



**COACHELLA VALLEY ASSOCIATION OF
GOVERNMENTS (CVAG)**

**REQUEST FOR PROPOSALS
FOR PROFESSIONAL ENGINEERING SERVICES**

FOR THE

**WESTERN COACHELLA VALLEY FLOOD AND
BLOWSAND ROAD IMPROVEMENT PROJECT,
PHASE ONE**

COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92236

JULY 2022

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NOTICE OF REQUEST FOR PROPOSALS

**COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS
REQUEST FOR PROPOSALS FOR PROFESSIONAL ENGINEERING SERVICES**

**WESTERN COACHELLA VALLEY FLOOD AND BLOWSAND ROAD IMPROVEMENT
PROJECT, PHASE ONE**

ON

INDIAN CANYON DRIVE (From Sunrise Parkway to Palm Station Road, INCN7)

VARNER ROAD (From Mountain View Road to Date Palm Drive, VRNR2)

DATE PALM DRIVE (From I-10 to Varner Road, DPLM5)

The Coachella Valley Association of Governments (CVAG) invites proposals from qualified consultants to perform professional services to include Bridge/Culvert Structures Design and Roadway Engineering, Environmental Studies and Permits, Geotechnical Studies and Report, Right of Way Engineering, Bid/Award Support, and Construction Support.

This project located in the western Coachella Valley consists of improving the local agencies roads and bridges/culvert on the above-mentioned roads segments. Bridge/Culvert Structures shall be designed to convey 100-year flood events at White Water River, Chino Canyon Creek, Willow Wash, Long Canyon Wash crossings. The Roads shall include bike lanes and other mitigation measure improvements for blowsand mitigation.

The proposed improvements shall meet federal and state standards and requirements. All work and resulting facilities shall fully conform to the requirements set forth by the Federal Highways Administration (FHWA), the State of California Department of transportation (Caltrans), Caltrans Standard Plans and Specifications, latest edition, and the Caltrans Local Assistance Procedures Manual (LAPM, 2019). Coordination with local jurisdictions, utility companies, and others is required. All work and resulting facilities will fully conform to the current adopted Coachella Valley State Implementation Plan (CVSIP) for PM10 and including Best Management Practices during the construction process.

The proposed design and engineering services costs of this project is fully funded locally as part of the CVAG Reginal Arterial programs.

Proposals shall be received at CVAG on or before **4:30 p.m. on August 4, 2022**. Proposals shall be submitted to the following:

Allen D. Mc Millen
Management Analyst – Contract / Procurement
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

Proposals, and amendments to proposals, received after the date and time specified above will **NOT** be accepted and returned to the Consultants unopened.

Parties interested in obtaining a copy of this Request for Proposal for the **WESTERN COACHELLA VALLEY FLOOD AND BLOWSAND ROAD IMPROVEMENT PROJECT, PHASE 1**, may do so by accessing CVAG's website at www.cvag.org.

This will be a two-part submittal. The Consultant will be chosen based on qualifications. In envelope No. 1, Consultants shall submit written statements of technical qualifications and describe in detail their work plan for completing the work specified in the Request for Proposal. In envelope No. 2, Consultants shall submit a cost proposal for the project, detailing a cost break-down for each project task and sub-task. The cost proposal for the most qualified Consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations will proceed to the next most qualified Consultant. Each Consultant's cost proposal will remain sealed until negotiations commence with that particular Consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals will be returned to consultants.

Consultants are notified that CVAG has established a Disadvantaged Business Enterprise (DBE) goal of 14% through for FY 2021/22 through 2022/23.

Certain labor categories under this Project may be subject to prevailing wages as identified in the State of California Labor Code commencing at sections 1720 et seq. and 1770 et seq. If applicable, employees working in these categories at the site must be paid not less than the basic hourly rates of pay and fringe benefits established by the California Department of Industrial Relations ("DIR"). Copies of the State of California wage schedules are available for review at www.dir.ca.gov/dlsr/. In addition, a copy of the prevailing rate of per diem wages will be made available at the CVAG's office upon request. The successful proposer shall post a copy of the prevailing wage rates at each job site. It shall be mandatory upon the proposer to whom the contract is awarded, and upon any subcontractors, to comply with all Labor Code provisions, which include but are not limited to the payment of not less than the said specified prevailing wage rates to all workers employed by them in the execution of the contract, employment of apprentices, hours of labor and debarment of contractors and subcontractors. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter a contract to perform public work must be registered with the DIR. No proposal will be accepted, nor any contract entered without proof of the proposer's and subcontractors' current registration with the DIR to perform public work. If awarded a contract, the proposer, and its subcontractors, of any tier, shall maintain active registration with the DIR for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1. The contract awarded pursuant to this proposal may also be subject to compliance monitoring and enforcement by the DIR.

CVAG reserves the right to waive informalities and to reject all proposals at its sole discretion. It is imperative that Consultant's proposal fully address all aspects of the RFP. The award of this contract is subject to receipt of funds adequate to carry out the provisions of the proposed contract included in the identified Scope of Work.

Sincerely,

Jonathan Hoy, PE
Director of Transportation
06/24/2022

SECTION I – INSTRUCTIONS TO CONSULTANTS

A. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

This project is subject to Title 49 CFR 26.

To ensure there is equal participation of the DBE groups specified in 49 CFR 26, the Coachella Valley Association of Governments has established a Disadvantaged Business Enterprise (DBE) goal of 14% for this Project.

To that end, exhibit 10-I: Notice to Proposers DBE Information is attached hereto in Section VI and should be thoroughly reviewed by the proposer including the section on submission of DBE commitments and good faith efforts.

B. EXAMINATION OF PROPOSAL DOCUMENTS

By submitting a proposal, Consultant represents that it has thoroughly examined and become familiar with the work required under this RFP and that it can perform quality work to achieve CVAG's objectives.

ADDENDA

Any CVAG changes to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. CVAG will not be bound to any modifications to, or deviations from, the requirements set forth in this RFP as the result of oral instructions. Consultants shall acknowledge receipt of addenda in their proposals by attaching a copy of each addendum to the proposal document.

C. CVAG POINT OF CONTACT

All questions with CVAG staff regarding this RFP shall be directed in writing to the following person:

Allen D. Mc Millen
Management Analyst – Contract / Procurement
73-710 Fred Waring Drive, Suite 200
Palm Desert, California 92260
Phone: (760) 346-1127

D. CLARIFICATIONS

1. Examination of Documents

Should a Consultant require clarifications to this RFP, the Consultant shall notify CVAG in writing in accordance with Section E.2 below. Should it be found that the point in question is not clearly and fully set forth, CVAG will issue a written addendum clarifying the matter. Addenda will be sent to all registered firms via first class mail or e-mail.

2. Submitting Requests

- a. All questions shall be put in writing and shall be received by the CVAG no later than **4:30 p.m., JULY 28, 2022**. All inquiries received after this deadline will **NOT** receive a response.

- b. Requests for clarification, questions and comments shall be clearly labeled, "Request for Information." CVAG is not responsible for failure to respond to a request that has not been labeled as such.
- c. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:

- U.S. Mail / Personal Courier:
Allen D. Mc Millen
Management Analyst – Contract / Procurement
Coachella Valley Association of Governments
73710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260
- Facsimile: (760) 340-5949
- E-mail: amcmillen@cvag.org

3. CVAG Responses

Responses from CVAG will be issued in writing as an addendum that can be accessed via www.cvag.org. Consultants shall acknowledge receipt of CVAG clarification responses by attaching a copy of each Addendum to their Proposals.

E. SUBMISSION OF PROPOSALS

1. Date and Time - Proposals shall be received at CVAG Offices at 73-710 Fred Waring Drive, Suite 200, Palm Desert, CA 92260 **on or before 4:30 p.m. on August 4, 2022**. Proposals received after the above specified date and time will **NOT** be accepted and be returned to consultants unopened.
2. Address - Proposals delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

Allen D. Mc Millen, Management Analyst – Contract / Procurement
Coachella Valley Association of Governments
73710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

3. Technical Proposal Content and Evaluation Weighting:

- a. Qualifications, Related Experience, and References (25%) - This section of the proposal should establish the ability of the proposed team to satisfactorily perform the required work by reasons of: experience in performing work of the same or similar nature; demonstrated experience working with agencies directly involved in this Project; staffing capability; workload; record of meeting schedules on similar projects; and at least three (3) supportive client references.

CVAG strongly encourages proposals from qualified small local businesses. It is CVAG's policy to encourage greater availability, capacity development, and contract participation by small local business enterprises in CVAG contracts. It is intended to further CVAG's interest to stimulate economic development in the Coachella Valley through the support and empowerment of the local community, ensure that it is neither an active nor passive participant in marketplace discrimination, and promote equal opportunity for all segments

of the contracting community.

- b. Proposed Staffing and Project Organization (35%) - This section of the proposal should establish the method that will be used to manage the Project as well as identify key personnel assigned.
 - c. Work Plan (40%) - This section of the proposal shall provide a narrative that addresses the Scope of Services and shows understanding of the Project needs and requirements.
4. Identification of Proposals - Proposal shall clearly mark the Consultant's name, address, and phone number as well as the project name and service to be provided. Only one proposal per consultant will be considered. Consultant shall submit one original, five (5) copies and one complete set of PDF files on flash drive, or similar, of its proposal.
 5. Acceptance of Proposals
 - a. CVAG reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
 - b. CVAG reserves the right to withdraw or cancel this RFP at any time without prior notice and makes no representations that any agreement will be awarded to any Consultant responding to this RFP.
 - c. Submitted proposals shall not be copyrighted.
 6. Interviews - Following submission and evaluation of proposals. CVAG may, at its discretion, conduct interviews with the most highly qualified consultants. These interviews, if required, will be scheduled between **10:00 a.m. and 2:00 p.m. on September 8, 2022**, tentatively.

F. PRE-CONTRACTUAL EXPENSES

CVAG shall not, in any event, be liable for any pre-contractual expenses incurred by consultant in the preparation of its proposal. Consultant shall not include any such expenses as part of its proposal. Pre-contractual expenses are defined as expenses incurred by consultant in:

- a. Preparing its proposal in response to this RFP.
- b. Submitting that proposal to the CVAG.
- c. Preparing for and attending an interview with the CVAG.
- d. Negotiating with the CVAG any matter related to this proposal; or
- e. Any other expenses incurred by consultant prior to date of award, if any, of the contract.

G. JOINT OFFERS

Where two or more Consultants desire to submit a single proposal in response to this RFP, they should do so on a prime-subconsultant basis rather than as a joint venture. CVAG intends to contract with a single firm and not with multiple firms doing business as a joint venture.

H. CONTRACT TYPE

This will be a project-specific contract between CVAG and the selected CONSULTANT for the performance of services with a defined scope of work. It is anticipated that the contract resulting from this solicitation, if awarded, will be a cost-plus fixed fee contract, with a total not-to-exceed amount based on tasks specified in the Scope of Work included in this RFP under SECTION III – SCOPE OF WORK.

I. PROTEST PROCEDURES/DISPUTE RESOLUTION

Protest procedures and dispute resolution process for the contract portions of the project that are federally funded will be in accordance with 2 CFR Part 200.318(k), 2 CFR 172.5 (2) (18) and the CVAG process. The protest shall be submitted in writing to the attention of the Director of Transportation as follows:

Allen D. Mc Millen
Management Analyst – Contract / Procurement
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

SECTION II – PROPOSAL CONTENT AND FORMAT

A. PROPOSAL CONTENT AND FORMAT

Presentation of the proposals shall be typed, with a 11-point font and submitted on 8-1/2" x 11" size paper, using a single method of fastening (no paper or binder clips). Charts and schedules may be included in 11" x 17" format. Consultants should not include unnecessarily elaborate or promotional material. Lengthy narrative is discouraged, and presentations should as be brief and concise as possible. Proposals shall not exceed forty (40) pages in length, excluding any letter of transmittal and appendices. Forms and resumes should be included in the appendices and will not be included in the page count. Envelope 1 of the proposals shall include all five sections below. Envelope 2 shall include the Cost and Price proposal.

1. Letter of Transmittal

Letter of Transmittal, two page maximum, shall be addressed to Jonathan Hoy PE, Director of Transportation and shall, at a minimum, contain the following:

- a. Identification of Consultant that will have contractual responsibility with CVAG. Identification shall include legal name of company, corporate address, telephone, and fax number. Include name, title, address, and telephone number of the contact person identified during period of proposal evaluation.
- b. Identification of all proposed Subcontractors including legal name of company, whether the firm is a Disadvantaged Business Enterprise (DBE), contact person(s) name and address, phone number and fax number. Relationship between CONSULTANT and Subcontractors, if applicable.
- c. Acknowledgment of receipt of all RFP addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 180 days from the date of submittal.
- e. A statement that the CONSULTANT does not have any personal, business, and financial relationship with the Contractors and Subcontractors that will be pursuing the work.
- f. Signature of a person authorized to bind CONSULTANT to the terms of the proposal.
- g. Signed statement attesting that all information submitted with the proposal is true and correct.

2. Technical Proposal

- a. Qualifications, Related Experience and References of Consultant - This section of the proposal should establish the ability of Consultant to satisfactorily perform the required work by reasons of: experience in performing work of the same or similar nature; demonstrated experience working with affected local agencies directly involved in this project; experience working with Caltrans District 8 - Local Assistance, Federal Highway Administration (FHWA), strength and stability of the Consultant; staffing capability; work load; record of meeting schedules on similar projects; and at least three supportive client references.
- b. Consultant to:
 - i. Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size, and location of offices; number of employees.
 - ii. Provide a general description of the firm's financial condition, identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Consultant's ability to complete the Project.
 - iii. Describe the firm's experience in performing work of a similar nature to that

- solicited in this RFP and highlight the participation in such work by the key personnel proposed for assignment to this Project.
- iv. Describe experience in working with the various government agencies and private entities that may have jurisdiction over the approval of the work specified in this RFP. Please include specialized experience and professional competence in areas related to this RFP.
 - v. A minimum of three (3) references should be given. Furnish the name, title, address, and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. Consultant may also supply references from other work not cited in this section as related experience.
- c. Proposed Staffing and Project Organization - This section of the proposal should establish the method that will be used by the Consultant to manage the Project as well as identify key personnel and sub-consultants assigned.

Consultant to:

- i. Provide education, experience, and applicable professional credentials of project staff. Include applicable professional credentials of "key" project staff.
 - ii. Furnish brief resumes (not more than two (2) pages each) for the proposed Project Manager and other key personnel in the appendix, include copy of their certifications
 - iii. Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, proposed position for this Project, current assignment, level of commitment to that assignment, availability for this assignment and how long each person has been with the firm.
 - iv. Include a project organization chart that clearly delineates communication and reporting relationships with CVAG among the project staff and including sub-consultants.
 - v. Include a statement that key personnel will be available to the extent proposed for the duration of the Project, acknowledging that no person designated as "key" to the Project shall be removed or replaced without the prior written consent of CVAG.
- d. Work Plan - Consultant shall provide a narrative that addresses the Scope of Work and shows Consultant's understanding of CVAG's needs and requirements.

Consultant to:

- i. Describe the approach and work plan for completing the tasks specified in the Scope of Work. The work plan shall be of such detail to demonstrate the Consultant's ability to accomplish the Project objectives and overall schedule.
- ii. Outline sequentially, the activities that would be undertaken in completing the tasks and specify who would perform them and identify all deliverables.
- iii. Identify methods that Consultant will use to ensure quality control as well as budget and schedule control for the Project.
- iv. Identify any special issues or problems that are likely to be encountered during this Project and how the Consultant would propose to address them.
- v. Consultant is encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the Project.
- vi. Provide Schedule and Deadlines.
- vii. Consultant DBE Commitment document (See Exhibit 10-O1, Consultant Proposal

DBE Commitment).

3. **Exceptions/Deviations**

State any exceptions to, or deviations from, the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions. Where Consultant wishes to propose alternative approaches to meeting CVAG's technical or contractual requirements, these should be thoroughly explained. If no contractual exceptions are noted, Consultant will be deemed to have accepted the contract requirements as set forth in SECTION IV – PROFESSIONAL SERVICES AGREEMENT.

4. **Appendices**

Information considered by consultant to be pertinent to this Project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Consultants are cautioned, however, that this does not constitute an invitation to submit enormous amounts of extraneous materials. Appendices should be relevant and brief.

5. **Cost and Price Proposal**

A separate **sealed** envelope, with a detailed cost and price proposal. Cost proposals shall be prepared to follow the order and format of the items of work listed in SECTION III - SCOPE OF WORK on the applicable exhibits.

- i. In addition, it shall include a detailed itemized cost break-down for each project task and sub-task shall be submitted in a summary table. Cost proposals shall, as a minimum, show all anticipated Prime and Subconsultant costs by Task and Subtask, including personnel by classification, hours, and hourly rates. Other Direct Costs shall be summarized at the Project level, rather than by Task. Cost proposals shall comply with prevailing wage requirements as applicable.

SECTION III – SCOPE OF WORK

The Coachella Valley Association of Governments (CVAG) is seeking proposals from qualified Professional Engineering Consultants to Bid Administration and Pre-Construction Assistance, Construction Management, and Project Closeout Services for the WESTEREN COACHELLA VALLEY FLOOD AND BLOWSAND ROAD IMPROVEMENT PROJECT, PHASE 1 ON INDIAN CANYON DRIVE (From Sunrise Parkway to Palm Station Road, INCN7) VARNER ROAD (From Mountain View Road to Date Palm Drive, VRNR2) DATE PALM DRIVE (From I-10 to Varner Road, DPLM5).

The following Scope of Work represents the minimum effort needed to complete the Project. Consultants should review the listed tasks in detail and are encouraged to add additional tasks and propose enhancements, or procedural/technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the Project.

CVAG will utilize the services of CONSULTANT to support the pre-bid and pre-construction management activities for the Project. The CONSULTANT will provide bid administration and pre-construction assistance.

1. Planning and Project Development - The Consultant shall be responsible for obtaining all required project documents, studies, reports, as-built plans, record drawings, record maps and surveys, and other information needed to complete the project.
The Consultant shall coordinate and attend meetings with the CVAG's Project Manager and other required representatives from affected agencies as deemed necessary by the CVAG's Project Manager. The Consultant's Project Manager(s) and/or sub-consultants shall attend as appropriate. The Consultant shall prepare minutes for each meeting and distribute to the attendees at each succeeding meeting.
2. Design and Preliminary Studies - Consultant shall be responsible to supply all engineering support and preliminary services needed for design of this project. These tasks shall include, at a minimum: Supplemental Topographic Surveying for Base Mapping and Hydraulics Analysis; Geotechnical Soils Testing; Hydraulics Analysis; Floodplain Analysis and Renderings of preliminary design concepts. The Consultant shall perform planning and project development, which may include, but not be limited to the following:
 - a. Research and Data Gathering,
 - b. Surveys
 - c. Utility Survey, including coordination with the Sanitary District for Indian Canyon Drive project.The improvements shall include all the required mitigation measures including improvements for blowsand containment throughout the project. The preliminary engineering plans together with an engineer's estimate shall be submitted for approval before final plans can be prepared.
3. Environmental Review, Coordination, Design and Permitting - The consultant shall be responsible for necessary special environmental studies and permits and preparing the necessary

National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) documents to satisfy the requirements of the project funded through the Federal Highway Administration's Highway Bridge Program (HBP). These tasks are expected to include, at a minimum: Environmental Field Review; Environmental Review for CEQA, NEPA and all required Technical Studies; Section 401 Water Quality Certification or waiver; Consultation with the US Fish & Wildlife Service (USFWS) will require USFWS concurrence with the proposed project mitigation, and to render an opinion that the project is not likely to adversely affect threatened or endangered species; Coordination with review and permitting agencies.

4. Right of Way - Consultant shall provide preliminary right of way engineering services needed to prepare the project plans. Right of way engineering services included as part of this RFP include providing the City with preliminary boundary limits, expected acquisition requirements, and affected property owners.
5. FLOOD AND BLOWSAND ROAD IMPROVEMENT DESIGN - Consultant shall be responsible to supply all civil design services needed to supply a final construction set of Plans, Specifications and Estimates for the Indian Canyon Drive, Varner Road, and Date Palm Drive. These tasks shall include, at a minimum: Bridge/Culvert Structure Selection, Aesthetic and Structural Design; Foundation Analysis and Design: Bridge Approach and Adjacent Roadway Improvements Design; Bypass Roads for Phased Construction Design Preparation of Plans, Technical Specifications and Estimates (PS&E); Utility Coordination and Relocations. The Consultant shall submit engineering plans at completion stages of (30%/60%/95%/100%), technical specifications including special provisions and cost estimates for review and approval. The 100% PSE means Bid Ready construction documents.
6. All the above mentioned tasks shall be done concurrently for INDIAN CANYON DRIVE (INCN7), VARNER ROAD (VRNR2) and DATE PALM DRIVE (DPLM5).
7. Bidding and Award - Assist the CVAG during bidding of the project. Includes responses to contractor RFI's, supplying information to the CVAG for Addendum preparation, and revisions to plans as necessary for Addendum revisions. CONSULTANT shall provide a Project Manager to coordinate pre-bid bid and pre-construction activities with CVAG. The Project Manager shall be licensed as a Professional Civil Engineer in the State of California at the time of proposal submittal and through the duration of the contract. The Project Manager shall be responsible for all matters related to CONSULTANT performing these services.
8. Construction Support Services - Consultant shall be available during construction to provide design clarification. Upon construction completion, consultant shall prepare as-built drawings.

SECTION IV – PROPOSED PROFESSIONAL SERVICES AGREEMENT(Sample)



For

[INSERT PROJECT]

CVAG PROJECT NUMBER:(_____)

Between

COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS (CVAG)

And

[INSERT CONSULTANT]

To Provide

[Architectural, Planning, Design, and Engineering Services]

CVAG/Alta Contract for Planning, Design, and Engineering Services

CV Link Project - FPN: ATPL-6164(022)

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EXHIBITS

A: Statement of Work

B: Price Formula

C: Schedule

D: Form 10-O2, Consultant Contract DBE Information

ARTICLE I INTRODUCTION

- A. This contract 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:

[INSERT CONSULTANT]

[ADDRESS]

[CITY, STATE, ZIP]

Incorporated in the State of [INSERT STATE]

The Project Manager for the “CONSULTANT” will be [INSERT NAME]

The name of “LOCAL AGENCY” is as follows:

Coachella Valley Association of Governments (CVAG)

The Contract Administrator for LOCAL AGENCY will be [INSERT NAME].

- B. The work to be performed under this contract is described in Exhibit A entitled Statement of Work and the approved Price Formula dated (_____, 20__). The approved Price Formula is attached hereto (Exhibit B) and incorporated by reference. If there is any conflict between the approved Exhibit B, Price Formula and this contract, this contract shall take precedence.
- C. CONSULTANT shall indemnify, defend with counsel approved by CVAG, and hold harmless CVAG, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature to the extent arising out of or in connection with CONSULTANT's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this AGREEMENT, except such loss or damage which is caused by the sole active negligence or willful misconduct of the CVAG (meaning that CONSULTANT shall indemnify and defend CVAG notwithstanding any alleged or actual passive negligence of CVAG which may have contributed to the claims, damages, costs or liability). Should CVAG in its sole discretion find CONSULTANT'S legal counsel unacceptable, then CONSULTANT shall reimburse the CVAG its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The CONSULTANT shall promptly pay any final judgment rendered against the CVAG (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONSULTANT's negligence, recklessness or willful misconduct. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.
- D. CONSULTANT is and shall at all times remain as to CVAG a wholly independent contractor. The personnel performing the services under this Agreement on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CVAG, its members, nor any of their officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this Agreement. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of CVAG or its members. CONSULTANT

shall not incur or have the power to incur any debt, obligation, or liability whatever against CVAG or its members, or bind CVAG or its members in any manner except as expressly authorized by CVAG.

- E. CONSULTANT's failure to comply with the provisions of this Agreement shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this Agreement, CVAG shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this Agreement immediately by written notice to CONSULTANT. Provided, however, if such failure by CONSULTANT to make progress in the performance of work hereunder arises out of causes beyond CONSULTANT's control, and without fault or negligence of CONSULTANT, it shall not be considered a default. As an alternative to notice of immediate termination, the CVAG Executive Director or his/her delegate may cause to be served upon CONSULTANT a written notice of the default. CONSULTANT shall then have ten (10) days after service of said notice in which to cure the default by rendering a satisfactory performance. In the event that CONSULTANT fails to cure its default within such period of time, CVAG shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.
- F. Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of CVAG.
- G. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- H. 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.
- I. At all times during the term of this Agreement, CONSULTANT shall have in full force and effect all licenses required of it by law for the performance of the services described in this Agreement.
- J. CVAG and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the Riverside County Superior Court, Indio Branch. CONSULTANT shall give CVAG written notice within seven (7) days after any event which CONSULTANT believes may give rise to a claim for an increase in compensation or a change in the performance schedule. Within fourteen (14) days thereafter, CONSULTANT shall supply CVAG with a statement supporting the claim. CVAG shall not be liable for and CONSULTANT hereby waives any claim or potential claim which CONSULTANT knew or should have known about and which was not reported in accordance with the provisions of this paragraph. CONSULTANT agrees to continue performance of the services during the time any claim is pending. No claim shall be allowed if asserted after final payment.
- L. Neither party hereto shall be liable to the other for its failure to perform under this Agreement when such failure is caused by strikes, accidents, acts of God, fire, war, flood, governmental restrictions, or any other cause beyond the control of the party charged with performance; provided that the party so unable to perform shall promptly advise the other party of the extent of its inability to perform. Any suspension of performance by reason of this paragraph shall be limited to the period during which such cause of failure exists.

ARTICLE II STATEMENT OF WORK

The Statement of Work, including a description of the deliverables, is presented in Exhibit A, entitled Statement of Work, to this Agreement.

A. Consultant Services

Consultant shall perform services consistent with the provisions of the Request for Qualifications released on May 13, 2014, (the "RFQ,") and Exhibit A to this Agreement, upon issuance by CVAG of written authority to proceed (a "Work Order") as to either (a) a portion of the work if separate and independent tasks are contemplated or (b) all work if it constitutes a single project.

Except as amended by the exhibits hereto, CONSULTANT is bound by the contents of the RFQ and CONSULTANT's response thereto. In the event of conflict, the requirements of this Agreement, including any exhibits, then the Request for Qualifications, shall take precedence over those contained in CONSULTANT's response.

The scope of work shall be subject to change by additions, deletions or revisions by CVAG. CONSULTANT shall be advised of any such changes by written notice. CONSULTANT shall promptly perform and strictly comply with each such notice. If CONSULTANT believes that performance of any change would justify modification of the Agreement price or time for performance, CONSULTANT shall comply with the provisions for dispute resolution set out herein below.

B. Right of Way

Right of Way requirements are to be determined and shown by CONSULTANT, land surveys and computations with metes and bounds descriptions are to be made, and Right of Way plots are to be furnished (see exhibit A attached hereto.)

C. Surveys

The CONSULTANT has the responsibility for performing preliminary surveys (see exhibit A attached hereto.)

D. Subsurface Investigations

CONSULTANT has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of CONSULTANT, all activities are to be in compliance with the mitigation and monitoring plan outlined in the approved environmental document(s) NEPA EA, CEQA EIR.

E. Local Agency Obligations

All data applicable to the project and in possession of LOCAL AGENCY or another agency, or government that are to be made available to CONSULTANT have been made available. No other assistance or services shall be furnished to CONSULTANT.

F. Conferences, Visits to Site, Inspection of Work

This contract provides for conferences as needed, visits to the site, and inspection of the work by representatives of the state, or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting are included in the fee proposal (See Exhibit B attached hereto.)

G. Checking Shop Drawings

CONSULTANT shall be responsible to check shop drawings submitted for conformance review at commencement of construction phase. Payment for checking shop drawings by CONSULTANT are not included in the contract fee proposal. Checking of shop drawings will be performed by consultant on an as-needed basis with reimbursement based on the direct and indirect cost rates proposed in the approved cost proposal (see exhibit B attached hereto.)

H. Documentation and Schedules

CONSULTANT shall document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, updated monthly schedules, plans, specifications and estimates, or similar evidence of attainment of the contract objectives (see Exhibit A attached hereto.)

I. Consultant Services During Construction (NOT APPLICABLE)

There are no anticipated CONSULTANT's services during the course of construction such as material testing, construction surveys, etc. It is anticipated that these services will be included in the construction management contract.

J. Deliverables and Number of Copies

Six (6) copies of reports, brochures, sets of plans, specifications, or Right of Way plots is specified shall be considered as included in contract deliverables. Payment for additional copies shall be based on the direct and indirect cost rates proposed on the approved cost proposal (see exhibit B attached hereto).

ARTICLE III CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit informal progress reports to LOCAL AGENCY's Project Manager by telephone, e-mail or in person, on a weekly basis, in a form acceptable to LOCAL AGENCY, describing the state of work performed. The purpose of the reports is to allow LOCAL AGENCY to determine if the contract objectives and activities are being completed in accordance with the agreed upon schedule, and to afford occasions for airing difficulties or special problems encountered.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the contract.

ARTICLE IV PERFORMANCE PERIOD

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

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

- A. The method of payment for this contract will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article II Statement of Work of this contract. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by contract amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.

- C. CONSULTANT shall not commence performance of work or services until this contract has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this contract.
- D. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within 60-calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

Coachella Valley Association of Governments
[INSERT NAME], Contract Administrator
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

- E. The total amount payable by LOCAL AGENCY shall not exceed \$[(INSERT AMOUNT)].
- F. All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE VI TERMINATION

- A. LOCAL AGENCY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.
- B. LOCAL AGENCY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, LOCAL AGENCY may proceed with the work in any manner deemed proper by LOCAL AGENCY. If LOCAL AGENCY terminates this contract with CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.
- C. The maximum amount for which the Government shall be liable if this contract is terminated is _____ dollars.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to LOCAL AGENCY.

D. All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE VIII RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and LOCAL AGENCY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, LOCAL AGENCY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by LOCAL AGENCY'S Director of Administrative Services.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Director of Administrative Services 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 contract.
- D. CONSULTANT and subconsultants' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract manager 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 contract 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, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.
- E. CONSULTANT Cost Proposal is subject to a CPA ICR Audit Work Paper Review by Caltrans' Audit and Investigation (Caltrans). Caltrans, 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 contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

1. During a Caltrans' review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans 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 Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at a provisional ICR until a FAR 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 Audit Guide; and other applicable procedures and guidelines} is received and approved by A&I. Provisional rates will be as follows:
 - a. If the proposed rate is less than 150% - the provisional rate reimbursed will be 90% of the proposed rate.
 - b. If the proposed rate is between 150% and 200% - the provisional rate will be 85% of the proposed rate.
 - c. If the proposed rate is greater than 200% - the provisional rate will be 75% of the proposed rate.
2. If Caltrans is unable to issue a cognizant letter per paragraph E.1. above, Caltrans 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. Caltrans 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 Section E, or if Caltrans 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 provisional 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 provisional ICR will become the actual and final ICR for reimbursement purposes under this contract.
4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) Caltrans approves or rejects the original or revised independent CPA-audited ICR; (2) all work under this contract has been completed to the satisfaction of LOCAL AGENCY; and, (3) Caltrans has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO local agency no later than 60 days after occurrence of the last of these items.

The provisional ICR will apply to this contract and all other contracts executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between LOCAL AGENCY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its subconsultant(s) 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 CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from LOCAL AGENCY'S obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this contract shall be subcontracted without written authorization by LOCAL AGENCY'S Contract Administrator, except that, which is expressly identified in the approved Exhibit B, Price Formula.

- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by LOCAL AGENCY.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- E. Any substitution of subconsultants must be approved in writing by LOCAL AGENCY's Contract Administrator prior to the start of work by the subconsultant.

ARTICLE XI EQUIPMENT PURCHASE

- 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 \$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 Exhibit B, Price Formula and exceeding \$5,000 prior authorization by LOCAL AGENCY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following: "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 \$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 contract, or if the contract 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." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.
- D. All subcontracts in excess \$25,000 shall contain the above provisions.

ARTICLE XII STATE PREVAILING WAGE RATES

- A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

ARTICLE XIII CONFLICT OF INTEREST

- A. CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this contract, or any ensuing LOCAL AGENCY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing LOCAL AGENCY construction project, which will follow.
- B. 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 contract.
- C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.
- F. CONSULTANT covenants that neither it nor any officer or principal of CONSULTANT's firm has any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of services hereunder. CONSULTANT further covenants that in the performance of this Agreement, no person having such interest shall be employed by CONSULTANT as an officer, employee, agent, or subcontractor.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONSULTANT warrants that this contract 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 the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

- A. 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 CONSULTANT to any person for influencing or attempting to influence an officer or employee of any 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 of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative 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 federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement;

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 Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. 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 subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XVI STATEMENT OF COMPLIANCE

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. 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.
- C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California 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.
- D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR Part 180,

“OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (nonprocurement)”, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and 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. Any exceptions to this certification must be disclosed to LOCAL AGENCY.

- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

ARTICLE XVIII FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this contract 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 contract were executed after that determination was made.
- B. This contract is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this contract. In addition, this contract 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 contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to void the contract under the 30-day cancellation clause, or by mutual agreement to amend the contract to reflect any reduction of funds.
- E. LOCAL AGENCY hereby warrants that no authorization for CONSULTANT to proceed with services under this agreement shall be issued until adequate funding is made available to compensate CONSULTANT for such services. LOCAL AGENCY shall notify CONSULTANT of any funding shortages or failures to secure the entire funding amount required under this contract before CONSULTANT performs any services under this agreement.

ARTICLE XIX CHANGE IN TERMS

- A. This contract may be amended or modified only by mutual written agreement of the parties.
- B. The scope of work shall be subject to change by additions, deletions or revisions by LOCAL AGENCY. CONSULTANT shall be advised of any such changes by written notice. CONSULTANT shall promptly perform and strictly comply with each such notice. If CONSULTANT believes that performance of any change would justify modification of the Agreement price or time for performance, CONSULTANT shall comply with the provisions for dispute resolution set out herein below.
- C. 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.

- D. Because of the personal nature of the services to be rendered pursuant to this Agreement, there shall be no change in CONSULTANT's Project Manager or subconsultant firms of the project team without prior written approval by LOCAL AGENCY.

ARTICLE XX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this contract is _____%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. 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. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT 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, Part 26 in the award and administration of US DOT-assisted agreements. Failure by 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 LOCAL AGENCY deems appropriate.
- D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract 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 contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the, contract is commensurate with the work it is actually performing, and other relevant factors.
- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, 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.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the

contract 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.

- I. 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 prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- K. If a DBE subconsultant is decertified during the life of the contract, 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 Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within 30 days.

ARTICLE XXI CONTINGENT FEE

CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract 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 contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXII DISPUTES

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and CVAG's Executive Director, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than 30 days after completion of all work under the contract, CONSULTANT may request review by CVAG's Executive Committee 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 contract.

ARTICLE XXIII INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

ARTICLE XXIV 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 Section 591 of the Vehicle Code, 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. 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
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 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 feet or deeper.

ARTICLE XXV INSURANCE

- A. Throughout the term of this Agreement, CONSULTANT shall procure and maintain insurance, including Workers' Compensation as required by law for its personnel, and a one million dollar (\$1,000,000.00) commercial general liability policy. CONSULTANT shall include CVAG, its member agencies and any other interested and related party designated by CVAG, as additional insureds on this commercial liability policy for liabilities caused by CONSULTANT in its performance of services under this Agreement and shall provide CVAG with a certificate verifying such coverage.
- B. In the event said insurance coverage expires at any time or times during the term of this Agreement, CONSULTANT agrees to provide at least five (5) days notice prior to said expiration date and, prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for no less than the remainder of the term of the Agreement, or for a total period of not less than one (1) year. New certificates of insurance are subject to the approval of CVAG. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, CVAG may, in addition to any other remedies it may have, terminate this Agreement.
- C. CVAG, member agencies and any other interested and related party designated by CVAG are to be covered as additional insured as respects liability arising out of automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the said additional insureds. Minimum requirements are \$100,000/\$300,000/\$25,000.
- D. CONSULTANT's insurance coverage shall be primary insurance as respects CVAG, its member agencies, and any other interested and related party designated by CVAG as additional insureds. Any insurance or self-insurance maintained by said additional insureds shall be in excess of CONSULTANT's insurance and shall not contribute with it and, to the extent obtainable, such coverage shall be payable notwithstanding any act of negligence of CVAG, its members, or any other additional

insured, that might otherwise result in forfeiture of coverage. Any failure to comply with reporting or other provisions of the policies, including breach of warranties, shall not affect coverage provided to said additional insureds. CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by any party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to CVAG.

- E. CONSULTANT shall provide worker's compensation insurance or a California Department of Insurance-approved self-insurance program in an amount and form that meets all applicable Labor Code requirements, covering all persons or entities providing services on behalf of CONSULTANT and all risks to such persons or entities.
- F. Said insurance policy or policies shall be issued by a responsible insurance company with a minimum A. M. Best Rating of "A-" Financial Category "X", and authorized and admitted to do business in, and regulated by, the State of California.
- G. Evidence of all insurance coverage shall be provided to CVAG prior to issuance of the first Work Order. CONSULTANT acknowledges and agrees that such insurance is in addition to CONSULTANT's obligation to fully indemnify and hold CVAG, its members and any other additional insureds free and harmless from and against any and all claims arising out of an injury or damage to property or persons caused by the acts or omissions of CONSULTANT.

ARTICLE XXVI OWNERSHIP OF DATA

- A. Unless the RFP/Q or exhibits hereto expressly provide otherwise, upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of LOCAL AGENCY and may be used, reused, or otherwise disposed of by LOCAL AGENCY without the permission of CONSULTANT. With respect to computer files, CONSULTANT shall make available to LOCAL AGENCY, at CONSULTANT's office and upon reasonable written request by LOCAL AGENCY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by LOCAL AGENCY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by LOCAL AGENCY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by CONSULTANT.
- 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.

- F. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXVII 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. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this contract.
- 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 contract in order to resolve the construction claims.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXVIII 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 contract, 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 contract, 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 contract or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this contract, 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 contract 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.
- F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than LOCAL AGENCY
- G. All information gained by CONSULTANT in performance of this Agreement shall be considered confidential and shall not be released by CONSULTANT without CVAG's prior written authorization. CONSULTANT, its officers, employees, agents, or sub-consultants, shall not without written authorization from the CVAG Task Manager or unless requested by the CVAG Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property

of CVAG. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CVAG notice of such court order or subpoena.

- H. CONSULTANT shall promptly notify CVAG should CONSULTANT, its officers, employees, agents, or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property of CVAG or its members. CVAG retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding. CONSULTANT agrees to cooperate fully with CVAG and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, CVAG's right to review any such response does not imply or mean the right by CVAG to control, direct, or rewrite said response.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 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 XXX 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 contract record.

ARTICLE XXXI RETENTION OF FUNDS

- A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- B. No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

ARTICLE XXXII UNDUE INFLUENCE

- A. CONSULTANT declares and warrants that no undue influence or pressure was or will be used against or in concert with any officer or employee of LOCAL AGENCY in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of LOCAL AGENCY will receive compensation, directly or indirectly, from CONSULTANT, or from any officer, employee or agent of CONSULTANT, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling LOCAL AGENCY to any and all remedies at law or in equity.

B. No member, officer, or employee of LOCAL AGENCY, nor its designees or agents, and no public official who exercises authority over or responsibilities with respect to the subject of this Agreement during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the services performed under this Agreement.

ARTICLE XXXIII LEGAL RESPONSIBILITIES

CONSULTANT shall keep itself informed of State, Federal and local laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. CONSULTANT shall at all times observe and comply with all such laws and regulations. CVAG, its members, and their officers and employees, shall not be liable at law or in equity for any liability occasioned by failure of CONSULTANT to comply with this Section.

CONSULTANT shall perform all tasks required hereunder in a manner consistent with the degree of care and skill ordinarily exercised by other members of the same profession currently operating under similar circumstances. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this Agreement.

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, national origin, or any other unlawful basis.

ARTICLE XXXIV NOTIFICATION

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

CONSULTANT:

[INSERT CONSULTANT]
[INSERT NAME, TITLE]
[ADDRESS]
[CITY, STATE, ZIP]

LOCAL AGENCY:

Coachella Valley Association of Governments
Tom Kirk, Executive Director
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

ARTICLE XXXV CONTRACT

The two parties to this contract, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this contract constitutes the entire understanding between the parties relating

to the obligations of the parties described herein. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this contract as evidenced by the signatures below.

ARTICLE XXXVI SIGNATURES

The person or persons executing this Agreement on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this Agreement on behalf of CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

[INSERT CONSULTANT] Coachella Valley Association of Governments

[INSERT NAME, TITLE]

Tom Kirk, Executive Director

DATE: _____

DATE:

CONTRACT EXHIBITS

- A: Statement of Work
- B: Price Formula
- C: Schedule
- D: Form 10-O2, Consultant Contract DBE Information

SECTION V – CALTRANS/FEDERAL FORMS

Forms 1-7 may be downloaded from: <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>

1. EXHIBIT 10-H1-H3: COST PROPOSAL
2. EXHIBIT 10-H4: COST PROPOSAL FOR CONTRACTS WITH PREVAILING WAGES
3. EXHIBIT 10-K: CONSULTANT ANNUAL CERTIFICATION OF INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM
4. EXHIBIT 10-O1: CONSULTANT PROPOSAL DBE COMMITMENT
5. EXHIBIT 10-O2: CONSULTANT CONTRACT DBE COMMITMENT
6. EXHIBIT 10-Q: DISCLOSURE OF LOBBYING ACTIVITIES
7. EXHIBIT 15-H: DBE INFORMATION – GOOD FAITH EFFORTS DIR REGISTRATION CERTIFICATION
8. IRAN CONTRACTING ACT CERTIFICATION (see below)

Iran Contracting Act Certification

Instructions: Complete, as applicable, and submit with proposal.

Prior to bidding on, submitting a proposal or executing a contract or renewal for a State of California contract for goods or services of one million dollars (\$1,000,000) or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code Section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code Section 2203(c) or (d). The DGS list of entities prohibited from contracting with public entities in California per the Iran Contracting Act, 2010, can be found at: Department of General Services, Procurement Division, Iran Contracting Act List (<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-Ineligible-Businesses>).

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete one of the options below. Please note, California law establishes penalties for providing false certifications, including civil penalties equal to the greater of two hundred fifty thousand dollars (\$250,000) or twice the amount of the contract for which the false certification was made; contract termination; and three (3) year ineligibility to bid on contracts (Public Contract Code Section 2205).

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is not on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor for 45 days or more if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

| | |
|---|----------------------------|
| Print Vendor Name Financial Institution | Federal ID Number (or N/A) |
|---|----------------------------|

By (Authorized Signature)

Printed Name and Title of Person Signing

| | |
|---------------|-------------------------------------|
| Date Executed | Executed in the County and State of |
|---------------|-------------------------------------|

OPTION #2 - EXEMPTION

Pursuant to Public Contract Code Sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran on a case-by-case basis to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

| | |
|---|----------------------------|
| Print Vendor Name Financial Institution | Federal ID Number (or N/A) |
|---|----------------------------|

By (Authorized Signature)

Printed Name and Title of Person Signing

Date Executed

SECTION VI – ATTACHMENTS

Attachments 1-3 may be downloaded from the following link:

https://cvag.org/library/pdf_files/trans/Flooding_Blowsand_RFP_Attachments.pdf

1. MBI feasibility study
2. Alternative Concepts
3. Cathedral City North City extended specific Plans
4. CVAG TPPS (<https://cvag.org/wp-content/uploads/2021/10/CVAG-TPPS-2017-04-27-rev2017-06-26-1.pdf>)