

**REQUEST FOR PROPOSALS (RFP) 3-2247**

**PLANS, SPECIFICATIONS AND  
ESTIMATES FOR THE LEESDALE  
SIDING EXTENSION PROJECT**



**ORANGE COUNTY TRANSPORTATION AUTHORITY  
ON BEHALF OF:  
LOS ANGELES-SAN DIEGO-SAN LUIS OBISPO RAIL CORRIDOR  
AGENCY**

**550 South Main Street  
P.O. Box 14184  
Orange, CA 92863-1584  
(714) 560-6282**

**Key RFP Dates**

<b>Issue Date:</b>	<b>February 1, 2023</b>
<b>Pre-Proposal Conference Date:</b>	<b>February 7, 2023</b>
<b>Question Submittal Date:</b>	<b>February 10, 2023</b>
<b>Authority Responses</b>	<b>December 5, 2022</b>
<b>Proposal Submittal Date:</b>	<b>March 1, 2023</b>
<b>Interview Date:</b>	<b>March 29, 2023</b>

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## **NOTICE OF REQUEST FOR PROPOSALS**

**(RFP): 3-2247: “PLANS, SPECIFICATIONS AND ESTIMATES FOR THE LEESDALE SIDING EXTENSION PROJECT”**

**TO: ALL OFFERORS**

**FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY**

On behalf of the Los Angeles-San Diego-San Luis Obispo (LOSSAN) Rail Corridor Agency (Agency), the Orange County Transportation Authority (Authority) invites proposals from qualified consultants to prepare the plans, specifications and estimates for the Leesdale siding extension project.

To prevent potential conflicts of interest, the following prohibitions apply to this solicitation:

**The prime consultant and all subconsultants (at any tier), regardless of the level of service provided by said subcontractor(s), awarded the program management consultant services contract for the LOSSAN Agency are precluded from participating in this solicitation.**

**The prime consultant and all subconsultants (at any tier), regardless of the level of service provided by said subcontractor(s), awarded the on-call construction management services contract for the LOSSAN Agency are precluded from participating in this solicitation.**

**The prime consultant and all subconsultants (at any tier), regardless of the level of service provided by said subcontractor(s), awarded this contract to prepare the plans, specifications and estimates for the Leesdale Siding Extension Project are precluded from participating in the future construction management services and construction services contracts for this Project.**

**Offeror(s) are advised that the evaluation of conflicts of interest situations with regards to team composition will be done on a case-by-case basis, when such evaluation is requested prior to submitting a proposal.**

**Please note that by submitting a Proposal, Offeror certifies that it is not subject to any Ukraine/Russia-related economic sanctions imposed by the State of California or the United States Government including, but not limited to, Presidential Executive Order Nos. 13660, 13661, 13662, 13685, and 14065. Any individual or entity that is the subject of any Ukraine/Russia-related economic sanction is not eligible to submit a Proposal. In submitting a Proposal, all Offerors agree to comply with all economic sanctions imposed by the State or U.S. Government.**

Offerors are advised that the Consultant's cost proposals and supporting documents for the project contract are subject to audit or review by the California Department of Transportation (Caltrans). Consultant's cost proposal is subject to a Financial Document Review (FDR) of the indirect cost rate (ICR) by the Caltrans Independent Office of Audits and Investigations (IOAI). IOAI will review the ICR financial documents to either accept or adjust the ICR prior to contract execution. The cost proposal shall be adjusted by the Consultant and approved by the Authority's Contract Administrator to conform to the IOAI recommendations. The Consultant agrees that the accepted/adjusted ICRs identified in the IOAI review shall be incorporated into Consultant's final cost proposal by this reference. Refusal by the Consultant to incorporate the IOAI or audit recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.

In response to Caltrans' audit/review requirements, Offeror and all their subconsultants will be required to submit, after award of contract, Caltrans' form titled "Certification of Indirect Costs and Financial Management System", a copy of which is attached to this RFP as Exhibit F. As part of this certification, the prime and all subconsultants must show their financial system's ability to segregate cost elements.

Proposals delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Orange County Transportation Authority  
Contracts Administration and Materials Management  
600 South Main Street, (Lobby Receptionist)  
Orange, California 92868  
Attention: Megan Bornman, Senior Contract Administrator**

Proposals delivered using the U.S. Postal Service shall be addressed as follows:

**Orange County Transportation Authority  
Contracts Administration and Materials Management  
P.O. Box 14184  
Orange, California 92863-1584  
Attention: Megan Bornman, Senior Contract Administrator**

Proposals and amendments to proposals received after the date and time specified above will be returned to the Offerors unopened.

Note: The Authority utilizes a third-party delivery service therefore, Offerors should anticipate a 48-hour delay in delivery of proposals mailed to the P.O. Box listed above. Proposals are considered received once time-stamped at the Authority's physical address.

Firms interested in obtaining a copy of this Request for Proposals (RFP) may do so by downloading the RFP from CAMM NET at <https://cammnet.octa.net>.

All firms interested in doing business with the LOSSAN Agency are required to register their business on-line at CAMM NET. The website can be found at <https://cammnet.octa.net>. From the site menu, click on CAMM NET to register.

To receive all further information regarding this RFP 3-2247, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Category:

Professional Consulting

Professional Services

Commodity:

Architectural & Engineering  
Design Consulting  
Consultant Services - General  
Engineering - Architectural  
Engineering - Civil  
Engineering - General  
Railroad; Rapid Transit;  
Monorail - Architectural  
Engineering - Environmental  
Land Surveying

A pre-proposal conference will be held via teleconference on February 7, 2023, at 1:00 p.m. Prospective Offerors may join or call-in using the following credentials:

- [Microsoft Teams Link](#)
- OR Call-in Number: 916-550-9867
- Conference ID: 927 993 609#

An on-site/in-person conference will not be held. A copy of the presentation slides and pre-proposal conference registration sheet(s) will be issued via addendum prior to the date of the pre-proposal conference. All prospective Offerors are encouraged to attend the pre-proposal conference.

The Authority has established March 29, 2023, as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

Certain labor categories under this project are subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et. Seq. It is required that all mechanics and laborers employed or working at the site be paid not less than the basic hourly rates of pay and fringe benefits as shown in the current minimum wage schedules. Offerors must use the current wage schedules applicable at the time the work is in progress.

Offerors are encouraged to subcontract with small businesses to the maximum extent possible.

All Offerors will be required to comply with all applicable equal opportunity laws and regulations.

The award of this contract is subject to receipt of federal, state and/or local funds adequate to carry out the provisions of the proposed agreement including the identified Scope of Work.

**SECTION I: INSTRUCTIONS TO OFFERORS**

## **SECTION I. INSTRUCTIONS TO OFFERORS**

### **A. PRE-PROPOSAL CONFERENCE**

A pre-proposal conference will be held via teleconference on February 7, 2023, at 1:00 p.m. Prospective Offerors may join or call-in using the following credentials:

- [Microsoft Teams Link](#)
- OR Call-in Number: 916-550-9867
- Conference ID: 927 993 609#

An on-site/in-person conference will not be held. A copy of the presentation slides and pre-proposal conference registration sheet(s) will be issued via addendum prior to the date of the pre-proposal conference. All prospective Offerors are encouraged to attend the pre-proposal conference.

### **B. EXAMINATION OF PROPOSAL DOCUMENTS**

By submitting a proposal, Offeror represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of performing quality work to achieve the LOSSAN Agency's objectives.

### **C. ADDENDA**

The Authority reserves the right to revise the RFP documents. Any Authority changes to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. The Authority will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. Offerors shall acknowledge receipt of addenda in their proposals. Failure to acknowledge receipt of Addenda may cause the proposal to be deemed non-responsive to this RFP and be rejected.

### **D. AUTHORITY CONTACT**

All communication and/or contacts with Authority staff regarding this RFP are to be directed to the following Contract Administrator:

Megan Bornman, Senior Contract Administrator  
Contracts Administration and Materials Management Department  
600 South Main Street  
P.O. Box 14184  
Orange, CA 92863-1584  
Phone: 714.560. 5064, Fax: 714.560.5792  
Email: mbornman@octa.net



Commencing on the date of the issuance of this RFP and continuing until award of the contract or cancellation of this RFP, no Offeror, subcontractor, lobbyist or agent hired by the Offeror shall have any contact or communications regarding this RFP with any Authority's staff; member of the evaluation committee for this RFP; or any contractor or consultant involved with the procurement, other than the Contract Administrator named above or unless expressly permitted by this RFP. Contact includes face-to-face, telephone, electronic mail (e-mail) or formal written communication. Any Offeror, subcontractor, lobbyist or agent hired by the Offeror that engages in such prohibited communications may result in disqualification of the Offeror at the sole discretion of the Authority.

## **E. CLARIFICATIONS**

### **1. Examination of Documents**

Should an Offeror require clarifications of this RFP, the Offeror shall notify the Authority in writing in accordance with Section E.2. below. Should it be found that the point in question is not clearly and fully set forth, the Authority will issue a written addendum clarifying the matter which will be sent to all firms registered on CAMM NET under the commodity codes specified in this RFP.

### **2. Submitting Requests**

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and received via e-mail at [mbornman@octa.net](mailto:mbornman@octa.net) no later than 5:00 p.m., on February 10, 2023.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions RFP 3-2247" in the subject line of the e-mail. The Authority is not responsible for failure to respond to a request that has not been labeled as such.

### **3. Authority Responses**

Responses from the Authority will be posted on CAMM NET, no later than February 15, 2023. Offerors may download responses from CAMM NET at <https://cammnet.octa.net>, or request responses be sent via email.

To receive email notification of Authority responses when they are posted on CAMM NET, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Category:  
Professional Consulting

Professional Services

Commodity:  
Architectural & Engineering  
Design Consulting  
Consultant Services - General  
Engineering - Architectural  
Engineering - Civil  
Engineering - General  
Railroad; Rapid Transit;  
Monorail - Architectural  
Engineering - Environmental  
Land Surveying

Inquiries received after 5:00 p.m. on February 10, 2023 will not be responded to.

**F. SUBMISSION OF PROPOSALS**

**1. Date and Time**

Proposals must be received in the Authority's office at or before 2:00 p.m. on March 1, 2023.

Proposals received after the above-specified date and time will be returned to Offerors unopened.

**2. Address**

Proposals delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Orange County Transportation Authority  
Contracts Administration and Materials Management (Camm)  
600 South Main Street, (Lobby Receptionist)  
Orange, California 92868  
Attention: Megan Bornman, Senior Contracts Administrator**

Or proposals delivered using the U.S. Postal Services shall be addressed as follows:

**Orange County Transportation Authority  
Contracts Administration and Materials Management (Camm)  
P.O. Box 14184  
Orange, California 92863-1584  
Attention: Megan Bornman, Senior Contracts Administrator**

Note: The Authority utilizes a third-party delivery service therefore, Offerors should anticipate a 48-hour delay in delivery of proposals mailed to the P.O.

Box listed above. Proposals are considered received once time-stamped at the Authority's physical address.

**3. Identification of Proposals**

Offeror shall submit one (1) original hard copy of its proposal in a sealed package, addressed as shown above in F.2. The outer envelope must show the Offeror's name and address and clearly marked as follows: (RFP 3-2247 and "Plans, Specifications and Estimates for the Leesdale Siding Extension Project").

In addition to the above, Offerors shall also include one (1) electronic copy of their entire RFP submittal package in "PDF" format, on a CD, DVD, or flash drive.

**4. Acceptance of Proposals**

- a. The Authority reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
- b. The Authority reserves the right to withdraw or cancel this RFP at any time without prior notice and the Authority makes no representations that any contract will be awarded to any Offeror responding to this RFP.
- c. The Authority reserves the right to issue a new RFP for the project.
- d. The Authority reserves the right to postpone proposal openings for its own convenience.
- e. Each proposal will be received with the understanding that acceptance by the Authority of the proposal to provide the services described herein shall constitute a contract between the Offeror and Authority which shall bind the Offeror on its part to furnish and deliver at the prices given and in accordance with conditions of said accepted proposal and specifications.
- f. The Authority reserves the right to investigate the qualifications of any Offeror, and/or require additional evidence of qualifications to perform the work.
- g. Submitted proposals are not to be copyrighted.

**G. PRE-CONTRACTUAL EXPENSES**

The Authority shall not, in any event, be liable for any pre-contractual expenses incurred by Offeror in the preparation of its proposal. Offeror shall not include any such expenses as part of its proposal.

Pre-contractual expenses are defined as expenses incurred by Offeror in:

1. Preparing its proposal in response to this RFP;
2. Submitting that proposal to the Authority;
3. Negotiating with the Authority any matter related to this proposal; or
4. Any other expenses incurred by Offeror prior to date of award, if any, of the Agreement.

**H. JOINT OFFERS**

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

**I. TAXES**

Offerors' proposals are subject to State and Local sales taxes. However, the Authority is exempt from the payment of Federal Excise and Transportation Taxes. Offeror is responsible for payment of all taxes for any goods, services, processes and operations incidental to or involved in the contract.

**J. PROTEST PROCEDURES**

The Authority has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting the Contract Administrator responsible for this procurement. Any protests filed by an Offeror in connection with this RFP must be submitted in accordance with the Authority's written procedures.

**K. CONTRACT TYPE**

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be a firm-fixed price contract specifying firm-fixed prices for individual tasks specified in the Scope of Work, included in this RFP as Exhibit A.

**L. CONFLICT OF INTEREST**

All Offerors responding to this RFP must avoid organizational conflicts of interest which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships or contracts, an Offeror is unable, or potentially unable to render impartial

assistance or advice to the Agency; an Offeror's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or an Offeror has an unfair competitive advantage. Conflict of Interest issues must be fully disclosed in the Offeror's proposal.

All Offerors must disclose in their proposal and immediately throughout the course of the evaluation process if they have hired or retained an advocate to lobby Agency staff or the Board of Directors on their behalf.

Offerors hired to perform services for the Agency are prohibited from concurrently acting as an advocate for another firm who is competing for a contract with the Authority, either as a prime or subcontractor.

**M. PREVAILING WAGES**

Certain labor categories under this project are subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et.seq., and all applicable Federal requirements respecting prevailing wages.

It is required that all mechanics and laborers employed or working at the site be paid not less than the basic hourly rates of pay and fringe benefits as shown in the current minimum wage schedules. The Offeror to whom a contract for the work is awarded by the Authority shall comply with the provision of the California Labor Code, including, without limitation, the obligation to pay the general prevailing rates of wages in the locality in which the work is to be performed in accordance with, without limitation, Sections 1773.1, 1774, 1775 and 1776 of the California Labor Code governing employment of apprentices.

Copies of the prevailing rates of per diem wages are on file at the Authority's principal office at 550 S. Main Street, Orange, CA 92868 and are available to any interested party on request.

**N. CODE OF CONDUCT**

All Offerors agree to comply with the Agency's Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. All Offerors agree to include these requirements in all of its subcontracts.

**O. PRIME AND LOWER TIER DEBARMENT**

Offerors are advised that by signing their proposal, they are certifying that they and their subconsultants are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

**P. CERTIFICATION OF CONTRACT COSTS AND FINANCIAL MANAGEMENT SYSTEM**

Offerors and all their subconsultants will be required to submit, after award of contract, Exhibit 10-K entitled "Consultant Annual Certification of Indirect Costs and Financial Management System", a copy of which is attached to this RFP. As part of this certification, the prime and all subconsultants must show their financial system's ability to segregate cost elements.

**Q. OWNERSHIP OF RECORDS/PUBLIC RECORDS ACT**

All proposals and documents submitted in response to this RFP shall become the property of the Agency and a matter of public record pursuant to the California Public Records Act, Government Code sections 6250 et seq. (the "Act"). Offerors should familiarize themselves with the provisions of the Act requiring disclosure of public information. Offerors are discouraged from marking their proposal documents as "confidential" or "proprietary."

If a Proposal does include "confidential" or "proprietary" markings and the Agency receives a request pursuant to the Act, the Agency will endeavor (but cannot guarantee) to notify the Offeror of such a request. In order to protect any information submitted within a Proposal, the Offeror must pursue, at its sole cost and expense, any and all appropriate legal action necessary to maintain the confidentiality of such information. The Agency generally does not consider pricing information, subcontractor lists, or key personnel, including resumes, as being exempt from disclosure under the Act. In no event shall the Agency or any of its officers, directors, employees, agents, representatives, or consultants be liable to a Offeror for the disclosure of any materials or information submitted in response to the RFP or by failing to notify a Offeror of a request seeking its Proposal. The Agency reserves the right to make an independent decision to disclose records and material.

Notwithstanding the above, all information regarding proposal responses will be held as confidential until such time as the evaluation has been completed; an award has been made by the Board of Directors or Authority Staff, as appropriate; and the contract has been fully negotiated.

**R. STATEMENT OF ECONOMIC INTERESTS**

The awarded Offeror (including designated employees and subconsultants) may be required to file Statements of Economic Interests (Form 700) in accordance with the Political Reform Act (Government Code section 81000 et seq.). This applies to individuals who make, participate in making, or act in a staff capacity for making governmental decisions. The LOSSAN Agency determines which individuals are required to file a Form 700, and if such determination is made, the individuals must file Form 700s with the LOSSAN Agency's Clerk of the Board no

later than 30 days after the execution of the Agreement, annually thereafter for the duration of the Agreement, and within 30 days of termination of the Agreement.

**R. PROHIBITION**

The following prohibitions apply to this procurement:

The prime consultant and all subconsultants (at any tier), regardless of the level of service provided by said subcontractor(s), awarded the program management consultant services contract for the LOSSAN Agency are precluded from participating in this solicitation.

The prime consultant and all subconsultants (at any tier), regardless of the level of service provided by said subcontractor(s), awarded the on-call construction management services contract for the LOSSAN Agency are precluded from participating in this solicitation.

The prime consultant and all subconsultants (at any tier), regardless of the level of service provided by said subcontractor(s), awarded this contract to prepare the plans, specifications and estimates for the Leesdale Siding Extension Project are precluded from participating in the future construction management services and construction services contracts for this Project.

Offeror(s) are advised that the evaluation of conflicts of interest situations with regards to team composition will be done on a case-by-case basis, when such evaluation is requested prior to submitting a proposal, and as needed, throughout the term of the Project.

**SECTION II: PROPOSAL CONTENT**



## **SECTION II. PROPOSAL CONTENT**

### **A. PROPOSAL FORMAT AND CONTENT**

#### **1. Format**

Proposals should be typed with a standard 12-point font, double-spaced and submitted on 8 1/2" x 11" size paper, using a single method of fastening. Charts and schedules may be included in 11"x17" format. Proposals should not include any unnecessarily elaborate or promotional materials. Proposals should not exceed fifty (50) pages in length, excluding any appendices, cover letters, resumes, or forms.

#### **2. Letter of Transmittal**

The Letter of Transmittal shall be addressed to Megan Bornman, Senior Contract Administrator and must, at a minimum, contain the following:

- a. Identification of Offeror that will have contractual responsibility with the Authority. Identification shall include legal name of company, corporate address, telephone and fax number, and email address. Include name, title, address, email address, and telephone number of the contact person identified during period of proposal evaluation.
- b. Identification of all proposed subcontractors including legal name of company, contact person's name and address, phone number and fax number, and email address; relationship between Offeror and subcontractors, if applicable.
- c. Acknowledgement of receipt of all RFP addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 120 days from the date of submittal.
- e. Signature of a person authorized to bind Offeror to the terms of the proposal.
- f. Signed statement attesting that all information submitted with the proposal is true and correct.

#### **3. Technical Proposal**

##### **a. Qualifications, Related Experience and References of Offeror**

This section of the proposal should establish the ability of Offeror to satisfactorily perform the required work by reasons of: experience in performing work of a similar nature; demonstrated competence in the

services to be provided; strength and stability of the firm; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references.

Offeror to:

- (1) Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; and number of employees.
- (2) Provide a general description of the firm's financial condition and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Offeror's ability to complete the project.
- (3) Describe the firm's experience in performing work of a similar nature to that solicited in this RFP, and highlight the participation in such work by the key personnel proposed for assignment to this project.
- (4) Identify subcontractors by company name, address, contact person, telephone number, email, and project function. Describe Offeror's experience working with each subcontractor.
- (5) Identify all firms hired or retained to provide lobbying or advocating services on behalf of the Offeror by company name, address, contact person, telephone number and email address. This information is required to be provided by the Offeror immediately during the evaluation process, if a lobbyist or advocate is hired or retained.
- (6) Provide as a minimum three (3) references for the projects cited as related experience, and furnish the name, title, address, telephone number, and email address of the person(s) at the client organization who is most knowledgeable about the work performed. Offeror may also supply references from other work not cited in this section as related experience.

**b. Proposed Staffing and Project Organization**

This section of the proposal should establish the method, which will be used by the Offeror to manage the project as well as identify key personnel assigned.

Offeror to:

- (1) Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, proposed position for this project, current assignment, level of commitment to that assignment, availability for this assignment and how long each person has been with the firm.
- (2) Furnish brief resumes (not more than two [2] pages each) for the proposed Project Manager and other key personnel that includes education, experience, and applicable professional credentials.
- (3) Indicate adequacy of labor resources utilizing a table projecting the labor-hour allocation to the project by individual task.
- (4) Include a project organization chart, which clearly delineates communication/reporting relationships among the project staff.
- (5) Include a statement that key personnel will be available to the extent proposed for the duration of the project acknowledging that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of the Authority.

**c. Work Plan**

Offeror should provide a narrative, which addresses the Scope of Work, and shows Offeror's understanding of LOSSAN Agency's needs and requirements.

Offeror to:

- (1) Describe the approach to completing the tasks specified in the Scope of Work. The approach to the work plan shall be of such detail to demonstrate the Offeror's ability to accomplish the project objectives and overall schedule.
- (2) Outline sequentially the activities that would be undertaken in completing the tasks and specify who would perform them.

- (3) Furnish a project schedule for completing the tasks in terms of elapsed weeks.
- (4) Identify methods that Offeror will use to ensure quality control as well as budget and schedule control for the project.
- (5) Identify any special issues or problems that are likely to be encountered in this project and how the Offeror would propose to address them.
- (6) Offeror is encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the project.

**d. Exceptions/Deviations**

State any technical and/or contractual exceptions and/or deviations from the requirements of this RFP, including the Authority's technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit A) and Proposed Agreement (Exhibit C), using the form entitled "Proposal Exceptions and/or Deviations" included in this RFP. This Proposal Exceptions and/or Deviations form (Exhibit G) must be included in the original proposal submitted by the Offeror. If no technical or contractual exceptions and/or deviations are submitted as part of the original proposal, Offerors are deemed to have accepted the Authority's technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit A) and Proposed Agreement (Exhibit C). Offerors will not be allowed to submit the Proposal Exceptions and/or Deviations form (Exhibit G) or any technical and/or contractual exceptions after the proposal submittal date identified in the RFP. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed by Authority.

All exceptions and/or deviations will be reviewed by the Authority and will be assigned a "pass" or "fail" status. Exceptions and deviations that "pass" do not mean that the Authority has accepted the change but that it is a potential negotiable issue. Exceptions and deviations that receive a "fail" status means that the requested change is not something that the Authority would consider a potential negotiable issue. Offerors that receive a "fail" status on their exceptions and/or deviations will be notified by the Authority and will be allowed to retract the exception and/or deviation and continue in the evaluation process. Any exceptions and/or deviation that receive a "fail" status and the Offeror cannot or does not retract the requested change may result in the firm being eliminated from further evaluation.

**4. Cost and Price Proposal**

Offerors are asked to submit only the technical qualifications as requested in the RFP. No cost proposal or work hours are to be included in this phase of the RFP process. Upon completion of the initial evaluations and interviews, if conducted, the highest ranked Offeror will be asked to submit a detailed cost proposal and negotiations will commence based on both the cost and technical proposals.

**5. Appendices**

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

**B. FORMS**

**1. Safety Specifications (Exhibit C)**

Offerors shall comply with Safety Specifications Level 2 as included in this RFP as Exhibit C, during the term of the awarded Agreement.

**2. Status of Past and Present Contracts Form (Exhibit D)**

Offeror shall complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFP and submit as part of its proposal. Offeror shall identify the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract. Offeror shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of Offeror's proposal.

A separate form must be completed for each identified contract. Each form must be signed by the Offeror confirming that the information provided is true and accurate. Offeror is required to submit one copy of the completed form(s) as part of its proposals and it should be included in only the original proposal.

### 3. Campaign Contribution Disclosure Form (Exhibit E)

In conformance with the statutory requirements of the State of California Government Code Section 84308, part of the Political Reform Act and Title 2, California Code of Regulations 18438 through 18438.8, regarding campaign contributions to members of appointed Board of Directors, Offeror is required to complete and sign the Campaign Contribution Disclosure Form provided in this RFP and submit as part of the proposal.

This form **must** be completed regardless of whether a campaign contribution has been made or not and regardless of the amount of the contribution.

The prime contractor, subconsultants, lobbyists and agents are required to report all campaign contributions made from the proposal submittal date up to and until the Board of Directors makes a selection.

Offeror is required to submit only **one** copy of the completed form(s) as part of its proposal and it must be included in only the **original** proposal.

### 4. Certification of Indirect Costs and Financial Management System (Exhibit F)

This exhibit entitled "Certification of Indirect Costs and Financial Management System" (RFP 3-2247, Exhibit F) is to be completed by Offeror and all subconsultants after award of contract. As part of this certification, the prime and all subconsultants must show their financial system's ability to segregate cost elements.

### 5. Proposal Exceptions and/or Deviations Form (Exhibit G)

Offerors shall complete the form entitled "Proposal Exceptions and/or Deviations" provided in this RFP and submit it as part of the original proposal. For each exception and/or deviation, a new form should be used, identifying the exception and/or deviation and the rationale for requesting the change. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed nor considered by the Authority.

**SECTION III: EVALUATION AND AWARD**

### **SECTION III. EVALUATION AND AWARD**

#### **A. EVALUATION CRITERIA**

The Authority will evaluate the offers received based on the following criteria:

- 1. Qualifications of the Firm 20%**  
  
 Technical experience in performing work of a closely similar nature; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.
- 2. Staffing and Project Organization 40%**  
  
 Qualifications of project staff, particularly key personnel and especially the Project Manager; key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.
- 3. Work Plan 40%**  
  
 Depth of Offeror's understanding of LOSSAN Agency's requirements and overall quality of work plan; logic, clarity and specificity of work plan; appropriateness of resource allocation among the tasks; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.

#### **B. EVALUATION PROCEDURE**

An evaluation committee will be appointed to review all proposals received for this RFP. The committee is comprised of Authority staff and may include outside personnel. The committee members will evaluate the written proposals using criteria identified in Section III A. A list of top-ranked proposals, firms within a competitive range, will be developed based upon the totals of each committee members' score for each proposal.

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established March 29, 2023, as the date to conduct interviews. All prospective Offerors are asked to keep this date available. No other interview dates will be provided, therefore, if an Offeror is unable to attend the interview on this date, its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Offeror after which the evaluation committee will ask questions related to the firm's proposal and qualifications.



At the conclusion of the proposal evaluations, the evaluation committee will score the proposals to develop a competitive range.

At the conclusion of the evaluation process, the evaluation committee will recommend to the LOSSAN Board of Directors, the Offeror with the highest final ranking or a short list of top ranked firms within the competitive range whose proposal(s) is most advantageous to the Authority.

**C. AWARD**

The Authority will evaluate the proposals received and will submit the proposal considered to be the most competitive to the LOSSAN Agency's Board of Directors for consideration and selection. The Authority may also negotiate contract terms with the selected Offeror prior to award, and expressly reserves the right to negotiate with several Offerors simultaneously and, thereafter, to award a contract to the Offeror offering the most favorable terms to the Authority.

Offeror acknowledges that the LOSSAN Agency's Board of Directors reserves the right to award this contract in its sole and absolute discretion to any Offeror to this RFP regardless of the evaluation committee's recommendation.

The Authority reserves the right to award its total requirements to one Offeror or to apportion those requirements among several Offerors as the Authority may deem to be in its best interest. In addition, negotiations may or may not be conducted with Offerors; therefore, the proposal submitted should contain Offeror's most favorable terms and conditions, since the selection and award may be made without discussion with any Offeror.

The selected Offeror will be required to submit to the Authority's Accounting department a current IRS W-9 form prior to commencing work.

**D. NOTIFICATION OF AWARD AND DEBRIEFING**

Offerors who submit a proposal in response to this RFP shall be notified via CAMM NET of the contract award. Such notification shall be made within three (3) business days of the date the contract is awarded.

Offerors who were not awarded the contract may obtain a debriefing concerning the strengths and weaknesses of their proposal. Unsuccessful Offerors, who wish to be debriefed, must request the debriefing in writing or electronic mail and the Authority must receive it within three (3) business days of notification of the contract award.

**EXHIBIT A: SCOPE OF WORK**

## SCOPE OF WORK

### SECTION 1

## PROGRAM OVERVIEW, PROJECT DESCRIPTION & STANDARDS

### 1.1 Program Overview

The Los Angeles-San Diego-San Luis Obispo (LOSSAN) Rail Corridor Agency (AGENCY) is responsible for the management of the state-funded, Amtrak operated Pacific Surfliner intercity passenger rail service along the 351-mile corridor between San Diego and San Luis Obispo. The LOSSAN AGENCY is a Joint Powers Authority originally formed in 1989 that works to increase ridership, revenue, capacity, reliability, coordination, and safety through the six-county coastal rail line. Since assuming full administration and management responsibility from the California Department of Transportation (Caltrans) in July 2015, the duties and responsibilities of the LOSSAN AGENCY have significantly expanded, especially in the areas of capital projects and grants management.



LOSSAN Rail Corridor Right-of-Way (ROW) owners include San Diego Metropolitan Transit System (SDMTS), North County Transit District (NCTD), Orange County Transportation Authority (OCTA), BNSF Railway (BNSF), Los Angeles County Metropolitan Transportation Authority (Metro), Ventura County Transportation Commission (VCTC), and Union Pacific Railroad (UPRR).

**LOSSAN Rail Corridor ROW Owners**

Owner	Route Miles
SDMTS	22
NCTD	38
OCTA	42
BNSF	21
Metro	36
VCTC	16
UPRR	176
<b>Total</b>	<b>351</b>

The LOSSAN rail corridor serves Metrolink and COASTER commuter trains, Amtrak intercity trains, and BNSF Railway and UPRR freight trains and is identified as the second most heavily travelled intercity passenger rail corridor in the nation. The corridor extends through urban and rural environments with some segments supporting dense (> 50 per day) mixed passenger and freight movements.

**Planned Pacific Surfliner Service Levels**

Route Segments	FY 2022-23	FY 2023-24	FY 2024-25
San Diego - Los Angeles	22 trains	26 trains*	28 trains*
Los Angeles - Santa Barbara/Goleta	8 trains	10 trains*	12 trains*
Los Angeles - Santa Barbara - San Luis Obispo	4 trains	4 trains	6 trains*

\* Service dependent on equipment and crew availability

The railroad industry is constantly changing due to changes in federal regulations. As federal regulations change, LOSSAN/ROW owners are required to adapt and implement new procedures to comply with the latest federal regulations.

**LIMITATION ON GOVERNMENTAL DECISIONS**

Nothing contained in this scope of work permits CONSULTANT's personnel to authorize or direct any actions, votes, appoint any person, obligate, or commit Agency to any course of action or enter into any contractual agreement on behalf of Agency. In addition, CONSULTANT's personnel shall not provide information, an opinion, or a recommendation for the purpose of affecting a decision without significant intervening substantive review by Agency personnel, counsel, and management.

## **1.2 PROJECT DESCRIPTION**

### **1.2-1 Background**

The need for a usable siding between Moorpark and Oxnard was highlighted in the California State Rail Plan in 2013 as a barrier to the passenger service improvements envisioned for Southern California. The existing Leesdale Siding is a short and unsignalized siding that constrains the capacity on the Los Angeles to Santa Barbara/San Luis Obispo Corridor. In 2021, LOSSAN's Rail Corridor Optimization Study identified infrastructure improvements needed to implement pulse scheduling and service patterns. The Leesdale Siding Extension project was again identified as a near-term project, crucial to the improvements in service patterns planned for the LOSSAN North Corridor.

The extension and signalization of the Leesdale Siding will increase operational flexibility on the corridor. The completion of this project will ultimately provide for double-track Centralized Traffic Control (CTC) operations.

### **1.2-2 Request for Proposal**

The AGENCY will require professional engineering services for preliminary and final design of this capital improvement project (to be referred to herein as CONSULTANT). The key features of this project include a lengthened Siding track, track structures and bridges, modifying drainage structures, and safer at-grade road crossing(s) to improve service capacity and operations. This will be done in close coordination with Union Pacific Railroad (UPRR), and following UPRR's processes, standards, and requirements for submittals.

CONSULTANT shall have team members in key positions with good knowledge of designing projects within a live railroad operating environment and freight operations constraints. The CONSULTANT team shall be fully knowledgeable of the current best industry practices related to design and construction in a constrained railroad traffic environment.

CONSULTANT shall provide personnel with the technical expertise in track design, railroad structures, grade crossings and designing these to UPRR's requirements. CONSULTANT shall have a working knowledge of passenger and freight rail in California and regulatory requirements from various governing agencies including but not limited to Federal Railroad Administration (FRA), California Public Utilities Commission (CPUC), and other coordinating agencies.

State funding for the phase of project will expire on June 30, 2024. Therefore, it is imperative that CONSULTANT explore acceleration opportunities to meet this schedule.

### **1.2-3 Alternatives, Location and Limits**

The project is located just east of Oxnard in an area known as Leesdale. Depending on funding, this project will extend the existing siding approximately to approximately 2.1 miles or as much as 3.7 miles.

Alternative A is the base alternative and would extend the existing siding track from MP 409.15 to approximately MP 407.19 – creating an approximately 2-mile-long siding.

Alternative B, if funding becomes available, would extend the siding further west to MP 405.45 – creating approximately 3.7 miles of total siding length.

Alternative B would also need to address the third-party project, Rice Avenue Grade Separation. Coordination by CONSULTANT will be needed to confirm the timing of construction. Based upon this information, CONSULTANT shall either:

- Improve the existing at-grade crossing as determined by the diagnostic team, or
- Evaluate if any crash walls will be needed or accommodated for in the future grade separation and support the associated design/coordination as required.

See Attachment A for schematic of Alternatives A & B.

### **1.2-4 General Project Description**

The Project will provide safety improvements at the grade crossing(s), operational reliability and flexibility, and reduce travel times that will allow for service enhancements to better serve current and future travel needs. The project is in a busy section of the LOSSAN Rail Corridor, which serves a vital function in providing a rail link between the metropolitan areas of Southern California, the Central Coast, and the rest of the nation.

The purpose of the project is to alleviate current and future rail traffic impacts on the LOSSAN Rail Corridor by reducing delays from train meets. Conceptual engineering alternatives through a draft Project Study Report (DPSR) have been developed and include geometrics for the base alternative. It is the desire of the AGENCY to have CONSULTANT proceed with preliminary and final engineering (PS&E) including construction bidding phase assistance and design services during construction of the preferred alternative, as outlined in the project's alternatives evaluation/geometric concepts report.

### Alternative A

Alternative A includes an extension of Leesdale Siding westward to just east of the Del Norte at-grade crossing. This equates to a 6,600 feet extension for an overall clear siding length of 9,750 feet. This alternative includes CTC signalization, two powered turnouts, two new control points, culvert extensions, new bridges over large drainage structures, and one (1) improved at-grade crossing.

Stakeholders for the planning, design and construction of the preferred alternative include:

- The City of Oxnard (City)
- County of Ventura
- Union Pacific Railroad
- Ventura County Transportation Commission
- Amtrak
- Southern California Regional Rail Authority
- Local community groups
- Utility owners
- Adjacent landowners
- Ventura County Flood Control District

### Alternative B

Alternative B is an extension of Alternative A by another 8,700 feet for an overall clear length of 18,450 feet, ending just east of Rose Avenue. This alternative adds one (1) additional culvert extension, two (2) new improved at-grade crossings and one (1) universal crossover at Rose to provide operational flexibility.

Stakeholder coordination would be similar to Alternative A, except coordination with the Rice Avenue grade crossing and timing of that project will be required.

CONSULTANT shall obtain all right of entry permitting with UPRR. CONSULTANT shall be responsible for all cost incurred for permitting and flagging. Ultimately, it is LOSSAN's vision to purchase part of the railroad right-of-way for this project.

All signal design work will be performed by UPRR. CONSULTANT will be responsible for coordinating with UPRR in the development of the project design to ensure alignment between track, civil and signal design work.

### **1.2-5 Third Party Coordination**

CONSULTANT will work with AGENCY staff to coordinate with external agencies, jurisdictions, third parties, stakeholders, operating railroads, and affected utilities and shall maintain coordination documents as part of the reference data utilized during the design. This task shall also include assistance and support in executing agreements with third parties and stakeholders to complete the Project and any potential “betterments” identified by third parties.

Assistance shall also be provided for presentations to external parties, stakeholders, or the LOSSAN Board of Directors, including providing relevant documents, drawings, or visual presentation materials and attending meetings as required. CONSULTANT will be responsible for scheduling and coordinating meetings with stakeholders (as listed in previous section) to provide updates and gain acceptance of designs throughout the Project development and implementation.

## **1.3 STANDARDS**

### **1.3-1 Latest Editions**

CONSULTANT shall perform all services under the Agreement in conformance and in compliance with the latest:

- UPRR Engineering Standards and Specifications,
- City of Oxnard Standard Drawings and Specifications,
- American Railway Engineering and Maintenance-of-Way Association (AREMA),
- Ventura County Flood Control District design requirements,
- Standard Specifications for Public Works Construction (SSPWC) as needed for roadways,
- California Public Utilities Commission (CPUC) General Orders 26, 72, and 88, and
- other applicable AGENCY requirements.

Some standard drawings may come from other sources. The standard drawings to be utilized will need to be determined by the CONSULTANT and may be a blend of UPRR or other agencies as needed.

### **1.3-2 Conflicts**

In case of conflict, ambiguities, discrepancies, errors, or omissions among the reference materials obtained by CONSULTANT from other agencies, CONSULTANT shall submit the matter to AGENCY for clarification. Any work



affected by such conflicts, ambiguities, discrepancies, errors or omissions which is performed by CONSULTANT prior to clarification by AGENCY shall be at CONSULTANT's risk and expense.

In the event that non-standard features become apparent during the initial design, CONSULTANT shall prepare the necessary design exceptions following UPRR and/or the City's guidelines.

### **1.3-3 Plans, Specifications and Estimates (PS&E) & Reports / Studies**

PS&E shall be prepared in English units and in conformance with the latest editions of applicable standards. Railway, Roadway and related plans shall be prepared on standard plan and profile sheets acceptable to AGENCY and the City and shall meet UPRR drafting requirements for CAD located in this link: <https://www.up.com/customers/ind-dev/operations/specs/track/index.htm>.

CONSULTANT shall prepare Special Provisions (project Specific Specifications) pertaining to items of work included in the plans that are not addressed in the latest editions of applicable standards. CONSULTANT will furnish and compile Special Provisions to include AGENCY contract administration requirements. The final Division/Section 01 Specifications for General Requirements will need to be a blend of UPRR, SCRRA, or other recommended agency(ies). CONSULTANT shall combine these together and modify as needed to best serve LOSSAN Agency. It is anticipated LOSSAN Agency will lead the solicitation for construction services.

In accordance with UPRR procedures, CONSULTANT shall submit PS&E SUBMITTALS at 10%, 25%, 30%, 60% (Structures only), 90%, and 100% stages in accordance with UPRR's requirements and design procedures for Public Projects. CONSULTANT shall prepare and submit signed and sealed deliverables suitable to advertise an Invitation for Bids (IFB).

Written reports and studies should be provided in hard copies and PDF format. Microsoft Word or Excel files should be provided upon request by LOSSAN Agency.

#### ***Deliverables:***

- Final plans, specifications, and estimates (PS&E)
- Schedule of Quantities, Unit Costs and Total Costs
- All Engineering Calculations
- All Related Reports and Plans
- Project Cost Estimate Backup Documentation including Unit Cost Justification
- Design Review Comment Matrix and Responses

All processes and procedures in the UPRR Public Projects website, Public Projects Manual, and Track Design Guidelines for Third Party Public Projects provided below shall be followed and led by the CONSULTANT.

All requirements within the links below shall be followed:

- [https://www.up.com/real\\_estate/roadxing/industry/index.htm](https://www.up.com/real_estate/roadxing/industry/index.htm)
- [https://www.up.com/cs/groups/public/@uprr/@corprel/documents/up\\_pdf\\_nativedocs/pdf\\_up\\_public\\_projects\\_manual.pdf](https://www.up.com/cs/groups/public/@uprr/@corprel/documents/up_pdf_nativedocs/pdf_up_public_projects_manual.pdf)
- [https://www.up.com/customers/ind-dev/operations/specs/public\\_projects/index.htm](https://www.up.com/customers/ind-dev/operations/specs/public_projects/index.htm)
- <https://www.up.com/customers/ind-dev/operations/specs/index.htm>

### **1.3-4 Reference Material**

CONSULTANT shall utilize the following documents:

- UPRR Public Projects Manual
- UPRR Public Projects Checklist
- UPRR Engineering Standards
- UPRR Track Design Guidelines for Third Party Public Projects
- UPRR Specifications and Provisions
- American Railway Engineering and Maintenance of Way Association (AREMA) Standards
- A Policy on Geometric Design of Highways and Streets (AASHTO)
- California Public Utilities Commission (CPUC) General Orders Requirements
- California Regional Water Quality Control Board Requirements
- Manual of Uniform Traffic Control Devices (MUTCD)
- MUTCD California Supplement
- City of Oxnard Standard Drawings and Specifications
- Applicable Local Codes and Manuals
- Construction Best Management Practices (BMP's)
- Prior Project Study Reports, developed by others during previous phase of work

Please note it is not AGENCY's intent to provide a comprehensive list of resources; therefore, CONSULTANT shall make use of additional reference material as appropriate.

### **1.4 DESIGN CRITERIA**

CONSULTANT shall adhere to design standards as specified by the local jurisdiction where the road is located.

Railroad and railroad bridges will be designed in accordance with UPRR and AREMA (latest edition) Design Standards.

The City, AGENCY, and UPRR are responsible for providing final approval of the PS&E, required reports, and all other work products.

All work shall be conducted in compliance with all applicable State law and regulation, and all applicable local ordinance and regulation.

## **1.5 DELIVERABLES FORMAT**

All electronic data produced and supporting the PS&E shall be submitted electronically in PDF and original source file formats consistent with AGENCY, UPRR, and City of Oxnard software programs and acceptable to each of these agencies.

All native CADD files (reference and sheet files) and electronic files (word, excel, etc.) shall be delivered upon project completion (or provided in advance if requested by AGENCY). CADD format shall follow UPRR's MicroStation requirements.

## **SECTION 2**

### **SCOPE OF WORK**

#### **2.1 TASK 1 - PROJECT MANAGEMENT/ COORDINATION/ ADMINISTRATION**

This task covers project management services including meetings, schedules, project reporting, 3<sup>rd</sup> party coordination, and administration of CONSULTANT's work.

##### **2.1-1 Coordination & Administration**

CONSULTANT shall develop a project team and prepare the project scope of work, activities, schedule, and work plan; define key issues and goals and coordinate responsibilities of project team members.

CONSULTANT shall conduct regular meetings as necessary to coordinate with project team and provide status. CONSULTANT shall prepare agenda, meeting minutes and action items. Meetings should include:

*Regular Project Development Team (PDT) Meetings* with AGENCY, the City, and UPRR shall be held on monthly basis to update the project team on design development.

*Agency Coordination/Technical Workshop Meetings* shall be held to discuss technical issues with specific agencies as needed.

CONSULTANT shall review key risks from the risk matrix each month at PDT meetings.

CONSULTANT shall also support the AGENCY Public Outreach Coordinator and provide updates to the project fact sheet with each design submittal.

### **2.1-2 Schedule**

CONSULTANT shall submit an initial Project Master Schedule (in Primavera P6 format) within 15 business days following NTP. Upon approval by AGENCY, this schedule will become the Project Baseline Schedule. The approved Project Baseline Schedule shall be shown on the Project Master Schedule updates. The following element must be included by CONSULTANT in the Schedule:

- Work items and deliverables identified in accordance with a Work Breakdown Structure as developed by CONSULTANT and approved by AGENCY
- Work items of agencies and other third parties that may affect or be affected by CONSULTANT's activities
- The Project Master Schedule shall include all data necessary to represent the total Project and the critical path shall be clearly identified
- The order, sequence, and interdependence of significant work items shall be reflected on the Project Master Schedule
- The defined Major milestone deliverables shall be included and clearly identified on the Project Master Schedule

CONSULTANT shall submit a copy of the Project Master Schedule to AGENCY Project Manager for review and approval. Monthly schedule updates will be part of the Progress Report and PDT meetings.

The following list of major tasks, at minimum, shall be used to develop the Project Master Schedule:

- Project Management/Coordination/Administration
- Environmental Regulatory Permitting
- Third Party Permits and Agreements
- 10% Conceptual Plan and Estimate
- 25% Plans and Estimate

- 30% Plans and Estimate
- 60% PS&E (Structures only)
- 90% PS&E Submittal
- 100% PS&E Submittal
- Issue For Bid (IFB) Submittal
- Construction Bid Assistance
- Design Support During Construction

Major tasks should be broken down into subtasks as warranted.

For each plan submittal, CONSULTANT shall address and incorporate comments from AGENCY, UPRR, and any other reviewing agency. From the 10% submittal through IFB submittal, CONSULTANT shall continue to advance designs to the level typical of industry and UPRR standards.

### **2.1-3 Monthly Progress Reporting**

CONSULTANT shall prepare and submit monthly progress reports to AGENCY Project Manager including updates on key milestones, project schedule, 30 day recap, 30 day projection, and percent complete detail for each task worked on during the reporting period. The monthly progress reports will also present any identified risks or issues and proposed mitigation measures to address them. This report shall be included with the monthly invoice and received no later than the fifteenth (15th) calendar day of the month following the month being reported.

### **2.1-4 Basis of Design Report**

CONSULTANT shall confirm and/or provide a Basis of Design Report including a description of the Project and all components. All design elements including, but not limited to: track, civil, structural, architectural, landscape, mechanical, plumbing, and electrical systems and materials will be narratively described. Each element and space will be described with design parameters, equipment, utilities, track work, switches lay out and details. All design assumptions shall be outlined.

### **2.1-5 Quality Management Plan**

CONSULTANT shall present a Quality Management Plan (QMP) for Quality Assurance and Quality Control (QA/QC) The QMP is intended to ensure that reports, plans, studies, estimates, and other documents submitted under the Agreement are complete, accurate, checked, conform to standards, and proofread to meet professional engineering practices in effect at the time of execution of the Agreement, and of a quality acceptable to AGENCY.

### **2.1-6 Constructability Review Coordination**

CONSULTANT shall cooperate with constructability review consultant, participate meetings, and provide technical support, including performing feasibility and technical analysis as necessary to address constructability review comments.

## **2.2 TASK 2 – PERMITTING**

CONSULTANT shall determine and obtain the required permits for project design and construction. CONSULTANT shall provide list of permits needed, both general and environmental permits. These include, but are not limited to:

- UPRR Right of Entry permit
- City Encroachment Permit
- CPUC General Order 88 Application(s)
- FAA Permit(s)
- FCC Permit(s)
- US Army Corps of Engineers
- Regional Water Quality Control Board

## **2.3 TASK 3 – ENGINEERING SUPPORT SERVICES**

### **2.3-1 Field Exploration**

CONSULTANT shall conduct a thorough independent field investigation of the project site to identifying pre-existing site conditions and physical constraints of the project areas.

### **2.3-2 Design Surveys**

CONSULTANT shall perform as needed supplemental design surveys including mapping necessary to complete a constructible PS&E package. This includes horizontal and vertical control, drainage surveys, topographical surveys, cross sections, grid grades, open ended traverses, profile data sheets, three-line profiles, and required documentation. CONSULTANT shall provide the Record of Survey and set control points and monuments (as needed) throughout the Project right-of-way. The coordinate system shall be California Coordinate System State Plane, Zone VI (FIPS 0406), units = feet, North American Datum 1983.

CONSULTANT shall survey all potholing locations on site. CONSULTANT shall obtain UPRR or City right-of-entry permitting and cover all costs for permitting and flagging.

### **2.3-3 Utilities & Potholing**

CONSULTANT shall identify all public and private utilities and utility conflicts within the proposed roadway and proposed track & structures. CONSULTANT shall provide subsurface utility location services to determine horizontal and vertical underground utility positions of all potential conflicts. Horizontal and vertical information obtained shall be shown on the plans and profiles.

CONSULTANT shall provide design services and coordination support to AUTHORITY in expediting relocation of existing facilities with utility carriers. All utility designs shall meet AREMA standards and requirements. Additional utility relocation design for PS&E packages may be requested to advance or expedite project staging.

### **2.3-4 Right-of-Way Engineering Service**

CONSULTANT shall conduct necessary right-of-way research and coordination with UPRR Right-Of-Way (ROW) Department, including identification of ROW impacts involving easement requirements and utility facility replacement easements and preparing applicable ROW engineering plans and letter reports. CONSULTANT shall obtain Title Reports (if needed).

### **2.3-5 Geotechnical Exploration Plan**

CONSULTANT will prepare geotechnical review and exploration plan. This includes subsurface investigation and analysis. The geotechnical report will be prepared to include recommendations for design and construction of bridge foundations, earth retaining structures, cut and fill slopes, pavement, ballast and subballast depth, and drainage facilities.

### **2.3-6 Hydrology & Hydraulics**

CONSULTANT shall prepare hydrologic and hydraulic analyses to support the design of bridges, culvert extensions, ditches, and roadway / grade crossing improvements for the Project. CONSULTANT shall utilize design methodology typical for this area of the county and prepare hydrology/hydraulics report according to those standards. Report shall consider both onsite and offsite systems.

## **2.4 TASK 4 – DESIGN SUBMITTALS**

### **2.4-1 General**

CONSULTANT will follow UPRR's Public Projects Check Sheet for the track requirements at each submittal.

CONSULTANT shall prepare signed and sealed drawings, technical specifications, special provisions, bid schedule, and other required documents for the successful construction of the Project.

Each major milestone submittal (as defined herein) shall consist of:

- UPRR required documents (includes checklists, Design Exceptions, etc.)
- Utility Matrix and updates
- Permit Matrix and updates
- Risk Matrix (to be updated at every submittal and as requested by AGENCY)
- Design Submittal Report summarizing the key accomplishments, changes, issues and solutions, risks, etc.
- Quality Statement (for prime and each subconsultant)
- Responses to previous comments
- Construction Documents (as applicable to each milestone submittal):
  - Plans
  - Technical Reports (Drainage, Geotechnical, etc.)
  - Specifications (Standard, Special Provisions)
  - Project Estimate (includes all soft costs, previous costs, etc)
  - Engineer's Estimate
  - Bid Schedule of Quantities
  - List of Standard Drawings that apply to this project
    - Copies of all Standard Drawings
  - List of Standard Specifications that apply to this project
    - Copies of all Standard Specifications
  - Others as needed

#### **2.4-2 Track Plans**

CONSULTANT will follow UPRR's Public Projects Check Sheet for the track requirements at each submittal.

The trackwork consists of:

- New concrete tie track.
- Upgrade of existing siding track and installation of #20 powered switches.
- Extension/replacement of existing rail loaded culverts and bridges to support the additional rail tracks.
- Track shifting.
- Fiber optic relocation.

#### ***Deliverables:***

- Title / General Sheets



- Track Horizontal Control Plans
- Track Geometry Table
- Track Improvement Plans
- Track Profiles
- Construction Details
- Construction Phasing Plan
- Track Grading Plans
- Typical Cross Sections (including earthwork sections) per the limits defined in the UPRR Public Projects Check Sheet.

### **2.4-3 Roadway Civil and Grade Crossing Plans**

CONSULTANT shall prepare plans depicting the necessary modifications to grade crossings in accordance with the City, CPUC, and MUTCD standards.

The following streets will be included depending on Alternative selected:

**Alternative A:** East Pleasant Valley Road

**Alternative B:** East Pleasant Valley Road, Del Norte Ave., and Rose Ave.

CONSULTANT shall include in the design for each intersection the following:

- Survey control
- Pavement section design
- Curb / Street plan and profile drawings
- Typical sections
- Grading design as necessary
- Miscellaneous sections and details as appropriate
- Coordination with other design elements and existing features
- Fencing as needed
- Erosion Control plan
- Any required storm water pollution or water quality plan

#### **2.4-1 Traffic Plans**

CONSULTANT shall prepare plans depicting the necessary modifications to roadway signing and striping associated with the project in accordance with the City and MUTCD standards. CONSULTANT shall confirm adequate truck turning based on City requirements and also ensure clear sight lines.

CONSULTANT shall also prepare detailed Maintenance of Traffic (roadway staging) Plans depicting any necessary temporary traffic control measures needed to complete the necessary construction while maintaining traffic. This work will be coordinated with the City, UPRR, AGENCY, and Metrolink.

#### **2.4-2 Traffic Signal Design**

CONSULTANT shall prepare Traffic Signal Modification plans for the intersection(s) stated in 3.4-2. Plans shall consider the following:

- Advance preemption
- Pre-signals or Queue-cutters
- Blank-out “No Right Turn” signs
- Update traffic signal phasing
- Grade crossing advance warning signs
- Adequate street lighting

#### **2.4-3 Drainage Plans and Culvert Structures**

The project drainage will be achieved in a manner similar to the existing condition. Culvert crossings were observed onsite and will be extended to accommodate and support the new or shifted track. At grade crossings, there are a series of inlets and culverts that convey flows to flood control facilities. These facilities will be improved as needed to accommodate safety improvements and the addition of a track at each at-grade crossing. No changes to flow patterns or drainage methods are anticipated.

AGENCY’s Program Management Consultant performed a structural inspection in 2021 of each drainage structure below and are believed to be in good condition. All structures shall still be evaluated for double-track loading requirements. Ultimately, re-use/extension of any existing structures will require UPRR approval.

CONSULTANT shall coordinate with the necessary resource agencies in development of drainage plans and in accordance with City and railway design standards as applicable.

CONSULTANT will prepare drainage plans and profiles based on the hydrology / hydraulics report. CONSULTANT shall also prepare temporary drainage plans where needed.

Below is a list of culvert structures that cover Alternative A and B. (See introduction for clarification on Alternatives).

- CMP Pipe Culvert at Wood Road
- Concrete Culvert on East side of Pleasant Valley Road
- Pipe Culvert on West side of Pleasant Valley Road
- Pipe Culvert Extension West of Pleasant Valley Road 1
- Pipe Culvert Extension West of Pleasant Valley Road 2
- CMP Pipe Culvert at Wolf Road Junction
- CMP Pipe Culvert West of the 3 Span Bridge
- Culvert Extension at Del Norte Road
- Pipe Culvert Extension West of Del Norte Road 1
- Pipe Culvert Extension West of Del Norte Road 2
- Pipe Culvert Extension West of Rice Ave 1
- Pipe Culvert Extension West of Rice Ave 2 (assumed, but may not be necessary)
- Drainage channel parallel to the tracks near the vicinity of Del Norte Road (may be avoided with track shift)

CONSULTANT to verify if there's any other structures not listed above.

#### **2.4-4 Utility Plans**

CONSULTANT shall identify all existing utilities and utility conflicts within the limits of the proposed Project through records research, utility map requests, survey, and field reconnaissance.

CONSULTANT shall provide any subsurface utility investigation and potholing to confirm the depths and locations of all utilities and potential utility conflicts. CONSULTANT shall survey all potholing locations on site and shall provide a report of all field findings with photos.

CONSULTANT shall coordinate with utility owners to design relocations or protection measures needed to accommodate the Project. CONSULTANT shall coordinate with UPRR and utility carriers for utilities within UPRR Railroad ROW. CONSULTANT shall coordinate with the City and utility carriers for utilities impacted on the roadway(s).

CONSULTANT shall compile all findings into an existing utility composite plan.

Utilities expected to require coordination and/or potentially be affected include:

- Fiber Optic facilities (AT&T and Level 3)
- Water
- Sewer
- Storm Drain
- Electrical (lighting, other services)
- Railroad signal & communications lines

CONSULTANT shall identify, design, and coordinate utility connections for new or relocated facility improvements. CONSULTANT shall identify all existing fiber and shall either protect in place or coordinate relocation with fiber owner. All existing fiber lines shall be protected in place when feasible (fiber lines are vital on this site). All utility designs shall meet AREMA standards and requirements.

CONSULTANT shall prepare a utility matrix identifying all utilities, owners, contact info, relocation vs protect in place, status of coordination, new utility connection needs, etc.

#### **2.4-5 Structures and Bridge Plans**

CONSULTANT shall prepare layout plans and structural details as necessary, including aesthetic details, for the structures specified along the project limits. Structural design will be in accordance with specified criteria per AREMA and UPRR Standards and specifications.

AGENCY's Consultant performed a structural inspection in 2021 of each drainage structure and it is understood that all are in good condition. All structures shall still be evaluated for double-track loading. Ultimately, re-use/extension of any existing structure will require UPRR approval.

Below is a list of bridge structures that cover Alternatives A and B. (See introduction for clarification on Alternatives).

- Wooden Bridge No. 1 West of Pleasant Valley Road
- Wooden Bridge No. 2 West of Pleasant Valley Road
- Two (2) Span Bridge Widening at Drain
- Three (3) Span Bridge Widening West of Wolff Road (if impacted)
- Single Span Drain Bridge Widening West of Rice Ave (assume track shift to avoid)
- Crash walls under the future Rice Avenue Grade Separation, if required and if not included in the third party project design

#### **2.4-6 Specifications**

CONSULTANT shall prepare Project Specifications in UPRR Standard Format with any City requirements added as separate sections.

#### **2.4-7 Project Cost Estimate**

CONSULTANT shall prepare Project cost estimates at every submittal stage.

#### **2.4-8 Electrical, Communication, and Signal Design**

The track electrical, communication, and signal designs will be prepared by UPRR. CONSULTANT shall coordinate and review UPRR's design for design conflicts. Design conflicts shall be resolved by CONSULTANT and provide additional civil improvements as necessary for a complete constructable PS&E.

CONSULTANT shall prepare special provisions to address electrical, communication, and signal designs as necessary during construction of the Project.

### **2.5 TASK 5 – BID SUPPORT**

During the procurement of the construction contractor, CONSULTANT shall:

- Attend pre-bid meeting
- Prepare material and exhibits for the construction pre-bid conference as needed
- Attend site visit
- Assist AGENCY in responding to bidder questions
- Prepare bid addendums as needed
- Review bids for conformance and compliance
- Analyze cost data for bidders
- Prepare conformed drawings and technical specifications

## **2.6 TASK 6 – DESIGN SUPPORT DURING CONSTRUCTION (DSDC)**

During the construction phase, CONSULTANT shall provide engineering support to the LOSSAN AGENCY as outlined below.

During the construction of the Project CONSULTANT shall:

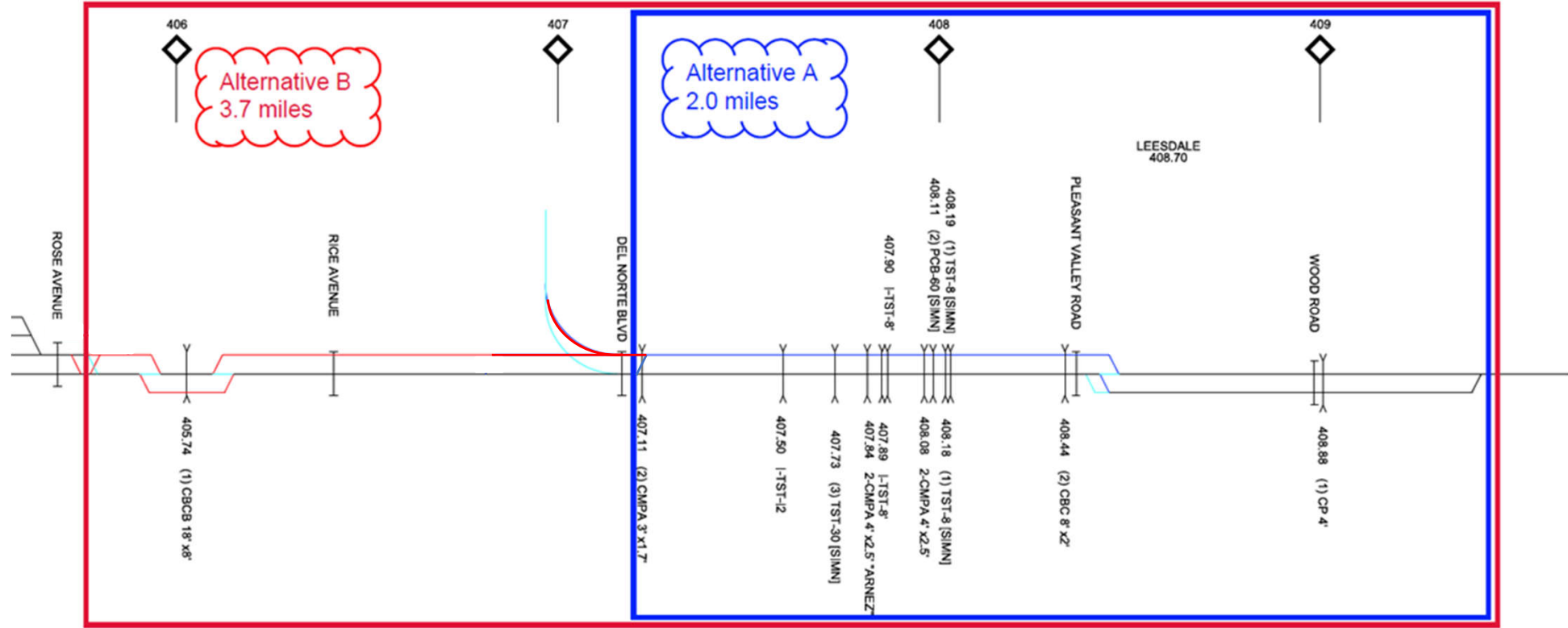
- Provide support for agency, stakeholder, or utility coordination (as needed)
- Assist with materials needed for public relations during construction
- Respond to RFIs
- Review contractor prepared product submittals, show drawings, samples, and
- certificates of compliance
- Review change orders and value engineering proposals and make recommendations (as needed)
- Complete any required design revisions
- Attend construction progress and site meetings (as needed)
- Participate in periodic site inspections (as needed)
- Review Operations and Maintenance Manuals submitted by Contractor
- Prepare as-builts and record drawings in CADD from Contractor's as-built markups
- Complete CPUC Final Documentation – Form G

## **PROJECT SCHEDULE**

To the extent feasible, all effort should be made to complete Camera Ready (Read for Bid) design by June 30, 2024, to avoid potential funding constraints.

<b>Activity</b>	<b>Proposed Date</b>
Notice to Proceed (NTP)	
A. Begin Work	NTP
B. Submit 10% P&E	NTP + 105 days
C. Submit 25% P&E	NTP + 195 days
D. Submit 30% P&E	NTP + 255 days
E. Submit 60% Structures	NTP + 360 days
F. Submit 90% PS&E	NTP + 335 days
G. Submit 100% PS&E	NTP + 420 days
H. Camera Ready (Ready for Bid)	NTP + 436 days
I. Advertise	NTP + 510 days
J. Award	NTP + 570 days
K. Begin Construction	NTP + 600 days
L. Completion of Construction	NTP + 1140 days

Attachment A - Leesdale Alternatives A & B



- Legend:**
- Alternative A additional siding track
  - Alternative B additional siding track



**EXHIBIT B: PROPOSED AGREEMENT**

1 **PROPOSED AGREEMENT NO. L-3-0001**

2 **BETWEEN**

3 **LOS ANGELES-SAN DIEGO-SAN LUIS OBISPO RAIL CORRIDOR AGENCY**

4 **AND**

5 \_\_\_\_\_  
6 **THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"),  
7 by and between the Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency, 550 South Main  
8 Street, P.O. Box 14184, Orange, California 92863-1584, a joint powers authority of the State of California  
9 (hereinafter referred to as "AGENCY"), and \_\_\_\_\_ (hereinafter  
10 referred to as "CONSULTANT").

11 **WITNESSETH:**

12 **WHEREAS**, AGENCY requires assistance from CONSULTANT to prepare the plans,  
13 specifications and estimates for the Leesdale siding extension project; and

14 **WHEREAS**, said work cannot be performed by the regular employees of AGENCY; and

15 **WHEREAS**, CONSULTANT has represented that it has the requisite personnel and experience,  
16 and is capable of performing such services; and

17 **WHEREAS**, CONSULTANT wishes to perform these services;

18 **WHEREAS**, AGENCY's Board of Directors authorized this Agreement on \_\_\_\_\_; and

19 **NOW, THEREFORE**, it is mutually understood and agreed by AGENCY and CONSULTANT as  
20 follows:

21 **ARTICLE 1. COMPLETE AGREEMENT**

22 A. This Agreement, including all exhibits and documents incorporated herein and made  
23 applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of  
24 this Agreement between AGENCY and CONSULTANT and it supersedes all prior representations,  
25 understandings and communications. The invalidity in whole or in part of any term or condition of this  
26 Agreement shall not affect the validity of other terms or conditions.

B. AGENCY's failure to insist in any one or more instances upon CONSULTANT's performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of AGENCY's right to such performance or to future performance of such terms or conditions and CONSULTANT's obligation in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not be binding upon AGENCY except when specifically confirmed in writing by an authorized representative of AGENCY by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

**ARTICLE 2. AGENCY DESIGNEE**

The Managing Director of AGENCY, or designee, shall have the authority to act for and exercise any of the rights of AGENCY as set forth in this Agreement.

**ARTICLE 3. SCOPE OF WORK**

A. CONSULTANT shall perform the work necessary to complete in a manner satisfactory to AGENCY the services set forth in Exhibit A, entitled "Scope of Work," attached to and, by this reference, incorporated in and made a part of this Agreement. All services shall be provided at the times and places designated by AGENCY.

B. CONSULTANT shall provide the personnel listed below to perform the above-specified services, which persons are hereby designated as key personnel under this Agreement.

**Names**

**Functions**

C. No person named in paragraph B of this Article, or his/her successor approved by AGENCY, shall be removed or replaced by CONSULTANT, nor shall his/her agreed-upon function or level of commitment hereunder be changed, without the prior written consent of AGENCY. Should the services of any key person become no longer available to CONSULTANT, the resume and qualifications of the proposed replacement shall be submitted to AGENCY for approval as soon as possible, but in no event

1 later than seven (7) calendar days prior to the departure of the incumbent key person, unless  
2 CONSULTANT is not provided with such notice by the departing employee. AGENCY shall respond to  
3 CONSULTANT within seven (7) calendar days following receipt of these qualifications concerning  
4 acceptance of the candidate for replacement.

5 **ARTICLE 4. TERM OF AGREEMENT**

6 A. This Agreement shall go into effect on \_\_\_\_\_, contingent upon approval by  
7 AUTHORITY, and CONSULTANT shall commence after notification to proceed by AUTHORITY's  
8 Contract Administrator. This Agreement shall end on \_\_\_\_\_, unless extended by amendment to  
9 the Agreement, or terminated as provided hereunder.

10 B. CONSULTANT is advised that any recommendation for contract award is not binding on  
11 AGENCY until the Agreement is fully executed and approved by AGENCY.

12 **ARTICLE 5. PAYMENT**

13 A. For CONSULTANT's full and complete performance of its obligations under this Agreement  
14 and subject to the maximum cumulative payment obligation provisions set forth in Article 6 "Maximum  
15 Obligation", AGENCY shall pay CONSULTANT on a firm-fixed price basis in accordance with the  
16 following provisions.

17 B. The following schedule shall establish the firm-fixed payment to CONSULTANT by AGENCY  
18 for each work task set forth in the Scope of Work. The schedule shall not include any CONSULTANT  
19 expenses not approved by AGENCY, including, but not limited to reimbursement for local meals.

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<u>Tasks</u>	<u>Description</u>	<u>Firm-Fixed Price</u>
1	Project Management/Coordination/Administration	\$_____
2	Permitting	\$_____
3	Engineering Support Services	\$_____
4	Design Submittals	\$_____
5	Bid Support	\$_____
6	Design Support During Construction	\$_____
<b>TOTAL FIRM-FIXED PRICE PAYMENT</b>		<b>\$_____</b>

C. The method of payment for this Agreement is based on lump sum. The total lump sum price paid CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Exhibit A entitled "Scope of Work" to this agreement. No additional compensation will be paid to CONSULTANT unless there is a change in the Scope of 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 AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by amendment to this Agreement that is approved by AGENCY. The total firm fixed price (lump sum) as specified in Paragraph B of this Article shall not be exceeded, unless authorized by an amendment to this Agreement.

D. The overhead rate established for this Agreement is extended through the term of this specific Agreement. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds AGENCY's approved overhead rate set forth in this Agreement.

E. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

F. Progress payments will be made monthly in arrears based on the percentage of work completed by the CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Scope of Work, AGENCY shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Article 14 entitled "Termination."

1           G.       CONSULTANT shall not commence performance of work or services until this Agreement  
2 has been approved by AGENCY and notification to proceed has been issued by AGENCY. No payment  
3 will be made prior to approval of any work, or for any work performed prior to approval of this Agreement.

4           H.       For personnel subject to prevailing wage rates as described in the California Labor Code,  
5 all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

6           I.       CONSULTANT will be reimbursed, less any retention amount withheld, as promptly as  
7 fiscal procedures will permit upon receipt by the AGENCY's Accounts Payable office of itemized invoices  
8 in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of  
9 the work for which the CONSULTANT is billing. Invoices shall detail the work performed on each  
10 task/milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved  
11 Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain  
12 the final cost and all credits due the AGENCY that include any equipment purchased under the provisions  
13 of Article 31 entitled "Contractor Purchased Equipment" of this Agreement. The final invoice should be  
14 submitted to AGENCY within sixty (60) calendar days after completion of CONSULTANT's work.

15          J.       CONSULTANT shall invoice the AGENCY on a monthly basis for payments  
16 corresponding to the work actually completed by CONSULTANT. Percentage of work completed shall  
17 be documented in a monthly progress report prepared by CONSULTANT, which shall accompany each  
18 invoice submitted by CONSULTANT. The report should be sufficiently detailed for the AGENCY to  
19 determine, if CONSULTANT is performing to expectations, or is on schedule; or to provide  
20 communication of interim findings, and to sufficiently address any difficulties or special problems  
21 encountered, so remedies can be developed. CONSULTANT shall also furnish such other information  
22 as may be requested by AGENCY to substantiate the validity of an invoice. At its sole discretion,  
23 AGENCY may decline to make full payment for any task listed in Paragraph B of this Article until such  
24 time as CONSULTANT has documented to AGENCY's satisfaction, that CONSULTANT has fully  
25 completed all work required under the task. AGENCY's payment in full for any task completed shall not  
26 constitute AGENCY's final acceptance of CONSULTANT's work under such task.

1           K.       As partial security against CONSULTANT's failure to satisfactorily fulfill all its obligations  
2 under this Agreement, AGENCY shall retain ten percent (10%) of the amount of each invoice submitted  
3 for payment by CONSULTANT, and shall make prompt and regular incremental acceptances of  
4 portions/milestones/tasks, as determined by AUTHORITY, of the Agreement work, and pay retainage to  
5 CONSULTANT based on these acceptances. The CONSULTANT, or subconsultant, shall return all  
6 monies withheld in retention from a subconsultant within thirty (30) calendar days after receiving payment  
7 for work satisfactorily completed and accepted including incremental acceptances of  
8 portions/milestones/tasks of the Agreement work by the AGENCY. CONSULTANT shall invoice  
9 AUTHORITY for the release of the retention in accordance with this Article.

10           L.       The prime consultant, or subconsultant, shall return all monies withheld in retention from  
11 a subconsultant within seven (7) days for construction contracts and fifteen (15) days for consultant  
12 contracts after receiving payment for work satisfactorily completed and accepted. Any subcontract  
13 entered into as a result of this Agreement shall contain all of the provisions of this section. Federal law,  
14 CFR Title 49, Part 26.29, requires that any delay or postponement of payment over seven (7) days for  
15 construction contracts and fifteen (15) days for consultant contracts may take place only for good cause  
16 and with the AUTHORITY's prior written approval. Any violation of this provision shall subject the violating  
17 prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section  
18 7108.5 of the California Business and Professions Code and Section 10262 of the California Public  
19 Contract Code for construction contracts, and Section 3321 of the California Civil Code for consultant  
20 contracts. These requirements shall not be construed to limit or impair any contractual, administrative,  
21 or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute  
22 involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or  
23 noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT  
24 and subconsultants.

25           M.       All retained funds shall be released by AGENCY and shall be paid to CONSULTANT  
26 within sixty (60) calendar days of payment of final invoice, unless AGENCY elects to audit

CONSULTANT's records in accordance with Article 17 entitled "Audit and Inspection of Records", of this Agreement. If AGENCY elects to audit, retained funds shall be paid to CONSULTANT within thirty (30) calendar days of completion of such audit in an amount reflecting any adjustment required by such audit. During the term of the Agreement, at its sole discretion, AGENCY reserves the right to release all or a portion of the retained amount based on CONSULTANT's satisfactory completion of certain portions/milestones/tasks. CONSULTANT shall invoice AGENCY for the release of the retention in accordance with this Article.

N. Invoices shall be submitted by CONSULTANT on a monthly basis and shall be submitted in duplicate to AGENCY'S Accounts Payable office or may be emailed to VendorInvoices@octa.net. Each invoice shall be accompanied by the monthly progress report specified in paragraph J of this Article. Invoices shall be submitted no later than 30 calendar days after the performance of work for which CONSULTANT is billing. AGENCY shall remit payment within thirty (30) calendar days of the receipt and approval of each invoice. Each invoice shall include the following information:

1. Agreement No. L-3-0001;
2. Specific task number for which payment is being requested;
3. The time period covered by the invoice;
4. Total monthly invoice by task (including project to-date cumulative invoice amount); and retention amount;
5. Monthly Progress Report;
6. Weekly certified payroll for personnel subject to prevailing wage requirements;
7. Certificate signed by the CONSULTANT or his/her designated alternate that a) The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup information included with the invoice is true, complete and correct in all material respects; c) All payments due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The invoice does not include any amount which CONSULTANT intends to withhold or retain from a



subcontractor or supplier unless so identified on the invoice.

8. Any other information as agreed or otherwise requested by AUTHORITY to substantiate the validity of an invoice.

O. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this Agreement number and project title. Invoices shall include all reimbursable costs/expenditures to satisfy Caltrans' Local Assistance Procedures Manual (LAPM), Chapter 5 Accounting/Invoices.

P. CONSULTANT shall not commence performance of work or services until this Agreement has been approved by the AGENCY. No payment will be made prior to approval of any work, or for any work performed prior to approval of this Agreement.

#### **ARTICLE 6. MAXIMUM OBLIGATION**

Notwithstanding any provisions of this Agreement to the contrary, AGENCY and CONSULTANT mutually agree that AGENCY's maximum cumulative payment obligation (including obligation for CONSULTANT's profit) shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) which shall include all amounts payable to CONSULTANT for its subcontracts, leases, materials and costs arising from, or due to termination of, this Agreement.

#### **ARTICLE 7. NOTICES**

All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered or certified mail, returned receipt requested, postage prepaid and addressed as follows:

To CONSULTANT:

To AGENCY:

Los Angeles-San Diego-San Luis Obispo Rail

Corridor Agency

550 South Main Street

P.O. Box 14184

Orange, California 92863-1584

ATTENTION:

ATTENTION: Megan Bornman

Title:

Title: Senior Contract Administrator

Phone:

Phone: 714-560-5064

Email:

Email: mbornman@octa.net

Cc: James Campbell

Operations Officer

Phone: 714-560-5390

Email: [jcampbell@octa.net](mailto:jcampbell@octa.net)

#### **ARTICLE 8. INDEPENDENT CONTRACTOR**

A. CONSULTANT's relationship to AGENCY in the performance of this Agreement is that of an independent contractor. CONSULTANT's personnel performing services under this Agreement shall at all times be under CONSULTANT's exclusive direction and control and shall be employees of CONSULTANT and not employees of AGENCY. CONSULTANT shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

B. Should CONSULTANT's personnel or a state or federal agency allege claims against AGENCY involving the status of AGENCY as employer, joint or otherwise, of said personnel, or allegations involving any other independent contractor misclassification issues, CONSULTANT shall defend and indemnify AGENCY in relation to any allegations made.

#### **ARTICLE 9. INSURANCE**

A. CONSULTANT shall procure and maintain insurance coverage in full force and effect during the entire term of the Agreement. Coverage shall be full coverage and not subject to self-insurance provisions. CONSULTANT shall provide the following insurance coverage:

1. Commercial General Liability, to include Products/Completed Operations, Independent Contractors', Contractual Liability, Advertising (if applicable to Scope of Work) and Personal

1 Injury Liability, and Property Damage with a minimum limit of \$1,000,000 per occurrence, \$2,000,000  
2 general aggregate and \$2,000,000 Products/Completed Operations aggregate;

3 2. Automobile Liability Insurance to include owned, hired and non-owned autos with  
4 a combined single limit of \$1,000,000 for each accident;

5 3. Workers' Compensation with limits as required by the State of California including  
6 a Waiver of Subrogation in favor of AGENCY, its officers, directors and employees;

7 4. Employers' Liability with minimum limits of \$1,000,000 per accident, \$1,000,000  
8 policy limit-disease, and \$1,000,000 policy limit employee-disease;

9 5. Professional Liability with minimum limits of \$1,000,000 only if the CONSULTANT  
10 is required by contract or law to be licensed or specially certified and AGENCY is relying on performance  
11 based on that specialty license or certification; and

12 6. Railroad Protective Liability insurance listing the Railroad as the named insured  
13 with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall  
14 be issued on a standard ISO form CG 00 35 10 93 and include the following:

- 15 a) No other endorsements restricting coverage may be added.
- 16 b) The original policy must be provided to the Railroad prior to performing  
17 any work or services under this Agreement.
- 18 c) All policies (applying to coverage listed above) must not contain an  
19 exclusion for punitive damages and certificates of insurance must reflect  
20 that no exclusion exists.
- 21 d) CONSULTANT agrees to waive its right of recovery against Railroad and  
22 LOSSAN AGENCY for all claims and suits against Railroad and LOSSAN  
23 AGENCY. In addition, its insurers, through the terms of the policy or policy  
24 endorsement, waive their right of subrogation against Railroad and  
25 LOSSAN AGENCY for all claims and suits. The certificate of insurance  
26 must also have attached the waiver of subrogation endorsement.

CONSULTANT further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad and LOSSAN AGENCY for loss of its owned or leased property or property under CONSULTANT's care, custody or control.

B. If any portion of the operation is to be subcontracted by CONSULTANT, CONSULTANT must require that the subconsultant provide, and maintain the insurance coverages set forth herein, naming Union Pacific Railroad as additional insureds, and requiring that the subconsultant release, defend and indemnify Railroad to the same extent and under the same terms and conditions as CONSULTANT is required to release, defend and indemnify railroad herein.

C. Proof of such coverage, in the form of a certificate of insurance and an insurance policy blanket additional insured endorsement, designating the AGENCY, its officers, directors and employees as additional insureds on general liability and automobile liability, as required by Agreement. Proof of insurance coverage must be received by AGENCY within ten (10) calendar days from the effective date of the Agreement and prior to commencement of any work. Such insurance shall be primary and non-contributive to any insurance or self-insurance maintained by AGENCY. Furthermore, AGENCY reserves the right to request certified copies or review all related insurance policies, in response to a related loss.

D. CONSULTANT shall include on the face of the certificate of insurance the Agreement Number L-3-0001 and, the Contract Administrator's Name, Megan Bornman.

E. CONSULTANT shall also include in each subcontract, the stipulation that subconsultants shall maintain insurance coverage in the amounts required of CONSULTANT as provided in the Agreement. Subconsultants will be required to include AGENCY as additional insureds on the Commercial General Liability, and Auto Liability insurance policies.

F. Insurer must provide AGENCY with at least thirty (30) days' prior notice of cancellation or material modification of coverage, and ten (10) days' prior notice for non-payment of premium.

/

1           **ARTICLE 10. ORDER OF PRECEDENCE**

2           Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:

3           (1) the provisions of this Agreement, including all exhibits; (2) the provisions of  
4           RFP 3-2247; (3) CONSULTANT's technical proposal dated \_\_\_\_\_, CONSULTANT's cost  
5           proposal dated \_\_\_\_\_ and final cost proposal dated \_\_\_\_\_; and (4) all other documents, if any,  
6           cited herein or incorporated by reference.

7           **ARTICLE 11. CHANGES**

8           A. By written notice or order, AUTHORITY may, from time to time, order work suspension and/or  
9           make changes in the general scope of this Agreement, including, but not limited to, the services furnished  
10          to AUTHORITY by CONSULTANT as described in the Scope of Work. If any such work suspension or  
11          change causes an increase or decrease in the price of this Agreement or in the time required for its  
12          performance, CONSULTANT shall promptly notify AUTHORITY thereof and assert its claim for  
13          adjustment within ten (10) days after the change or work suspension is ordered, and an equitable  
14          adjustment shall be negotiated. However, nothing in this clause shall excuse CONSULTANT from  
15          proceeding immediately with the Agreement as changed.

16          B. This Agreement may be amended or modified only by mutual written agreement of the  
17          parties.

18          C. CONSULTANT shall only commence work covered by an amendment after the  
19          amendment is executed and notification to proceed has been provided by AUTHORITY's Contract  
20          Administrator.

21           **ARTICLE 12. DISPUTES**

22          A. Except as otherwise provided in this Agreement, when a dispute arises between  
23          CONSULTANT and AGENCY, the project managers shall meet to resolve the issue. If project managers  
24          do not reach a resolution, the dispute will be decided by AUTHORITY's Director of Contracts  
25          Administration and Materials Management (CAMM), who shall reduce the decision to writing and mail or  
26          otherwise furnish a copy thereof to CONSULTANT. The decision of the Director, CAMM, shall be the

1 final and conclusive administrative decision.

2 B. Pending final decision of a dispute hereunder, CONSULTANT shall proceed diligently with  
3 the performance of this Agreement and in accordance with the decision of AUTHORITY's Director,  
4 CAMM. Nothing in this Agreement, however, shall be construed as making final the decision of any  
5 AUTHORITY official or representative on a question of law, which questions shall be settled in  
6 accordance with the laws of the State of California.

7 **ARTICLE 13. TERMINATION**

8 A. This AGREEMENT may be terminated by Managing Director of AGENCY, provided that  
9 Managing Director of AGENCY gives not less than thirty (30) calendar days' written notice (delivered by  
10 certified mail, return receipt requested) of intent to terminate. Upon termination, Managing Director of  
11 AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals,  
12 inventories, studies, analyses, drawings and data estimates performed to that date, whether completed  
13 or not.

14 B. Managing Director of AGENCY may temporarily suspend this AGREEMENT, at no additional  
15 cost to Managing Director of AGENCY, provided that CONSULTANT is given written notice (delivered by  
16 certified mail, return receipt requested) of temporary suspension. If Managing Director of AGENCY gives  
17 such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this  
18 AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.

19 C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of  
20 liability to Managing Director of AGENCY for damages sustained by City by virtue of any breach of this  
21 AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT  
22 until such time as the exact amount of damages, if any, due City from CONSULTANT is  
23 determined.

24 D. In the event of termination, CONSULTANT shall be compensated as provided for in this  
25 AGREEMENT. Upon termination, Managing Director of AGENCY shall be entitled to all work, including  
26

1 but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data  
2 estimates performed to that date, whether completed or not.

3 E. AGENCY may terminate this Agreement for CONSULTANT's default if a federal or state  
4 proceeding for the relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT  
5 makes an assignment for the benefit of creditors, or for cause if CONSULTANT fails to perform in  
6 accordance with the scope of work or breaches any term(s) or violates any provision(s) of this Agreement  
7 and does not cure such breach or violation within ten (10) calendar days after written notice thereof by  
8 AGENCY. CONSULTANT shall be liable for any and all reasonable costs incurred by AGENCY as a  
9 result of such default or breach including, but not limited to, reprourement costs of the same or similar  
10 services defaulted by CONSULTANT under this Agreement. Such termination shall comply with CFR  
11 Title 48, Chapter 1, Part 49, of the FAR.

12 **ARTICLE 14. INDEMNIFICATION**

13 A. CONSULTANT shall indemnify, defend and hold harmless AGENCY, its  
14 officers, directors, employees and agents (indemnities) from and against any and all claims (including  
15 attorneys' fees and reasonable expenses for litigation or settlement) for any loss or  
16 damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent  
17 acts, omissions or willful misconduct by CONSULTANT, its officers, directors, employees, agents,  
18 subconsultants or suppliers in connection with or arising out of the performance of this Agreement.

19 B. To the maximum extent permitted by Civil Code section 2782.8, CONSULTANT shall  
20 indemnify and hold harmless indemnitees from and against all liability, loss, damage, expense, cost  
21 (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of  
22 litigation) of every nature arising out of or in connection with any and all claims of whatever nature arising  
23 out of CONSULTANT's performance of the work under this Agreement.

24 **ARTICLE 15. ASSIGNMENTS AND SUBCONTRACTS**

25 A. Nothing contained in this Agreement or otherwise, shall create any contractual relation  
26 between 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 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 AGENCY's obligation to make payments to the CONSULTANT.

B. Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CONSULTANT either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONSULTANT, without the prior written consent of AGENCY. Consent by AGENCY shall not be deemed to relieve CONSULTANT of its obligations to comply fully with all terms and conditions of this Agreement.

C. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by AUTHORITY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

D. CONSULTANT shall pay its subconsultants within seven (7) days for construction contracts and fifteen (15) days for consultant contracts from receipt of each payment made to CONSULTANT by AUTHORITY.

E. All subcontracts entered into as a result of this Agreement, shall contain all of the provisions stipulated in this entire Agreement to be applicable to subconsultants unless otherwise noted.

F. Any substitution or addition of subconsultant(s) must be approved in writing by the AUTHORITY's Contract Administrator, in advance of assigning work to a substitute subconsultant(s).

G. AGENCY hereby consents to CONSULTANT's subcontracting portions of the Scope of Work to the parties identified below for the functions described in CONSULTANT's proposal. CONSULTANT shall include in the subcontract agreement the stipulation that CONSULTANT, not AGENCY, is solely responsible for payment to the subcontractor for the amounts owing and that the subcontractor shall have no claim, and shall take no action, against AGENCY, its officers, directors,



employees or sureties for nonpayment by CONSULTANT.

<u>Subcontractor Name/Addresses</u>	<u>Subcontractor Amounts</u>
	\$0.00
	\$0.00

**ARTICLE 16. AUDIT AND INSPECTION OF RECORDS**

CONSULTANT shall provide AGENCY, the California Department of Transportation (Caltrans), or other agents of AGENCY, such access to CONSULTANT's accounting books, records, payroll documents and facilities, as AGENCY deems necessary. CONSULTANT shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CONSULTANT's performance hereunder and for a period of four (4) years from the date of final payment by AGENCY. AGENCY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors identified in Article 15 of this Agreement. CONSULTANT shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

**ARTICLE 17. AUDIT REVIEW PROCEDURES**

A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by AUTHORITY's Internal Audit.

B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by AUTHORITY's Internal Audit of unresolved audit issues. The request for review will be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this Agreement.

D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, an Agreement audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, cost

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

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

1. During IOAI review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, 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),

1 if applicable; in accordance with procedures and guidelines of the American Association of State  
2 Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and  
3 guidelines} is received and approved by IOAI. Accepted rates will be as follows:

4 a. If the proposed rate is less than 150% - the accepted rate reimbursed will be 90%  
5 of the proposed rate.

6 b. If the proposed rate is between 150% and 200% - the accepted rate will be 85%  
7 of the proposed rate.

8 c. If the proposed rate is greater than 200% - the accepted rate will be 75% of the  
9 proposed rate.

10 2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require  
11 CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3)  
12 months of the effective date of the management letter. IOAI will then have up to six (6) months to review  
13 the CONSULTANT's and/or the independent CPA's revisions.

14 3. If the CONSULTANT fails to comply with the provisions of this Section E, or if IOAI is still  
15 unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted,  
16 overhead cost reimbursement will be limited to the accepted ICR that was established upon initial  
17 rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this  
18 accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

19 4. CONSULTANT may submit to AGENCY final invoice only when all of the following items  
20 have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA-audited ICR; (2) all  
21 work under this Agreement has been completed to the satisfaction of AGENCY; and, (3) IOAI has issued  
22 its final ICR review letter. The Consultant must submit its final invoice to the AGENCY, no later than sixty  
23 (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this  
24 Agreement and all other Agreements executed between AGENCY and the CONSULTANT, either as a  
25 prime or subconsultant, with the same fiscal period ICR.

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**ARTICLE 17. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

A. CONSULTANT agrees that the CFR, Title 48, Chapter 1, Part 31, Contract Cost Principles and Procedures, shall be used to determine the cost allowability of individual terms of costs.

B. CONSULTANT also agrees to comply with Federal procedures in accordance with CFR, Title 2, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under CFR Title 48, Part 31 or CFR Title 2, Part 200, are subject to repayment by CONSULTANT to AGENCY.

D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

**ARTICLE 18. FEDERAL, STATE AND LOCAL LAWS**

CONSULTANT warrants that in the performance of this Agreement, it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

**ARTICLE 19. EQUAL EMPLOYMENT OPPORTUNITY**

In connection with its performance under this Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. CONSULTANT shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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1           **ARTICLE 20. PROHIBITED INTERESTS**

2           A. CONSULTANT covenants that, for the term of this Agreement, no director, member, officer  
3 or employee of AGENCY during his/her tenure in office/employment or for one (1) year thereafter shall  
4 have any interest, direct or indirect, in this Agreement or the proceeds thereof.

5           B. No member of or delegate to the Congress of the United States shall have any interest, direct  
6 or indirect, in this Agreement or to the benefits thereof.

7           **ARTICLE 21. OWNERSHIP OF REPORTS AND DOCUMENTS**

8           A. The originals of all letters, documents, reports and other products and data produced under  
9 this Agreement shall be delivered to, and become the property of AGENCY. Copies may be made for  
10 CONSULTANT's records but shall not be furnished to others without written authorization from AGENCY.  
11 Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained  
12 by AGENCY.

13           B. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings,  
14 descriptions, and all other written information submitted to CONSULTANT in connection with the  
15 performance of this Agreement shall not, without prior written approval of AGENCY, be used for any  
16 purposes other than the performance under this Agreement, nor be disclosed to an entity not connected  
17 with the performance of the project. CONSULTANT shall comply with AGENCY's policies regarding such  
18 material. Nothing furnished to CONSULTANT, which is otherwise known to CONSULTANT or is or  
19 becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not  
20 use AGENCY's name, photographs of the project, or any other publicity pertaining to the project in any  
21 professional publication, magazine, trade paper, newspaper, seminar or other medium without the  
22 express written consent of AGENCY.

23           C. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be  
24 released by CONSULTANT to any other person or agency except after prior written approval by  
25 AGENCY, except as necessary for the performance of services under this Agreement. All press releases,  
26 including graphic display information to be published in newspapers, magazines, etc., are to be handled

only by AGENCY unless otherwise agreed to by CONSULTANT and AGENCY.

**ARTICLE 22. PATENT AND COPYRIGHT INFRINGEMENT**

A. In lieu of any other warranty by AGENCY or CONSULTANT against patent or copyright infringement, statutory or otherwise, it is agreed that CONSULTANT shall defend at its expense any claim or suit against AGENCY on account of any allegation that any item furnished under this Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and CONSULTANT shall pay all costs and damages finally awarded in any such suit or claim, provided that CONSULTANT is promptly notified in writing of the suit or claim and given authority, information and assistance at CONSULTANT's expense for the defense of same. However, CONSULTANT will not indemnify AGENCY if the suit or claim results from: (1) AGENCY's alteration of a deliverable, such that said deliverable in its altered form infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by CONSULTANT when such use in combination infringes upon an existing U.S. letters patent or copyright.

B. CONSULTANT shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof. CONSULTANT shall not be obligated to indemnify AGENCY under any settlement made without CONSULTANT's consent or in the event AGENCY fails to cooperate fully in the defense of any suit or claim, provided, however, that said defense shall be at CONSULTANT's expense. If the use or sale of said item is enjoined as a result of such suit or claim, CONSULTANT, at no expense to AGENCY, shall obtain for AGENCY the right to use and sell said item, or shall substitute an equivalent item acceptable to AGENCY and extend this patent and copyright indemnity thereto.

**ARTICLE 23. DESIGN WITHIN FUNDING LIMITATIONS**

A. In order to ensure the accuracy of the construction budget for the benefit of the public works bidders and AGENCY's budget process, CONSULTANT shall accomplish the design services required under this Agreement so as to permit the award of a contract, for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth by AGENCY. When

1 bids or proposals for the construction contract are received that exceed the estimated price,  
2 CONSULTANT shall perform such redesign and other services as are necessary to permit contract award  
3 within the funding limitation. These additional services shall be performed at no increase in the price for  
4 which the services were specified. However, CONSULTANT shall not be required to perform such  
5 additional services at no cost to AGENCY if the unfavorable bids or proposals are the result of conditions  
6 beyond its reasonable control.

7 B. CONSULTANT will promptly advise AGENCY if it finds that the project being designed will  
8 exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these  
9 limitations. Upon receipt of such information, AGENCY will review CONSULTANT's revised estimate of  
10 construction cost. AGENCY may, if it determines that the estimated construction contract price is so low  
11 that award of a construction contract not in excess of such estimate is improbable, authorize a change in  
12 scope or materials as required to reduce the estimated construction cost to an amount within the  
13 estimated construction contract price set forth by AGENCY, or AGENCY may adjust such estimated  
14 construction contract price. When bids or proposals are not solicited or are unreasonably delayed,  
15 AGENCY shall prepare an estimate of constructing the design submitted and such estimate shall be used  
16 in lieu of bids or proposals to determine compliance within the funding limitation.

17 **ARTICLE 24. REQUIREMENTS FOR REGISTRATION OF DESIGNERS**

18 All design and engineering work furnished by CONSULTANT shall be performed by or under the  
19 supervision of persons licensed to practice architecture, engineering or surveying (as applicable) in the  
20 State of California, by personnel who are careful, skilled, experienced and competent in their respective  
21 trades or professions, who are professionally qualified to perform the work in accordance with the contract  
22 documents and who shall assume professional responsibility for the accuracy and completeness of the  
23 design documents and construction documents prepared or checked by them.

24 **ARTICLE 25. FINISHED AND PRELIMINARY DATA**

25 A. All of CONSULTANT's finished technical data, including but not limited to illustrations,  
26 photographs, tapes, software, software design documents, including without limitation source code,

1 binary code, all media, technical documentation and user documentation, photoprints and other graphic  
2 information required to be furnished under this Agreement, shall be AGENCY's property upon payment  
3 and shall be furnished with unlimited rights and, as such, shall be free from proprietary restriction except  
4 as elsewhere authorized in this Agreement. CONSULTANT further agrees that it shall have no interest  
5 or claim to such finished, AGENCY-owned, technical data; furthermore, said data is subject to the  
6 provisions of the Freedom of Information Act, 5 USC 552.

7 B. It is expressly understood that any title to preliminary technical data is not passed to AGENCY  
8 but is retained by CONSULTANT. Preliminary data includes roughs, visualizations, software design  
9 documents, layouts and comprehensives prepared by CONSULTANT solely for the purpose of  
10 demonstrating an idea or message for AGENCY's acceptance before approval is given for preparation  
11 of finished artwork. Preliminary data title and right thereto shall be made available to AGENCY if  
12 CONSULTANT causes AGENCY to exercise Article 11, and a price shall be negotiated for all preliminary  
13 data.

14 **ARTICLE 26. STATE PREVAILING WAGE RATES**

15 A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate  
16 requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local  
17 laws and ordinances applicable to the work.

18 B. When prevailing wages apply to the services described in the scope of work, transportation  
19 and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial  
20 Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

21 C. CONSULTANT warrants that all mechanics, laborers, journeypersons, workpersons,  
22 craftspersons or apprentices employed by CONSULTANT or subconsultant at any tier for any work  
23 hereunder, shall be paid unconditionally and not less often than once a week and without any subsequent  
24 deduction or rebate on any account (except such payroll deductions as are permitted or required by  
25 federal, state or local law, regulation or ordinance), the full amounts due at the time of payment, computed  
26 at a wage rate and per diem rate not less than the aggregate of the highest of the two basic hourly rates



and rates of payments, contributions or costs for any fringe benefits contained in the current general prevailing wage rate(s) and per diem rate(s), established by the Director of the Department of Industrial Relations of the State of California, (as set forth in the Labor Code, commencing at Section 1770 et. seq.), or as established by the Secretary of Labor (as set forth in the Davis-Bacon Act, 40 U.S.C. 267a, et. seq.), regardless of any contractual relationship which may be alleged to exist between CONSULTANT or subconsultant and their respective mechanics, laborers, journeypersons, workpersons, craftspersons or apprentices. Copies of the current General Prevailing Wage Determinations and Per Diem Rates are on file at AUTHORITY's offices and will be made available to CONSULTANT upon request. CONSULTANT shall post a copy thereof at each job site at which work hereunder is performed.

D. In addition to the foregoing, CONSULTANT agrees to comply with all other provisions of the California Labor Code, which is incorporated herein by reference, pertaining to workers performing work hereunder including, but not limited to, those provisions for work hours, payroll records and apprenticeship employment and regulation program.

E. Any subcontract entered into as a result of this Agreement, 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. CONSULTANT agrees to insert or cause to be inserted the preceding clause in all subcontracts which provide for workers to perform work hereunder regardless of the subcontractor tier.

#### **ARTICLE 27. NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

During the performance of this Agreement, CONSULTANT, for itself, its assignees and successors in interest agree as follows:

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 Code of Regulations, Section 8103.

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

11           C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment  
12 and Housing Act (Government Code Section 12990 et seq.), the applicable regulations promulgated there  
13 under (Title 2 of the California Code of Regulations (CCR) Section 11000 et seq.), the provisions of  
14 Government Code Sections 11135-11139.5, and the regulations or standards adopted by AUTHORITY  
15 to implement such article. The applicable regulations of the Fair Employment and Housing Commission  
16 implementing Government Code Section 12990 (a-f), set forth in 2 CCR Section 8100-8504, are  
17 incorporated into this Agreement by reference and made a part hereof as if set forth in full.

18           D. CONSULTANT shall permit access by representatives of the Department of Fair Employment  
19 and Housing (Department) and the AGENCY upon reasonable notice at any time during the normal  
20 business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records,  
21 accounts, and all other sources of information and its facilities as said Department or AGENCY shall  
22 require to ascertain compliance with this clause.

23           E. CONSULTANT and its subconsultants shall give written notice of their obligations under this  
24 clause to labor organizations with which they have a collective bargaining or other Agreement.

25           F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause  
26 in all subcontracts to perform work under this Agreement.

G. CONSULTANT, with regard to the work performed under this Agreement, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

H. CONSULTANT shall comply with regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 – Effectuation of Title VI of the 1964 Civil Rights Act). Specifically, CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Section 21.5, including employment practices and the selection and retention of subconsultants.

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

## **ARTICLE 28. CONFLICT OF INTEREST**

A. CONSULTANT agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the CONSULTANT is unable, or potentially unable to render impartial assistance or advice to AGENCY; CONSULTANT's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or CONSULTANT has an unfair competitive advantage. CONSULTANT is obligated to fully disclose to AGENCY in writing Conflict of Interest issues as soon as they are known to CONSULTANT. All disclosures must be submitted

1 in writing to AGENCY pursuant to the Notice provision herein. This disclosure requirement is for the  
2 entire term of this Agreement.

3 B. If the AGENCY determines that CONSULTANT, its employees, or subconsultants are subject  
4 to disclosure requirements under the Political Reform Act (Government Code section 81000 et seq.),  
5 CONSULTANT and its required employees and subconsultants shall complete and file Statements of  
6 Economic Interest (Form 700) with the AUTHORITY's Clerk of the Board disclosing all required financial  
7 interests.

8 **ARTICLE 29. CODE OF CONDUCT**

9 A. CONSULTANT agrees to comply with AGENCY's Code of Conduct as it relates to Third-  
10 Party contracts which is hereby referenced and by this reference is incorporated herein.

11 B. CONSULTANT agrees to include these requirements in all of its subcontracts.

12 **ARTICLE 30. PROHIBITION ON PROVIDING ADVOCACY SERVICES**

13 CONSULTANT and all subconsultants performing work under this Agreement, shall be  
14 prohibited from concurrently representing or lobbying for any other party competing for a contract with  
15 AGENCY, either as a prime consultant or subconsultant. Failure to refrain from such representation  
16 may result in termination of this Agreement.

17 **ARTICLE 31. CONTRACTOR PURCHASED EQUIPMENT**

18 A. If during the course of this Agreement, additional equipment is required, which will be paid for  
19 by the AGENCY, CONSULTANT must request prior written authorization from the AGENCY's project  
20 manager before making any purchase. As part of this purchase request, CONSULTANT shall provide a  
21 justification for the necessity of the equipment or supply and submit copies of three (3) competitive  
22 quotations. If competitive quotations are not obtained, CONSULTANT must provide the justification for  
23 the sole source.

24 B. CONSULTANT shall maintain an inventory record for each piece of equipment purchased  
25 that will be paid for by the AGENCY. The inventory record shall include the date acquired, total cost, serial  
26 number, model identification, and any other information or description necessary to identify said

1 equipment or supply. A copy of the inventory record shall be submitted to the LOSSAN AGENCY upon  
2 request.

3 C. At the expiration or termination of this Agreement, CONSULTANT may keep the equipment  
4 and credit AGENCY in an amount equal to its fair market value. Fair market value shall be determined,  
5 at CONSULTANT's expense, on the basis of an independent appraisal. CONSULTANT may sell the  
6 equipment at the best price obtainable and credit AGENCY in an amount equal to the sales price. If the  
7 equipment is to be sold, then the terms and conditions of the sale must be approved in advance by  
8 LOSSAN AGENCY's project manager.

9 D. Any subconsultant agreement entered into as a result of this Agreement shall contain all  
10 provisions of this clause.

11 **ARTICLE 32. CONTINGENT FEE**

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

20 **ARTICLE 33. CONFIDENTIALITY OF DATA**

21 A. All financial, statistical, personal, technical, or other data and information relative to the  
22 AGENCY's operations, which are designated confidential by the AGENCY and made available to the  
23 CONSULTANT in order to carry out this Agreement, shall be protected by the CONSULTANT from  
24 unauthorized use and disclosure.

25 B. Permission to disclose information on one occasion, or public meeting held by the  
26 AGENCY relating to the Agreement, shall not authorize the CONSULTANT to further disclose such

1 information or disseminate the same on any other occasion.

2 C. CONSULTANT shall not comment publicly to the press or any other media regarding the  
3 Agreement or AGENCY's actions on the same, except to AGENCY's staff, CONSULTANT's own  
4 personnel involved in the performance of this Agreement, at public hearings, or in response to questions  
5 from a Legislative committee.

6 D. CONSULTANT shall not issue any news release or public relations item of any nature,  
7 whatsoever, regarding work performed or to be performed under this Agreement without prior review of  
8 the contents thereof by the AGENCY, and receipt of the AGENCY's written permission.

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

18 **ARTICLE 34. PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL**  
19 **FUNDS FOR LOBBYING**

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

21 1. No state, federal or local agency appropriated funds have been paid, or will be  
22 paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer  
23 or employee of any local, State or Federal agency; a Member of the State Legislature or United States  
24 Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the  
25 Legislature or Congress, in connection with the awarding or making of this Agreement, or with the  
26 extension, continuation, renewal, amendment, or modification of this Agreement.

2. If any funds other than Federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, 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 U.S. Code Title 31 Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

C. 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 one hundred thousand dollars (\$100,000), and that all such sub recipients shall certify and disclose accordingly.

#### **ARTICLE 35. PROHIBITION**

A. The prime consultant firm and all subconsultants (at any tier), regardless of the level of service provided by said subconsultant(s), awarded this contract for the preparation of plans, specifications and estimates for the Leesdale Siding Extension Project will be ineligible to participate (at any tier) in any of the separate procurements for the construction management services and construction services for this Project.

B. Furthermore, CONSULTANT is advised that the evaluation of team composition with regards to conflicts of interest will be done on a case-by-case basis, as needed, throughout the term of this Agreement.

#### **ARTICLE 36. EVALUATION OF CONSULTANT**

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

**ARTICLE 37. LIMITATION ON GOVERNMENTAL DECISIONS**

CONSULTANT shall not make, participate in making, or use its position to influence any governmental decisions as defined by the Political Reform Act, Government Code section 81000 et seq., and the implementing regulations in Title 2 of the California Code of Regulations section 18110 et seq. CONSULTANT's personnel performing services under this Agreement shall not authorize or direct any actions, votes, appoint any person, obligate, or commit AGENCY to any course of action or enter into any contractual agreement on behalf of AGENCY. In addition, CONSULTANT's personnel shall not provide information, an opinion, or a recommendation for the purpose of affecting a decision without significant intervening substantive review by AGENCY personnel, counsel, and management.

**ARTICLE 38. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

A. Definitions. As used in this Article:

1. "Backhaul" means intermediate links between the core network, or backbone network, and the smallsubnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

2. "Covered foreign country" means The People's Republic of China.

3. "Covered telecommunications equipment or services" means:

a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

b) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any



subsidiary or affiliate of such entities);

c) Telecommunications or video surveillance services provided by such entities or using such equipment; or

d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

4. "Critical technology" means:

a) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under 22 C.F.R. subchapter M of chapter I;

b) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under 15 C.F.R. subchapter C of chapter VII, and controlled

1. Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

2. For reasons relating to regional stability or surreptitious listening;

c) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 C.F.R. Part 810 (relating to assistance to foreign atomic energy activities);

d) Nuclear facilities, equipment, and material covered by 10 C.F.R. Part 110 (relating to export and import of nuclear equipment and material);

e) Select agents and toxins covered by 7 CFR Part 331, 9 C.F.R. Part 121, or 42 C.F.R. Part 73; or

f) Emerging and foundational technologies controlled pursuant to section 1758 of the ExportControl Reform Act of 2018 (50 U.S.C. §4817).

5. "Interconnection arrangements" means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

6. "Reasonable inquiry" means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

7. "Roaming" means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

8. "Substantial or essential component" means any component necessary for the proper function or performance of a piece of equipment, system, or service.

#### B. Prohibition

1. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of a federal executive agency, on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. CONSULTANT is prohibited from providing to AGENCY or the Federal Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (C) of this Article applies or the covered telecommunication equipment or services are covered by a waiver described in FAR §4.2104.

2. Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of a federal executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (C) of this Article applies or the covered telecommunication equipment or services are covered by a waiver described in FAR section 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a federally-funded contract.

C. Exceptions. This Article does not prohibit CONSULTANT from providing:

1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

D. Reporting Requirement

1. In the event CONSULTANT identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during Agreement performance, or CONSULTANT is notified of such by a subcontractor at any tier or by any other source, CONSULTANT shall report the information in paragraph (d)(2) of this Article to the Managing Director of AGENCY, or designee, unless elsewhere in this Agreement are established procedures for reporting the information; in the case of the Department of Defense, CONSULTANT shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, CONSULTANT shall report to the Managing Director of AGENCY, or designee, for the indefinite delivery contract and the Managing Director of AGENCY, or designee, for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

2. CONSULTANT shall report the following information pursuant to paragraph (D)(1) of this Article:

- a) Within one (1) business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- b) Within ten (10) business days of submitting the information in paragraph (D)(2)(i) of this Article: any further available information about mitigation actions undertaken or recommended. In addition, CONSULTANT shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

E. Subcontracts. CONSULTANT shall insert the substance of this Article, including this paragraph (E) and excluding paragraph (B)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

### **ARTICLE 39. SEISMIC SAFETY REQUIREMENTS**

CONSULTANT agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. CONSULTANT also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the

Seismic Safety Regulations and the certification of compliance issued on the project.

**ARTICLE 40. HEALTH AND SAFETY REQUIREMENT**

CONSULTANT shall comply with all the requirements set forth in Exhibit B, Level 2 Safety Specifications.

**ARTICLE 41. FORCE MAJEURE**

Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. L-3-0001 to be executed as of the date of the last signature below.

**CONSULTANT**

**LOS ANGELES-SAN DIEGO-SAN LUIS OBISPO RAIL  
CORRIDOR AGENCY**

By \_\_\_\_\_

By \_\_\_\_\_  
Jason Jewell  
Managing Director

APPROVED AS TO FORM:

By \_\_\_\_\_  
James M. Donich  
General Counsel

**EXHIBIT C: SAFETY SPECIFICATIONS**

## **LEVEL 2 STANDARD HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS**

### **PART I – GENERAL**

#### **1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS**

- A. The Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Authority health, safety and environmental compliance department (HSEC), requirements of this safety specification, project site requirements, and bus yard safety rules as well as all federal, state, and local regulations pertaining to scope of work or agreements with the Authority. Additionally, manufacturer requirements are considered incorporated by reference as applicable to this scope of work.
- B. Observance of repeated unsafe acts or conditions, serious violation of safety standards, non-conformance of Authority health, safety and environmental compliance department (HSEC) requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor or its subcontractors may be reason for termination of scope or agreements with the Authority, at the sole discretion of the Authority.

#### **C. INJURY AND ILLNESS PREVENTION PROGRAM**

The Contractor shall comply with CCR Title 8, Section with California Code of Regulations (CCR) Title 8, Section 3203. The intent and elements of the IIPP shall be implemented and enforced by the Contractor and its sub-tier contractors, suppliers, and vendors. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

#### **D. SUBSTANCE ABUSE PREVENTION PROGRAM**

Contractor shall comply with the Policy or Program of the Company's Substance Abuse Prevention Policy that complies with the most recent Drug Free Workplace Act. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

#### **E. HAZARD COMMUNICATION PROGRAM**

- 1. Contractor shall comply with CCR Title 8, Section 5194 Hazard Communication Standard. Prior to use on Authority property and/or project work areas Contractor shall provide the Authority Project Manager copies of SDS for all applicable products used, if any. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.
- 2. All chemicals including paint, solvents, detergents and similar substances shall comply with South Coast Air Quality Management District (SCAQMD) rules 103, 1113, and 1171.

**F. STORM WATER POLLUTION PREVENTION PLAN**

1. The Contractor shall protect property and water resources from fuels and similar products throughout the duration of the contract. Contractor shall comply with Storm Water Pollution Prevention Plan (SWPPP) requirements. The program or plan if required by scope shall be provided to the Authority's Project Manager, upon request, within 72 hours.

**G. DESIGNATED HEALTH, SAFETY, ENVIRONMENTAL (HSE) REPRESENTATIVE**

1. Upon contract award, the contractor within 10 business days shall designate a health and safety representative and provide a resume and qualifications to the Authority project manager, upon request, within 72 hours.
2. This person shall be a Competent or Qualified Individual as defined by the Occupational, Safety, and Health Administration (OSHA), familiar with applicable CCR Title 8 Standards, and has the authority to affect changes in work procedures that may have associated cost, schedule and budget impacts.
3. The Contractor's HSE Representative is subject to acceptance by the Authority Project Manager, and the HSEC Department. All contact information of the HSE Representative (name, phone, and fax and pager/cell phone number) shall be provided to the Authority Project Manager, upon request, within 72 hours.
4. The Contractor's HSE Representative shall hold a current certification from the Board of Certified Safety Professionals (BCSP) and have five years of demonstrated construction/scope experience enforcing HSE compliance on construction, industrial or similar project scopes. The designated HSE Representative shall participate in any required HSE related submittals. The Authority reserves the right to allow for an exception and to modify these minimum qualification requirements for unforeseen circumstances, at the sole discretion of the Authority Project Manager and HSEC Department Manager.
5. Competent Individual means an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees and/or property, and who has authorization to take prompt corrective measures to eliminate them.
6. Qualified Individual means an individual who by possession of a recognized degree, certificate, certification or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems relating to the subject matter, the work, or the Project.



#### **H. SCOPE PLANNING**

Prior to any scope work activity or task, the Contractor shall evaluate the hazards of the scope of work and the work environment to ensure proper control measures are identified for employee public and property protection measures to prevent incidents. This evaluation shall be implemented by developing a written site specific Job Hazard Analysis (JHA) or similar tool designed for planning the work to prevent incidents. The plan shall be provided to the Authority's Project Manager, upon request, within 72 hours.

#### **I. ORIENTATION**

1. The Contractor shall conduct and document a project site safety orientation for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to performing any work on Authority projects. The safety orientation at a minimum shall include, as applicable, Personal Protection Equipment (PPE) requirements, eye protection, ANSI class 2 or 3 reflective vests, designated smoking, eating, and parking areas, traffic speed limit and routing, cell phone policy, and barricade requirements. When required by scope, additional orientation shall include fall protection, energy isolation/lock-out/tag-out (LOTO), confined space, hot work permit, security requirements, and similar project safety requirements.
2. Copies of orientation documents shall be provided to the Authority Project Manager within 72 hours upon request.

#### **J. TRAFFIC & PARKING**

The Contractor shall ensure that all Contractor vehicles, including those of their subcontractors, suppliers, vendors and employees are parked in designated parking areas, personal vehicles shall be parked in the employee parking lot, work vehicles required in the maintenance area of a bus base shall be identified by company name and/or logo, covered by the company insurance, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots. Vehicles without appropriate company name and logo are considered personal vehicles and not allowed in the maintenance area of the bus base.

#### **K. GENERAL PROVISIONS**

1. The Contractor shall provide all necessary tools, equipment, and related safety protective devices to execute the scope of work in compliance with Authority's HSEC requirements, CCR Title 8 Standards, and recognized safe work practices.
2. The Contractor shall immediately notify the Authority's Project Manager whenever local, state or federal regulatory agency personnel are identified as being onsite.

3. The Authority HSEC requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be pre-planned and performed, and safe conditions shall be maintained during the course of this work scope.
4. The Contractor shall specifically acknowledge that it has primary responsibility to prevent and correct all health, safety and environmental hazards for which it and its employees, or its subcontractors (and their employees) are responsible. The Contractor shall further acknowledge their expertise in recognition and prevention of hazards in the operations for which they are responsible, that the Authority may not have such expertise, and is relying upon the Contractor for such expertise. The Authority retains the right to notify the Contractor of potential hazards and request the Contractor to evaluate and, as necessary, to eliminate those hazards.
5. The Contractor shall instruct all its employees, and all associated subcontractors under contract with the Contractor who work on Authority property in the recognition, identification, and avoidance of unsafe acts and/or conditions applicable to its work.
6. California Code of Regulations (CCR) Title 8 Standards are minimum requirements, and each Contractor is encouraged to exceed minimum requirements. When the Contractor safety requirements exceed statutory standards, the more stringent requirements shall be achieved for the safeguard of the public and workers.

## **1.2 ENVIRONMENTAL REQUIREMENTS**

- A. The Contractor shall comply with Federal, State, county, municipal, and other local laws and regulations pertaining to the environment, including noise, aesthetics, air quality, water quality, contaminated soils, hazardous waste, storm water, and resources of archaeological significance. Expense of compliance with these laws and regulations is considered included in the agreement. Contractor shall provide water used for dust control, or for pre-wetting areas to be paved, as required; no payment will be made by OCTA for this water.
- B. The Contractor shall prevent pollution of storm drains, rivers, streams, irrigation ditches, and reservoirs with sediment or other harmful materials. Fuels, oils, bitumen, calcium chloride, cement, or other contaminants that would contribute to water pollution shall not be dumped into or placed where they will leach into storm drains, rivers, streams, irrigation ditches, or reservoirs. If operating equipment in streambeds or in and around open waters, protect the quality of ground water, wetlands, and surface waters.
- C. The Contractor shall protect adjacent properties and water resources from erosion and sediment damage throughout the duration of the contract. Contractor shall comply with applicable NPDES permits and Storm Water Pollution Prevention Plan (SWPPP) requirements.

- D. Contractor shall comply with all applicable EPA, Cal EPA, Cal Recycle, DTSC, SCAQMD, local, state, county and city standards, rules and regulations for hazardous and special waste handling, recycling and/ disposal. At a minimum, Contractor shall ensure compliance where applicable with SCAQMD Rule 1166, CCR Title 8, Section 5192, 29 CFR Subpart 1910.120, 49 CFR Part 172, Subpart H, 40 CFR Subpart 265.16 and CCR Title 22 Section 6625.16. Contractor shall provide OCTA a schedule of all hazardous waste and special or industrial waste disposal dates in advance of transport date. Only authorized OCTA personnel shall sign manifests for OCTA generated wastes. Contractor shall ensure that only current registered transporters are used for disposal of hazardous waste and industrial wastes. The Contractor shall obtain approval from OCTA for the disposal site locations in advance of scheduled transport date.

### **1.3 INCIDENT NOTIFICATION AND INVESTIGATION**

- A. The Authority shall be promptly notified of any of the following types of incidents including but not limited to:
1. Damage incidents of property (incidents involving third party, contractor or Authority property damage);
  2. Reportable and/or Recordable injuries (as defined by the U. S. Occupational Safety and Health Administration), a minor injury, and near miss incidents;
  3. Incidents impacting the environment, i.e. spills or releases on Authority property.
- B. Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of the public that arise from the performance of Authority contract work. An immediate verbal notice followed by a written incident investigation report shall be submitted to Authority's Project Manager within 24 hours of the incident.
- C. A final written incident investigative report shall be submitted within seven (7) calendar days and include the following information. The Current Status of anyone injured, photos of the incident area, detailed description of what happened, Investigative photos of the existing conditions and area around the injury/incident scene, the contributing factors that lead to the incident occurrence, a copy of the company policy or procedure associated with the incident and evaluation of effectiveness, copy of task planning documentation, copy of the Physician's first report of injury, copy of Cal/OSHA 300 log of work related injuries and illnesses, the Cal/OSHA 301 Injury Illness Incident Report, and corrective actions initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report provided to OCTA.

- D. A Serious Injury, Serious Incident, OSHA Recordable Injury/Illness, or a Significant Near Miss shall require a formal incident review at the discretion of the Authority's Project Manager. The incident review shall be conducted within seven (7) calendar days of the incident. This review shall require a company senior executive, company program or project manager from the Contractors' organization to participate and present the incident review as determined by the OCTA Project Manager. The serious incident presentation shall include action taken for the welfare of the injured, a status report of the injured, causation factors that lead to the incident, a root cause analysis (using 5 whys and fishbone methods), and a detailed recovery plan that identifies corrective actions to prevent a similar incident, and actions to enhance safety awareness.
1. Serious Injury: includes an injury or illness to one or more employees, occurring in a place of employment or in connection with any employment, which requires inpatient hospitalization for a period in excess of twenty-four hours for other than medical observation, or in which an employee suffers the loss of any member of the body, or suffers any serious degree of physical disfigurement. A serious injury also includes a lost workday or reassignment or restricted injury case as determined by the Physician's first report of injury or Cal/OSHA definitions.
  2. Serious Incident: includes but not limited to property damage of \$500.00 or more, an incident requiring emergency services (local fire, paramedics and ambulance response), news media or OCTA media relations response, and/or incidents involving other agencies (Cal/OSHA, EPA, AQMD, DTSC, Metrolink, FTA, FRA etc.) notification or representation.
  3. OSHA Recordable Injury / Illness: includes and injury / illness resulting in medical treatment beyond First Aid, an injury / illness which requires restricted duty, or an injury / illness resulting in days away from work.
  4. Significant Near Miss Incident: includes incidents where no property was damaged and no personal injury sustained, but where, given a slight shift in time or position, damage and/or injury easily could have occurred.

#### 1.4 PERSONAL PROTECTIVE EQUIPMENT

Contractors, and all associated subcontractors, vendors and suppliers are required to provide their own personal protective equipment (PPE), including eye, head, foot, and hand protection, respirators, reflective safety vests, and all other PPE required to perform their work safely on Authority projects.

#### 1.5 LANGUAGE REQUIREMENTS

The Contractor for safety reasons shall ensure employees that do not read, or understand English, shall have a bilingual supervisor or foreman when on the Authority property or projects.

**1.6 WARNING SIGNS AND DEVICES**

The Contractor shall provide signs, signals, and/or warning devices to be visible when and where a hazard exists. Signs, signals, and/or warning devices shall be removed when the hazard no longer exists.

**1.7 REFERENCES**

- A. CCR Title 8 Standards (Cal/OSHA)
- B. FCR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. Construction Industry Institute (CII)
- E. Board of Certified Safety Professionals (BCSP)
- F. OCTA Yard Safety Rules

**END OF SECTION**

**EXHIBIT D: STATUS OF PAST AND PRESENT CONTRACTS FORM**

**STATUS OF PAST AND PRESENT CONTRACTS FORM**

On the form provided below, Offeror/Bidder shall list the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract.

A separate form must be completed for each contract. Offeror/Bidder shall provide an accurate contact name and telephone number for each contract and indicate the term of the contract and the original contract value. Offeror/Bidder shall also provide a brief summary and the current status of the litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations. If the contract was terminated, list the reason for termination.

Offeror/Bidder shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of the bid. Each form must be signed by an officer of the Offeror/Bidder confirming that the information provided is true and accurate.

<b>Project city/agency/other:</b>	
<b>Contact Name:</b>	<b>Phone:</b>
<b>Project Award Date:</b>	<b>Original Contract Value:</b>
<b>Term of Contract:</b>	
<b>(1) Litigation, claims, settlements, arbitrations, or investigations associated with contract:</b>	
<b>(2) Summary and Status of contract:</b>	
<b>(3) Summary and Status of action identified in (1):</b>	
<b>(4) Reason for termination, if applicable:</b>	

By signing this Form entitled "Status of Past and Present Contracts," I am affirming that all of the information provided is true and accurate.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EXHIBIT E: CAMPAIGN CONTRIBUTION DISCLOSURE FORM**



**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

**Information Sheet**

**LOS ANGELES-SAN DIEGO-SAN LUIS OBISPO RAIL CORRIDOR AGENCY**

The attached Campaign Contribution Disclosure Form must be completed by applicants for, or persons who are the subject of, any proceeding involving a license, permit, or other entitlement for use pending before the Board of Directors of LOSSAN or any of its affiliated agencies. (Please see next page for definitions of these terms.)

**IMPORTANT NOTICE**

**Basic Provisions of Government Code Section 84308**

- A. If you are an applicant for, or the subject of, any proceeding involving a license, permit, or other entitlement for use, you are prohibited from making a campaign contribution of more than \$250 to any board member or his or her alternate. This prohibition begins on the date your application is filed or the proceeding is otherwise initiated, and the prohibition ends three months after a final decision is rendered by the Board of Directors. In addition, no board member or alternate may solicit or accept a campaign contribution of more than \$250 from you during this period.
- B. These prohibitions also apply to your agents, and, if you are a closely held corporation, to your majority shareholder as well. These prohibitions also apply to your subcontractor(s), joint venturer(s), and partner(s) in this proceeding. Also included are parent companies and subsidiary companies directed and controlled by you, and political action committees directed and controlled by you.
- C. You must file the attached disclosure form and disclose whether you or your agent(s) have in the aggregate contributed more than \$250 to any board member or his or her alternate during the 12-month period preceding the filing of the application or the initiation of the proceeding.
- D. If you or your agent have in the aggregate contributed more than \$250 to any individual board member or his/or her alternate during the 12 months preceding the decision on the application or proceeding, that board member or alternate must disqualify himself or herself from the decision. However, disqualification is not required if the board member or alternate returns the campaign contribution within 30 days from the time the director knows, or should have known, about both the contribution and the fact that you are a party in the proceeding. The Campaign Contribution Disclosure Form should be completed and filed with your proposal, or with the first written document you file or submit after the proceeding commences.

1. A proceeding involving "a license, permit, or other entitlement for use" includes all business, professional, trade and land use licenses and permits, and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor or personal employment contracts), and all franchises.
2. Your "agent" is someone who represents you in connection with a proceeding involving a license, permit or other entitlement for use. If an individual acting as an agent is also acting in his or her capacity as an employee or member of a law, architectural, engineering, consulting firm, or similar business entity, both the business entity and the individual are "agents."
3. To determine whether a campaign contribution of more than \$250 has been made by you, campaign contributions made by you within the preceding 12 months must be aggregated with those made by your agent within the preceding 12 months or the period of the agency, whichever is shorter. Contributions made by your majority shareholder (if a closely held corporation), your subcontractor(s), your joint venturer(s), and your partner(s) in this proceeding must also be included as part of the aggregation. Campaign contributions made to different directors or their alternates are not aggregated.
4. A list of the members and alternates of the Board of Directors is attached.

This notice summarizes the major requirements of Government Code Section 84308 of the Political Reform Act and California Code of Regulations, Title 2 Sections 18438-18438.8.

LOS ANGELES-SAN DIEGO-SAN LUIS OBISPO RAIL CORRIDOR AGENCY  
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP Number: \_\_\_\_\_ RFP Title: \_\_\_\_\_

Was a campaign contribution made to any LOSSAN Board Member within the preceding 12 months, regardless of dollar amount of the contribution by either the proposing firm, proposed subconsultants and/or agent/lobbyist? Yes \_\_\_\_\_ No \_\_\_\_\_

**If no**, please sign and date below.

**If yes**, please provide the following information:

Prime Contractor Firm Name: \_\_\_\_\_

Contributor or Contributor Firm's Name: \_\_\_\_\_

Contributor or Contributor Firm's Address: \_\_\_\_\_

Is Contributor:

- |   |           |          |
|---|-----------|----------|
| <input type="radio"/> The Prime Contractor  | Yes _____ | No _____ |
| <input type="radio"/> Subconsultant   | Yes _____ | No _____ |
| <input type="radio"/> Agent/Lobbyist hired by Prime<br>to represent the Prime in this RFP | Yes _____ | No _____ |

Note: Under the State of California Government Code section 84308 and California Code of Regulations, Title 2, Section 18438, campaign contributions made by the Prime Contractor and the Prime Contractor's agent/lobbyist who is representing the Prime Contractor in this RFP must be aggregated together to determine the total campaign contribution made by the Prime Contractor.

Identify the Board Member(s) to whom you, your subconsultants, and/or agent/lobbyist made campaign contributions, the name of the contributor, the dates of contribution(s) in the preceding 12 months and dollar amount of the contribution. Each date must include the exact month, day, and year of the contribution.

Name of Board Member: \_\_\_\_\_

Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Name of Board Member: \_\_\_\_\_

Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

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

\_\_\_\_\_  
Signature of Contributor

\_\_\_\_\_  
Print Firm Name

\_\_\_\_\_  
Print Name of Contributor

**LOS ANGELES-SAN DIEGO-SAN LUIS OBISPO RAIL CORRIDOR AGENCY  
AND AFFILIATED AGENCIES**

**Board of Directors**

**Gregg Hart, Chairman**  
**Jewel Edson, Vice Chairman**  
**Fred Strong, Director**  
**Bryan MacDonald, Director**  
**Jess Talamantes, Director**  
**Al Murray, Director**  
**Joseph L. Muller, Director**  
**Dana Reed, Director**  
**Caylin Frank, Director**  
**Joe Mosca, Director**  
**Andy Pease, Director**  
**Jim White, Director**  
**David Perry, Director**  
**Mary Lou Echternach, Director**  
**Tim Shaw, Director**  
**Michael Hennessey, Director**  
**Raymond Gregory, Director**  
**Bill Sandke, Director**  
**Kellie Hinze, Director**

**EXHIBIT F: CERTIFICATION OF INDIRECT COSTS AND FINANCIAL  
MANAGEMENT SYSTEM**



# Inspector General

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## California Department of Transportation

### Certification of Indirect Costs and Financial Management System

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

Consultant's Full Legal Name: \_\_\_\_\_

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

#### Indirect Cost Rate (ICR):

Combined Rate: \_\_\_\_\_ Or

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

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

**Fiscal Period:\*** \_\_\_\_\_

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

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

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

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

#### Financial Management System:

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

Our financial management system has the following attributes:

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

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

### Cost Reimbursements on Contracts:

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

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

### All A&E Contract Information:

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

Cognizant ICR Audit

Local Govt ICR Audit

Caltrans ICR Audit

CPA ICR Audit

Federal Govt ICR Audit

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

Name:\*\* \_\_\_\_\_

Title:\*\*: \_\_\_\_\_

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

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

Phone:\*\*: \_\_\_\_\_

Email:\*\*: \_\_\_\_\_

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

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

**EXHIBIT G: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS**



**PROPOSAL EXCEPTIONS AND/OR DEVIATIONS**

The following form shall be completed for each technical and/or contractual exception or deviation that is submitted by Offeror for review and consideration by Authority. The exception and/or deviation must be clearly stated along with the rationale for requesting the exception and/or deviation. If no technical or contractual exceptions or deviations are submitted as part of the original proposal, Offerors are deemed to have accepted Authority’s technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit A) and Proposed Agreement (Exhibit C). Offerors will not be allowed to submit this form or any contractual exceptions and/or deviation after the proposal submittal date identified in the RFP. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed by Authority.

Offeror:\_\_\_\_\_

RFP No.:\_\_\_\_\_ RFP Title: \_\_\_\_\_

Deviation or Exception No. : \_\_\_\_\_

Check one:

- Scope of Work (Technical) \_\_\_\_\_
- Proposed Agreement (Contractual) \_\_\_\_\_

Reference Section/Exhibit: \_\_\_\_\_ Page/Article No. \_\_\_\_\_

Complete Description of Deviation or Exception:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Rationale for Requesting Deviation or Exception:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Area Below Reserved for Authority Use Only:

\_\_\_\_\_

\_\_\_\_\_