



**CITY OF HOLTVILLE**

**Request for Proposals for  
Resident Engineering and Construction Management**

**for the  
East Ninth Street Pedestrian Improvements Project  
(Webb Avenue to Oak Avenue - 2024)**

**Issued: January 04, 2024  
*Proposals Due: February 06, 2024***

**Project Funding Provided by:  
The Congestion Mitigation and Air Quality (CMAQ) Program**

**Requested by:  
Nick Wells, City Manager  
City of Holtville  
121 W Fifth Street  
Holtville, California 92250**

## TABLE OF CONTENTS

|   | <u>Page</u> |
|---|-------------|
| I. Procurement Statement .....                                | 2           |
| II. Schedule of Events .....                                  | 3           |
| III. Project Description .....                                | 3           |
| IV. Scope of Work .....                                       | 3           |
| V. Caltrans LAPM Requirements .....                           | 9           |
| VI. Responsibilities of the City .....                        | 9           |
| VII. Proposal Content and Information .....                   | 10          |
| VIII. Applicable Documents .....                              | 11          |
| IX. Evaluation of Proposals .....                             | 12          |
| <br>  |             |
| Project Description .....                                     | Appendix A  |
| <br>  |             |
| Geotechnical Testing Requirements .....                       | Appendix B  |
| <br>  |             |
| Sample Contract Language .....                                | Appendix C  |
| <br>  |             |
| LAPM Exhibit 10-I: Notice to Proposers DBE Information .....  | Appendix D  |
| <br>  |             |
| Required LAPM Certification by Consultant with Proposal ..... | Appendix E  |

**I. PROCUREMENT STATEMENT**

**CITY OF HOLTVILLE  
REQUEST FOR PROPOSALS**

**for**

**Resident Engineering and Construction Management Services  
for the East Ninth Street Pedestrian Improvements Project  
Between Webb Avenue and Oak Avenue**

**FEDERAL AID PROJECT NUMBER 5174(035)**

NOTICE IS HEREBY GIVEN that the City of Holtville (hereinafter referred to as the "City"), acting by and through its City Council, is requesting PROPOSALS from qualified construction management and field inspection professionals to provide the following services for the above-listed project.

**Resident Engineering and Construction Management Services**

**SUBMISSION DEADLINE:** Receipt up to, but no later than 4:00 p.m., **Tuesday, February 6, 2024**

Funding for this project is provided by local sales tax and through the federally-funded Congestion Mitigation and Air Quality (CMAQ) Program. Consultants shall follow the Caltrans Local Assistance Procedures Manual (LAPM) Guidelines and Procedures for Federal Highway Projects. Full time inspection services shall be provided for the duration of the construction work.

To be considered for negotiation and award of a contract, four (4) paper copies and one (1) electronic copy (CD or USB Flash Drive) of proposals must be received by the date and time specified above in a sealed package by the Project Administrator at the address listed below. Please provide at least one unbound copy of the proposal for filing purposes.

*The consultant's Costs & Fees must be provided in a separate sealed envelope marked "COST PROPOSAL" within the main RFP submittal package. The RFP package must be delivered to:*

Mr. Nicholas D. Wells  
City Manager/Project Administrator  
121 West Fifth Street  
Holtville, California 92250  
Phone: (760) 356-4574

Questions should be directed to the City of Holtville Project Administrator listed above. Copies of the Request for Proposals may be obtained on the **www.Holtville.ca.gov** website or at the address listed above.

Proposals will be evaluated by a committee. It is the City's intention to select the Consultant whose fee, qualifications and understanding of the project are deemed most advantageous to the City in accordance with this Request for Proposals. The Selection Committee's recommendation will be forwarded to the Holtville City Council for final determination.

The City reserves the right to reject any or all Proposals, or to waive any irregularities or informalities in any proposals or in the proposal and selection process.

Affirmative action to ensure against discrimination in employment practices on the basis of race, color, national origin, ancestry, gender identification, or religion will also be required. Agreements shall not be entered into with a consultant without an adequate financial management and accounting system(s) as required by 48 CFR Part 16.301-3, 49 CFR Part 18, and 48 CFR Part 31.

The **Disadvantaged Business Enterprises (DBE) Goal** for Resident Engineering & Construction Management services is 22.00% .

## II. SCHEDULE OF EVENTS

The Schedule of Events for the Resident Engineering & Construction Management Services Procurement phase is as follows:

|                             |                             |
|-----------------------------|-----------------------------|
| Issue Request for Proposals | Thursday, January 4, 2024   |
| Proposals Due               | Tuesday, February 6, 2024   |
| Bid Evaluation              | Wednesday, February 7, 2024 |
| City Awards Contract        | Monday, February 12, 2024   |

Proposals will be evaluated by a committee. It is the City's intention to select the Consultant whose qualifications and understanding of the project are deemed most advantageous to the City in accordance with this Request for Proposals. The Selection Committee's recommendation will be forwarded to the Holtville City Council for final determination.

The City reserves the right to reject any or all Proposals, or to waive any irregularities or informalities in any proposals or in the proposal and selection process.

Agreements shall not be entered into with a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 49 CFR Part 18, and 48 CFR Part 31.

The construction phase of this project is estimated to be approximately 60 calendar days, tentatively scheduled for: Monday, March 18, 2024 through Friday, May 17, 2024

**PLEASE NOTE: Onsite work is projected to take 45 calendar days, with 15 additional days built into the schedule for Non-Field / Office work. Please construct bid accordingly.**

## III. PROJECT DESCRIPTION

The purpose of the City of Holtville East Ninth Street Improvements Project is the construction of a new P.C.C. Sidewalk along the north side of Ninth Street from a point east of Oak Avenue to a point east of Webb Avenue. The new P.C.C. sidewalk will connect pedestrian access from the existing subdivision located east of Oak Avenue and north of Ninth Street to the existing sidewalk located along the north side of Ninth Street and north of the Holtville Middle School. Corresponding installation of 6-inch P.C.C. curb and gutter along the new interior sidewalk edge and new asphalt rubber hot mix (ARHM) pavement within the native earth area is also included. More detailed information is included in the attached **Appendix A**.

**The cost of construction to be completed by the Contractor has been estimated to be \$392,000.00 .**

## IV. SCOPE OF WORK

The Scope of Work is to provide the necessary full time Resident Engineer, Construction Management, and Inspection services to the City of Holtville in accordance with all provisions within this Request for Proposals (RFP). Consultant shall provide a dedicated full-time person or persons to provide these services for this specific project, which is funded with local and Federal funds. These services will be required from the date of award of the RE/CM contract, through the end of construction, through completion of all punch list items and submission of all documentation after the the Notice of Completion. Consultant is also expected to prepare for and physically attend any financial or process audits during the construction phase and/or after filing of the Notice of Completion. Project related duties include, but are not limited to: construction contract document review; monthly quantity estimate reviews for contractor completed work; contractor payment request reviews and recommendations regarding approval of payment requests; preconstruction meeting and project closure documentation; Caltrans/Federal Highway Administration (FHWA) audits and similar items.

The RE/CM shall be a California licensed Civil Engineer. The RE/CM will monitor and ensure that all required improvements are completed in accordance with the project improvement plans, specifications, City of Holtville Quality Assurance Program and the funding-related requirements of the FHWA via Caltrans. All such work shall also be conducted in accordance with all applicable local, state and federal standards and guidelines, as well as the most current edition of the Caltrans Standard Plans and Specifications and the City of Holtville Standard Details and Specifications.

The Consultant shall provide the services of a **Labor Standards Compliance Officer** with a minimum of five (5) years' experience in Labor Standards Compliance Monitoring. Certified payrolls shall be submitted by the Contractor, reviewed by the Labor Standards Compliance Officer and forwarded to the Caltrans Grant Administrator on a weekly basis. Caltrans Construction CEM 2504 shall be utilized for employee interviews and originals shall go to:

**Holtville City Clerk  
121 W Fifth Street - Holtville, CA 92250**

The RE/CM will complete or will acquire the services of a **Geotechnical Consultant** to complete the project Quality Assurance (QA) Services per Independent Assurance Program (IAP) in accordance with the City of Holtville Quality Assurance Program (QAP), dated July 14, 2019. The Geotechnical Consultant shall provide a certified person or persons as needed to provide testing services for this specific project. The tester(s) and laboratory shall have appropriate Caltrans certifications. The RE/CM is to coordinate and monitor the QA/QC testing during the construction process. The Quality Assurance (QA) services to be completed shall be for the acceptance testing (AT) to be completed by another geotechnical engineering firm to be hired by the Contractor. Details of testing required by the QC, which will need to be assured/witnessed by the QA, is included in the attached **Appendix B**.

The RE/CM shall check the native subbase grades, subgrade elevations and finish grade elevations prior to the installation of subgrade and finish grade materials to ensure the proper depth of materials are installed and the materials quantity placed at the project site is properly controlled. The RE/CM shall check the subbase grades within the elevation tolerances listed in the specifications. The RE/CM shall maintain level notes and records confirming the materials were placed to the proper grades and within the required tolerances. Quantity exceedance shall be immediately reported to the City Contract Administrator and noted in the RE's Daily Reports and Daily Material Spreadsheets.

The project consists of less than 1 acre of soil disturbance area, therefore there are no requirements from the State Water Resources Control Board.

The RE/CM will be the designated contact for communications and coordination between the City, the Contractor, Geotechnical Consultants, the Labor Standards Compliance Officer, affected utility companies, Imperial Irrigation District representatives (with regard to Encroachment Permit requirements for Traffic Control), the Caltrans/FHWA representative(s) and other parties involved with the construction. The RE/CM will coordinate, schedule, notice and conduct a pre-construction meeting that includes the aforementioned entities and individuals. The RE/CM will prepare an agenda to be reviewed and approved by the City Project Administrator. The meeting will address job site safety, labor compliance, permit requirements and critical items of work. The RE/CM will conduct the meeting and prepare detailed meeting minutes, which will be provided to the City Project Administrator and the Contractor within 48 hours of the meeting. All pertinent parties shall be notified of the meeting via email at least five (5) calendar days in advance of the meeting date.

RE/CM shall prepare a daily activity log for each construction work day. The daily activity log shall include the date, weather condition, workers present at the site, the times the workers were present at the site, equipment used at the site, the times the Geotechnical Consultants were at the project site, the times City of Holtville representatives were at the site, summary of construction activities, materials delivered, listing of material delivery slips, daily photos, other special events and concerns in accordance with the City of Holtville daily activity log format. Additionally, other Caltrans required construction-related forms and environmental certification forms shall be prepared in Caltrans format and attached to each daily activity log. The Daily Activity Log will be e-mailed to all pertinent parties at the conclusion of each work day.

Weekly meetings shall be scheduled by the RE/CM with the Contractor, City Project Administrator, and all other pertinent parties. The RE/CM will also provide a weekly written summary for the City, which includes project progress, key project photographs, weekly plan, and pending issues. The daily and weekly reports shall be forwarded to the City Project Administrator, Contractor, and all other pertinent parties. The reports shall be emailed in electronic PDF format. All original hard copy project records shall be provided to the City Project Administrator upon request for review, oversight and record keeping.

The RE/CM shall promptly respond to Contractor's questions per Request for Information forms (RFIs). The RFIs shall be distributed to the City Contract Administrator and Caltrans District Local Assistance Engineer, if required. The RE/CM shall maintain all RFIs in a project notebook and in an electronic file folder.

The RE/CM shall prepare a spreadsheet listing all of the Contractor's proposal items, units, unit costs, bid set quantities and bid set costs. The spreadsheet shall be updated at the conclusion of each work day and include the actual quantities placed at the project site, actual total cost of the item and difference between the total bid set cost and total actual cost. The spreadsheet shall be forwarded to the City Contract Administrator at the conclusion of each day along with the Daily Activity Log. The RE/CM shall keep and maintain copies of the material delivery slips. A material delivery slip chart listing the material delivery slip date, quantity of material, slip number and total materials delivered for each work day shall be prepared by the RE/CM.

The RE/CM shall assist with the completion of the Contractor's Monthly Payment Request prior to submitting it to the City Project Administrator. The RE/CM shall review Monthly Pay Requests for both the Contractor and geotechnical consultant in detail to determine whether each invoice is accurate and justified. The RE/CM shall be the primary contact with the Contractor, material testers and any other parties related to the project. The RE/CM shall forward Payment Requests to the City Contract Administrator for review and payment. The RE/CM shall keep an accurate record of all expenses and change orders.

The RE/CM shall also assist with the review of change orders submitted by the Contractor and Geotechnical Consultant (as required) and meet with the City Contract Administrator prior to issuing a response to a change order request. If a change order is approved, the RE/CM will assist in processing the change order and insuring that it is reflected in the payment request. All change orders will be reviewed by the Caltrans DLAE (District Local Assistant Engineer) prior to approval. The RE/CM will coordinate with the Caltrans DLAE and provide any additional supporting documentation as required.

The RE/CM shall be responsible for processing, monitoring, coordinating and completing the submittal review process with the Contractor. The RE/CM shall require the Contractor to provide a submittal review schedule within five days of the Notice to Proceed. The RE/CM shall immediately inform the Contractor and the City Contract Administrator verbally and in writing if the submittals are not processed according to the schedule.

The RE/CM shall be responsible for scheduling, coordinating and attending meetings and preparing meeting minutes for all Caltrans-related meetings and trainings required for the project.

The RE/CM shall be responsible for completing all Caltrans Construction Forms required by the Caltrans Local Assistance/FHWA, including but not limited to CEM 2701 – Weekly Statement of Working Days, CEM 4801 – Quantity Calculations and other forms as required.

The RE/CM will be required to note as-built conditions and prepare as-built plans for all improvements that may have deviated from the project improvement plans. Said as-built plans shall be forwarded to the City of Holtville and Caltrans Local Assistance with all final project documentation. The RE/CM shall prepare all required LAPM project close-out documents.

Upon project completion, all records are to be compiled in a three (3) ring binder(s), prominently labeled on the face and spine with the title:

**"PROJECT NAME: East Ninth Street Pedestrian Improvements Project - Webb Avenue to Oak Avenue"  
FEDERAL AID PROJECT NUMBER 5174(035)**

This shall serve as a record of the project. Photographs of the work site prior to commencement of work, during construction, and after completion of construction are to be included in the record of the project. Additionally, a copy of the record of the project is to be provided in Portable Document Format (PDF) on one (1) USB thumb drive.

In addition to the comprehensive record of the project detailed above, the Consultant is to also provide a detailed summary of the project. The project summary shall include a brief detailing of the dates of bid release, bid opening, dates of issue of Notice to Proceed to Contractor and RE, number of working days and a brief detailing of the project. This project summary is also to be provided in a three (3) ring binder labeled with the same information as the comprehensive record detailed above, as well as in Portable Document Format (PDF) on a USB thumb drive.

The Consultant shall document the results of the work to the satisfaction of the City and for federally funded projects, the State and FHWA as appropriate. Consultant's records shall be maintained for inspection by the City, State, and FHWA for a minimum of three (3) years after final payment to the Consultant.

All tracings, plans, specifications, and maps prepared or obtained under the terms of the Agreement with the City shall be delivered to, and become the property of, the City. Basic survey notes, sketches, charts, computations and other data, prepared or obtained under such Agreement, if not required to be provided, shall be made available upon request to the City without restriction or limitation on their use.

This project is funded by local and Federal funds. Work tasks will require adherence to all Federal Aid provisions and requirements.

The City of Holtville Disadvantaged Business Enterprise (DBE) Program affirms the utilization and participation of qualified disadvantaged business firms in its contracting and procurement activities. The City encourages general and prime contractors to afford competitive subcontracting opportunities to disadvantaged firms, where possible, in their contracting and procurement activities with the City of Holtville. Services that are partially funded with Federal funds are subject to Part 26, Title 49, Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises (DBE) in the Department of Transportation Financial Assistance program." Firms submitting a proposal shall be fully informed of the requirements of the regulations and the City's DBE program developed pursuant to the regulations.

**The City's DBE goal for the Resident Engineering and Construction Management services contract for this project is 22.00% .**

The construction period for this project is scheduled to be 60 (sixty) calendar days. Full time onsite inspection services are required during each and every day of construction work, however, for the purposes of preparing this proposal, consultant should assume that onsite work is projected to take 45 calendar days, with 15 additional days built into the schedule for Non-Field / Office work. This will include time to complete administrative work prior to and subsequent to the actual construction, as well as the for required attendance to any potential project audits. Please construct bid accordingly.

## **V. CALTRANS LAPM REQUIREMENTS**

Consultant shall be responsible for complying with all current Caltrans Local Assistance Procedures Manual (LAPM) requirements. ***It is understood that Caltrans has made recent annual LAPM changes at the time of the release of this RFP.***

The RE/CM shall conduct all work and perform all work and documentation to comply and be in compliance with the provisions of Chapter 15, "Advertise and Award Project", Chapter 16, "Administer Construction Contracts", and Chapter 17, "Project Completion", of Caltrans' latest LAPM; latest edition of Caltrans' Construction Manual; and latest edition of Caltrans' Standard Plans and Specifications. The RE/CM shall also administer the project in accordance with the special provisions/conditions of the project.

The Caltrans Local Assistance Procedures Manual (LAPM) forms can be found in digital format at:

<https://dot.ca.gov/programs/local-assistance/guidelines-and-procedures/local-assistance-procedures-manual-lapm>

## **VI. RESPONSIBILITIES OF THE CITY**

1. The City will provide a designated City Project Administrator to review project specific items throughout the duration of the project.
2. The City will pay an agreed upon amount normally within 30 days after receipt of invoice(s). Invoice(s) shall be submitted with a detailed accounting of staff hours attributed to specific tasks. Separate invoices shall be submitted for specific project billings. City will retain five percent (5%) of each invoice for the resident engineering and construction inspection services until 10 days after the filing of the Notice of Completion contingent upon all Resident Engineering and Construction Management services being complete.
3. The City will not provide dedicated workplace facilities.
4. The City reserves the right to perform any portion of the Scope of Work by City personnel or other consultants should the City determine it would be in the best interest of the City to do so.

## VII. PROPOSAL CONTENT AND INFORMATION

Proposal should be typed, organized and concise, yet comprehensive.

### 1. General Requirements

- a. Project Cover Sheet.
- b. Table of Contents.
- c. Provide a cover letter.
- d. State the interpretation of the Resident Engineering and Construction Management services to be performed. The Consultant is to demonstrate an understanding of the Scope of Work and Agency requirements regarding this project. Provide a statement that the offer is valid for at least a ninety (90) day period.
- e. Provide the name(s) of the primary and/or alternate individuals authorized to respond to this RFP. Include titles, addresses, license numbers, e-mail if available, and phone number.
- f. The Consultant is representing itself as a qualified professional in providing resident engineering and construction management services. The Consultant is to offer recommendations and comments with respect to services to be performed. It is expected that the Consultant will have some applicable experience in similar projects that will be delineated in the respondent proposals.
- g. List any sub-consultants participating in the project. Describe the services to be performed by the sub-consultants. Identify the qualifications and resumes of all sub consultants that will be utilized. Indicate the DBE or UDBE status of the sub-consultant as applicable.

### 2. Summary of Qualifications and Experience

- a. State whether the firm is local, regional, national or international.
- b. Identify the owner(s) of the firm and legal status (sole proprietor, corporation, etc.)
- c. Give the location of the office from which work is anticipated to be done and the number of employees of the company.
- d. Identify the qualifications and resumes of all individuals who will be associated with this service. Include professional registrations and affiliations.
- e. Summarize specific experience and qualification for similar and related projects, both federally funded and locally funded. List at least five (5) similar projects and describe the services previously performed for these projects. Least at least three (3) references with telephone numbers and email addresses.

### 3. Cost & Fees

#### ***TO BE PROVIDED IN A SEPARATE SEALED ENVELOPE***

- a. Provide a clear breakdown of costs by task including designated staff, hourly rate and hours. The costs and fees spreadsheet is to be submitted in a separate sealed envelope. Costs should be organized for full time hourly rates. Such hourly rates should be fully burdened or loaded, including full compensation for all employee taxes, overhead and profit. Billing rates shall include provision for normal office costs, including but not limited to office rental, utilities, and insurance. Telephone, copies, reproduction and transportation are regarded as additional expenses. The consultant shall list a lump sum value for these additional expenses on the fee schedule spreadsheet. A not to exceed fee breakdown by task of the project based on billable hours is required. Also detail what hourly rates for overtime will be used as needed.
- b. Submit itemized hourly fee schedule for additional services beyond the scope of work.
- c. ***The consultant's Costs & Fees must be provided in a separate sealed envelope marked "COST PROPOSAL" within the main RFP submittal package.***

**It is requested that responders submit a Cost Proposal (Caltrans LAPM Exhibit 10-H Example 1) based on hours necessary to perform the services set forth in the scope of work in a separate sealed envelope. Provide a clear breakdown of the costs by phase including staff or by item, by hour. No subcontractors shall be utilized without prior authorization by City.**



## VIII. APPLICABLE DOCUMENTS

1. Plans & Specifications: available upon request from Contract Administrator or on the City's Website.
2. Contract Documents (Invitation for Proposals, Instruction for Bidders, Proposal Forms, Contract and Bond forms, Caltrans LAPM Forms, General Conditions, Special Conditions, Technical Conditions, etc.)
3. Caltrans Local Assistance Procedures Manual

The Caltrans Local Assistance Procedures Manual (LAPM) forms can be found in digital format at:  
<https://dot.ca.gov/programs/local-assistance/guidelines-and-procedures/local-assistance-procedures-manual-lapm>

4. Caltrans Latest Edition of
  - a. Standard Plans and Standard Specifications
  - b. Construction Manual
  - c. California Manual on Uniform Traffic Control Devices (CAMUTCD)
5. City of Holtville Quality Assurance Program (QAP)
6. City of Holtville Standard Details and Specifications dated June 13, 2005.

## IX. EVALUATION OF PROPOSALS

A Committee will review and evaluate the proposals. It is the City's intention to select the Consultant whose qualifications and understanding of the project are deemed most advantageous to the City in accordance with this Request for Proposals. The Selection Committee's recommendation will be forwarded to the Holtville City Council for final determination.

The City reserves the right to reject any and all proposals or to waive any irregularities or informalities submitted in any proposals or in the proposal and selection process. The City also reserves the right to request additional information for clarification. The City Council reserves the right to select any consultant the City deems qualified regardless of the Evaluation Committee's recommendation.

Clarification desired by a proposer shall be requested in writing or by emailing a minimum of 72 hours prior to the RFP submission date. Oral explanation or instructions shall not be considered binding on behalf of the City. Forward questions to the City of Holtville Contract Administrator at the following address:

Mr. Nicholas D. Wells  
City Manager/ Project Administrator  
121 West Fifth Street  
Holtville, CA 92250  
Email: NWells@Holtville.ca.gov

Any modifications to this solicitation will be issued by the City Project Administrator as a written addendum.

Any sub-consultant participating in this project is to be listed within the contents of this consultant's response to this proposal. Sub-consultants shall not be allowed to be engaged by the Resident Engineer / Construction Manager after the proposals are submitted to the City of Holtville.

***This RFP does not commit the City of Holtville to award a contract or pay any costs associated with the preparation of a Proposal. The City reserves the right to cancel, in part or in its entirety, this solicitation should this be in the best interest of the City to do so.***

# *Appendix "A"*

## *East Ninth Street Pedestrian Improvements Project Project Description*

## **PROJECT DESCRIPTION**

The purpose of this project is to construct a new P.C.C. sidewalk along the north side of Ninth Street from a point east of Oak Avenue to a point east of Webb Avenue. The new P.C.C. sidewalk will connect pedestrians from the existing subdivision located east of Oak Avenue and north of Ninth Street to the existing sidewalk located along the north side of Ninth Street and north of the Holtville Middle School. It will also be necessary to install a new 6-inch P.C.C. curb and gutter adjacent to the south side of sidewalk edge along the north side of Ninth Street. New asphalt rubber hot mix (ARHM) pavement shall be installed within the native earth area between the existing north A.C. pavement edge and the new P.C.C. curb and gutter. The new P.C.C. curb and gutter along the north side of Ninth Street will maintain the same flow direction/slopes as the existing curb and gutter along the south side of Ninth Street.

The new 6-inch P.C.C. curb and gutter along the north side of Ninth Street will flow to an existing P.C.C. cross gutter west of Webb Avenue. The existing cross gutter conveys the stormwater to a P.C.C. stormwater scupper located beneath the existing south Ninth Street sidewalk. The water will be conveyed south along the scupper to an existing P.C.C. stormwater channel, which will ultimately direct the stormwater to the existing grass turf-covered retention basin at the north portion of the Holtville Middle School.

The pavement section between the existing north edge of Ninth Street to the new curb and gutter and sidewalk shall consist of 3 inches of ARHM pavement over 9 inches of Class 2 Base. The A.C. pavement shall be cold-planed along the existing north pavement edge for a width of 2 feet and overlaid with new ARHM pavement to mitigate pavement cracking along the new/existing pavement seam. Native earth "backing" material shall be placed along the exterior edge of the new sidewalk to transition from the new sidewalk grade to the existing native earth grade.

Other miscellaneous items include lowering and raising a sanitary sewer manhole frame and cover to finish pavement grade.

Traffic through Ninth Street shall be required to be open as Oak Avenue, Elm Avenue, and Ash Avenue are all connected only through Ninth Street. It will be required to maintain two lanes open at all times. The traffic control plan is located on Plan Sheet 9 of Improvement Plans (10 Plan Sheets Total). Erosion control measures shall be required to be implemented as illustrated on Plan Sheet 10 of the Improvement Plans.

# *Appendix "B"*

## *East Ninth Street Pedestrian Improvements Project Geotechnical Testing Requirements*

## GEOTECHNICAL TESTING REQUIREMENTS

All geotechnical testing and inspections required for this project shall be completed by the Caltrans-certified geotechnical engineers and laboratory(ies) in accordance with the Caltrans "CT" Method unless otherwise specified on the plans. All geotechnical testing shall be completed by two (2) independent geotechnical engineering firms. One geotechnical firm shall provide Acceptance Testing (AT) for Quality Control and the other shall provide Independent Assurance Program (IAP) services for Quality Assurance in accordance with the City of Holtville Quality Assurance Program (QAP). The Contractor shall provide and pay for Acceptance Testing (AT) services for Quality Control and the City of Holtville shall provide Independent Assurance Program (IAP) services for Quality Assurance. *Resident Engineering/Construction Management services shall include the geotechnical testing for the quality assurance (QA)/witness testing in accordance with the City of Holtville QAP.*

Copies of all tests shall be forwarded to the Construction Manager within four days of testing completion.

The Geotechnical testing shall include but not be limited to compaction tests on Class 2 Base and granular sand material. Compaction and extraction, gradation testing for the A.C./ARHM pavement shall be required during the project. The Construction Manager shall determine the location of the tests. Gradation, durability, R-value and sand equivalent tests for Granular Sand and Class 2 Base shall be required during the Submittal process. Compaction testing for the Class 2 Base shall be required. Mix designs for the A.C./ARHM pavement shall also be required during the Submittal process.

- A. A compaction test for the subgrade (top of Class 2 Base grade) shall be required for every 2,500 square feet of subgrade beneath asphalt pavement structure section.
- B. A compaction test for the Class 2 Base shall be required for each driveway entrance.
- C. A compaction test for the Class 2 Base shall be required for every 100 lineal feet of P.C.C. curb and gutter installed.
- D. A compaction test for the Class 2 Base shall be required for every 100 lineal feet of sidewalk installed.
- E. An extraction/gradation test shall be completed from an A.C./ARHM pavement sample obtained by the geotechnical consultant representative each morning pavement operations occur.
- F. A compaction test for the A.C./ARHM pavement shall be required for every 2,500 square feet of A.C./ARHM. street surface area.
- G. A.C./ARHM pavement density testing shall be conducted by the geotechnical representative during the placement of A.C./ARHM pavement.
- H. One (1) set of cylinders and one (1) slump test shall be required for every 50 cubic yards of concrete except that a minimum of one (1) set of cylinders and slump test shall be required each day twenty (20) or more yards of concrete are placed at a project site. The maximum allowable slump shall be 4 inches. A set of cylinders shall be composed of three (3) cylinders. The first cylinder of a set shall be tested after seven (7) days curing. The second cylinder of a set shall be tested after 28 days curing. The third cylinder shall be held in reserve and tested if directed by the engineer. The test results will be forwarded to the engineer for review. The engineer shall receive a concrete vendor slip for each truck load of concrete delivered to the project site. A Certificate of Compliance for concrete mix shall be provided for each day concrete is delivered to the project site.
- I. One (1) compaction test for the native earth shoulders shall be obtained for each 300 lineal feet of 5-foot wide shoulder installed. A minimum of five (5) compaction tests along Ninth Street shall be required.
- J. An A.C./ARHM mix design and concrete mix design shall be submitted for the review and approval of the engineer during the submittal process.
- K. Geotechnical testing for the Class 2 Base during the submittal process.
- L. Geotechnical engineers shall provide the Engineer with Monthly Summary Reports and Final Project Summary Reports per the Caltrans Local Assistance Procedure Manual (LAPM) and shall provide all other documentations required by Caltrans.

# *Appendix "C"*

## *East Ninth Street Pedestrian Improvements Project*

### *Sample Contract Language*



**PROFESSIONAL SERVICES AGREEMENT FOR  
FOR  
RESIDENT ENGINEERING & CONSTRUCTION MANAGEMENT SERVICES**

**CITY OF HOLTVILLE NINTH STREET SIDEWALK  
IMPROVEMENTS PROJECT BETWEEN BEALE & ASH AVENUES  
FEDERAL AID PROJECT NUMBER CML-5174 (031)**

between  
**The City of Holtville and**  
***RE/CM Firm***

**ARTICLE I INTRODUCTION**

- A. This contract is made and entered into this 05th of February, 2024 by and between the following named, hereinafter referred to as "CONSULTANT" and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:

*RE/CM Firm*

Incorporated in the State of California

The Project Manager for the "CONSULTANT" will be

*Eddie the Engineer*

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

*City of Holtville*

The Contract Administrator for LOCAL AGENCY will be

*Nick Wells, City Manager*

- B. The work to be performed under this contract is described in Article II entitled Statement of Work and the approved CONSULTANT's Cost Proposal dated February 5, 2024. The approved CONSULTANT's Cost Proposal is attached hereto (Exhibit A) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.
- C. CONSULTANT agrees to indemnify and hold harmless LOCAL AGENCY, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of CONSULTANT. CONSULTANT will reimburse LOCAL AGENCY for any expenditure, including reasonable attorney fees, incurred by LOCAL AGENCY in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of CONSULTANT.
- D. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of LOCAL AGENCY.

- E. Without the written consent of LOCAL AGENCY, this contract is not assignable by CONSULTANT either in whole or in part.
- F. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- G. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

## ARTICLE II STATEMENT OF WORK

- 1. The LOCAL AGENCY intends to perform an infrastructure improvement project *along Ninth Street between Webb Avenue and Oak Avenue, which shall be referred to herein as East Ninth Street Pedestrian Improvements Project*.
- 2. Infrastructure improvements are expected to include but not limited to *construction of new P.C.C. sidewalk with curb and gutter along the north side of Ninth Street from Oak Avenue to Webb Avenue. New asphalt rubber hot mix (ARHM) pavement will also be installed within the native earth area between the existing north A.C. pavement edge and the new P.C.C. curb and gutter*
- 3. CONSULTANT represents that it can perform the Resident Engineering and Construction Management Services for East Ninth Street Pedestrian Improvements Project.
- 4. CONSULTANT represents: that the principal members of CONSULTANT are qualified professional engineers and duly registered and certified pursuant to the laws of the State of California; that it is fully qualified to perform the Resident Engineering and Construction Management Services contemplated by this Agreement in a good and professional manner; and that it desires to perform such services as provided herein.
- 5. No official or employee of LOCAL AGENCY has a financial interest in the subject matter of this Agreement, as defined by the provisions of California Government Code, Sections 1090-1092.
- 6. The Contract Administrator for the Local Agency will be Nick Wells, City Manager.

NOW, THEREFORE, in consideration of performance by the parties of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

### A. Consultant Services

Subject to the terms and conditions set forth in this Agreement, LOCAL AGENCY hereby engages CONSULTANT to perform the Resident Engineering and Construction Management Services for the Infrastructure Project known as East Ninth Street Pedestrian Improvements Project.

The nature, scope and level of the Services to be performed by CONSULTANT are more particularly described in Exhibit A and Exhibit B. In the event of any inconsistencies between the Proposal and the Agreement, the terms and provisions of this Agreement shall control.

**Exhibit A** – CONSULTANT's Proposal to provide Resident Engineering and Construction Management Services dated February 5, 2024.

**Exhibit B** – City of Holtville RFP for Resident Engineering and Construction Management Services for East Ninth Street Pedestrian Improvements Project, dated December 2, 2020.



B. Right of Way

There are no requirements with regard to Right of Way for this project.

C. Surveys

CONSULTANT shall not have the responsibility for performing construction surveys.

D. Subsurface Investigations

Subsurface investigations shall not be required for this project; however, CONSULTANT shall complete or acquire the services of a Geotechnical Consultant to complete geotechnical testing and inspections as specified in Exhibit B.

E. Local Agency Obligations

All data applicable to the project and in possession of LOCAL AGENCY or another agency, or government, may be made available to CONSULTANT upon request.

F. Conferences, Visits to Site, Inspection of Work

The contract provides for conferences as needed, visits to the site, and inspection of the work by representatives of the state, or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

G. Checking Shop Drawings

Shop drawings prepared as a part of submittals during the submittal phase shall be reviewed and approved by CONSULTANT.

H. Consultant's Services During Construction

CONSULTANT's services to be provided during the course of construction are specified in Exhibit B.

I. Documentation and Schedules

Contracts where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the contract objectives.

J. Deliverables and Number of Copies

CONSULTANT shall provide all wet-signed originals and project notebook binders containing all documentations including correspondences, submittals, daily reports, quantity calculation sheets, plans, drawings, estimates, testing and material reports, Caltrans LAPM forms, and other construction management services related documentations to LOCAL AGENCY. Electronic copies in pdf format of the same shall be provided to LOCAL AGENCY.

K. Time for Performance

CONSULTANT shall perform all services under this Agreement on a timely, regular basis consistent with industry standards for professional skill and care and in accordance with the Performance Period specified within this agreement and support documentation.

L. Standard of Care

As a material inducement to LOCAL AGENCY to enter into this Agreement, CONSULTANT hereby represents that it has the experience necessary to undertake the services to be provided. In light of such status and experience, CONSULTANT hereby covenants that it shall follow the customary professional standards in performing all services.

M. Familiarity with Services

By executing this Agreement, CONSULTANT represents that, to the extent required by the standard of practice, CONSULTANT: (a) has investigated and considered the scope of services to be performed; (b) has carefully considered how the services should be performed; and (c) understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. CONSULTANT represents that CONSULTANT, to the extent required by the standard of practice, has investigated the subject site and is reasonably acquainted with the conditions therein. Should CONSULTANT discover any latent or unknown conditions, which will materially affect the performance of services, CONSULTANT shall immediately inform LOCAL AGENCY of such fact and shall not proceed except at CONSULTANT's risk until written instructions are received from the LOCAL AGENCY's Contract Administrator.

N. Compliance with Americans with Disabilities Act

All conceptual design plans prepared by CONSULTANT for the Project shall comply with the Americans with Disabilities Act (42 U.S.C. Section 12001 et seq.).

O. This agreement permits mutually acceptable changes in the scope, character, or complexity of the work; if such changes become desirable or necessary as the work progresses. Any modifications to the Scope of Work will be reviewed by both parties and an estimate pertaining to the proposed adjusted cost and adjusted time of performance for the work shall be reviewed and mutually approved. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the LOCAL AGENCY's Contract Administrator. 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 contract without prior approval by the LOCAL AGENCY's Contract Administrator.

**ARTICLE III CONSULTANT'S REPORTS OR MEETINGS**

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

**ARTICLE IV PERFORMANCE PERIOD (Verbatim)**

- A. This contract shall go into effect on February 12, 2024 (the "Effective Date"), or until issuance of the Notice to Proceed to the Contractor, whichever comes first. It shall remain in full force and effect until completion of the project, expected to last , force and effect until May 6, 2024 , or for 84 calendar days from the Notice to Proceed, whichever comes last, unless extended by a contract amendment or unless sooner terminated as provided in ARTICLE VI herein.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on LOCAL AGENCY until the contract is fully executed and approved by LOCAL AGENCY.
- C. Performance period extensions will be reviewed and approved mutually by both parties prior to the acceptance of a revised deliverable submittal date.

**ARTICLE V ALLOWABLE COSTS AND PAYMENTS (Verbatim)**

- A. The method of payment for this contract will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article II Statement of Work of this contract. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by contract amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this contract has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY’S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this contract.
- D. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by LOCAL AGENCY’S Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within 60-calendar days after completion of CONSULTANT’s work. Invoices shall be mailed to LOCAL AGENCY’s Contract Administrator at the following address:  

**City of Holtville**  
**Nick Wells, City Manager**  
**121 W Fifth Street**  
**Holtville, California 92250**
- E. The total amount payable by LOCAL AGENCY shall not exceed \$ TBD .

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

#### **ARTICLE VI TERMINATION (Verbatim)**

- A. LOCAL AGENCY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.
- B. LOCAL AGENCY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, LOCAL AGENCY may proceed with the work in any manner deemed proper by LOCAL AGENCY. If LOCAL AGENCY terminates this contract with CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.
- C. The maximum amount for which the Government shall be liable if this contract is terminated is \$ 0.00.
- D. CONSULTANT also reserves the right to terminate this Agreement within 30 days written notice for any reason to LOCAL AGENCY. In the event CONSULTANT exercises its right to terminate this Agreement, LOCAL AGENCY shall pay CONSULTANT for any services rendered prior to the effective date of the termination. CONSULTANT shall have no other claim against LOCAL AGENCY by reason of such termination, including any claim for compensations. Said compensation is to be arrived at by mutual agreement between LOCAL AGENCY and CONSULTANT; should the parties fail to agree on said compensation, an independent arbitrator shall be appointed and the decision of the arbitrator shall be binding upon the parties.

#### **ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS (Verbatim)**

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to LOCAL AGENCY.
- D. All subcontracts in excess of \$25,000 shall contain the above provisions.

## **ARTICLE VIII RETENTION OF RECORDS/AUDIT (Verbatim)**

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

## **ARTICLE IX AUDIT REVIEW PROCEDURES (Verbatim)**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.

*(The following AUDIT CLAUSE must be inserted into all contracts of \$150,000 or greater)*

- ~~D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, 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, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.~~

*(The following AUDIT CLAUSE must be inserted into all contracts of \$3,500,000 or greater).*

- ~~E. CONSULTANT Cost Proposal is subject to a CPA ICR Audit Work Paper Review by Caltrans' Audit and Investigation (Caltrans). Caltrans, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved~~

by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

1. ~~During a Caltrans' review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at a provisional ICR until a FAR compliant ICR (e.g. 48 CFR, part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials Audit Guide; and other applicable procedures and guidelines) is received and approved by A&I. Provisional rates will be as follows:
  - a. ~~If the proposed rate is less than 150% the provisional rate reimbursed will be 90% of the proposed rate.~~
  - b. ~~If the proposed rate is between 150% and 200% the provisional rate will be 85% of the proposed rate.~~
  - c. ~~If the proposed rate is greater than 200% the provisional rate will be 75% of the proposed rate.~~~~
2. ~~If Caltrans is unable to issue a cognizant letter per paragraph E.1. above, Caltrans may require CONSULTANT to submit a revised independent CPA audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.~~
3. ~~If the CONSULTANT fails to comply with the provisions of this Section E, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the provisional ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this provisional ICR will become the actual and final ICR for reimbursement purposes under this contract.~~
4. ~~CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) Caltrans approves or rejects the original or revised independent CPA audited ICR; (2) all work under this contract has been completed to the satisfaction of LOCAL AGENCY; and, (3) Caltrans has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO local agency no later than 60 days after occurrence of the last of these items.~~

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

## **ARTICLE X SUBCONTRACTING (Verbatim)**

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between LOCAL AGENCY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to LOCAL AGENCY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by

CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from LOCAL AGENCY'S obligation to make payments to the CONSULTANT.

- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by LOCAL AGENCY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by LOCAL AGENCY.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by LOCAL AGENCY's Contract Administrator prior to the start of work by the subconsultant(s).
- F. CONSULTANT shall not engage in any contract or agreement with subconsultants in whole or part without written agreement of LOCAL AGENCY.

#### **ARTICLE XI EQUIPMENT PURCHASE (Verbatim)**

- A. Prior authorization in writing, by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by LOCAL AGENCY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.
- D. All subcontracts in excess \$25,000 shall contain the above provisions.

## **ARTICLE XII STATE PREVAILING WAGE RATES (Verbatim)**

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

**Note:** The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

## **ARTICLE XIII CONFLICT OF INTEREST (Verbatim)**

- A. CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this contract, or any ensuing LOCAL AGENCY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing LOCAL AGENCY construction project, which will follow.
- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT hereby certifies that neither CONSULTANT, its employees, nor any firm affiliated with CONSULTANT providing services on this project prepared the Plans, Specifications, and Estimate for any construction project included within this contract. An affiliated firm is one, which is subject to the control of the same persons through joint- ownership, or otherwise.
- E. CONSULTANT further certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT, will bid on any construction subcontracts included within the construction contract. Additionally, CONSULTANT certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract.
- F. Except for subconsultants whose services are limited to materials testing, no subconsultant who is providing service on this contract shall have provided services on the design of any project included within this contract.

## **ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION (Verbatim)**

CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right in its discretion; to terminate the contract



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

## **ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING (Verbatim) – NOT APPLICABLE**

*(Include this article in all contracts where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the contract; delete this article and re-number the notification article which follows.)*

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

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

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

~~C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.~~

## **ARTICLE XVI STATEMENT OF COMPLIANCE**

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Contract, CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and

Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

- C. The CONSULTANT shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- D. The CONSULTANT, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT’s Regulations, including employment practices when the Agreement covers a program whose goal is employment.

#### **ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION**

- A. CONSULTANT’s signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)”, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to LOCAL AGENCY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

#### **ARTICLE XVIII FUNDING REQUIREMENTS**

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

- B. This contract is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to void the contract under the 30-day termination clause pursuant to Article VI, or by mutual agreement to amend the contract to reflect any reduction of funds.

#### **ARTICLE XIX CHANGE IN TERMS**

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

#### **ARTICLE XX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this contract is 16%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as LOCAL AGENCY deems appropriate.
- D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and

supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- I. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- K. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within 30 days.

## **ARTICLE XXI CONTINGENT FEE**

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

## ARTICLE XXII DISPUTES

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and City of Calipatria Mayor, 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 LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

## ARTICLE XXIII INSPECTION OF WORK

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

## ARTICLE XXIV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

*(Add to all contracts, which may require trenching of five feet or deeper)*

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

## ARTICLE XXV INSURANCE

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.

B. The Certificate of Insurance will provide:

1. That the insurer will not cancel the insured's coverage without 30 days prior written notice to LOCAL AGENCY.
2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this contract are concerned.
3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.

C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

D. Liability Insurance: CONSULTANT shall procure and maintain in full force and effect for the duration of this Agreement insurance against claims for injuries to persons or damages to property and professional negligence which may arise from or in connection with the performance of the services hereunder by CONSULTANT, and its agents, representatives, employees and subcontractors.

a. Minimum Scope of Insurance: Unless otherwise approved by LOCAL AGENCY, coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability insurance in a form approved by the LOCAL AGENCY.

b. Minimum Limits of Insurance: CONSULTANT shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence and in the aggregate for bodily injury, personal injury and property damage. Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Agreement or the general limit shall be twice the required occurrence limit.
2. Commercial Automobile Liability: \$1,000,000 combined single limit and \$1,000,000 aggregate, including owned, non-owned and hired vehicles.
3. Employer's Liability: \$1,000,000 per accident and in the aggregate for bodily injury or disease and Workers' Compensation Insurance in the amount required by law.
4. Professional Liability: \$1,000,000 per claim/aggregate.

- c. Deductibles and Self-Insured Retentions: CONSULTANT shall inform LOCAL AGENCY of any deductibles or self-insured retentions except with respect to professional liability insurance.
- d. Other Insurance Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
  - 1. LOCAL AGENCY, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of LOCAL AGENCY or agency officials, are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of CONSULTANT; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no limitations on the scope of protection afforded to LOCAL AGENCY, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of LOCAL AGENCY or agency officials which are not also limitations applicable to the named insured.
  - 2. For any claims related to this Agreement, CONSULTANT's insurance coverage shall be primary insurance as respects LOCAL AGENCY, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of LOCAL AGENCY or agency officials. Any insurance or self-insurance maintained by LOCAL AGENCY, their officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of LOCAL AGENCY or agency officials shall be excess of CONSULTANT's insurance and shall not contribute with it.
  - 3. CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - 4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled or materially modified except after 30 days prior written notice by first class mail has been given to LOCAL AGENCY.
  - 5. Each insurance policy, except for the professional liability policy, required by this clause shall expressly waive the insurer's right of subrogation against LOCAL AGENCY and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of LOCAL AGENCY or agency officials.
- e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless waived in writing by the LOCAL AGENCY's Contract Administrator.
- f. Verification of Coverage. No work or services under this Agreement shall commence until CONSULTANT has provided the LOCAL AGENCY with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the LOCAL AGENCY. Proof of insurance must be sent directly to the LOCAL AGENCY's Contract Administrator.
- g. Subcontractors. CONSULTANT shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein unless otherwise approved in advance in writing by LOCAL AGENCY.

## **ARTICLE XXVI OWNERSHIP OF DATA**

- A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in LOCAL AGENCY; and no further agreement will be necessary to transfer ownership to LOCAL AGENCY. CONSULTANT shall furnish LOCAL AGENCY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by LOCAL AGENCY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by LOCAL AGENCY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by CONSULTANT.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.
- F. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

## **ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this contract.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.



## **ARTICLE XXVIII CONFIDENTIALITY OF DATA**

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

## **ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

## **ARTICLE XXX EVALUATION OF CONSULTANT**

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

## **ARTICLE XXXI RETENTION OF FUNDS**

- A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- B. N/A
- C. No retainage will be held by the Agency from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant

to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

## **ARTICLE XXXII OTHER REQUIREMENTS BY LOCAL AGENCY**

### **1. Representatives**

1.1. LOCAL AGENCY's Contract Administrator: For the purposes of this Agreement, the LOCAL AGENCY's Contract Administrator shall be the City Manager, or such other person as the City Manager designates in writing. It shall be CONSULTANT's responsibility to assure that the LOCAL AGENCY's Contract Administrator is kept informed of the progress of the performance of the services, and CONSULTANT shall refer any decisions that must be made by LOCAL AGENCY to the LOCAL AGENCY's Contract Administrator. Unless otherwise specified herein, any approval of LOCAL AGENCY required hereunder shall mean the approval of the LOCAL AGENCY's Contract Administrator.

1.2. Consultant Representative: For the purposes of this Agreement, \_\_\_\_\_ is hereby designated as the principal and representative of CONSULTANT authorized to act on its behalf with respect to the services specified herein and make all decisions in connection therewith (the "Responsible Principal"). It is expressly understood that the experience, knowledge, capability and reputation of the Responsible Principal were a substantial inducement for LOCAL AGENCY to enter into this Agreement. Therefore, the Responsible Principal shall be responsible during the term of this Agreement for directing all activities of CONSULTANT and devoting sufficient time to personally supervise the services hereunder. CONSULTANT may not change the Responsible Principal without the prior written approval of LOCAL AGENCY, which approval shall not be unreasonably withheld.

1.3. Consultant's Personnel: All Services shall be performed by CONSULTANT or under CONSULTANT's direct supervision and all personnel shall possess the qualifications, permits, and licenses required by State and local law to perform such Services, including, without limitation, a City of Calipatria business license as required by the City Municipal Code. CONSULTANT shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the Services and compliance with the standard of care set forth in Section A of Article II.

CONSULTANT shall be responsible for payment of all employees' and subcontractors' wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security.

CONSULTANT shall indemnify and hold harmless LOCAL AGENCY and its elected officials, officers and employees, servants, designated volunteers, and agents serving as independent contractors in the role of city or agency officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from CONSULTANT's personnel practices. LOCAL AGENCY shall have the right to offset against the amount of any fees due to CONSULTANT under this Agreement any amount due to LOCAL AGENCY from CONSULTANT as a result of CONSULTANT's failure to promptly pay to LOCAL AGENCY

any reimbursement or indemnification arising under this Section 2 of Article XXXII.

## **2. Remedies**

If the CONSULTANT fails to perform under the terms of this Agreement, the LOCAL AGENCY shall have the right to remedy the default utilizing any legal means, including bringing lawsuit against the CONSULTANT, for damages and breach of the Agreement. The CONSULTANT shall also have the right to bring lawsuit against the LOCAL AGENCY in accordance with the Tort Claims Act set forth in California Government Code if the LOCAL AGENCY breaches this Agreement due to non-payment to the CONSULTANT for services performed, or for other breaches of the terms of this Agreement. The prevailing party shall be entitled to recover reasonable damages and attorney's fees.

## **3. Consultant's Endorsement on PS&E/Other Data**

The responsible CONSULTANT shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

## **4. Standards of Performance**

CONSULTANT shall perform all services to customary professional standards and in a manner reasonably satisfactory to LOCAL AGENCY.

## **5. Responsibility for Errors**

CONSULTANT shall be responsible for its work and results under this Agreement. CONSULTANT, when requested, shall furnish clarification and/or explanation as may be required by the LOCAL AGENCY's representative, regarding any services rendered under this Agreement at no additional cost to LOCAL AGENCY. In the event that an error or omission attributable to CONSULTANT occurs, then CONSULTANT shall, at no cost to LOCAL AGENCY, provide all necessary design drawings, estimates and other CONSULTANT professional services necessary to rectify and correct the matter to the sole satisfaction of LOCAL AGENCY and to participate in any meeting required with regard to the correction.

## **6. Status as Independent Contractor**

CONSULTANT is, and shall at all times remain as to LOCAL AGENCY, a wholly independent contractor. CONSULTANT shall have no power to incur any debt, obligation, or liability on behalf of LOCAL AGENCY or otherwise act as an agent of LOCAL AGENCY. Neither LOCAL AGENCY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as set forth in this Agreement. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of LOCAL AGENCY. CONSULTANT shall pay all required taxes on amounts paid to CONSULTANT under this Agreement, and defend, indemnify and hold LOCAL AGENCY harmless from any and all taxes, assessments, penalties, and interest asserted against LOCAL AGENCY by reason of the independent contractor relationship created by this Agreement. CONSULTANT shall fully comply with the workers' compensation law regarding CONSULTANT and CONSULTANT's employees. CONSULTANT further agrees to indemnify and hold LOCAL AGENCY harmless from any failure of CONSULTANT to comply with applicable workers' compensation laws. LOCAL AGENCY shall have the right to offset against the amount of any fees due to CONSULTANT any amount due to LOCAL AGENCY from CONSULTANT as a result of CONSULTANT's failure to promptly pay to

LOCAL AGENCY any reimbursement or indemnification arising under this Section.

## **7. Indemnification, Hold Harmless, and Duty to Defend**

- 7.1. Indemnity for Professional Services: In connection with its professional services, CONSULTANT shall hold harmless and indemnify LOCAL AGENCY, and its elected officials, officers, employees, servants, designated volunteers, and those LOCAL AGENCY agents serving as independent contractors in the role of City officials (collectively, "Indemnitees"), with respect to any and all claims, demands, damages, liabilities, losses, costs or expenses, including reimbursement of attorneys' fees and costs of defense (collectively, "Claims" hereinafter), including but not limited to Claims relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to in whole or in part to the negligence, recklessness, or willful misconduct of CONSULTANT or any of its officers, employees, subcontractors, or agents in the performance of its professional services under this Agreement.
- 7.2. Other Indemnities: In connection with any and all claims, demands, damages, liabilities, losses, costs or expenses, including attorneys' fees and costs of defense (collectively, "Damages" hereinafter) not covered by Subsection 7.1, CONSULTANT shall defend, hold harmless and indemnify the Indemnitees with respect to any and all Damages, including but not limited to, Damages relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to the acts or omissions of CONSULTANT or any of its officers, employees, subcontractors, or agents in the performance of this Agreement, except for such loss or damage arising from the negligence or willful misconduct of the LOCAL AGENCY, as determined by final arbitration or court decision or by the agreement of the parties. CONSULTANT shall defend Indemnitees in any action or actions filed in connection with any such Damages, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. CONSULTANT's duty to defend pursuant to this Subsection 7.2 shall apply independent of any prior, concurrent or subsequent misconduct, negligent acts, errors or omissions of Indemnitees.
- 7.3. Acknowledgment of Indemnity Duties: By affixing their signatures on this agreement, each party representative hereby acknowledges that they have read and accepted the provisions set forth in this Section 7.
- 7.4. Non-waiver of Rights: Indemnitees do not, and shall not, waive any rights that they may possess against CONSULTANT because of the acceptance by LOCAL AGENCY, or the deposit with LOCAL AGENCY, of any insurance policy or certificate required pursuant to this Agreement.
- 7.5. Waiver of Right of Subrogation: CONSULTANT, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation against the Indemnitees, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the Indemnitor.
- 7.6. Survival: The provisions of this Section shall survive the termination of the Agreement and are in addition to any other rights or remedies which Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against a CONSULTANT shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

## **8. Cooperation**

In the event any claim or action is brought against LOCAL AGENCY relating to CONSULTANT's performance or services rendered under this Agreement, CONSULTANT shall render any reasonable assistance and cooperation which LOCAL AGENCY might require. LOCAL AGENCY shall compensate CONSULTANT for any litigation support services in an amount to be mutually agreed upon by the parties.

## **9. Suspension**

LOCAL AGENCY may, in writing, order CONSULTANT to suspend all or any part of the CONSULTANT's Services for the convenience of LOCAL AGENCY or for work stoppages beyond the control of LOCAL AGENCY or CONSULTANT. Subject to the provisions of this Agreement relating to termination, a suspension of the Services does not void this Agreement. CONSULTANT will be paid the compensation due and payable to the date of suspension.

## **10. Compliance with Laws**

CONSULTANT shall comply with all applicable federal, state and local laws, ordinances, codes and regulations in force at the time CONSULTANT performs the Services.

## **11. Non-Waiver of Terms, Rights and Remedies**

Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by LOCAL AGENCY of any payment to CONSULTANT constitute or be construed as a waiver by LOCAL AGENCY of any breach of covenant, or any default which may then exist on the part of CONSULTANT, and the making of any such payment by LOCAL AGENCY shall in no way impair or prejudice any right or remedy available to LOCAL AGENCY with regard to such breach or default.

## **12. Attorney's Fees**

In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including all attorneys' fees incurred in connection therewith.

## **13. Exhibits; Precedence**

All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

## **14. Contract**

The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Contract shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the Agreement or who drafted that portion of the Agreement.

**ARTICLE XXXIII NOTIFICATION**

All notices hereunder and communications regarding interpretation of the terms of this contract and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT: *RE/CM Firm*  
*Eddie the Engineer, Principal Engineer*  
*1234 Fifth Street*  
*Holtville, CA 92243*

LOCAL AGENCY: *City of Holtville*  
*Nick Wells, City Manager*  
*121 W Fifth Street*  
*Holtville, California 92250*

**ARTICLE XXXIV CONTRACT**

The two parties to this contract, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this contract constitutes the entire agreement which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this contract as evidenced by the signatures below.

**ARTICLE XXXV SIGNATURES**

*RE/CM Firm*

*City of Holtville*

By: *Eddie the Engineer, Principal Engineer*

By: *Nicholas D. Wells, City Manager*

Date: \_\_\_\_\_

Date: *February 12, 2024*

# *Appendix "D"*

## *East Ninth Street Pedestrian Improvements Project*

### *LAPM Exhibit 10-I: Notice to Proposers DBE Information*

**EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION**

(Federally funded projects only)

The Agency has established a DBE goal for this Contract of 22.0%**1. TERMS AS USED IN THIS DOCUMENT**

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

**2. AUTHORITY AND RESPONSIBILITY**

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

**3. SUBMISSION OF DBE INFORMATION**

If there is a DBE goal on the contract, Exhibit 10-01 *Consultant Proposal DBE Commitment* must be included in the Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards meeting the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-02 *Consultant Contract DBE Information* must be included in best qualified consultant's executed consultant contract. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

**4. DBE PARTICIPATION GENERAL INFORMATION**

It is the proposer's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  1. The proposer is a DBE and will meet the goal by performing work with its own forces.
  2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
  3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.



# *Appendix "E"*

## *East Ninth Street Pedestrian Improvements Project*

### *Required LAPM Certification*

