



REQUEST FOR PROPOSAL

FOR

PROFESSIONAL ENGINEERING CONSULTING SERVICES

Manthey Road Bridge Replacement (PS 12-04)
Federal-Aid Project No. 5456(016)

OCTOBER 2020

DBE Goal 15%

Date Issued: October 1, 2020

Response Due Date: November 6, 2020 (by 4 PM)

Contact Person: Michael King, Director of Public Works
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Fax: (209) 941-7449
Email: mking@ci.lathrop.ca.us

Mailing Address: City of Lathrop
Public Works Department
390 Towne Centre Drive
Lathrop, California 95330

INTRODUCTION

The City of Lathrop's Public Works Department is requesting proposals for professional services to provide final design, construction permitting and right-of-way services for the **Manthey Road Bridge Replacement Project**. This request for proposal (RFP) defines the scope of services and outlines the requirements that must be met by Consultants interested in providing such services.

The City of Lathrop (City) is located in San Joaquin County at the interchange of three major freeways: Interstate 5 (I-5), Interstate 205 (I-205), and State Route 120 (SR-120). The City has an area of 23 square miles of level terrain and a population of approximately 26,000. Historically, Lathrop has been an agriculturally based community; however, the continuing dynamic outward growth of the San Francisco Bay Area has pushed industrial, warehousing, and logistics growth into the Northern San Joaquin Valley, which is benefiting Lathrop's strategic location. While the existing community is developed primarily east of Interstate 5 (East Lathrop), new developments are in various stages of establishment area west of Interstate 5. The new bridge will provide a vital link across the San Joaquin River.

A Project Location Map is attached in Appendix A.

BACKGROUND INFORMATION

The Manthey Road Bridge (Bridge Number 29C0127), over the San Joaquin River, was built in 1926 as a movable bridge. The bridge structure is a Pratt Camelback through steel truss with a Bascule lift approach on the north end and is more than 24 feet wide. The bridge has a pedestrian walkway on the southeast side outside of the main truss; however, this walkway is currently closed due to its poor and unsafe condition. A separate, independent pedestrian bridge is located immediately northwest (downstream) of the bridge.

In September 2012, Caltrans determined that the bridge is structurally deficient, with a sufficiency rating of 7.1 out of 100 and functionally obsolete. Federal-Aid Highway Bridge Program funds are programmed for this project.

Through the preliminary engineering and environmental compliance phase, the identified build alternative would replace the existing bridge with a new bridge downstream of the existing railroad bridge and demolish the existing bridge. The preliminary alignment for this alternative follows the proposed Golden Valley Parkway alignment across the San Joaquin River, in accordance with the West Lathrop Specific Plan, and conforms at Stewart Road west of the river. Partial right of way acquisition would be required from six privately owned properties (Assessor Parcel Numbers 213-310-05, 213-310-06, 241-020-69, 241-020-68, 241-020-67, and 241-020-63), as well as easements from Reclamation District 17 and Reclamation District 2062.

The new bridge would measure approximately 532 feet long by 53 feet wide and would accommodate two 12-foot traffic lanes, two 8-foot shoulders, two 5-foot, 6-inch sidewalks, and concrete barriers and tubular handrails. The bridge would be supported by three sets of two piers supported by cast-in-steel-shell piles in the river and abutments on both ends supported by cast-in-drilled-hole piles. The bridge superstructure would be precast, prestressed concrete bulb-tee girders with a cast-in-place concrete deck or a cast-in-place, post-tensioned concrete box girder. The United States Coast Guard supports this bridge configuration.

The proposed project would construct a 1-mile-long segment of Golden Valley Parkway along the alignment outlined in the West Lathrop Specific Plan. Though eventually planned as a four-lane arterial, the road constructed under this project would have two 12-foot lanes, with 8-foot shoulders and 5-foot sidewalks located within one-half of the proposed right of way that has been identified for the parkway. The new roadway approach would extend from Brookhurst Boulevard in the north heading southward, turn to the west, cross the San Joaquin River on the new bridge alignment, and connect to Stewart Road in the River Islands development west of the river. Intersection improvements would be made at Brookhurst Boulevard and Saddler Oak. The bridge would conform to existing ground level at Stewart Road.

Intersections of Golden Valley Parkway with Brookhurst Boulevard and Sadler Oak Drive would be signalized and would accommodate left and right turns from all directions. No changes would be made to the intersections of Manthey Road at Brookhurst Boulevard and Sadler Oak Drive. The intersection of Golden Valley Parkway and Stewart Road would be signalized; access to Stewart Road south of Golden Valley Parkway would be limited to right turns from Golden Valley Parkway. Northbound traffic on Stewart Road would only be able to turn right.

The Manthey Road Bridge would be removed after the new bridge is open to traffic. Access to the Mossdale County Park will be maintained and Manthey Road would culminate in a cul-de-sac at Mossdale County Park to allow for bus turn-arounds. On the west side of the San Joaquin River, Manthey Road would end in a free left turn onto Stewart Road. A free right turn from Stewart Road to Manthey Road would be striped. The existing pedestrian bridge will remain.

Land developments are required to make right-of-way dedications for Golden Valley Parkway, but the dedications have not been finalized.

In recent years, development as well as levee maintenance on west (River Island) side have altered the topography. Supplemental surveys are anticipated.

The following background/reference documents are available for download at <https://www.ci.lathrop.ca.us/rfps>:

- Draft Initial Studies with Proposed Mitigated Negative Declaration/Environmental Assessment (IS/MND EA)
- Bridge Type Selection Report
- Draft Project Report

Submit requests for technical studies in the same manner as questions.

SCOPE OF SERVICES

The consultant will be responsible for actively managing the project and for the performance of all aspects of the contract services to allow for the solicitation of a contract for the construction of the project by fall 2022.

As a minimum, all proposals should include the following tasks: project management; supplemental surveying; geotechnical investigations; construction permitting; right-of-way engineering, appraisal and acquisition; contract documents (Plans, Specifications and Estimates (PS&E)); and Construction Support. Consultants are expected to include any additional work items that they feel are appropriate and/or necessary for the successful completion of this project. Describe, in details, your deliverables including file format and information to be included.

A. Project Management

Manage the project in all aspects to maintain project schedule and budget, providing continuous leadership, consultation and advice to City. Lead regular status/coordination meetings with City staff and providing minutes for these meetings.

Provide presentations before the City Council or other public bodies. It is anticipated that the Consultant will be present for two (2) Council meetings.

B. Supplemental Surveys and Update Base Plans

Perform field surveys to update topographic base map, research and update right-of-way property boundaries, easements and other jurisdictional areas. Neither topographic aerial surveys nor aerial photographs will be acceptable as base plans.

C. Materials Investigation

Arrange for and direct completion of material tests, soils tests and subsurface investigations, as required for design and construction of the project.

D. Construction Permitting

Verify all agencies with permitting authority and prepare construction permits applications for all aspects of the project. Arrange for purchase of mitigation credits at approved mitigation bank(s). All permit application fees will be paid for by the City. The consultant, in close coordination with the City Project Manager shall serve as the liaison between the City and the permitting agency.

E. Right-of-Way Engineering. Appraisal and Acquisition

Obtain title reports, prepare appraisal maps, right-of-way acquisition maps, plat maps and legal descriptions for all rights-of-way required for the project. Provide right-of-way acquisition services (appraisals, negotiations, acquisition, etc.).

F. Plans, Specifications, and Estimates

Prepare plans, specifications and estimates in accordance with the latest City of Lathrop Design and Construction Standards and supplemented by current Caltrans standards. Work not covered by the “manuals” shall be performed in substantial conformance with accepted professional standards.

Deliverables must include supplemental information such as bridge 4-scale, roadway cross sections, quantity take-off calculations.

All plans shall be performed in AutoCAD.

G. Construction Support

1. Bidding Services – Provide assistance during the bidding period by responding to request for information, clarifying PS&E, preparing addenda (if necessary), and assisting the City in reviewing the bids for completeness and accuracy.
2. Construction Services - Provide construction assistance including attending pre-construction meeting, reviewing contractor submittals, responding to requests for information, and preparing design change orders.

PROPOSAL GUIDELINES

These guidelines were developed to standardize the preparation of the Proposal by consultants for the requested services. The purpose of these guidelines is to help assure consistency in format and content of Proposals prepared by consultants and submitted to the City.

Order

The Proposal should contain the following information in the order listed, and the maximum number of 8½” x 11” equivalent pages:

1. Introductory Letter
2. Qualifications and Experience
3. Work Plan
4. Scope of Work
5. Project Schedule
6. Conflict of Interest Statement
7. Resume
8. References
9. Required Federal Form
10. Cost Proposal (in separate seal envelope)

Mandatory Details

1. Introductory Letter (2 pages)

The introductory letter should be addressed to:

Michael King, P.E., Public Works Director
City of Lathrop
Public Works Department
390 Towne Centre Drive
Lathrop, CA 95330

Specify the name of the firm submitting the Proposal, its mailing address, telephone number, fax number and the name of the individual to contact if further information is desired. Included in the introductory letter, a statement that the contractual form, conflicts of interest, indemnification, and insurance provisions are understood and will be met. Any requested modifications to the contract must be submitted with this proposal. A sample Consultant Agreement is included in Appendix B.

2. Qualifications and Experience (2 pages)

Discuss team's experience projects of similar size and scope, and team's experience with procedures and requirements of Caltrans' Local Assistance Procedure Manual, the Uniform Relocation Act, and Caltrans project delivery standards.

Include an organization chart for the proposed team.

Identify key individuals, including subconsultants, who are proposed to be part of the team along with their qualifications and experience as related to the project. Describe the responsibilities of key team members and how the team will interact. The information should include the expected amount of involvement for each of these individuals on this project. Any changes in key personnel after the award of a project must be approved by the City before the change is made.

Describe your firm's approach to staff commitment for this project.

3. Work Plan (1 page)

Describe team's understanding of the project and the proposed approach to achieving the objectives and accomplishing the tasks described in this Request for Proposal. It should be concise, yet include sufficient detail to completely describe the planned approach. Description of how the objectives will be achieved shall be presented in a logical, innovative, and rational plan.

4. Scope of Work (6 pages)

Your proposed scope of services will be the starting point for negotiations should you be selected consultant, and will ultimately become part of the contract by reference. **THE SCOPE OF SERVICES MUST DESCRIBE EACH PHASE OR TASK OF THE WORK TO BE UNDERTAKEN INCLUDING THE MAN-HOUR LEVEL OF EFFORT FOR EACH CLASS OF PERSONNEL AND FOR EACH SUBCONSULTANT, INCLUDING DELIVERABLES TO BE PROVIDED.** The Consultant should specify any tasks that are assumed to be accomplished by City staff and the general level of participation expected.

5. Project Schedule (1-11"x17" page)

Provide a comprehensive schedule to complete the tasks listed in the Scope of Services. At the time of release of this request for proposal, the environmental document is in public circulation. The City expects completion of the Project Approval / Environmental Document phase to be complete by May 2021.

The schedule shall show the project to be ready for advertisement for construction bids by Fall 2022. The schedule must identify milestones for completion of each major task in the Scope of Work. Include the time allowed for review by the City and other governmental and regulatory agencies.

6. Conflict of Interest Statement

Disclose any financial, business or other relationship with the City that may have an impact upon the outcome of this contract or the City’s project. Also list current clients who may have a financial interest in the outcome of this contract or the City construction project that will follow. In particular, disclose any financial interest, or relationship with any owner/developer that currently have, or might have future improvements in the vicinity of the project.

7. Resume (1 page per key personnel)

Provide resume for each key personnel identified in the organizational chart. Include professional references including names, title at time of reference project, and current phone numbers.

8. References

Provide a minimum of 5 reference projects of similar scope and scale completed in the past 5 years. Include agency project managers who have direct working experience with the proposed team and their respective current email and phone numbers.

9. Required Federal Forms

Complete and submit LAPM Form 10-O1. Do not submit 10-O2.

10. Cost Proposal (in separate seal envelope)

Provide a proposed budget for completion of the work, broken down by individual work task. Within each work task, the cost should be further broken down by personnel working on the task (by prime and subconsultant), number of hours of work assigned to each personnel on that task, and their hourly rate.

Submit one copy in a separate, sealed envelope. The envelope shall be clearly labeled “Fee Proposal – Manthey Road Bridge Replacement (PS 12-04)”. Cost proposals for team not chosen by the selection committee will be return unopened.

MISCELLANY

Cost of Proposal

The City of Lathrop is not responsible for any costs incurred by Proposers in the preparation of this proposal. The City reserves the right to waive minor discrepancies for proposals received.

City Business License

The successful Proposer will be required to obtain and maintain a current a City Business License.

Proprietary Information

Consultants submitting a proposal in response to this RFP must provide a statement that nothing contained in the submitted proposal will be proprietary. All proposals shall become the property of the City once submitted.

Interviews and Question

The City will NOT grant interviews to discuss this project. Submit all inquiries in writing to mking@ci.lathrop.ca.us. Include “RFP 12-04” in the subject field. All inquiries must be received by **Friday, October 16, 2020**. Responses will be compiled and posted by October 23, 2020

SUBMITTAL

Provide 1 bound hard copy and 1 digital copy of your proposal, and 1 copy of your cost proposal in separate sealed envelope to:

Michael King, P.E.
Director of Public Works
City of Lathrop
Public Works Department
390 Towne Centre Drive
Lathrop, CA 95330

HARD COPY PROPOSAL AND COST PROPOSAL MUST BE RECEIVED BY

4:00 P.M. ON FRIDAY, NOVEMBER 6, 2020

Digital copy may be emailed to: mking@ci.lathrop.ca.us, but will not be considered towards meeting submittal deadline.

Note: Due to COVID considerations, City Hall may not be open to the public. Call (209) 941-7430 if you plan to deliver your proposal in person.

SELECTION PROCEDURE

After receipt of all proposals, the City will conduct an evaluation of the written proposals. The City will then rank the proposals. An oral presentation by up to (3) three of the most qualified proposing consultant firms, based on the Selection Criteria, may be required before an appraisal committee. The final ranking will be based on the written proposal and the oral presentation, if conducted. The City will then negotiate a contract price with the top ranked consulting firm. If there are unresolved issues and negotiations are unsuccessful with the top ranked firm, negotiations with that firm will be formally terminated, and the City may attempt to negotiate an agreement with the next highest ranked firm. Aside from announcing the top ranked proposal, the ranking will be kept confidential.

SELECTION CRITERIA

Selection will be based upon the following factors:

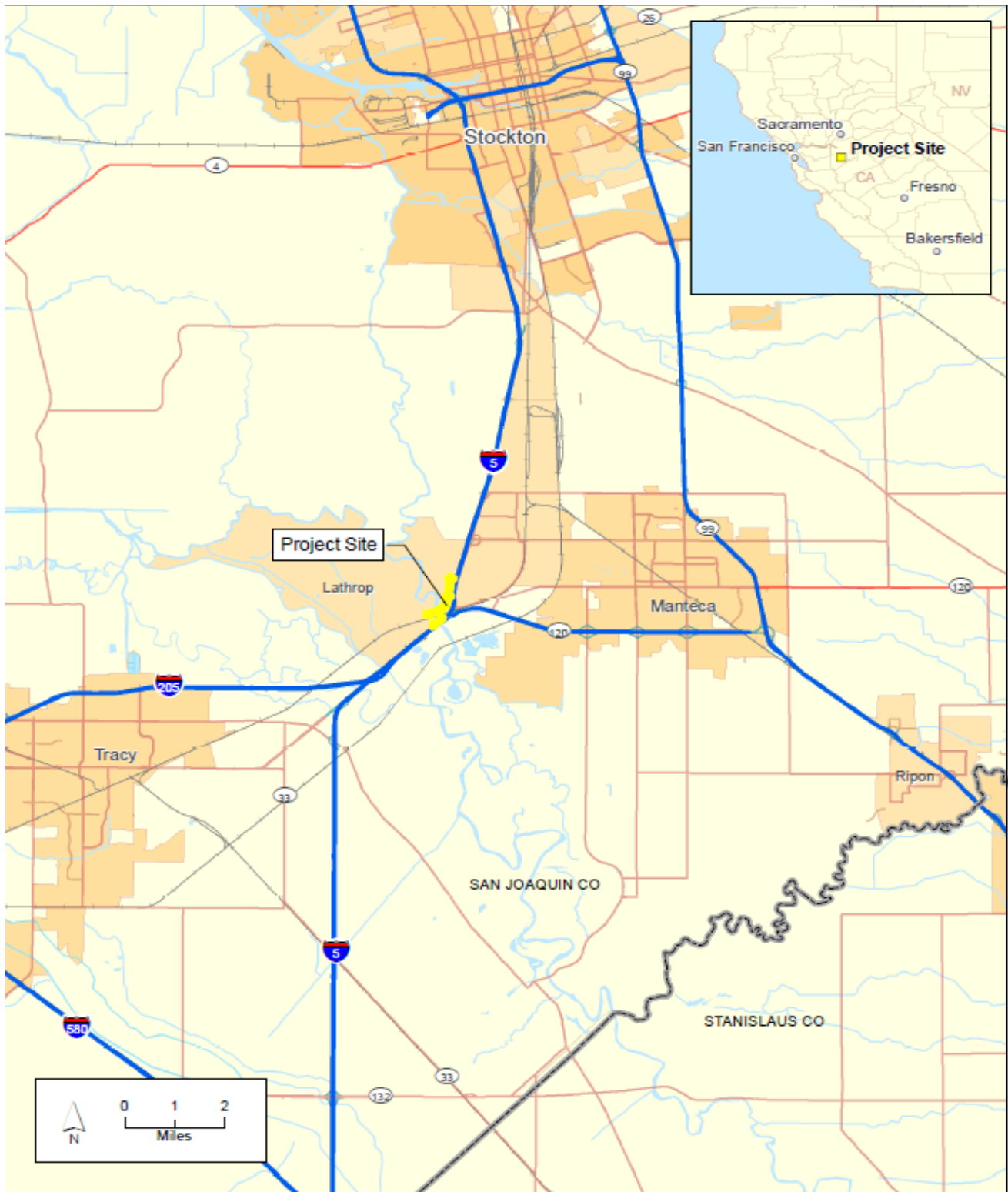
1. Understanding of the City's desires and general approach to the project.
2. Proposed Workplan.
3. Proposed Scope of Work.
4. Consultant's and Project Team's experience with similar projects comparable in type, size, and complexity.
5. Prior working relationship among the consultant team on projects of similar size and complexity.
6. Demonstrated ability of the Consultant team to work effectively together and with governmental agency staff.
7. Qualifications, availability and commitment of the Consultant's staff being assigned to this project.
8. Demonstrated ability of the Consultant to perform high quality work, to control costs and to meet time schedules.
9. Oral presentation (if necessary) provided by the staff that would be assigned to the project, and senior level staff that will be available for consultation by the project staff.

SCHEDULE

Release Request for Proposal	October 1, 2020
Deadlines for questions	October 16, 2020
Response to questions	October 23, 2020
Deadline to receive proposals	November 6, 2020
Selection Committee Review	November 9-13, 2020
Oral presentation of top ranked teams (if needed)	November 23, 2020
Negotiation with top ranked team	December 2020
City Council Approval	January 11, 2021

-END-

APPENDIX A



Project Vicinity and Location

APPENDIX B – LAPM 10-O1

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: City of Lathrop 2. Contract DBE Goal: 15%
 3. Project Description: Replace Manthey Road Bridge
 4. Project Location: Manthey Road and Golden Valley Parkway over San Joaquin River
 5. Consultant's Name: _____ 6. Prime Certified DBE:

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION % IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: <u>BRLS 5456(016)</u> 19. Proposed Contract Execution Date: <u>1/11/2021</u> 20. Consultant's Ranking after Evaluation: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
21. Local Agency Representative's Signature <u>Michael King</u>	22. Date _____	12. Preparer's Signature _____	13. Date _____
23. Local Agency Representative's Name <u>Director of Public Works</u>	24. Phone _____	14. Preparer's Name _____	15. Phone _____
25. Local Agency Representative's Title _____		16. Preparer's Title _____	

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

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

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

1. **Local Agency** - Enter the name of the local or regional agency that is funding the contract.
2. **Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Location** - Enter the project location as it appears on the project advertisement.
4. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
5. **Consultant's Name** - Enter the consultant's firm name.
6. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
7. **Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
8. **DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
9. **DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
10. **DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
11. **Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
12. **Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
13. **Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
14. **Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
15. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
16. **Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

17. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
18. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
19. **Proposed Contract Execution Date** - Enter the proposed contract execution date.
20. **Consultant's Ranking after Evaluation** - Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
21. **Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
22. **Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
23. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
24. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
25. **Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

APPENDIX C – Sample Contract

**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES BETWEEN
THE CITY OF LATHROP AND
[CONSULTANT NAME]**

**TO PROVIDE PROFESSIONAL ENGINEERING CONSULTING SERVICES]
FOR THE MANTHEY ROAD BRIDGE REPLACEMENT PROJECT, PS 12-04**

THIS AGREEMENT, dated for convenience this ___ day of ____, 2021, is by and between ___ (“CONSULTANT”) and the City of Lathrop, a California municipal corporation (“CITY”);

RECITALS:

WHEREAS, CONSULTANT is specially trained, experienced, and competent to perform Engineering and Right-of-Way services which are required by this AGREEMENT; and

WHEREAS, CITY selected the CONSULTANT pursuant to said qualifications; and

WHEREAS, CONSULTANT is willing to render such Engineering and Right-of-Way services, as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, CONSULTANT and the CITY agree as follows:

AGREEMENT

(1) Scope of Services.

(a) CONSULTANT agrees to perform Engineering and Right-of-Way services in accordance with the Scope of Work provided by the CONSULTANT, and attached hereto as Exhibit “A” and incorporated herein by reference. CONSULTANT agrees to diligently perform these service in accordance with the upmost standards of its profession and to CITY’S satisfaction.

(2) Compensation.

(a) The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. CITY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT’S Cost Proposal, attached hereto as Exhibit “B” and incorporated herein by reference, unless additional reimbursement is provided for by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds CITY’s approved overhead rate set forth in the Cost Proposal. In the event, that CITY determines that a change to the work from that specified in the Cost Proposal and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by CITY shall be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph “I” of this Article shall not be exceeded, unless authorized by AGREEMENT amendment.

(b) The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT. CONSULTANT’s agreement to the

extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or AGREEMENT award.

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

Department of Public Works
City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330

- (i) The total amount payable by CITY including the fixed fee shall not exceed \$(Amount).
- (j) For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

(3) Effective Date and Term

The effective date of this AGREEMENT is _____, 2021 and it shall terminate no later than _____, 2024 unless extended by AGREEMENT amendment.

(4) Independent Contractor Status.

- (a) CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including

CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.

- (b) CITY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the CITY as to the designation of tasks to be performed and the results to be accomplished.

(5) Subcontracting

- (a) Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the CITY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the CITY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the CITY's obligation to make payments to the CONSULTANT.
- (b) The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the CITY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- (c) Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- (d) Any substitution of Subconsultants must be approved in writing by the CITY Contract Administrator in advance of assigning work to a substitute Subconsultant.
- (e) Prompt Progress Payment

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

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other

remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

(f) Retention of Funds

No retainage will be withheld by CITY from progress payments due the CONSULTANT. Retainage by the CONSULTANT or subconsultants is prohibited, and no retainage will be held by the CONSULTANT from progress due subconsultants. Any violation of this provision shall subject the violating CONSULTANT or subconsultants to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.

(6) Advice and Status Reporting.

- (a) CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the CITY's Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- (b) CONSULTANT shall provide the CITY with timely reports, orally or in writing, of all significant developments arising during performance of its services hereunder, and shall furnish to City such information as necessary to enable CITY to monitor the performance of this AGREEMENT.

(7) Assignment of Personnel.

- (a) CONSULTANT shall assign only competent personnel to perform services pursuant to this AGREEMENT. If CITY asks CONSULTANT to remove a person assigned to the work called for under this AGREEMENT, CONSULTANT agrees to do so immediately, without requiring the CITY to process a reason or explanation for its request.
- (b) There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by CITY's Contract Administrator.

(8) Assignment and Subcontracting.

- (a) Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the CITY. However, claims for money due or which become due to CONSULTANT from CITY under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the CITY.

(9) Insurance.

On or before beginning any of the services or work called for by any term of this Agreement, CONSULTANT, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to the CITY the insurance specified in

CITY OF LATHROP – CONSULTING SERVICES AGREEMENT
[CONSULTANT NAME]

subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the CITY. CONSULTANT shall not allow any subcontractor to commence work on any subcontract until all insurance required of the CONSULTANT has also been obtained for the subcontractor. Verification of this insurance shall be submitted and made part of this Agreement prior to execution.

- (a) Workers' Compensation. CONSULTANT shall, at CONSULTANT'S sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by CONSULTANT. Said Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000). In the alternative, CONSULTANT may rely on a self-insurance program to meet these requirements provided that the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the CONSULTANT, if a program of self-insurance is provided, shall waive all rights of subrogation against the CITY for loss arising from work performed under this Agreement.
- (b) Commercial General and Automobile Liability Insurance. CONSULTANT, at CONSULTANT'S own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this Agreement in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) and Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (i) CITY, its officers, employees, agents, and volunteers are to be covered as insured with respect to each of the following: liability arising out of activities performed by or on behalf of CONSULTANT, including the insider's general supervision of CONSULTANT; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents, or volunteers.
- (ii) The insurance shall cover on an occurrence or an accident basis, and not on a claim made basis.
- (iii) An endorsement must state that coverage is primary insurance and that no other insurance affected by the CITY will be called upon to contribute to a loss under the coverage.

- (iv) Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
 - (v) Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A: VII.
 - (vi) Notice of cancellation or non-renewal must be received by CITY at least thirty days prior to such change.
- (c) Professional Liability. CONSULTANT, at CONSULTANT'S own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than Two Million Dollars (\$2,000,000) per claim made and per policy aggregate covering the licensed professionals' errors and omissions, as follows:
- (i) Any deductible or self-insured retention shall not exceed \$150,000 per claim.
 - (ii) Notice of cancellation, material change, or non-renewal must be received by the CITY at least thirty days prior to such change shall be included in the coverage or added as an endorsement to the policy.
 - (iii) The policy must contain a cross liability or severability of interest clause.
 - (iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:
 1. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this Agreement, CONSULTANT must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The CITY shall have the right to exercise at the CONSULTANT'S cost, any extended reporting provisions of the policy should the CONSULTANT cancel or not renew the coverage.
 4. A copy of the claim reporting requirements must be submitted to the CITY prior to the commencement of any work under this Agreement.
- (d) Deductibles and Self-Insured Retentions. CONSULTANT shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, upon express written authorization of the CITY's authorized representative, CONSULTANT may increase such deductibles or self-insured retentions with respect to CITY, its officers, employees, agents, and volunteers. The CITY's authorized representative may condition approval of an increase in deductible or self-insured retention levels upon a requirement that CONSULTANT

procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

- (e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the Agreement is reduced, limited, or materially affected in any other manner, CONSULTANT shall provide written notice to CITY at CONSULTANT'S earliest possible opportunity and in no case later than five days after CONSULTANT is notified of the change in coverage.
- (f) In addition to any other remedies CITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option:
 - (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
 - (ii) Order CONSULTANT to stop work under this Agreement or withhold any payment which becomes due to CONSULTANT hereunder, or both stop work and withhold any payment, until CONSULTANT demonstrates compliance with the requirements hereof;
 - (iii) Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for CONSULTANT'S breach.

(10) Indemnifications – CONSULTANT'S Responsibility.

- (a) As to the CONSULTANT'S work hereunder, it is understood and agreed that (a) CONSULTANT has the professional skills necessary to perform the work, (b) CITY relies upon the professional skills of CONSULTANT to perform the work in a skillful and professional manner, and (c) CONSULTANT thus agrees to so perform.
- (b) Acceptance by CITY of the work performed under this Agreement does not operate as a release of said CONSULTANT from such professional responsibility for the work performed. It is further understood and agreed that CONSULTANT is apprised of the scope of the work to be performed under this Agreement and CONSULTANT agrees that said work can and shall be performed in a fully competent manner in accordance with the standard of care applicable to CONSULTANT'S profession.
- (c) CONSULTANT shall indemnify, defend, and hold CITY, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused by the willful misconduct or negligent acts or omissions of CONSULTANT, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising out of the negligence or willful misconduct of the CITY, its officers, employees, agents, or volunteers. It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such

insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(11) Licenses.

If a license of any kind, which term is intended to include evidence of registration, is required of CONSULTANT, its employees, agents, or subcontractors by federal or state law, CONSULTANT warrants that such license has been obtained, is valid and in good standing, and CONSULTANT shall keep it in effect at all times during the term of this AGREEMENT, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

(12) Business Licenses.

CONSULTANT shall obtain and maintain a City of Lathrop Business License until all AGREEMENT services are rendered and accepted by the CITY.

(13) Termination.

- (a) This AGREEMENT may be terminated by CITY, provided that CITY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, CITY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- (b) CITY may temporarily suspend this AGREEMENT, at no additional cost to CITY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If CITY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- (c) Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to CITY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- (d) In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, CITY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

(14) Funding.

- (a) It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- (b) This AGREEMENT is valid and enforceable only if sufficient funds are made available to CITY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or CITY governing board

that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

- (c) It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- (d) CITY has the option to terminate the AGREEMENT pursuant to Section 13 Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

(15) Notices.

- (a) All contracts, appointments, approvals, authorizations, claims, demands, change orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by the United States mail, postage prepaid, (3) sent by private express delivery service, or (4) in the case of a facsimile transmission, if sent to the telephone FAX number set forth below during regular business hours of the receiving party and flowed with two (2) Days by delivery of a hard copy of the material sent by facsimile transmission. Personal services shall include, without limitation, service by delivery and service by facsimile transmission.

To City: City of Lathrop
City Clerk
390 Towne Centre Drive
Lathrop, CA 95330

Copy to: City of Lathrop
Department of Public Works
390 Towne Centre Drive
Lathrop, CA 95330

MAIN: (209) 941-7460
FAX: (209) 941-7449

To Consultant

(16) Disadvantaged Business Enterprise (DBE) Participation.

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

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found at: <https://dot.ca.gov/programs/civil-rights/dbe-search>.

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

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

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

- (b) The goal for DBE participation for this AGREEMENT is 15% Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- (c) CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

- (d) Contract Assurance

Under 49 CFR 26.13(b):

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

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

- (i) Withholding monthly progress payments;

- (ii) Assessing sanctions;
 - (iii) Liquidated damages; and/or
 - (iv) Disqualifying CONSULTANT from future proposing as non-responsible
- (e) Termination and Substitution of DBE Subconsultants

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

The CITY authorizes a request to use other forces or sources of materials if CONSULTANT shows any of the following justifications:

- (i) Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
- (ii) The CITY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the CITY's bond requirements.
- (iii) Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
- (iv) Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
- (v) Listed DBE's work is unsatisfactory and not in compliance with the contract.
- (vi) Listed DBE is ineligible to work on the project because of suspension or debarment.
- (vii) Listed DBE becomes bankrupt or insolvent.
- (viii) Listed DBE voluntarily withdraws with written notice from the Contract
- (ix) Listed DBE is ineligible to receive credit for the type of work required.
- (x) Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
- (xi) The CITY determines other documented good cause.

CONSULTANT shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise CONSULTANT and the CITY of the reasons why the use of other forces or sources of materials should not occur.

CONSULTANT's request to use other forces or material sources must include:

- (i) One or more of the reasons listed in the preceding paragraph.
- (ii) Notices from CONSULTANT to the DBE regarding the request.

(iii) Notices from the DBEs to CONSULTANT regarding the request.

If a listed DBE is terminated or substituted, CONSULTANT must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

(f) Commitment and Utilization

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

The CITY shall request CONSULTANT to:

(iv) Notify the CITY's contract administrator or designated representative of any changes to its anticipated DBE participation

(v) Provide this notification before starting the affected work

(vi) Maintain records including:

- Name and business address of each 1st-tier subconsultant
- Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
- Date of payment and total amount paid to each business (see Exhibit 9-F Monthly Disadvantaged Business Enterprise Payment)

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

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

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

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

(g) A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the

material and installing (where applicable), and paying for the material itself. 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 AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.

- (h) A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- (i) If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- (j) CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- (k) If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to CITY's Contract Administrator within thirty (30) calendar days.
- (l) After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the Agency.
- (m) Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

(17) Cost Principles and Administrative Requirements.

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

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

(18) Retention of Records/Audit.

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

(19) 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 CITY's Contract Administrator and [insert Department Head or Official] 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 CITY's Governing Body 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.

(20) Audit Review Procedures.

- (a) Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by agreement, shall be reviewed by CITY'S Chief Financial Officer.
- (b) Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by CITY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing
- (c) Neither the pendency of a dispute nor its consideration by CITY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT
- (d) CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA

ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, CITY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by CITY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by CITY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, CITY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

(e) CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the CITY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

(i) During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, CITY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

1. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
2. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.

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

(21) Equipment Purchases.

- (a) Prior authorization in writing by CITY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- (b) For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by CITY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- (c) Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
 - (i) CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, CITY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit CITY 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 CITY procedures; and credit

CITY 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 CITY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by CITY.

- (ii) Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

(22) 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 CITY Safety Officer and other CITY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- (b) Pursuant to the authority contained in Vehicle Code §591, CITY 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.

(23) Ownership of Data.

- (a) It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- (b) Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- (c) Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at CITY's sole risk.

- (d) Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- (e) CITY 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.

(24) Confidentiality of Data.

- (a) All financial, statistical, personal, technical, or other data and information relative to CITY's operations, which are designated confidential by CITY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- (b) Permission to disclose information on one occasion, or public hearing held by CITY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- (c) CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or CITY's actions on the same, except to CITY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- (d) CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by CITY, and receipt of CITY'S written permission.
- (e) All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than CITY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, CITY's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

(25) National Labor Relations Board Certification.

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

(26) Evaluation of Consultant.

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

(27) Non-Discrimination Clause and Statement of Compliance.

- (a) The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- (b) During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by CITY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- (d) CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the CITY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or CITY shall require to ascertain compliance with this clause.
- (e) CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (f) CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- (g) The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- (h) The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR

Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

- (i) CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the CITY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

(28) Debarment and Suspension Certification.

- (a) The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - (i) Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - (ii) Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - (iii) Does not have a proposed debarment pending; and
 - (iv) Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- (b) Any exceptions to this certification must be disclosed to CITY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- (c) Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

(29) State Prevailing Wage Rates.

- (a) No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- (b) The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by

reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at CITY construction sites, at CITY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve CITY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

- (c) General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- (d) Payroll Records
 - (i) Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - 1. The information contained in the payroll record is true and correct.
 - 2. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 - (ii) The payroll records enumerated under paragraph (i) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by CITY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
 - 1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - 2. A certified copy of all payroll records enumerated in paragraph (i) above, shall be made available for inspection or furnished upon request to a representative of CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - 3. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the CITY Contract Administrator by

both email and regular mail on the business day following receipt of the request.

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

knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

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

(g) Hours of Labor

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

(h) Employment of Apprentices

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

(30) Conflict of Interest.

- (a) During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this AGREEMENT or any ensuing CITY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing CITY construction project which will follow.
- (b) CONSULTANT certifies that it has disclosed to CITY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise CITY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either CITY ordinance or State law.
- (c) The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- (d) The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any

construction contract or on any AGREEMENT to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

(31) Rebates, Kickbacks, or Other Unlawful Consideration.

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

(32) Prohibition of Expending City, State or Federal Funds for Lobbying.

- (a) The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
 - (i) No State, Federal, or CITY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
 - (ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (b) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- (c) The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

(33) Claims made by CITY's Construction Contractor

- (a) If claims are filed by CITY'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

CITY'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 CITY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from CITY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- (c) Services of CONSULTANT's personnel in connection with CITY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

(34) Retention of Funds

(35) Miscellany

- (a) Contingency Fee: CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, CITY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee
- (b) Inspection of Work: CONSULTANT and any subconsultant shall permit CITY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.
- (c) Consent: Whenever in this AGREEMENT the approval or consent of party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.
- (d) Controlling Law: The parties agree that this AGREEMENT shall be governed and construed by and in accordance with the Laws of the State of California.
- (e) Definitions: The definitions and terms are as defined in these specifications.
- (f) Force Majeure: Neither party shall be deemed to be in default on account of any delays or failure to perform its obligations under this AGREEMENT, which directly results from an Act of God or an act of a superior governmental authority.
- (g) Headings: The paragraph headings are not a part of this AGREEMENT and shall have no effect upon the construction or interpretation of any part of this AGREEMENT.
- (h) Incorporation of Documents: All documents constituting the AGREEMENT documents described in Sections 1 and 2 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto, are by such reference incorporated in the AGREEMENT and shall be deemed to be part of this AGREEMENT.

- (i) Integration: This AGREEMENT and any amendments hereto between the parties constitute the entire AGREEMENT between the parties concerning the Project and Work, and there are no other prior oral or written agreements between the parties that are not incorporated into this AGREEMENT.
- (j) Modification of Agreement: This AGREEMENT shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.
- (k) Provision: Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the AGREEMENT shall define or other control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provision, whether covenant or conditions, shall be deemed to be both covenants and conditions.
- (l) Severability: If a court of competent jurisdiction finds or rules that any provision of this AGREEMENT is void or unenforceable, the provisions of this AGREEMENT not so affected shall remain in full force and effect.
- (m) Successors and Assigns: The provisions of this AGREEMENT shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.
- (n) Venue: In the even that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Joaquin or in the United States District Court for the Easter District of California.
- (o) Recover of Costs: The prevailing party in any action brought to enforce the terms of this AGREEMENT or arising out of this AGREEMENT may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.

(36) Notice to Proceed

Prior to commencing work under this AGREEMENT, CONSULTANT shall receive a written "Notice to Proceed" from CITY. A Notice to Proceed shall not be issued until all necessary bonds and insurances have been received. City shall not be obligated to pay CONSULTANT for any services prior to issuance of the Notice to Proceed.

CITY OF LATHROP – CONSULTING SERVICES AGREEMENT
[CONSULTANT NAME]

(37) Signatures

The individuals executing this AGREEMENT represents and warrants that they have the right, power, legal capacity, and authority to enter into and to execute this AGREEMENT on behalf of the respective legal entities of the CONSULTANT and the CITY/. This AGREEMENT shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Approved as to Form:

City of Lathrop
City Attorney

Salvador Navarrete

Date

Recommended for Approval:

City of Lathrop
Director of Public Works

Michael King

Date

Accepted by:

City of Lathrop
390 Towne Centre Drive
Lathrop, CA 9330

Resolution # _____

Stephen J. Salvatore
City Manager

Date

CONSULTANT:

Fed EIN # _____

Business License # _____

[Name, Title]

Date