

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into this 27<sup>th</sup> day of September, 2023, by and between the **CITY OF MANTECA**, a public body, corporate and politic ("City") and **MARK THOMAS & COMPANY, INC.**, a CALIFORNIA corporation ("Consultant").

### RECITALS

- A. Consultant is specially trained, experienced, and competent to perform the professional services required by this Agreement.
- B. Consultant possesses the skill, experience, ability, background, certification, and knowledge to provide the services described in this Agreement on the terms and conditions specified herein.
- C. City desires to retain Consultant to render the professional services set forth in this Agreement.

### AGREEMENT

1. Scope of Services. Consultant shall perform the Design & Environmental Engineering services described in the attached Attachment 1 that is incorporated by this reference, and pursuant to the Proposal submitted by Consultant dated July 27, 2023 and negotiated Proposal dated August 8, 2023, and attached hereto as Attachment 2. Consultant shall provide these services at the time, place, and in the manner specified in Attachment 1, subject to the direction of the City through its staff that may be provided from time to time. Performance of the Design & Environmental Engineering services is sometimes referred to herein as "the Project."

2. Work Through City Staff. Consultant shall perform its services pursuant to this Agreement solely through City staff. No communications, information or documentations shall be made directly to any applicant to the City without the prior written consent of the City. This shall not apply to the sole request of information or clarification of information by Consultant from the applicant. All requests shall be noted to City in an expeditious manner.

3. Time of Performance. Consultant's services will commence upon execution of this Agreement and shall be completed in accordance with the Schedule of Activities, attached hereto as Attachment 3. All work shall be completed no later than DECEMBER 31, 2025. Failure to submit work products in accordance with the Schedule of Activities may result in the City withholding progress payments. Repeated failure to complete work products in accordance with the Schedule of Activities may result in a reduction of the total compensation provided for in Section 4 herein.

4. Compensation. Without additional authorization from the City, compensation to be paid to Consultant shall not exceed THREE HUNDRED THREE THOUSAND EIGHT HUNDRED EIGHTEEN DOLLARS & TWO CENTS (\$303,818.02). Payment by City under

this Agreement shall not be deemed a waiver of any defects, even if those defects were known to the City at the time of payment.

5. Method of Payment. Consultant shall submit monthly billings to City specifying and describing the work performed during the preceding month. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours expended and by whom, and a description of any reimbursable expenditures. Full payment of each task will only be made at such time as each task is completed.

City shall pay Consultant no later than 30 days after approval of the monthly invoice by City staff. Payments may be delayed by City if Consultant fails to provide services in accordance with the Schedule of Activities, unless the City has provided prior written consent to any delay in the schedule.

6. Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, the term "Extra Work" means any work that is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without the City's prior written authorization.

7. Termination. This Agreement may be terminated by the City immediately for cause, or by either party without cause upon 15 days' prior written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination upon submittal of an invoice for same.

8. Ownership of Documents; Confidentiality.

A. All plans, studies, documents, and other writings prepared by and for Consultant, its officers, employees, agents, and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of City upon payment to Consultant for such work. City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request by City. Consultant shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose.

B. All memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other documents and data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. These materials shall not, without the City's prior written consent, be used by Consultant for any purposes other than the performance of the services under this Agreement. Nor shall these materials be disclosed to any person or entity not connected with the performance of services under this Agreement. Nothing furnished to Consultant that is otherwise known to Consultant, or is generally known, or has become known to the related profession shall be deemed confidential. Consultant shall not use City's name or insignia, photographs relating to the Project for which Consultant's services are

rendered, or any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production, or other similar medium without the City's prior written consent.

9. Consultant's Books and Records.

A. Consultant shall maintain all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City, for a minimum period of three years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement.

B. Consultant shall maintain all records that document performance under this Agreement for a minimum period of three years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address specified in Section 16 of this Agreement.

D. Where City has reason to believe that records or documents may be lost or discarded due to the dissolution or termination of Consultant's business, City may, by written request, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to these records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

10. Independent Contractor. In the performance of the work and services required by this Agreement, Consultant shall act as and be an independent contractor and not an agent, or employee of the City. Consultant shall obtain no rights to retirement or other benefits that accrue to City's employees, and Consultant expressly waives any claim it may have to any such rights.

11. Interest of Consultant.

A. Consultant represents that neither it nor any employee has any investment or interest in real property, and shall not acquire any such interest, direct or indirect, within the area covered by this Agreement, or any other source of income, interest in real property, or investment that would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further represents that, in the performance of its duties hereunder, no person having any such interest shall perform any services under this Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- (1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City, or of any City official, other than normal Agreement monitoring; and
- (2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (FPPC Reg. 18700(a)(2).)

## 12. Professional Ability of Consultant.

A. City is relying upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

B. The primary provider of the services required by this Agreement shall be Matt Brogan, PE. A list of other individuals assigned to the Project will be provided to City for its review and approval, and these individuals shall not be replaced without the City's prior written consent.

13. Compliance with Laws. Consultant shall use the customary standard of care in its profession to comply with all applicable federal, state, and local statutes, codes, ordinances, and regulations.

14. Licenses. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance, and approvals that are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance, and approvals that are legally required of Consultant to practice its profession.

15. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, and hold harmless the City, its officers, officials, agents, employees, and volunteers, from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therewith), arising out of Consultant's performance of this Agreement, or Consultant's failure to comply with any of its obligations contained in this Agreement; excluding, however, any claim arising out of the active negligence or willful misconduct of the City, its officers, agents, employees, or volunteers.

## 16. Insurance Requirements.

A. Job specific insurance requirements can be found on the attached Attachment 4. Other insurance provisions can be found below:



B. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing an A.M. Best's rating of no less than A:VII and shall be endorsed with language substantially as follows:

- (1) The City, its elected and appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work.
- (2) The policy shall be considered primary insurance as respects the City, its elected and appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.
- (3) The insurance shall apply to each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
- (4) The insurer waives all rights of subrogation against the City, its elected and appointed officers, officials, employees, and agents.
- (5) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officers, officials, employees, agents, or volunteers.
- (6) The insurance provided by the policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after 30 days written notice has been received by the City.
- (7) The City will not accept any endorsements that were issued in 2004. Acceptable endorsement forms are CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of those deductibles or self-insured retentions.

D. Certificates of Insurance. Consultant shall provide to City certificates of insurance with original endorsements as evidence of the required insurance coverage. Certificates of insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

17. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed

to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Manteca  
1001 W. Center Street  
Manteca, CA 95337  
Attention: Kyzen Nicolas, Assistant Engineer  
Email: [knicolas@manteca.gov](mailto:knicolas@manteca.gov)

If to Consultant: Mark Thomas & Company, Inc.  
701 University Avenue, Suite 200  
Sacramento, CA 95825  
Attention: Matt Brogan, PE, Principal/Vice President  
Email: [mbrogan@markthomas.com](mailto:mbrogan@markthomas.com)

18. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in their entirety by this Agreement.

19. Amendments. This Agreement may be amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

20. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience, and competence of Consultant. Assignments of any or all rights, duties, or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay any monies due to any such subcontractor other than as may be required by law.

21. Waiver. Waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach or default of the same or any other provision under this Agreement.

22. Severability. If any provision of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

23. Controlling Law; Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California, and any legal action relating to this Agreement shall take place in the Superior Court, County of San Joaquin.

24. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing

party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

25. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS, and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

26. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy has been signed by both parties.

27. Authority to Enter Agreement. Consultant warrants that it has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants to the other that the signatories to this Agreement have the legal power, right, and authority to enter into this Agreement and to bind each party.

28. Prohibited Interests.

A. Consultant warrants that it has not employed or retained any person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has neither paid nor agreed to pay any person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For any breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

B. For the term of this Agreement, no member, officer, or employee of City, during the period of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

29. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer, and it shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

30. Precedence. In case of conflict between Consultant's Proposal/Consultant's attachments and the City's Agreement/City's attachments, the City's Agreement and City's attachments shall take precedence over Consultant's proposal/Consultant's attachments.

31. Federal Aid Provisions. The Consultant's services are federally funded, which necessitates compliance with additional requirements. Special attention is directed to Caltrans

Local Assistance Procedures Manual Exhibit 10-R: A&E Boilerplate Agreement Language,  
which is incorporated as part of this Agreement.

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TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth in the introductory paragraph on page 1 above.

**CITY OF MANTECA:**

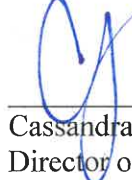
  
 Toni Lundgren  
 City Manager

**CONSULTANT:**

MARK THOMAS & COMPANY, INC.

(Type name of Consultant/form of organization)\*


**ATTEST:**

  
 Cassandra Candini-Tilton,  
 Director of Legislative Services


By:

  
 (Signature)  
 Zach Siviglia, President  
 (Type name and title)


**COUNTERSIGNED:**

  
~~Jared Hansen~~, ~~Shay Narayan~~  
~~Deputy~~ Director of Finance

By:

  
 (Signature)  
 R. Matt Brogan, Secretary  
 (Type name and title)

**COUNTERSIGNED:**

  
 Dawn Cortesi,  
 Acting Director of Human Resources

Address: 701 University Avenue, Suite 200

Sacramento, CA 95825

Telephone: (916) 381-9100

**APPROVED AS TO FORM:**

L. David Nefouse, City Attorney

By:   
 Daniella Green, Assistant City Attorney

**ATTACHMENT 1**

**SCOPE OF SERVICES**



# DETAILED SCOPE OF WORK

The specific tasks to be completed and deliverables to be provided by Mark Thomas for the project are outlined below.

## **Task 1. PROJECT MANAGEMENT**

Mark Thomas will provide ongoing project management for each task for the duration of the Contract term, which is assumed to be 8 months for the completion of the environmental clearance and design phase. Project management activities will consist of management, administration, coordination, supervision, project controls, attending meetings, and as follows:

### **Task 1.1. Project Management**

Mark Thomas will supervise, coordinate, and monitor activities and product development for conformance with the City's standards and policies and local ordinances. Prior to the start of any Services, Mark Thomas will interface with City staff to assure format consistency of deliverables and to facilitate free and timely flow of information for each task activity.

Mark Thomas will prepare and submit monthly progress reports that will identify work performed on each task in the preceding month, including percent completed compared to percent billed for each task must be shown. The monthly summary will show total charges made to each task, the Contract budget for each task, reallocated budget amounts, prior billing amount, current billing, total billed to date, and a total percent billed to date.

### **Task 1.2. Project Meetings**

Mark Thomas will arrange and conduct up to 8 monthly Project Development Team (PDT) meetings with project stakeholders, as directed by the City, which will include general discussion materials and preparation of agendas and minutes. Mark Thomas will endeavor to prepare and submit all meeting agendas one (1) week prior to the relevant meeting date and distribute draft meeting minutes for City review within three (3) working days after each meeting. Final meeting minutes will be distributed to the PDT incorporating relevant comments received on draft meeting minutes.

Mark Thomas will coordinate planning and design efforts with stakeholders including schools, transit agencies, utility companies, and private property/business owners as required. This includes coordination of design reviews and integration of adjacent public agency and third-party utility company designs for incorporation into the project design as appropriate. Mark Thomas will coordinate and attend up to three (3) meetings with the City staff and project stakeholders to resolve technical issues.

### **Task 1.3. Project Administration/Project Coordination**

Mark Thomas will prepare a detailed critical path method (CPM) schedule to reflect plan and progress of Services and to serve as a master schedule for the Project. The schedule will be updated on a monthly basis to include key milestones and tasks completed.

### **Task 1.4. Public Outreach**

Mark Thomas will support the City with preparation of a public notification letter for distribution by the City via mail. The letter is anticipated to include a narrative description of the project purpose and need, exhibit of the project location and cross section for the design, and anticipated schedule for completion.

Support for conducting public outreach meetings with community members, including residents, businesses and other non-agency stakeholders, is not included in this scope of work but may be provided as an additional service.



### Task 1.5. Quality Control

The Mark Thomas Quality Control plan consists of established procedures for performing the work (which are reassessed with each project), including methods for design calculations, establishing appropriate levels of design development for intermediate submittals, identification of required plan checks, design checklists, and methods of project documentation.

Our QC/QA Manager will implement and maintain these quality control procedures during the preparation of plans and documents throughout design. Independent quality assurance reviews will be conducted prior to each design submittal to the City. Reviews will be conducted by a licensed engineer with experience in the areas of work involved for the project.

### TASK 1 DELIVERABLE(S):

- Monthly progress reports and invoices
- Monthly CPM schedule updates
- Project Cloud-based File Repository
- Project Team Meeting Attendance w/ agendas and minutes (up to 8 meetings)
- Stakeholder Meetings (up to 3)
- Draft and Final Public Notification Letter
- QC/QA Review Checklist (35% and 95% design levels)
- *All deliverables to be submitted electronically in .pdf format unless specified otherwise*

### Task 2. ENVIRONMENTAL STUDIES

This scope of work for environmental studies is based on the scope of work and Preliminary Environmental Study (PES) Form provided in the RFP. Mark Thomas believes that the Project will qualify for a CEQA Categorical Exemption under 13 CCR § 15301. Existing Facilities because the Project will be constructed within the existing right of way and will involve a negligible expansion of existing use. The City will prepare and file a CEQA Notice of Exemption.

Caltrans will be the lead agency for NEPA and will be responsible for competing items identified in the PES including:

- Air Quality Checklist
- Biological Resources Technical Memorandum
- Cultural Resources (Caltrans PQS)

#### Task 2.1. Hazardous Materials/Waste

As a subconsultant to Mark Thomas, Crawford will prepare an Initial Site Assessment (ISA) report to identify evidence of prior or existing hazardous materials, hazardous waste, or petroleum impacts (Recognized Environmental Conditions, or RECs) that might negatively affect the proposed project alignment. The ISA will be prepared using ASTM E 1527-21 and Caltrans guidelines. The scope of services for the ISA will include:

- **Records review:** Selected federal, state, local, and tribal environmental agency databases will be reviewed for information pertaining to the project site and properties within the ASTM approximate minimum search distance. This data will be obtained from a vendor specializing in retrieval of environmental information. Results of the records search will be reviewed for indications of existing and potentially hazardous waste and hazardous material conditions with and immediately adjacent to the project alignment.
- **Historical Records:** Historical aerial photographs and topographic maps will be reviewed for indications of past uses of properties adjacent to the project site. Historical city directories and fire insurance maps (where available) will be consulted to assess previous commercial or industrial development adjacent to the project alignment.

- **Reconnaissance:** A drive-by reconnaissance will be performed, supplemented by a walking traverse if observation indicates possible hazardous materials use or storage. Reconnaissance will be performed to evaluate existing development and property uses adjacent to the alignment, and observe if hazardous materials, hazardous wastes, or petroleum products are being stored adjacent to the alignment.
- **Interviews:** If warranted by the records search or site reconnaissance, reasonable attempts will be made to interview persons identified as knowledgeable about potentially contaminated locations within or adjacent to the project site to obtain information indicating their potential impacts to the project. Interviews may be conducted in person, by telephone, or in writing. Individuals interviewed might include owners, occupants, local government officials, or others.
- **Report:** A report documenting our assessment will be prepared for the project. The report will include, but not necessarily be limited to, the following:
  - Description of the project site and vicinity;
  - Summary of the local geologic and hydrogeologic conditions;
  - Summary of the historical record review;
  - Findings from the records review;
  - Site reconnaissance observations;
  - Interview results;
  - Findings and Conclusions: a summary of potential impacts of recognized environmental conditions with potential to impact the project site; and
  - Recommendations: As warranted by the findings.

#### **Assumptions:**

- Project plans showing planned improvements, stationing, project limits, and extents of the implied easements will be provided.
- Our report will not include a chain-of-title review or search for environmental liens and activity and use limitations (AULs) for the project site or adjacent properties.
- This scope does not include collection and analysis of environmental samples. If warranted by the findings of the ISA, Crawford can provide a scope and costs for a Preliminary Site Investigation that includes sampling and testing at a later project phase.

#### **Task 2.2. NEPA Approval**

Based on a review of the Project, Mark Thomas believes the Project will qualify for a NEPA Categorical Exclusion under 23 CFR 771.117(c)(3) Construction of bicycle and pedestrian lanes, paths, and facilities. Caltrans will prepare the Categorical Exclusion Determination Form for the Project. Mark Thomas will coordinate with Caltrans to confirm the CE Determination Form is completed.

#### **Task 2.3. Land Use and Community Impacts**

Mark Thomas will prepare a Land Use and Community Impacts Technical Memorandum to document the project's long term and construction impacts to emergency services, bus routes, and access to residences/businesses and the Golden West Elementary School. Specific impacts are anticipated to include loss of street parking, coordination with emergency responders for access during construction, maintaining access to bus stops, and driveway access during construction. A summary of public outreach activities and materials will be provided.

The project is located entirely within the public right of way on a developed street. Therefore, no long term impacts are anticipated for changes in land use, property access, utilities, easements or right of way. Project construction will be completed using temporary, short-term, lane closures and no detour will be needed.

**TASK 2 DELIVERABLE(S):**

- Draft and Final Phase 1 Initial Site Assessment Technical Memorandum
- Draft and Final Land Use and Community Impacts Technical Memorandum
- *All deliverables to be submitted electronically in .pdf format unless specified otherwise*

**Task 3. SITE INVESTIGATIONS AND SURVEYS****Task 3.1. Project Initiation and Data Gathering**

Mark Thomas will coordinate a project kick-off meeting with the City and members of the design team to discuss the project background, scope, concepts, schedule, project management, potential stakeholders and issues, outreach opportunities and expectations. Mark Thomas will provide a project information gathering checklist to collect data elements needed for the design, including GIS mapping information, City-owned facility maps, utility contacts, as-built and planned improvement drawings, and available collision, speed studies, and traffic count information.

The data gathering process will include a review of the existing site characteristics. Mark Thomas will conduct site visits and take photographic inventory of existing conditions to reference during the design process and make observations related to sight distance at pedestrian crossings, ADA-compliance and potential tripping hazards on the sidewalks and identify potential conflicts with existing utilities and privately-owned improvements within the public right-of-way. For estimating purposes, one (1) day of site visits by two (2) staff persons are assumed to complete the field reviews. A photo log for each project location will be prepared and submitted to the City electronically.

**Task 3.2. Topographic Surveys and Base Map Preparation**

Mark Thomas proposes the following work plan to set project control, collect topographic survey, provide electronic base files for the design, and delineate public right-of-way limits as described below.

The general requirements for the work under this scope are listed below:

- These tasks will be completed under the direct supervision of a California Licensed Land Surveyor.
- Base mapping will be delivered in AutoCAD Civil 3D 2018 or earlier version as required by the City.
- Submittal of electronic information may be transmitted by email or posted to the Mark Thomas FTP site (or other FTP site, as directed) under password protection with instruction for retrieval and password transmitted by email.

Available AutoCAD base mapping for the design, based on aerial photograph and GIS information, will be furnished by the City. Mark Thomas will utilize City-furnished base mapping to prepare preliminary plans and details. Supplemental topographic survey and base mapping will be prepared by Mark Thomas for use with the design plans and details.

Right of way information will be shown on the base mapping based on available GIS right of way information.

**Topographic Survey** – Mark Thomas will conduct topographic surveys between back of sidewalks on Main Street and to 25' feet from curb return on side streets to locate pertinent accessible above ground features to augment the City-furnished base mapping using conventional ground survey techniques. The limits of detailed topo will extend along Main Street from the intersection of Northgate Drive to Alameda Street.

Ground visible features to be captured include, but are not limited to sidewalks, curb and gutter, driveways, curb ramps, fences, surface visible utilities, trees, street lighting, signing, striping, and markings within the project limits. Storm and sewer manholes will be dipped to determine invert elevations and pipe diameters within the streets around the site. Drain inlet invert elevations and pipe sizes will be based on information

furnished by the City. Field crews will rely upon markings on utility feature lids. No utilities will be dipped other than sewer and storm.

#### **Survey Assumptions and Exclusions**

- Monument Preservation is not included
- A Record of Survey is not included.
- Preparation of Plats and Legal Descriptions for property acquisition or easements are not included.

#### **Task 3.3. Utility Coordination**

For this project, we assume utility relocations will be limited to adjustment of existing sewer, storm drain, and water facilities, where needed, to accommodate new raised medians and curb ramps. To the extent possible, relocation of dry utilities, including gas, communications, underground electric and vaults/boxes will be avoided to mitigate the potential schedule risk for completion of design and scheduling of relocations by others.

Mark Thomas will send air photo base maps with any known utility base information shown ("A" Plans) to utility providers with a brief explanation of the project. System mapping/facility confirmation will be requested so revised project utility mapping can be generated for the project site. Mark Thomas will prepare utility conflict maps ("B" Plans) and coordinate relocation designs with the affect owners, and will prepare "C – Notice to Owner" letters notifying the utilities of the pending construction.

Should any relocations of private utility facilities be required, it is assumed that these designs will be provided by the private utility company.

Recent changes to the Caltrans Project Development Procedures Manual (Ch. 17, Section 2 – Utility Policies) require positive location information for underground high priority utilities if the project involves excavations greater than 6" deep beyond the existing roadbed limits or digging beyond the limits of the existing pavement structural section within the roadbed. These procedures must be applied to all Local Assistance projects. The maximum depth of excavation is not expected to go beyond the existing roadway pavement structural section limits so additional measures to positively locate and verify the depth of existing underground utilities are not proposed for this project. If the assumption for the design is changed during the design process, potholing may be required and may be provided as a potential optional task.

#### **Task 3.4. Pavement Rehabilitation Recommendations Memo (Optional Task)**

As an optional task, Crawford can provide pavement engineering services that will include R-values and pavement rehabilitation recommendations for Main Street from Northgate Drive to Alameda Street. Based on our site visit the pavement along Main Street can be broken into two sections:

1. Alameda Street to Argonaut Street – Poor Condition
2. Argonaut Street to Northgate Drive – Moderate Condition

Below we present our scope of services for this task.

- **Coordination and Preliminary Review** - Crawford will meet with the design team to discuss preliminary design plans, project design needs, issues and schedules. We will obtain a City of Manteca encroachment permit.
- **Pavement Coring and Sampling** - To measure the existing structural pavement sections (AC and AB), Crawford will perform 6 to 8 pavement cores along Main Street. An Engineer/Geologist will direct the coring and sampling.



- **Preliminary Pavement Section Analysis** - Following the results of our pavement coring and R-value testing, Crawford will discuss the current calculated traffic indexes and potential rehabilitation options along Main Street with the City and design team prior to completing laboratory testing. Estimated values will be used to establish the mix design specifications for construction which will need to be confirmed during construction.
- **Pavement Design Memo** - Crawford will prepare a Pavement Design Report including the following:
  - Project description;
  - Existing pavement conditions including dig out and replacement locations;
  - New structural pavement sections including traditional asphalt and aggregate base and deep lift asphalt;
  - Rehabilitation recommendations (depending on existing section and design constraints) including traditional mill/overlay or in-place recycling including one of a combination of full depth recycling, cement/lime treatment, and cold in-place recycling;
  - Recommendations for grading and construction, including ground preparation, materials excavation, stability, and placement;
  - Risk Management and Limitations;
  - Vicinity Map;
  - Site Plan with pavement core locations, and pavement conditions notes.

#### ASSUMPTIONS

- The City will waive the encroachment permit fee.
- Traffic control will consist of lane shifts with and without flagmen.
- Pavement cores will be backfilled with concrete.

#### TASK 3 DELIVERABLE(S):

- Photo Log of Site Conditions
- Topographic Base Mapping (20 Scale) – AutoCAD Format
- Utility “A, B & C Letters”
- *Optional Item:* Draft and Final Pavement Design Memo
- *All deliverables to be submitted electronically in .pdf format unless specified otherwise*

### Task 4. PREPARE DRAFT PLANS, SPECIFICATIONS AND ESTIMATES (PS&E)

The anticipated design services included in this scope of work are based on a budget of \$1.6 Million of local and Federal funds, as identified in the HSIP grant application, which are allocated for pavement resurfacing, restriping travel lanes, curb ramps, installing raised concrete medians and pedestrian median fences, and traffic signal modifications. Our scope of work encompasses civil and electrical design to prepare approved plans, specifications, and estimate (PS&E) for use by the City in bidding constructing the improvements.

Draft PS&E submittals will be prepared at the 35% and 95% design levels. The intent of intermediate submittals is to define the project for review by the City and stakeholders, and to allow for major comments prior to investment of significant design effort in design details. The 65% design submittal identified in the RFP has been omitted from this scope of work to advance the design and project approval process with Caltrans to address the City’s goal for completion of the design.

#### Task 4.1. 35% Plans, Specifications and Estimate

The Mark Thomas team will prepare 35% PS&E to identify roadway and intersection geometrics, potential conflicts with existing utilities, preliminary construction quantities, and cost estimates for the Project. Designs will be prepared in accordance with the Caltrans Highway Design Manual, Caltrans Standard Plans, Caltrans Standard Specifications, and California Manual for Uniform Traffic Control Devices, as appropriate.

### 35% Plans

The Mark Thomas team will prepare, coordinate, and submit design plan sheets in English units for the roadway design to confirm the project geometrics and major project elements. The sheets to be developed as a part of this task include:

Sheet Name	Number of Sheets	Drawing Scale
Title Sheet	1	Not to scale
Typical Cross Sections	2	Not to scale
Layout Plans	4	20
Drainage and Utility Layouts	4	20
Pavement Delineation/Sign Plan	4	20
Preliminary Signal Design Plans (Bennett)	4	20
<b>Total Sheets</b>	<b>19</b>	

### Outline Specifications:

Mark Thomas will prepare outline technical specifications based on the bid items identified on the 35% Plans.

### Cost Estimates

Mark Thomas will prepare a cost estimate to identify items of work associated with the project and utilize the appropriate contingency at this level of design. The unit prices will be based on recent relevant bid prices and the Caltrans Cost Database as well as input from the City.

### Preliminary Signal Design

The Mark Thomas Team will obtain electronic base plans and as-built signal plans from the City and verify them in the field. Based on the obtained information, BEN|EN will prepare traffic signal modification plans, specifications, and cost estimates (PS&E) for the following intersections:

- Main Street/Alameda Street
- Main Street/Louise Avenue
- Main Street/Lancaster Drive
- Main Street/Northgate Drive

The traffic signal modifications may include installation/re-installation of vehicle and bike detector loops and/or relocation of pedestrian pushbuttons due to reconstruction of curb ramps. It does not include any lighting modifications. BEN|EN will submit traffic signal PS&E to the City for review at 35% and 95% level.

### **Task 4.2. 95% PS&E**

In order to meet the City's schedule requirements, Mark Thomas proposes to omit the preliminary PS&E submittal at the 65% level and advance the PS&E from the 35% design directly to the 95%-level of design. The Mark Thomas team will develop plans, specifications, and estimates for 95% design and include comment responses as received from the City's review of 35% design submittal and identifying and resolving conflicts. It is assumed that no major geometric or other major project elements will change after the 35% design. Ahead of the 95% design, Mark Thomas will attend a PDT meeting with the City and other stakeholders to resolve any issues from 35% design review. Mark Thomas will incorporate the agreed upon comments received from the City and other agencies into the 95% design. The 95% plan set will include all of the sheets shown in Task 5 below.

Mark Thomas will prepare technical specifications and bid form in the City's standard format. It is assumed the City will provide the boilerplate contract and general provisions. The basis of the technical specifications will be the Caltrans Standard Specifications, or as required by the City.

An itemized estimate of construction costs will be prepared using recent bid summaries for similar projects in the vicinity of Manteca. Prices will be adjusted using engineering judgement that reflects the project location and the quantity of each item.

The 95% PS&E will be submitted to the City for review and comment. An independent review of the 95% PS&E will be conducted with Task 1.5, "Quality Control," as described above.

#### **Task 4.3. Obtain Required Permits**

The project is assumed to be constructed entirely within the existing Right of Way for Main Street in the City of Manteca. As such, no permits are anticipated other than a City of Manteca Encroachment Permit. It is assumed the City will provide a no fee encroachment permit for construction.

#### **TASK 4 DELIVERABLE(S):**

- 35% Plans, Outline Specifications and Estimate
- 95% PS&E (2-11"x17" plan sets if requested by City)
- *All deliverables will be submitted in .pdf format unless specified otherwise*

#### **Task 5. PREPARE FINAL PS&E PACKAGE**

The Mark Thomas team will complete final design for the project defined in draft PS&E submittal at the 95% level of completion. The 100% (pre-final) submittal will be provided as a final plan check opportunity by the City to ensure prior comments have been addressed prior to bidding. Addressing new design comments provided by the City after the 95% design package has been submitted would be provided as an additional service with additional fee to be negotiated prior to the start of design revisions.

The approach listed below will best address the scope of improvements listed in our understanding of the project and will be built upon during the preparation of intermediate design submittals by adding plan information and detail sheets until a complete, buildable and biddable package is reached.

Below is an estimated count of plan sheets:

Sheet Name	Number of Sheets	Drawing Scale
Title Sheet	1	Not to scale
Standard Abbreviations/General Notes	1	Not to scale
Typical Cross Sections	2	Not to scale
Project Control	1	200
Layout Plans	4	20
Construction Details (Curb Ramp Grading)	6	Varies
Drainage and Utility Plans and Profiles (Includes Water Pollution Control)	4	20
Drainage and Utility Details and Lateral Profiles	2	Varies
Construction Area Signs	1	200
Pavement Delineation/Sign Plan and Details	4	20
Traffic Signal Modification Plans and Schedules (Bennett)	8	20
<b>Total Sheets</b>	<b>34</b>	



**Task 5.1. 100% (Pre-final and Bid Set) PS&E**

Upon receipt of a single set of non-conflicting comments from the City and reviewing agencies, the Mark Thomas team will prepare a Comment Response Matrix listing the comment, source, and proposed resolution. If necessary, Mark Thomas will arrange a PDT meeting with City staff and stakeholders to review the comments received, discuss any questions and confirm the resolutions.

Once the comment resolutions are agreed upon, Mark Thomas will update the PS&E to the 100% (pre-final) design level. The 100% (pre-final) PS&E will be of sufficient detail for the City to use in bidding and constructing the project improvements. The 100% (pre-final) plans and specifications will be signed and sealed by a professional civil engineer in responsible charge of the work. Any comment by the City will be incorporated to the 100% (Bid Set) PS&E.

Bid Set PS&E will be submitted to the City in hardcopy and electronic format. Signed plans will be provided in PDF format. AutoCAD files for the drawings will be provided if requested. Specifications will be provided electronically in MS Word format.

**Task 5.2. Request for Authorization: Construction Authorization**

Project funds for construction include federal grant funds through the HSIP program, which is administered by Caltrans Local Assistance. Mark Thomas will assist the City to ensure the project is developed in accordance with the guidelines presented in the current Caltrans Local Assistance Procedures Manual (LAPM) and Caltrans Local Assistance Procedures Guidelines (LAPG). This task includes any work involved in coordinating with Caltrans, District 10 Local Assistance, for the development of the Right of Way and Utility Certification documents, Request for Authorization (RFA) documents to obtain the Caltrans Authorization (E-76) for Construction, and other forms required by Caltrans Local Assistance for approval.

**Task 5.3. RE File**

Mark Thomas will provide a resident engineer's file for the construction contract. The following items, as a minimum, will be included in the Resident Engineer's File are quantity calculations (related to individual design plan sheets) and estimates.

**TASK 5 DELIVERABLE(S):**

- PS&E (100% (Pre-final)) (2-11"x17" plan sets)
- Final (Bid Set) Plans (1 - 24"x36" Hardcopy and AutoCAD format)
- Final (Bid Set) Specifications (Hardcopy and MS Word format)
- Final Estimate (Hardcopy and MS Excel format)
- RFA Documents (Exhibits 3-A; 39-D; 12-D; 13-B, 14-D)
- RE File
- *All deliverables to be submitted electronically in .pdf format unless otherwise noted*

**Task 6. CONSTRUCTION SUPPORT**

Construction bidding procedures are the responsibility of the City. Mark Thomas will provide engineering services to support the bidding and construction phases of the project as described herein. Once the project is approved for advertisement Mark Thomas and subconsultants will provide services to facilitate the successful advertisement, award, and construction of the project. Since this work is difficult to estimate at this stage, Mark Thomas has provided an estimated fee in the fee schedule. After the budget is exhausted, the assistance will be on a time and materials basis. This work includes:

**Task 6.1. Bid and Construction Support**

Mark Thomas and subconsultants will provide clarification of the design, provide information in response to bidders' questions regarding the Bid Documents, and attend the pre-bid meeting as requested by the City.

This task assumes that the City will hire a Construction Management firm with qualifications that include past experience with roadway construction and signalized intersections. The construction management firm will be responsible for managing the project through construction including overseeing the Contractor and day-to-day construction activities. This task also assumes that the City will hire a Resident Engineer that is a licensed Civil Engineer in the State of California.

During the construction phase, Mark Thomas and Bennett will work with the Resident Engineer (RE) that is hired by the City to assist and advise the RE in order to minimize construction conflicts and to expedite project completion. Mark Thomas and Bennett will prepare Contract Change Order (CCO) plans, respond to Request for Information (RFIs) and review submittals and requests for changes, if necessary.

**Task 6.2. Construction Meetings**

Mark Thomas will attend construction meetings including the mandatory pre-bid meeting, pre-construction meeting and up to ten (10) regular weekly construction meetings as required by the City.

**Task 6.3. Record Plans**

Mark Thomas will provide Record Drawings to the City after construction is complete. These drawings will be based on red-lined as-builts provided by the City construction manager or City contractor.

**TASK 6 DELIVERABLE(S):**

- Addenda to bid document as needed
- Reviews of Contractor submittals, shop drawings and change requests as needed
- Prepare responses to Contractor RFI as needed
- Preparation of CCO plans as needed
- Attendance at up to 12 construction meetings
- Prepare Record Drawings
- *All deliverables to be submitted electronically in .pdf format unless otherwise noted*

**Project Assumptions**

This scope of services is based on the following assumptions:

- The project is expected to be Categorically Exempt under CEQA. The City will prepare and file all environmental clearance documents for the project.
- The project will be advertised, awarded, and administered by the City and the City will coordinate reproductions of the bid package.
- Construction staging and traffic handling plans are not included.
- Landscape design is not included.
- Traffic analysis is not included.
- No utility as-builts or locating service will be obtained by Mark Thomas.
- Mark Thomas will identify survey monuments on the plans if any are encountered during the topographic survey. Mark Thomas will not be responsible for preserving and perpetuating survey monuments.
- City will lead the effort to identify pavement section dig out and reconstruction areas to be shown on the plans.
- Geotechnical services during construction will be provided by the City.

- The City will lead the effort and will provide rights of entry to private property. The City will obtain and provide encroachment permits, at no fee, for work within public right of way.
- Detailed right of way delineation will not be done within the project limits, approximate right of way and property lines will be developed using Assessors Parcel Maps and GIS Mapping.
- A Record of Survey is not included in this scope of work.
- Optional design services by Bennett, not included in this scope of service, but that may be completed for an additional fee to be negotiated prior to beginning work include the following:
  - Traffic signal modifications or new traffic signal designs for locations where additional signal equipment upgrades or changes are deemed necessary or required due to changes in roadway geometry or lane configurations.
  - Corridor Lighting Improvements
  - Signal Interconnect & Communication Plans
  - Temporary Signal Plans for Construction Staging

## MILESTONE SCHEDULE

Below is a summary of anticipated project schedule and milestones. A detailed CPM schedule has been provided.

Milestone	Estimated Completion
Execute Contract	August 2023
Environmental Services	Aug 2023 to Nov 2023
Site Investigations and Surveys	Aug 2023 to Sept 2023
35% PS&E	Sept 2023 to Oct 2023
95% PS&E	Nov 2023 to Dec 2023
100% (Pre-final) PS&E	Jan 2024 to Feb 2024
100% (Bid Set) PS&E	Feb 2024 to May 2024
Advertise and Award	April 2024
Construction	Begins May/June 2024

**ATTACHMENT 2**

**CONSULTANT'S PROPOSAL**

# PROPOSAL



## SUBMISSION DATE

JULY 27, 2023

## PROJECT

# MAIN STREET BIKE & PEDESTRIAN IMPROVEMENTS

HSIPL 5242 (035)

## PREPARED FOR

City of Manteca



MARK THOMAS





## MARK THOMAS

July 27, 2023

Kyzen Nicolas  
City of Manteca - Engineering Department  
1001 West Center Street, Suite E  
Manteca, CA 95337

Dear Kyzen:

The City of Manteca (City) is seeking qualified consultants to provide design and environmental services for the HSIPL 5242(035) Main Street Bike and Pedestrian Improvement Project (Project). Mark Thomas prepared the grant application for Highway Safety Improvement Program (HSIP) that helped the City secure funds to improve a portion of Main Street from Northgate Drive to Alameda Street. The proposed bike and pedestrian improvements include installation of Class II bike lanes, installation of raised median, enhanced pedestrian crossings with curb extensions, modification of signal loops, and installation of pedestrian median fencing.

For more than 96 years, Mark Thomas has provided civil and structural engineering, landscape architecture, land surveying, and utility coordination for transportation projects that include all modes of travel to local agencies throughout the Central Valley. The City is familiar with Mark Thomas, having delivered several projects in the City, including the ATP & HSIP Grant Writing Services, Main Street Improvements from Yosemite Avenue to Atherton Drive, Main Street Pavement Improvements, Airport Way/Yosemite Avenue to Daniels Street Widening, and the SR 120/Union Road Interchange. These projects demonstrate our technical capabilities and our dedication to working closely with the City.

Daniel Blomquist, PE will lead the team as project manager. He has more than 22 years of experience in the management and design of transportation and public works projects. His projects include bike and pedestrian improvements, roadway improvements, complete streets, and road widenings. He has worked on projects with similar elements as the Main Street Bike and Pedestrian Improvement, has coordinated with Caltrans Local Assistance for the delivery of numerous projects with Federal funds, and his participation in the grant application process gives him better understanding of what the project will entail. He will be supported by a team familiar with working with the City and have experience designing bike and pedestrian improvements.

Mark Thomas and our subconsultants have delivered numerous projects together, which provides for efficient and effective project delivery. We have teamed with **Bennett Engineering Services + Y&C Transportation Consultants** (Bennett) and **Crawford & Associates** (Crawford) for this project. Work for this project will be performed out of the Sacramento office in addition to the subconsultant office locations listed on the table below. A memorandum from each firm can be found following the cover letter.

FIRM	SERVICE	LOCATION	% OF WORK
Bennett Engineering (DBE)	Traffic Signal Design	Sacramento	15%
Crawford	Geotechnical	Sacramento	3.7%

By submitting this proposal, we commit to providing an experienced, available team whose time will be dedicated to serving the City on this project. We acknowledge receipt of all addenda and we request the City evaluate our proposal based upon the scope of services for the Project. Mark Thomas' proposal shall remain valid for no less than one hundred eighty (180) days from the day of submittal. As a principal of Mark Thomas, I am authorized to negotiate and contractually bind the firm and attest that all information included in the proposal is true and correct.

Sincerely,

**MARK THOMAS & COMPANY, INC**

Matt Brogan, PE  
Principal + Vice President



(916) 381-9100  
701 UNIVERSITY AVENUE, SUITE 200  
SACRAMENTO, CA 95825

MARKTHOMAS.COM

## COST PROPOSAL FOR PROJECT SCOPE: Manteca-Main Street Bike &amp; Pedestrian Improvements

<div>MARK THOMAS</div>																		Subconsultants		TOTAL COST
Principal	Sr. Project Manager	Project Manager	Project Engineer	Design Engineer II	Design Engineer I	Survey Manager I	Project Surveyor II	Survey Technician III	2-Person Crew (OC3)*	Sr. Project Accountant	Sr. Project Coordinator	Sr. Graphic Manager	Sr. Graphic Designer	Total Hours	Total MT Cost	Bennett Engineer	Crawford & Associates			
\$481	\$204	\$214	\$152	\$142	\$115	\$217	\$192	\$136	\$328	\$146	\$145	\$173	\$148							
1.0 PROJECT MANAGEMENT																				
6		12												18	\$5,454					
4		12	18											34	\$7,227					
1.3 Project Administration/Project Coordination																				
		4								16	32			52	\$7,832					
	2	2	4									8	8	24	\$4,012					
1.4 Public Outreach																				
	24		6											30	\$5,811					
1.5 Quality Control																				
10	26	30	28	0	0	0	0	0	0	16	32	8	8	158	\$30,335	\$0	\$0			
Subtotal Phase 1																				
2.0 ENVIRONMENTAL STUDIES																				
2.1 Hazardous Materials/Waste																				
		2	2											4	\$732		11,517			
2.2 NEPA Approval																				
	4	4	20		16									0	\$0					
2.3 Land Use & Community Impacts																				
0	4	6	22	0	16	0	0	0	0	0	0	0	0	44	\$6,551					
Subtotal Phase 2																				
3.0 SITE INVESTIGATIONS & SURVEYS																				
3.1 Project Initiation & Data Gathering																				
		4	8		8									20	\$2,992					
3.2 Topographic Surveys & Base Map Preparation																				
		2	2	2	2	16	16	80	56					174	\$36,754					
3.3 Utility Coordination																				
		4	16	8	40									68	\$9,023					
Subtotal Phase 3																				
0	0	10	26	8	50	16	16	80	56	0	0	0	0	262	\$48,769	\$0	\$0			
Subtotal Phase 4																				
PREPARE DRAFT PLANS, SPECIFICATIONS & ESTIMATES (PS&E)																				
4.0 ESTIMATES (PS&E)																				
4.1 35% Plans, Specifications & Estimate																				
		12	24	48	120									204	\$26,831	12,961				
4.2 95% PS&E																				
		24	80	160	280									544	\$72,212	18,692				
4.3 Obtain Required Permits																				
		2	2											4	\$732					
Subtotal Phase 4																				
0	0	38	106	208	400	0	0	0	0	0	0	0	0	752	\$99,775	\$31,653	\$0			
Subtotal Phase 4																				
5.0 PREPARE FINAL PS&E PACKAGE																				
5.1 100% (Pre-Final & Bid Set) PS&E																				
		8	24	40	80									152	\$20,239	6,057				
Request for Authorization: Construction																				
5.2 Authorization																				
		8	8	32	16									48	\$7,472					
5.3 RE File																				
		8	8											32	\$4,768					
Subtotal Phase 5																				
0	0	24	40	72	96	0	0	0	0	0	0	0	0	232	\$32,478	\$6,057	\$0			
Subtotal Phase 5																				
6.0 CONSTRUCTION SUPPORT																				
6.1 Bid & Construction Support																				
		8	40		40									88	\$12,390	2,593				
6.2 Construction Meetings																				
		10	4											14	\$2,748	1,521				
6.3 Record Plans																				
		2	4		40									46	\$5,636	552				
Subtotal Phase 6																				
0	0	20	48	0	80	0	0	0	0	0	0	0	0	148	\$20,774	\$4,667	\$0			
Subtotal Phase 6																				
TOTAL HOURS																				
10	30	128	270	288	642	16	16	80	56	16	32	8	8	1600						
Anticipated Salary Increases																				
OTHER DIRECT COSTS																				
\$4,809	\$6,124	\$27,392	\$41,027	\$40,896	\$73,830	\$3,472	\$3,072	\$10,880	\$18,368	\$2,336	\$4,640	\$1,384	\$1,184	\$247,536	\$347	\$772	\$12,288			
TOTAL COST																				
OPTIONAL TASKS																				
Pavement Rehabilitation Recommendations																				
Memo																				
0	0	4	4	0	0	0	0	0	0	2	2	0	0	12	\$2,046		28,746			
Subtotal Optional Tasks																				
0	0	4	4	0	0	0	0	0	0	2	2	0	0	12	\$2,046	\$0	\$28,746			
Subtotal Optional Tasks																				
0	0	4	4	0	0	0	0	0	0	2	2	0	0	12		\$0	\$0			
Subtotal Optional Tasks																				
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Subtotal Optional Tasks																				
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Subtotal Optional Tasks																				
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Subtotal Optional Tasks																				
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**Bennett Engineering Services +  
Y & C Transportation Consultants**

3250 Ramos Circle  
Sacramento, CA 95827  
(916) 366-8000

Roseville | Fremont | Milpitas

[www.ben-en.com](http://www.ben-en.com)

July 27, 2023

Matt Brogan, PE  
Mark Thomas & Company, Inc.  
701 University Avenue, Suite 200  
Sacramento, CA 95825

Re: Main Street Bike and Pedestrian Improvement Project

Dear Mr. Brogan,

Bennett Engineering Services + Y&C Transportation Consultants is pleased to team with Mark Thomas & Company, Inc. (Mark Thomas) to perform traffic/electrical engineering for the Main Street Bike and Pedestrian Improvement Project.

Our firm will perform these services out of our Sacramento, CA office.

We are in receipt of all addenda for this RFP and can assure Mark Thomas and the City of Manteca that all information pertaining to our firm that is contained in the proposal is true and correct. We further confirm that all key personnel proposed for this project shall, upon award of a contract, not be removed or replaced without the prior written consent of the City.

Please contact me at (916) 397-4481 or via email [lrubio@ben-en.com](mailto:lrubio@ben-en.com) should you have any questions.

Sincerely,

Leo Rubio, PE, President and CEO  
Bennett Engineering Services + Y&C Transportation Consultants



July 27, 2023

Matt Brogan, PE  
Mark Thomas & Company, Inc.  
701 University Avenue, Suite 200  
Sacramento, CA 95825

Re: Main Street Bike and Pedestrian Improvement Project

Dear Mr. Brogan,

Crawford & Associates, Inc. is pleased to team with Mark Thomas & Company, Inc. (Mark Thomas) to perform Phase I Initial Site Assessment for the Main Street Bike and Pedestrian Improvement Project.

Our firm will perform these services out of our Sacramento, CA office.

We are in receipt of all addenda for this RFP and can assure Mark Thomas and the City of Manteca that all information pertaining to our firm that is contained in the proposal is true and correct. We further confirm that all key personnel proposed for this project shall, upon award of a contract, not be removed or replaced without the prior written consent of the City.

Please contact me at (209) 915-1147 or via email [shawn.leyva@crawford-inc.com](mailto:shawn.leyva@crawford-inc.com) should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shawn Leyva', is written over a light blue horizontal line.

Shawn Leyva, Principal  
Crawford & Associates, Inc.



## CONTRACT TERMINATION CIRCUMSTANCES

**A. Provide a response to the following question: Has your firm ever been terminated from a contract?**

Mark Thomas has not been terminated from a contract.

**B. If Consultant has been terminated from a contract, describe the facts and circumstances in detail, on a separate sheet.**

Not applicable.

Note: Mark-ups are Not Allowed

☒ Prime Consultant☐ Subconsultant☐ 2nd Tier SubconsultantConsultant: **Mark Thomas & Company, Inc.**

Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_

Date **8/8/2023****DIRECT LABOR**

Classification/Title	Name	Range	Hours	Actual Hourly Rate	Total
Principal	Matt Brogan	\$138 - \$165	10	\$ 174.42	\$ 1,744.20
Sr. Engineering Manager		\$112 - \$148		\$ 137.82	\$ -
Engineering Manager		\$105 - \$126		\$ 115.69	\$ -
Design Manager		\$101 - \$126		\$ 115.69	\$ -
Sr. Project Manager	Dan Blomquist	\$75 - \$107	30	\$ 74.03	\$ 2,220.90
Sr. Project Manager		\$75 - \$107		\$ 96.11	\$ -
Sr. Technical Lead		\$75 - \$107		\$ 96.11	\$ -
Project Manager		\$62 - \$88	128	\$ 77.61	\$ 9,934.08
Technical Lead		\$62 - \$88		\$ 77.61	\$ -
Sr. Project Engineer		\$56 - \$78		\$ 67.46	\$ -
Sr. Technical Engineer		\$56 - \$78		\$ 67.46	\$ -
Project Engineer	Arsalan Gharachorloo	\$50 - \$70	270	\$ 55.11	\$ 14,879.70
Project Engineer		\$50 - \$70		\$ 59.48	\$ -
Civil Engineering Designer		\$40 - \$67		\$ 56.94	\$ -
Design Engineer II		\$38 - \$62	288	\$ 51.50	\$ 14,832.00
Design Engineer I		\$30 - \$52	642	\$ 41.71	\$ 26,777.82
Sr. Planner		\$38 - \$62		\$ 51.50	\$ -
Planner II		\$31 - \$53		\$ 42.80	\$ -
Planner I		\$28 - \$45		\$ 34.09	\$ -
Sr. Technician		\$40 - \$63		\$ 52.59	\$ -
Technician		\$23 - \$46		\$ 35.18	\$ -
Intern		\$17 - \$34		\$ 23.94	\$ -
Survey Division Manager		\$85 - \$126		\$ 115.33	\$ -
Survey Manager II		\$74 - \$96		\$ 87.77	\$ -
Survey Manager I		\$69 - \$89	16	\$ 78.70	\$ 1,259.20
Project Surveyor III		\$65 - \$91		\$ 80.51	\$ -
Project Surveyor II		\$60 - \$80	16	\$ 69.63	\$ 1,114.08
Project Surveyor I		\$52 - \$75		\$ 64.19	\$ -
Asst Surveyor III		\$45 - \$65		\$ 54.76	\$ -
Asst Surveyor II		\$41 - \$60		\$ 49.32	\$ -
Asst Surveyor I		\$35 - \$54		\$ 43.88	\$ -
Survey Specialist III		\$58 - \$87		\$ 76.53	\$ -
Survey Specialist II		\$45 - \$69		\$ 58.75	\$ -
Survey Specialist I		\$35 - \$56		\$ 45.70	\$ -
Lead Survey Technician		\$46 - \$67		\$ 56.94	\$ -
Survey Technician III		\$37 - \$60	80	\$ 49.32	\$ 3,945.60
Survey Technician II		\$34 - \$56		\$ 45.70	\$ -
Survey Technician I		\$19 - \$51		\$ 40.26	\$ -
Chief of Party (OE3)*		\$55 - \$73		\$ 62.02	\$ -
Instrumentperson (OE3)*		\$51 - \$67		\$ 56.58	\$ -

# ATTACHMENT 7

Chainperson (OE3)*		\$48 - \$65		\$ 54.76	\$ -
Apprentice (OE3)*		\$28 - \$50		\$ 39.53	\$ -
2-Person Crew (OE3)*		\$103 - \$129	56	\$ 118.96	\$ 6,661.76
3-Person Crew (OE3)*		\$133 - \$169		\$ 158.85	\$ -
Utility Locator (PW North)*		\$44 - \$60		\$ 49.32	\$ -
2-Person Utility Locate (PW North)*		\$90 - \$108		\$ 97.20	\$ -
Chief of Party (OE12)*		\$64 - \$84		\$ 73.26	\$ -
Instrumentperson (OE12)*		\$58 - \$77		\$ 66.01	\$ -
Chainperson (OE12)*		\$58 - \$75		\$ 64.19	\$ -
Apprentice (OE12)*		\$24 - \$50		\$ 39.53	\$ -
2-Person Crew (OE12)*		\$122 - \$148		\$ 137.46	\$ -
3-Person Crew (OE12)*		\$146 - \$186		\$ 175.54	\$ -
Utility Locator (PW South)*		\$62 - \$78		\$ 67.82	\$ -
2-Person Utility Locate (PW South)*		\$125 - \$148		\$ 137.46	\$ -
LAUD Division Manager		\$85 - \$104		\$ 93.93	\$ -
Sr. LAUD Project Manager		\$77 - \$99		\$ 88.13	\$ -
LAUD Project Manager		\$65 - \$87		\$ 76.53	\$ -
Sr. Landscape Architect		\$41 - \$70		\$ 59.12	\$ -
Landscape Architect		\$38 - \$64		\$ 53.68	\$ -
Landscape Designer II		\$33 - \$53		\$ 42.43	\$ -
Landscape Designer I		\$27 - \$45		\$ 34.09	\$ -
Landscape Intern		\$17 - \$34		\$ 23.94	\$ -
District Manager-Engineer		\$110 - \$133		\$ 122.22	\$ -
Deputy District Manager		\$97 - \$120		\$ 109.89	\$ -
Operations Manager		\$78 - \$106		\$ 95.38	\$ -
Sr. Sanitary Project Engineer		\$68 - \$95		\$ 84.87	\$ -
Sanitary Project Engineer		\$57 - \$85		\$ 74.71	\$ -
Associate Sanitary Engineer		\$54 - \$75		\$ 64.19	\$ -
Assistant Sanitary Engineer		\$48 - \$67		\$ 56.22	\$ -
Sr. Inspector*		\$42 - \$60		\$ 49.32	\$ -
Inspector*		\$34 - \$52		\$ 41.35	\$ -
Inspector - Apprentice*		\$21 - \$40		\$ 29.38	\$ -
Area Manager - CM		\$105 - \$145		\$ 134.19	\$ -
Division Manager - CM		\$105 - \$134		\$ 123.31	\$ -
Sr. Resident Engineer		\$90 - \$118		\$ 107.35	\$ -
Sr. Project Manager - CM		\$80 - \$112		\$ 101.91	\$ -
Project Manager - CM		\$72 - \$103		\$ 92.85	\$ -
Resident Engineer		\$72 - \$103		\$ 92.12	\$ -
Project Controls/Scheduler		\$53 - \$88		\$ 77.25	\$ -
Inspector - CM*		\$43 - \$88		\$ 77.61	\$ -
Asst. Resident Engineer*		\$55 - \$89		\$ 78.70	\$ -
Office Engineer		\$38 - \$66		\$ 55.85	\$ -
Office Technician		\$22 - \$40		\$ 29.38	\$ -
Expert Witness		\$170 - \$185		\$ 179.16	\$ -
Strategic Consulting		\$170 - \$185		\$ 179.16	\$ -
Funding Manager		\$88 - \$114		\$ 103.36	\$ -
Sr. Funding Specialist		\$52 - \$78		\$ 67.10	\$ -
Funding Specialist		\$38 - \$67		\$ 56.94	\$ -
Project Accountant Manager		\$55 - \$78		\$ 67.10	\$ -

Sr. Project Accountant		\$41 - \$63	16	\$ 52.92	\$ 846.72
Project Accountant		\$36 - \$57		\$ 46.79	\$ -
Sr. Project Coordinator		\$43 - \$63	32	\$ 52.59	\$ 1,682.88
Project Coordinator		\$33 - \$52		\$ 41.71	\$ -
Sr. Project Assistant		\$34 - \$52		\$ 41.35	\$ -
Project Assistant		\$24 - \$42		\$ 31.92	\$ -
Sr. Technical Writer		\$35 - \$59		\$ 48.96	\$ -
Technical Writer		\$21 - \$42		\$ 31.92	\$ -
Sr. Graphic Manager		\$50 - \$73	8	\$ 62.74	\$ 501.92
Sr. Graphic Designer		\$40 - \$64	8	\$ 53.68	\$ 429.44
Graphic Designer		\$35 - \$56		\$ 45.70	\$ -

**LABOR COSTS**

a) Subtotal Direct Labor Costs	\$ 86,830.30
b) Anticipated Salary Increases (see page 2 for calculation)	\$ -
<b>c) TOTAL DIRECT LABOR COSTS [(a) + (b)]</b>	<b>\$ 86,830.30</b>

**INDIRECT COSTS**

d) Fringe Benefits (Rate: 95.61% )	e) Total Fringe Benefits [(c) x (d)]	\$ 83,018.45
f) Overhead & G&A (Rate: 55.05% )	g) Overhead [(c) x (f)]	\$ 47,800.08
h) General & Admin (Rate: )	i) Gen & Admin [(c) x (h)]	\$ -
	<b>j) TOTAL INDIRECT COSTS [(e) + (g) + (i)]</b>	<b>\$ 130,818.53</b>
<b>FIXED FEE</b>	<b>k) TOTAL FIXED FEE [(c) + (j)] x fixed fee: 10%</b>	<b>\$ 21,764.88</b>

**l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE (Add additional pages if necessary)**

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage	950	miles	\$ 0.655	\$ 622.25
Mobile Scanner	1	lump sum	\$ 7,500.00	\$ 7,500.00
				\$ -

**l) TOTAL OTHER DIRECT COSTS \$ 8,122.25**

**m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

<b>Subconsultant 1:</b> Bennett Engineering	\$ 43,993.90
<b>Subconsultant 2:</b> Crawford & Associates	\$ 12,288.16
<b>Subconsultant 3:</b>	
<b>Subconsultant 4:</b>	

**m) TOTAL SUBCONSULTANTS' COSTS \$ 56,282.06**

**n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l) + (m)] \$ 64,404.31**

**TOTAL COST [(c) + (j) + (k) + (n)] \$ 303,818.02**

**NOTES:**

- Key personnel must be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

## CALCULATIONS FOR ANTICIPATED SALARY INCREASES

Consultant Mark Thomas & CompanyProject No. \_\_\_\_\_ Contract No. \_\_\_\_\_ Date 8/8/2023

## 1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal		Avg Hourly Rate	5 Year Contract Duration
\$ 86,830.30	1600	=	\$ 54.27	Year 1 Avg Hourly Rate

## 2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$ 54.27	+	5%	=	\$ 56.98	Year 2 Avg Hourly Rate
Year 2	\$ 56.98	+	5%	=	\$ 59.83	Year 3 Avg Hourly Rate
Year 3	\$ 59.83	+	5%	=	\$ 62.82	Year 4 Avg Hourly Rate
Year 4	\$ 62.82	+	5%	=	\$ 65.96	Year 5 Avg Hourly Rate

## 3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	40.00%	*	1600.0	=	640.0	Estimated Hours Year 1
Year 2	30.00%	*	1600.0	=	480.0	Estimated Hours Year 2
Year 3	30.00%	*	1600.0	=	480.0	Estimated Hours Year 3
Year 4	0.00%	*	1600.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	1600.0	=	0.0	Estimated Hours Year 5
Total	100%		Total	=	1600.0	

## 4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$ 54.27	*	640	=	\$ 34,732.12	Estimated Hours Year 1
Year 2	\$ 56.98	*	480	=	\$ 27,351.54	Estimated Hours Year 2
Year 3	\$ 59.83	*	480	=	\$ 28,719.12	Estimated Hours Year 3
Year 4	\$ 62.82	*	0	=	\$ -	Estimated Hours Year 4
Year 5	\$ 54.12	*	0	=	\$ -	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$ 90,802.79	
Direct Labor Subtotal before Escalation				=	\$ 86,830.30	
Estimated total of Direct Labor Salary Increase				=	\$ 3,972.49	Transfer to Page 1

## NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology).
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.



**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. Title 23 United States Code Section 112 - Letting of Contracts
4. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
5. 23 Code of Federal Regulations Part 172 - Procurement, Management and Administration of Engineering and Design Related Service
6. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: R. Matt Brogan

Title \*: Vice President

Signature: 

Date of Certification: 08/08/2023

Email: mbrogan@markthomas.com

Phone number: (916) 381-9100

Address: 701 University Avenue, Suite 200, Sacramento, CA 95825

\* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Surveying and engineering services

Cost Proposal 1

Cost Plus Fixed Fee or Lump Sum

Note: Mark-ups are Not Allowed

☐ Prime Consultant☒ Subconsultant☐ 2nd Tier SubconsultantConsultant: Bennett Engineering ServicesProject No. City of Manteca Main St Bike & Ped Imp Contract No. HSIPL 5242 (035)Date Rev 8/7/2023**DIRECT LABOR**

Classification/Title	Name	Range	Hours	Actual Hourly Rate	Total
Engineer 10	Daniel Yau		10	\$ 110.02	\$ 1,100.20
Engineer 10	Kin Chan		45	\$ 102.44	\$ 4,609.80
Engineer 5	Kirk Meyer		53	\$ 55.86	\$ 2,960.58
Engineer 3	Jason Nguyen		48	\$ 40.00	\$ 1,920.00
Engineer 2	Anson Huynh		48	\$ 36.00	\$ 1,728.00
Engineer 1	Staff - TBD	\$30.00 - \$35.00	60	\$ 32.50	\$ 1,950.00

**LABOR COSTS**

a) Subtotal Direct Labor Costs	\$ 14,268.58
b) Anticipated Salary Increases (see page 2 for calculation)	\$ 428.06
<b>c) TOTAL DIRECT LABOR COSTS [(a) + (b)]</b>	<b>\$ 14,696.64</b>

**INDIRECT COSTS**

d) Fringe Benefits (Rate: 76.08%)	e) Total Fringe Benefits [(c) x (d)]	\$ 11,181.20
f) Overhead & G&A (Rate: 93.91%)	g) Overhead [(c) x (f)]	\$ 13,801.61
h) General & Admin (Rate: )	i) Gen & Admin [(c) x (h)]	\$ -
	<b>j) TOTAL INDIRECT COSTS [(e) + (g) + (i)]</b>	<b>\$ 24,982.81</b>

**FIXED FEE**

<b>k) TOTAL FIXED FEE [(c) + (j)] x fixed fee: 10%</b>	<b>\$ 3,967.95</b>
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**I) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE (Add additional pages if necessary)**

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs (at cost)	300	mile	\$ 0.655	\$ 196.50
Express Mails and Delivery (at cost)	1	each	\$ 100.00	\$ 100.00
Outside Copying (at cost)	1	each	\$ 50.00	\$ 50.00

**I) TOTAL OTHER DIRECT COSTS \$ 346.50****m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

Subconsultant 1: \_\_\_\_\_

Subconsultant 2: \_\_\_\_\_

Subconsultant 3: \_\_\_\_\_

Subconsultant 4: \_\_\_\_\_

**m) TOTAL SUBCONSULTANTS' COSTS \$ -****n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(I) + (m)] \$ 346.50****TOTAL COST [(c) + (j) + (k) + (n)] \$ 43,993.90****NOTES:**

- Key personnel must be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

## CALCULATIONS FOR ANTICIPATED SALARY INCREASES

Consultant Bennett Engineering ServicesProject No. City of Manteca Main St Bike & Ped Imp Contract No. HSIPL 5242 (035)Date Rev 8/7/2023

## 1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal		Avg Hourly Rate	5 Year Contract Duration
\$ 14,268.58	264	=	\$ 54.05	Year 1 Avg Hourly Rate

## 2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation		
Year 1	\$ 54.05	+	5%	=	\$ 56.75 Year 2 Avg Hourly Rate
Year 2	\$ 56.75	+	5%	=	\$ 59.59 Year 3 Avg Hourly Rate
Year 3	\$ 59.59	+	5%	=	\$ 62.57 Year 4 Avg Hourly Rate
Year 4	\$ 62.57	+	5%	=	\$ 65.70 Year 5 Avg Hourly Rate

## 3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	40.00%	*	264.0	=	105.6	Estimated Hours Year 1
Year 2	60.00%	*	264.0	=	158.4	Estimated Hours Year 2
Year 3	0.00%	*	264.0	=	0.0	Estimated Hours Year 3
Year 4	0.00%	*	264.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	264.0	=	0.0	Estimated Hours Year 5
Total	100%		Total	=	264.0	

## 4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$ 54.05	*	106	=	\$ 5,707.43	Estimated Hours Year 1
Year 2	\$ 56.75	*	158	=	\$ 8,989.21	Estimated Hours Year 2
Year 3	\$ 59.59	*	0	=	\$ -	Estimated Hours Year 3
Year 4	\$ 62.57	*	0	=	\$ -	Estimated Hours Year 4
Year 5	\$ -	*	0	=	\$ -	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$ 14,696.64	
Direct Labor Subtotal before Escalation				=	\$ 14,268.58	
Estimated total of Direct Labor Salary Increase				=	\$ 428.06	Transfer to Page 1

## NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology).
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. Title 23 United States Code Section 112 - Letting of Contracts
4. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
5. 23 Code of Federal Regulations Part 172 - Procurement, Management and Administration of Engineering and Design Related Service
6. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: Daniel Yau

Title \*: Vice President

Signature: 

Date of Certification: Rev 8/7/2023

Email: [dyau@ben-en.com](mailto:dyau@ben-en.com)

Phone number: 916-947-3876

Address: 1082 Sunrise Avenue, Suite 100, Roseville, CA 95661

\* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Prepare electrical plans, specifications, and cost estimate for traffic signal modifications.

Cost Proposal 1

Cost Plus Fixed Fee or Lump Sum

Note: Mark-ups are Not Allowed

☐ Prime Consultant☒ Subconsultant☐ 2nd Tier SubconsultantConsultant: **Crawford & Associates**Project No. **HSIPL 5242 (035) City of Manteca - Main Street Bike and Pedestrian Improvements**Date **7/20/2023****DIRECT LABOR**

Classification/Title	Name	Range	Hours	Actual Hourly Rate	Total
Principal *	Benjamin Crawford	N/A	6	\$ 70.30	\$ 421.80
Senior Project Manager	Chris Trumbull	N/A	0	\$ 72.50	\$ -
Senior Project Manager	Eric Nichols	N/A	0	\$ 59.09	\$ -
Project Manager II	TBD	\$52.88 - \$56.81	0	\$ 54.85	\$ -
Project Manager I	TBD	\$49.00 - \$56.75	0	\$ 52.88	\$ -
Senior Geologist	TBD	\$42.85 - \$50.00	46	\$ 46.43	\$ 2,135.78
Senior Engineer	TBD	\$42.85 - \$50.00	0	\$ 46.43	\$ -
Project Engineer II	TBD	\$42.00 - \$42.00	0	\$ 42.00	\$ -
Project Engineer I	TBD	\$34.00 - \$41.00	6	\$ 37.50	\$ 225.00
Staff Engineer	TBD	\$29.00 - \$36.75	4	\$ 32.88	\$ 131.52
Administrative Assistant	TBD	\$28.00 - \$31.50	4	\$ 29.75	\$ 119.00
Field Technician (PW) **	TBD	\$39.25 - \$42.00	0	\$ 40.63	\$ -
Concrete Technician (PW) **	TBD	\$36.00 - \$39.25	0	\$ 37.63	\$ -
Laborer Technician (PW) **	TBD	\$29.38 - \$36.00	0	\$ 32.69	\$ -

**LABOR COSTS**

a) Subtotal Direct Labor Costs

\$ 3,033.10

b) Anticipated Salary Increases (see page 2 for calculation)

\$ 138.76

c) TOTAL DIRECT LABOR COSTS [(a) + (b)] \$ 3,171.86

**INDIRECT COSTS**

d) Fringe Benefits (Rate: 93.29% )

e) Total Fringe Benefits [(c) x (d)] \$ 2,959.03

f) Overhead &amp; G&amp;A (Rate: 116.79% )

g) Overhead [(c) x (f)] \$ 3,704.42

h) General &amp; Admin (Rate: 20% )

i) Gen &amp; Admin [(c) x (h)] \$ 634.37

j) TOTAL INDIRECT COSTS [(e) + (g) + (i)] \$ 7,297.83

**FIXED FEE**

k) TOTAL FIXED FEE [(c) + (j)] x fixed fee: 10% \$ 1,046.97

**l) CONSULTANT'S OTHER DIRECT COSTS (ODC) - ITEMIZE (Add additional pages if necessary)**

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage	300	Mile	\$ 0.655	\$ 196.50
ERIS (Records, aeriels, topos, FIM)	1	Day	\$ 575.00	\$ 575.00

l) TOTAL OTHER DIRECT COSTS \$ 771.50

m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)

Subconsultant 1:

m) TOTAL SUBCONSULTANTS' COSTS \$ -

n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l) + (m)] \$ 771.50

TOTAL COST [(c) + (j) + (k) + (n)] \$ 12,288.16



## CALCULATIONS FOR ANTICIPATED SALARY INCREASES

Consultant Crawford & AssociatesProject No. HSIPL 5242 (035) City of Manteca - Main Street Bike and Pedestrian ImprovementsDate 7/20/2023

## 1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal		Avg Hourly Rate	5 Year Contract Duration
\$ 3,033.10	66	=	\$ 45.96	Year 1 Avg Hourly Rate

## 2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$ 45.96	+	5%	=	\$ 48.25	Year 2 Avg Hourly Rate
Year 2	\$ 48.25	+	5%	=	\$ 50.67	Year 3 Avg Hourly Rate
Year 3	\$ 50.67	+	5%	=	\$ 53.20	Year 4 Avg Hourly Rate
Year 4	\$ 53.20	+	5%	=	\$ 55.86	Year 5 Avg Hourly Rate

## 3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	40.00%	*	66.0	=	26.4	Estimated Hours Year 1
Year 2	30.00%	*	66.0	=	19.8	Estimated Hours Year 2
Year 3	30.00%	*	66.0	=	19.8	Estimated Hours Year 3
Year 4	0.00%	*	66.0	=	0.0	Estimated Hours Year 4
Year 5	0.00%	*	66.0	=	0.0	Estimated Hours Year 5
Total	100%		Total	=	66.0	

## 4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$ 45.96	*	26	=	\$ 1,213.24	Estimated Hours Year 1
Year 2	\$ 48.25	*	20	=	\$ 955.43	Estimated Hours Year 2
Year 3	\$ 50.67	*	20	=	\$ 1,003.20	Estimated Hours Year 3
Year 4	\$ 53.20	*	0	=	\$ -	Estimated Hours Year 4
Year 5	\$ -	*	0	=	\$ -	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$ 3,171.86	
Direct Labor Subtotal before Escalation				=	\$ 3,033.10	
Estimated total of Direct Labor Salary Increase				=	\$ 138.76	Transfer to Page 1

## NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology).
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. Title 23 United States Code Section 112 - Letting of Contracts
4. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
5. 23 Code of Federal Regulations Part 172 - Procurement, Management and Administration of Engineering and Design Related Service
6. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: Benjamin D. Crawford

Title \*: President

Signature: 

Date of Certification: 7/20/2023

Email: [ben.crawford@crawford-inc.com](mailto:ben.crawford@crawford-inc.com)

Phone number: (916) 455-4225

Address: Crawford & Associates, Inc., 4701 Freeport Blvd., Sacramento, CA 95822

\* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

**ENVIRONMENTAL SERVICES (ISA)**



# Inspector General

California Department of Transportation

## Certification of Indirect Costs and Financial Management System

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required)

Consultant's Full Legal Name: Mark Thomas & Company, Inc.

**Important:** Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

### Indirect Cost Rate (ICR):

Combined Rate: 150.66 Or

Home Office Rate: \_\_\_\_\_ and Field Office Rate (if applicable): \_\_\_\_\_

Facilities Capital Cost of Money (if applicable): \_\_\_\_\_

Fiscal Period:\* 01/01/2022 - 12/31/2022

\* Fiscal period is annual one year applicable accounting period that the ICR was developed (not the contract period). The ICR is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an ICR(s) for the fiscal period as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the ICR(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31).
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31.
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on the Financial Document Review Request form.

### Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\); 48 CFR Part 31.201-2\(d\); 23 CFR, Chapter 1, Part 172.11\(a\)\(2\)](#); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirements.

### Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

### All A&E Contract Information:

- Total participation amount 158,977,436.00 on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is \_\_\_\_\_
- Years of consultant's experience with 48 CFR Part 31 is 30+ years
- Identify the type of audits listed below that the consultant has had performed (if applicable):

Cognizant ICR Audit ☐

Local Govt ICR Audit ☐

Caltrans ICR Audit ☐

CPA ICR Audit ☒

Federal Govt ICR Audit ☐

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the ICR Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name:\*\* R. Matt Brogan

Title:\*\* Vice President

Signature: 

Date: 07/19/2023

Phone:\*\* (916) 381-9100

Email:\*\* mbrogan@markthomas.com

\*\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: Both prime and subconsultants as parties of a contract must complete their own forms. Caltrans will not process local agency's invoices until a complete form is accepted and approved by the Independent Office of Audits and Investigations.





# Inspector General

California Department of Transportation

## Certification of Indirect Costs and Financial Management System

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required)

Consultant's Full Legal Name: Bennett Engineering Services Inc

**Important:** Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

### Indirect Cost Rate (ICR):

Combined Rate: 166.68 Or

Home Office Rate: \_\_\_\_\_ and Field Office Rate (if applicable): \_\_\_\_\_

Facilities Capital Cost of Money (if applicable): \_\_\_\_\_

Fiscal Period:\* 1/1/2021 - 12/31/2021

\* Fiscal period is annual one year applicable accounting period that the ICR was developed (not the contract period). The ICR is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an ICR(s) for the fiscal period as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the ICR(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31).
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31.
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on the Financial Document Review Request form.

### Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\); 48 CFR Part 31.201-2\(d\); 23 CFR, Chapter 1, Part 172.11\(a\)\(2\)](#); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost accounts;



- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirements.

### Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

### All A&E Contract Information:

- Total participation amount 7,226,033.00 on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is 1
- Years of consultant's experience with 48 CFR Part 31 is 13
- Identify the type of audits listed below that the consultant has had performed (if applicable):

Cognizant ICR Audit ☐

Local Govt ICR Audit ☐

Caltrans ICR Audit ☐

CPA ICR Audit ☐

Federal Govt ICR Audit ☐

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the ICR Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name:\*\* Jenn Goodwin

Title:\*\* Chief Financial Officer

Signature: Jenn Goodwin Digitally signed by Jenn Goodwin  
Date: 2023.02.24 13:02:24 -08'00'

Date: 06/28/2023

Phone:\*\* (916) 771-6146

Email:\*\* jgoodwin@ben-en.com

**\*\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.**

Note: Both prime and subconsultants as parties of a contract must complete their own forms. Caltrans will not process local agency's invoices until a complete form is accepted and approved by the Independent Office of Audits and Investigations.



# Inspector General

California Department of Transportation

## Certification of Indirect Costs and Financial Management System

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required)

Consultant's Full Legal Name: Crawford & Associates, Inc.

**Important:** Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

### Indirect Cost Rate (ICR):

Combined Rate: 241.59 Or

Home Office Rate: \_\_\_\_\_ and Field Office Rate (if applicable): \_\_\_\_\_

Facilities Capital Cost of Money (if applicable): \_\_\_\_\_

Fiscal Period:\* 01/01/2021 to 12/30/2021

\* Fiscal period is annual one year applicable accounting period that the ICR was developed (not the contract period). The ICR is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an ICR(s) for the fiscal period as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the ICR(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31).
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31.
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on the Financial Document Review Request form.

### Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\); 48 CFR Part 31.201-2\(d\); 23 CFR, Chapter 1, Part 172.11\(a\)\(2\)](#); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirements.

### Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

### All A&E Contract Information:

- Total participation amount 8,000,000.00 on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is 1
- Years of consultant's experience with 48 CFR Part 31 is 12
- Identify the type of audits listed below that the consultant has had performed (if applicable):

Cognizant ICR Audit ☐

Local Govt ICR Audit ☐

Caltrans ICR Audit ☒

CPA ICR Audit ☐

Federal Govt ICR Audit ☐

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the ICR Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name:\*\* Benjamin D. Crawford

Title:\*\* President

Signature: 

Date: 7/24/23

Phone:\*\* (916) 455-4225

Email:\*\* ben.crawford@crawford-inc.com

\*\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: Both prime and subconsultants as parties of a contract must complete their own forms. Caltrans will not process local agency's invoices until a complete form is accepted and approved by the Independent Office of Audits and Investigations.





Corporate Office: 4701 Freeport Boulevard, Sacramento, CA 95822  
Modesto: 1405 8th Street, Modesto, CA 95354  
Pleasanton: 6200 Stoneridge Mall Road, Suite 330, Pleasanton, CA 94588  
Rocklin: 4220 Rocklin Road, Suite 1, Rocklin, CA 95677  
Seattle: 1448 NW Market Street, Suite 500, Seattle, WA 98107  
Ukiah: 100 North Pine Street, Ukiah, CA 95482

July 20, 2023

To: Mark Thomas & Company  
CC: City of Manteca

Subject: **Indirect Cost Rate – Lower Rate Explanation**  
Main Street Bike and Pedestrian Improvement Project (HSIPL 5242 (035))

To Whom It May Concern:

Crawford & Associates, Inc. is electing to use a lower Indirect Cost Rate (ICR) FYE 2021 totaling 230.08%.

2021 Acceptance ID 2023-1070.

Please contact Tracy Adkins, Controller at [tracy.adkins@crawford-inc.com](mailto:tracy.adkins@crawford-inc.com) if you require additional information regarding this explanation. We look forward to the opportunity to be a part of this project.

Sincerely,  
**Crawford & Associates, Inc.**

Benjamin Crawford  
President/Principal

## EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: City of Manteca 2. Contract DBE Goal: 15%  
 3. Project Description: Main Street Bike & Pedestrian Improvement Project; HSIPL 5242(035)  
 4. Project Location: City of Manteca  
 5. Consultant's Name: Mark Thomas & Company, Inc. 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Land Surveying	43459	Bennett Engineering (916) 771-6146 1082 Sunrise Ave, #100 Roseville, CA 95661	15.36%
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION	15.36%
17. Local Agency Contract Number: <u>TBD</u>	18. Federal-Aid Project Number: <u>HSIPL 5242(035)</u>	IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
19. Proposed Contract Execution Date: <u>TBD</u>	20. Consultant's Ranking after Evaluation: <u>1</u>		
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.		12. Preparer's Signature <u>R.M. Brogan</u>	13. Date <u>7/26/23</u>
21. Local Agency Representative's Signature <u>Kyzen Nicolas</u>	22. Date <u>08/03/2023</u>	14. Preparer's Name <u>R. Matt Brogan</u>	15. Phone <u>(916) 381-9100</u>
23. Local Agency Representative's Name <u>Assistant Engineer</u>	24. Phone <u>209-456-8418</u>	16. Preparer's Title <u>Principal/Division Manager</u>	
25. Local Agency Representative's Title <u> </u>			

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.



## EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: City of Manteca 2. Contract DBE Goal: 15%  
 3. Project Description: Main Street Bike & Pedestrian Improvement Project; HSIPL 5242(035)  
 4. Project Location: City of Manteca  
 5. Consultant's Name: Mark Thomas & Company, Inc. 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: \$303,818  
 8. Total Dollar Amount for ALL Subconsultants: \$56,282 9. Total Number of ALL Subconsultants: 2

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Engineering	43459	Bennett Engineering (916) 771-6146 1082 Sunrise Ave, #100 Roseville, CA 95661	\$43,994
<b>Local Agency to Complete this Section</b> 20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: <u>HSIPL 5242(035)</u> 22. Contract Execution Date: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div> <u>K. Nicolas</u>              23. Local Agency Representative's Signature              Kyzen Nicolas              25. Local Agency Representative's Name              Assistant Engineer              27. Local Agency Representative's Title           </div> <div> <u>08/16/2023</u>              24. Date              209-456-8418              26. Phone           </div> </div>			<b>14. TOTAL CLAIMED DBE PARTICIPATION</b> <div style="text-align: right; margin-top: 10px;">\$43,994</div> <div style="text-align: right; margin-top: 10px;">14.48%</div>
IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div> <u>R. M. Brogan</u>              15. Preparer's Signature              R. Matt Brogan              17. Preparer's Name              Principal/Division Manager              19. Preparer's Title           </div> <div> <u>8/8/23</u>              16. Date              (916) 381-9100              18. Phone           </div> </div>			

DISTRIBUTION: 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

## EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Cost Proposal Due Date 07/27/2023 PE/CEFederal-aid Project No(s) HSIPL 5242(035) Bid Opening Date 07/10/2023 CON

The City of Manteca established a Disadvantaged Business Enterprise (DBE) goal of 15.00% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) **calendar** days from cost proposal due date or bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer's or bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions, **please attach additional sheets as needed:**

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications

Dates of Advertisement

N/A

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited

Date of Initial Solicitation

Follow Up Methods and Dates

N/A

- C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation in order to meet or exceed the DBE contract goal.

Items of Work	Proposer or Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract
N/A	Pick			0.00%
	Pick			0.00%
	Pick			0.00%
	Pick			0.00%

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

N/A

Names, addresses and phone numbers of firms selected for the work above:

N/A

- E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

N/A

- F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

N/A

- G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization

Method/Date of Contact

Results

N/A

- H. Any additional data to support a demonstration of good faith efforts:

The original cost proposal met the DBE requirement but was adjusted due to the cost negotiation process.

# No Lobbying Activities to Disclose

Local Assistance Procedures Manual

EXHIBIT 10-Q  
Disclosure of Lobbying Activities

## EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change  <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known  Congressional District, if known _____	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known _____	
<b>6. Federal Department/Agency:</b> _____	<b>7. Federal Program Name/Description:</b> CFDA Number, if applicable _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> _____	
<b>10. Name and Address of Lobby Entity</b> (If individual, last name, first name, MI) _____	<b>11. Individuals Performing Services</b> (including address if different from No. 10) (last name, first name, MI) _____	
(attach Continuation Sheet(s) if necessary)		
<b>12. Amount of Payment (check all that apply)</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>14. Type of Payment (check all that apply)</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
<b>13. Form of Payment (check all that apply):</b> <input checked="" type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
<b>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:</b>  (attach Continuation Sheet(s) if necessary)		
<b>16. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		
Signature: <u>R. M. Brogan</u> Print Name: <u>Matt Brogan, PE</u> Title: <u>Principal + Vice President</u> Telephone No.: <u>916.605.6761</u> Date: <u>7/27/2023</u>		Authorized for Local Reproduction Standard Form - LLL

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## EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change  <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
---	---	---

**4. Name and Address of Reporting Entity**

☐ Prime      ☐ Subawardee  
Tier \_\_\_\_\_, if known

Congressional District, if known \_\_\_\_\_

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

Congressional District, if known \_\_\_\_\_

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, if applicable \_\_\_\_\_

**8. Federal Action Number, if known:**

**9. Award Amount, if known:**

**10. Name and Address of Lobby Entity**  
(if individual, last name, first name, MI)

**11. Individuals Performing Services**  
(including address if different from No. 10)  
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

**12. Amount of Payment (check all that apply)**  
\$ \_\_\_\_\_ ☐ actual    ☐ planned

**13. Form of Payment (check all that apply):**  
☒ a. cash  
☐ b. in-kind; specify: nature \_\_\_\_\_  
Value \_\_\_\_\_

**14. Type of Payment (check all that apply)**

<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	a. retainer b. one-time fee c. commission d. contingent fee e. deferred f. other, specify _____
---	--

**15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:**

(attach Continuation Sheet(s) if necessary)

**16. Continuation Sheet(s) attached:** Yes ☐ No ☐

**No Lobbying Activities to Report**

**17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352.** This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: \_\_\_\_\_

Print Name: Leo Rubio, PE

Title: President/CEO

Telephone No.: 916.783.4100 Date: 7/17/2023

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## EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change  <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known  Congressional District, if known _____	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known _____	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b> CFDA Number, if applicable _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b>	
<b>10. Name and Address of Lobby Entity</b> (If individual, last name, first name, MI)	<b>11. Individuals Performing Services</b> (including address if different from No. 10) (last name, first name, MI)	
(attach Continuation Sheet(s) if necessary)		
<b>12. Amount of Payment (check all that apply)</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>14. Type of Payment (check all that apply)</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
<b>13. Form of Payment (check all that apply):</b> <input checked="" type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
<b>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:</b>  (attach Continuation Sheet(s) if necessary)		
<b>16. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		
Signature: <u>Benjamin D. Crawford</u> Print Name: <u>Benjamin D. Crawford</u> Title: <u>President</u> Telephone No.: <u>(916) 455-4225</u> Date: <u>07/20/23</u>		Authorized for Local Reproduction Standard Form - LLL

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ATTACHMENT 3  
SCHEDULE OF ACTIVITIES

- The City will lead the effort and will provide rights of entry to private property. The City will obtain and provide encroachment permits, at no fee, for work within public right of way.
- Detailed right of way delineation will not be done within the project limits, approximate right of way and property lines will be developed using Assessors Parcel Maps and GIS Mapping.
- A Record of Survey is not included in this scope of work.
- Optional design services by Bennett, not included in this scope of service, but that may be completed for an additional fee to be negotiated prior to beginning work include the following:
  - Traffic signal modifications or new traffic signal designs for locations where additional signal equipment upgrades or changes are deemed necessary or required due to changes in roadway geometry or lane configurations.
  - Corridor Lighting Improvements
  - Signal Interconnect & Communication Plans
  - Temporary Signal Plans for Construction Staging

## MILESTONE SCHEDULE

Below is a summary of anticipated project schedule and milestones. A detailed CPM schedule has been provided.

Milestone	Estimated Completion
Execute Contract	August 2023
Environmental Services	Aug 2023 to Nov 2023
Site Investigations and Surveys	Aug 2023 to Sept 2023
35% PS&E	Sept 2023 to Oct 2023
95% PS&E	Nov 2023 to Dec 2023
100% (Pre-final) PS&E	Jan 2024 to Feb 2024
100% (Bid Set) PS&E	Feb 2024 to May 2024
Advertise and Award	April 2024
Construction	Begins May/June 2024

ATTACHMENT 4

INSURANCE

**EXHIBIT 10-R**

**FEDERAL AID CONTRACT**

**PROVISIONS**



**Exhibit 10-R: A&E BOILERPLATE AGREEMENT LANGUAGE**

(For Local Assistance Federal-Aid Projects)

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**ARTICLE I INTRODUCTION**

- A. This AGREEMENT is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:

MARK THOMAS & COMPANY, INC.

Incorporated in the State of CALIFORNIA

The Project Manager for the "CONSULTANT" will be DAN

BLOMQUIST

The name of the "LOCAL AGENCY" is as follows:

CITY OF MANTECA

The Contract Administrator for LOCAL AGENCY will be KYZEN NICOLAS

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal dated 08/08/2023. The approved CONSULTANT's Cost Proposal is attached hereto and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.
- E. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the LOCAL AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

## ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY's Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

## ARTICLE III PERFORMANCE PERIOD

- A. This AGREEMENT shall go into effect as shown on the AGREEMENT FOR PROFESSIONAL SERVICES, contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end as shown on the AGREEMENT FOR PROFESSIONAL SERVICES, unless extended by AGREEMENT amendment.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

## ARTICLE IV ALLOWABLE COSTS AND PAYMENTS

- A. The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY's approved overhead rate set forth in the Cost Proposal. In the event, that LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by LOCAL AGENCY shall be adjusted by AGREEMENT amendment to

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accommodate the changed work. The maximum total cost as specified in Paragraph "I" of this Article shall not be exceeded, unless authorized by AGREEMENT amendment.

- B. The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT. CONSULTANT's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or AGREEMENT award.
- C. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$21,764.88. The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- E. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT.
- G. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- H. CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

CITY OF MANTECA  
ATTN: KYZEN NICOLAS  
1001 W. CENTER ST, SUITE E  
MANTECA CA 95337  
EMAIL: [KNICOLAS@MANTECA.GOV](mailto:KNICOLAS@MANTECA.GOV)

- I. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed \$303,818.02.
- J. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

#### ARTICLE V TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt



requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

#### ARTICLE VI COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR 31 or 2 CFR 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

#### ARTICLE VII RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

**ARTICLE VIII AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
  - 1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR (e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines) is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

#### ARTICLE IX SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.

- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.

F. Prompt Progress Payment

CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

G. Prompt Payment of Withheld Funds to Subconsultants

The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

**Method 3:** The LOCAL AGENCY shall hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY of the contract work and pay retainage to CONSULTANT based on these acceptances. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the LOCAL AGENCY. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT; deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant.

#### ARTICLE X EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
  1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
  2. Regulation 2 CFR 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.



**ARTICLE XI STATE PREVAILING WAGE RATES**

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
    - a. The information contained in the payroll record is true and correct.
    - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
  2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
    - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
    - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.

- c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
  3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
  4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
  5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
  6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
  2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the CONSULTANT of the project is not liable for the penalties described above unless the CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the CONSULTANT fails to comply with all of the following requirements:
  - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
  - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
  - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

**H. Employment of Apprentices**

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

**ARTICLE XII CONFLICT OF INTEREST**

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

**ARTICLE XIII REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

**ARTICLE XIV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

*[Include this article in all AGREEMENTs where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the AGREEMENT; delete this article and re-number the subsequent articles.]*

A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:

1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

**ARTICLE XV NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2



CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.

- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

#### ARTICLE XVI DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
  - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  - 3. Does not have a proposed debarment pending; and

4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
  - C. Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

## ARTICLE XVII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. CONSULTANT, subrecipient (LOCAL AGENCY), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the LOCAL AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate Good Faith Efforts (GFE) to meet this goal. It is CONSULTANT's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is 15%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10- 02: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance

Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying CONSULTANT from future proposing as non-responsible

E. Termination and [Replacement](#) of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the LOCAL AGENCY's written consent. CONSULTANT shall not terminate or [replace](#) a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the LOCAL AGENCY. Unless the LOCAL AGENCY's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02: Consultant Contract DBE Commitment form.

Termination of DBE Subconsultants

After execution of the AGREEMENT, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the LOCAL AGENCY:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.

6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
8. Listed DBE voluntarily withdraws with written notice from the Contract.
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The LOCAL AGENCY determines other documented good cause.

CONSULTANT must use the following procedures to request the termination of a DBE or portion of a DBE's work:

1. Send a written notice to the DBE of the CONSULTANT's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the LOCAL AGENCY. The written notice to the DBE must request they provide any response within five (5) business days to both the CONSULTANT and the LOCAL AGENCY by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
2. If the DBE does not respond within five (5) business days, CONSULTANT may move forward with the request as if the DBE had agreed to CONSULTANT's written notice.
3. Submit CONSULTANT's DBE termination request by written letter to the LOCAL AGENCY and include:
  - One or more above listed justifiable reasons along with supporting documentation.
  - CONSULTANT's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of CONSULTANT's written notice
  - The DBE's response to CONSULTANT's written notice, if received. If a written response was not provided, provide a statement to that effect.

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE termination request within five (5) business days.

#### Replacement of DBE Subconsultants

After receiving the LOCAL AGENCY's written authorization of DBE termination request, CONSULTANT must obtain the LOCAL AGENCY's written agreement for DBE replacement. CONSULTANT must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the LOCAL AGENCY which must include:
  - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
  - b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
    - Description of scope of work and cost proposal



- Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
  - Revised Exhibit 10-O2: Consultant Contract DBE Commitment
2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT's GFEs to use DBE replacement firms within seven (7) days of LOCAL AGENCY's authorization to terminate the DBE. CONSULTANT may request the LOCAL AGENCY's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
- Search results of certified DBEs available to perform the original DBE work identified and or other work CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment
  - Solicitations of DBEs for performance of work identified
  - Correspondence with interested DBEs that may have included contract details and requirements
  - Negotiation efforts with DBEs that reflect why an agreement was not reached
  - If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
  - Copies of each DBE's and non-DBE's price quotes for work identified, as the LOCAL AGENCY may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
  - Additional documentation that supports CONSULTANT's GFE

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE replacement request within five (5) business days.

#### F. Commitment and Utilization

The LOCAL AGENCY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier subconsultant
  - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the LOCAL AGENCY. On work completion, CONSULTANT shall complete Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change and submit the form to the LOCAL AGENCY within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F: Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the LOCAL AGENCY within 90 days of contract acceptance. The LOCAL AGENCY will withhold \$10,000 until the form is submitted. The LOCAL AGENCY will release the withhold upon submission of the completed form.

In the LOCAL AGENCY's reports of DBE participation to Caltrans, the LOCAL AGENCY must display both commitments and attainments.

#### G. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

CONSULTANT must perform CUF evaluation for each DBE working on a federal-aid contract, with or without a DBE goal. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

CONSULTANT must provide written notification to the LOCAL AGENCY at least 15 days in advance of each DBE's initial performance of work or supplying materials for the Contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of a DBE initially performing work or supplying materials on the Contract, CONSULTANT shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

CONSULTANT must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation. CONSULTANT must submit to the LOCAL AGENCY



these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

CONSULTANT must notify the LOCAL AGENCY immediately if they believe the DBE may not be performing a CUF.

The LOCAL AGENCY will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional LOCAL AGENCY evaluations. The LOCAL AGENCY must evaluate DBEs and their CUF performance throughout the duration of a Contract. The LOCAL AGENCY will provide written notice to the CONSULTANT and the DBE at least two (2) business days prior to any evaluation. The CONSULTANT and the DBE must participate in the evaluation. Upon completing the evaluation, the LOCAL AGENCY must share the evaluation results with the CONSULTANT and the DBE. An evaluation could include items that must be remedied upon receipt. If the LOCAL AGENCY determines the DBE is not performing a CUF, the CONSULTANT must suspend performance of the noncompliant work.

CONSULTANT and DBEs must submit any additional CUF related records and documents within five (5) business days of LOCAL AGENCY's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If CONSULTANT and/or the LOCAL AGENCY determine that a listed DBE is not performing a CUF in performance of their DBE committed work, CONSULTANT must immediately suspend performance of the noncompliant portion of the work. LOCAL AGENCY may deny payment for the noncompliant portion of the work. LOCAL AGENCY will ask the CONSULTANT to submit a corrective action plan (CAP) to the LOCAL AGENCY within five (5) days of the noncompliant CUF determination. The CAP must identify how the CONSULTANT will correct the noncompliance findings for the remaining portion of the DBE's work. LOCAL AGENCY has five (5) days to review the CAP in conjunction with the CONSULTANT's review. The CONSULTANT must implement the CAP within five (5) days of the LOCAL AGENCY's approval. The LOCAL AGENCY will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a commercially useful function on the Contract, CONSULTANT may have good cause to request termination of the DBE.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work

of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- L. For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract. If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

## ARTICLE XVIII FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

## ARTICLE XIX CHANGE IN TERMS

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY's Contract Administrator.

**ARTICLE XX CONTINGENT FEE**

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**ARTICLE XXI DISPUTES**

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and DIRECTOR OF ENGINEERING/CITY ENGINEER, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

**ARTICLE XXII INSPECTION OF WORK**

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

**ARTICLE XXIII SAFETY**

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code.

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CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

*[Add the following paragraph to all AGREEMENTs, which may require trenching of five feet or deeper]*

- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

#### **ARTICLE XXIV OWNERSHIP OF DATA**

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

#### **ARTICLE XXV CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR**

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY.
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Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.

- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

#### ARTICLE XXVI CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

*[For PS&E contracts add paragraph F, below, to paragraphs A through E, above]*

- F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

#### ARTICLE XXVII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

#### ARTICLE XXVIII EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.



**ARTICLE XXIX PROMPT PAYMENT****A. PROMPT PAYMENT FROM LOCAL AGENCY TO CONSULTANT**

The LOCAL AGENCY shall make all project progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY shall pay interest to the CONSULTANT, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied and pro-rated as necessary. Upon receipt of the payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- (1) The LOCAL AGENCY shall review each payment request as soon as feasible after receipt to verify it is a proper payment request.
- (2) The LOCAL AGENCY must return any payment request deemed improper by the LOCAL AGENCY to the CONSULTANT as soon as feasible, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall include documentation setting forth in writing the reasons why it is an improper payment request.

**B. PROMPT PAYMENT CERTIFICATION**

For projects awarded on or after September 1, 2023: the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract by the 15th of the month following the month of any payment(s). If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

The LOCAL AGENCY must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. The LOCAL AGENCY must email a copy of Exhibit 9-P to [DBE.Forms@dot.ca.gov](mailto:DBE.Forms@dot.ca.gov) before the end of the month after receiving the Exhibit 9-P from the CONSULTANT.

**ARTICLE XXX TITLE VI ASSURANCES****APPENDICES A - E of the TITLE VI ASSURANCES**

*[The U.S. Department of Transportation Order No.1050.2A requires all federal-aid Department of Transportation contracts between an agency and a consultant to contain Appendices A and E of the Title VI Assurances. Include Appendices B, C, and D if applicable as shown below. In addition, the consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract.*

*The clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a LOCAL AGENCY.*



*The clauses set forth in Appendix C and Appendix D of this Assurance shall be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the LOCAL AGENCY with other parties:*

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and*
- b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.]*

## APPENDIX A

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT'S noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.

- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### (HABENDUM CLAUSE)

**TO HAVE AND TO HOLD** said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

**APPENDIX C**  
**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE**  
**ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**APPENDIX D**  
**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE**  
**ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on,

over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

## APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of

public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).