REQUEST FOR PROPOSALS

THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY (TAMC) INVITES CONSULTANTS TO SUBMIT THEIR PROPOSALS FOR THE:

PAVEMENT MANAGEMENT PROGRAM CONSULTANT SERVICES

You are invited to submit your proposal for the services to complete the above project. Proposals are due in the office of the Executive Director of the Transportation Agency for Monterey County, 55 B Plaza Circle, Salinas, CA 93901-2901 by 12:00 noon PST on Thursday, October 26, 2017.

Copies of the RFP and the detailed information regarding the submission of the proposal are available at the TAMC offices and may be obtained upon request. This RFP is available at the TAMC website (www.tamcmonterey.org) in Adobe Acrobat (PDF) format. You may email Hank Myers, Senior Transportation Planning Engineer, at hank@tamcmonterey.org to obtain a copy and for further information.
DATE: September 28, 2017

TO: Interested Consultants

FROM: Debra L. Hale, Executive Director

SUBJECT: Pavement Management Program

INVITATION

You are invited to submit a Proposal for the referenced services together with a Fee Schedule that includes an estimate of costs per task to complete the project. Please include your estimate of other direct costs charged to this project. Please submit five (5) paper copies and one (1) digital copy of your Proposal.

Your Proposal and sealed project cost information are due in the office of the Transportation Agency for Monterey County (TAMC), 55 B Plaza Circle, Salinas, CA, 93901, by 12:00 noon PST on Thursday, October 26, 2017. Proposals received after the date and time specified above will not be considered.

Proposals shall be considered firm offers to enter into a contract, as described in this RFP for a period of ninety (90) days from the time of submittal.

Proposals and inquiries relating to this Request for Proposals shall be submitted to:

Hank Myers, Senior Transportation Planning Engineer
Transportation Agency for Monterey County
55 B Plaza Circle, Salinas, CA 93901-2901
hank@tamcmonterey.org

Email inquiries relating to this Request for Proposals should include “Pavement Management Program” in the subject header.
BACKGROUND

The Transportation Agency for Monterey County (TAMC) is a state-designated public agency with regional transportation planning responsibilities that cross city-county boundaries. The Transportation Agency is committed to planning, funding and delivering transportation projects for the region. The Agency is also committed to providing information to the public about its projects, plans and activities, ensuring public participation and fostering public understanding of its functions.

TAMC’s Board of Directors includes twenty-three members who consist of local officials from each of its twelve incorporated cities and five county supervisorial districts, and ex-officio members from six public agencies.

The mission of the Transportation Agency for Monterey County is to proactively fund and plan a transportation system that enhances mobility, safety, access, environmental quality and economic activities by investing in regional transportation projects for Monterey County residents, businesses and visitors.

There are thirteen local agencies and approximately 1780 centerline miles of roads within the Monterey county region. The average pavement condition index (PCI) for the county was reported as 50 in the 2016 Statewide Needs Assessment, one of the lowest in the state. Due to budget constraints, the amount of pavement maintenance and repair has been limited by the lack of available funds.

The use of pavement management tools and procedures varies among the local agencies. Some agencies use software and some do in-house assessments of pavement conditions, while many do not use a pavement software, maintain a data base or do regular updates of the roadway pavement conditions. So most of the local agencies not only lack the funds to maintain their roads, but also lack the necessary tools to manage their roadways.

In 2017 TAMC successfully passed Measure X, a 3/8 cent sales tax for transportation purposes. Measure X allocates 60% of the funds received to local road maintenance, pothole repairs & safety. These funds will be distributed to each local agency in compliance with an approved ordinance. It requires each jurisdiction to develop, or participate in the development of by TAMC, a Pavement Management Program, and to submit regular reports on the conditions of their streets, to insure timely repairs and keep the public informed. TAMC will be procuring and overseeing the development of the Pavement Management Program for the region. The Pavement Management Program will provide each agency a management tool to inventory street pavements, assess pavement conditions, record historical maintenance, forecast budget needs, and view impacts of funding on agency pavement condition over time. It will allow each agency to obtain the best value for their limited funds.

TAMC contacted the thirteen local agencies in the region to discuss options for implementing a Pavement Management Program to satisfy the requirements of Measure X. One option discussed was for each agency to independently develop their own pavement management system. The other option discussed was for a coordinated effort for the procurement of pavement
management services. Nine of the thirteen agencies expressed intent to participate in a joint procurement of services. The remaining four agencies either already had a pavement management program or will independently develop one on their own. Based on that information TAMC is moving forward with the procurement of pavement management services for the nine participating agencies.

TAMC will be the responsible agency contracting and administering the project work with the consultant. TAMC will also collaborate closely with and provide assistance with member agency staff to ensure success of the implementation of the Pavement Management Program. The project will be funded by each agency’s proportionate share of Measure X revenues or their own agency funds.

Although the Measure X ordinance does not specify the type of software to be utilized, TAMC has selected the Metropolitan Transportation Agency (MTC) StreetSaver software for this procurement. This software is currently used by several of the local agencies and would allow for compatibility with other agencies within the Monterey region. It is used almost exclusively in the Bay Area and where MTC provides local training support and workshops. The software also includes analysis of the pavement distress types listed in the Measure X ordinance.

TAMC wishes to assist in developing a first year Pavement Management Program for the agencies within the region, and in subsequent years may assist the agencies in the resurveying the conditions of the roadway network and updating the system on a regular basis.

**PROJECT DESCRIPTION**

TAMC is requesting proposals from qualified and interested consultant firms for professional services to implement Pavement Management Programs for the nine local agencies in Monterey county participating in the procurement of services. There is a total of 1376 centerline miles in the nine agencies included in this project. A breakdown of the centerline miles for each of agency is listed in the scope of work (Attachment A). TAMC will be the responsible agency in contracting and administering the project work.

The overall goal of this program is to provide each agency the tools and training to develop and maintain their Pavement Management Program for future years, and to report the results in compliance with Measure X.

The development of the Pavement Management Program will be implemented in two phases. The first phase will include acquiring the pavement management software and getting the necessary database setup for each participating agency. The second phase would include acquiring the additional consultant services to assist each participating agency in the further implementation of the Pavement Management Program as outlined in the scope of work included in this RFP.

Through a separate procurement with MTC, the Agency will acquire the latest MTC StreetSaver software, training and software support services for each agency; and have MTC provide the services for the set up and conversion of a database for each agency, including maintenance and
repair history, and including the GIS integration and linkage for the software. It is expected that the first phase work will be completed in approximately 2 to 3 months and prior to authorization of the start of second phase.

In the second phase the consultant shall provide the additional services to assist each participating agency in the further implementation of the Pavement Management Program as outlined in the scope of work included in this RFP. In this phase the consultant shall provide current pavement condition surveys for the roads within each agency jurisdiction; recommend appropriate treatment strategies; provide budget analysis and future year funding scenarios; provide personnel training; and provide final reports for each agency. The consultant shall also provide each agency a breakdown of costs for items provided by the consultant. Once cost proposals are received from the consultant, each agency will have the opportunity opt in or out of their portion of the proposed program in accordance with their cost sharing agreement with the TAMC.

A final Scope of Work (attachment A) will be made a part of the professional services agreement between TAMC and the consultant. A copy of the template agreement anticipated to be used by TAMC is included in Attachment B. A sample cost proposal is included in Attachment C. A single document will be prepared between the Consultant and TAMC consistent with the provisions of these attachments.

It is important that the consultant have the capability to work closely with the Transportation Agency staff. The consultant or consultant team must be prepared to undertake whatever liaison and meetings are required to satisfy this requirement.

**SELECTION PROCESS**

The Transportation Agency will establish a committee to review the proposals. This review may be followed by an oral interview between a review committee and the firm(s) that responds best to the RFP. Based on the recommendations of the review committee, Transportation Agency staff will meet with the most qualified consultant or consultant team and will attempt to negotiate a final Scope of Work and a Fee Schedule for the project. The final Scopes of Work will include a full description of each task, a description of deliverable products, and a schedule of the due dates for the deliverable products and other important milestones. Upon successful completion of negotiations, the consultants or consultant teams will be recommended to the TAMC Board for final selection and contract approval.

Should the most qualified consultant or consultant team and TAMC fail to successfully negotiate a final scope of work and a mutually agreed upon Fee Schedule for these consulting services, then TAMC reserves the right to enter negotiations with the next most qualified candidate for performance of the work.

Further, the Agency may, or may not, also negotiate contract terms with selected proposers prior to award, and expressly reserves the right to negotiate with several proposers simultaneously and, thereafter, to award a contract to the proposer offering the most favorable terms to the
Agency. Proposals submitted, therefore, should contain the proposers’ most favorable terms and conditions, because the selection and award may be made without further discussion with any proposer. The Agency will submit the proposal considered to be the most responsive and competitive to the Board of Directors for consideration and selection. The Agency reserves the right to accept or reject any and all submitted proposals, to waive minor irregularities, and to request additional information or revisions to offers, and to negotiate with any or all proposers at any stage of the evaluation.

The evaluations will be based upon the following criteria:

1) Responsiveness of proposal to the requirements of the RFP  
   10 points

2) Qualifications of the firm and proposed project staffing  
   20 points

3) Understanding of the project and deliverables  
   20 points

4) Project Approach, Work Plan, and Schedule  
   20 points

5) Demonstrated Knowledge with similar projects, specifically with development of Pavement Management Programs and experience with StreetSaver software  
   20 points

6) Experience working with multiple local agencies in development of individual Pavement Management Programs within a region.  
   10 points

Total of 100 possible points

QUESTION & ANSWERS, REQUESTS FOR CLARIFICATION OR EXCEPTIONS, ADDENDA

This Request for Proposals and any addenda will be posted on the Transportation Agency’s website (www.tamcmonterey.org). Questions and answers regarding the request for proposals will also be posted on the website. All potential bidders are responsible for checking the website for any addenda to the bid documents. To receive email notifications of addendums to this Request for Proposals, prospective proposers must submit an email request to the Project Manager.

Any requests for clarification or exceptions to requirements in this Request for Proposals must be received by the Agency no later than 12 noon, Pacific Standard Time, on Thursday, October 12, 2017, to guarantee response or consideration. Responses to questions concerning this Request for Proposals posed before this deadline will be posted on the Agency’s website (www.tamcmonterey.org).
SUBMITTAL REQUIREMENTS/PROPOSAL FORMAT

All interested firms are required to submit five (5) hard copies and one (1) digital copy of their Proposal to perform the requested consulting services. The Proposal must include the names and qualifications of all personnel to be employed on the project. The Proposal should provide a short description of the firm’s experience with projects that relate to this Scope of Work. A list of relevant past clients should be included.

The following information must be included in the proposal in the order listed:

A. Cover Letter
The Proposal shall include a cover letter signed by an official authorized to solicit business and enter into contracts for the firm. The letter should refer to this RFP by title and date, and should include the name, telephone number, and email of the contact person for this project, and a statement that the proposal is a firm offer to enter into a contract with TAMC according to the terms of this Request for Proposals for ninety (90) days following its submission.

B. Qualifications of Project Team and Staffing
The Proposal shall clearly identify a Project Manager and include the names and qualifications of all personnel of the proposed team to be assigned to the contract and a chart representing the proposed organizational structure of the team. The Proposal shall also include any subcontractors expected to work on the project, the scope of the work to be done by the subcontractor, and any pavement management certifications. The cost of subcontractor work shall be itemized in the cost proposal and subcontractor markups are not allowed on this project.

C. Understanding of the Project
The Proposal shall include the consultant’s understanding of the project tasks to develop Pavement Management Programs for the agencies participating in this joint procurement of services, and the deliverables outlined in the scope of work.

D. Project Approach and Work plan
The Proposal shall include the consultant’s proposed approach to the development and implementation of the scope of work, broken out by tasks which demonstrate the consultant’s knowledge and understanding of the project and the constraints and challenges associated with performing the tasks outlined in the scope of work. The consultant shall identify the method to be utilized for the pavement condition surveys (automated or manual data collection).

G. Schedule of Work and Milestones
The Proposal shall include a detailed project schedule, identifying major project milestones and including key dates. The recommended time frame for completion of pavement condition surveys and related pavement management services is 8 to 10 months from notice to proceed to final reports and project completion.
E. Demonstrated Knowledge and Experience
The Proposal shall include the assigned project team’s demonstrated knowledge of, expertise and experience with providing similar pavement management program services and completing similar types of contracts. Include projects that involved work similar to that described in Attachment A, Scope of Work, and with experience with MTC StreetSaver software.

F. Experience Working with Multiple Local Agencies
The Proposal shall include the consultant’s experience in providing pavement condition surveys and related technical pavement management services, training and coordination for multiple local agencies, in the development of individual Pavement Management Programs within a region.

H. References
The Proposal shall include references and descriptions of the work performed on relevant, recent projects (within last five years) by the lead staff person and technical staff proposed for this project. Include projects that involved work similar to that described in Attachment A, Scope of Work, and include other regions where pavement condition surveys were provided and where Pavement Management Programs were developed.

Cost Proposal
A cost proposal must be submitted in a separate, sealed envelope, clearly marked “Pavement Management Program Cost Proposal.” The sealed cost proposal of the highest ranked firm will be opened after all proposals have been reviewed and ranked. The cost proposal shall include a total cost and a breakdown of costs for each agency as described in the scope of work. After reviewing the proposed costs, each agency will be provided an opportunity to continue participation in the joint procurement of services. The final scope of work will be revised to include only those tasks for the agencies that opt to proceed with the joint procurement of services.

All Proposals must be submitted to the office of Hank Myers, Senior Transportation Planning Engineer, Transportation Agency for Monterey County, 55 B Plaza Circle, Salinas, CA 93901-2901 by 12:00 noon on Thursday, October 26, 2017.
PROPOSED SCHEDULE

<table>
<thead>
<tr>
<th>Date/ Timeframe</th>
<th>Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 28, 2017</td>
<td>Distribute RFP</td>
</tr>
<tr>
<td>October 12, 2017</td>
<td>Deadline for requests for clarification or exceptions</td>
</tr>
<tr>
<td>October 26, 2017</td>
<td>Proposals due</td>
</tr>
<tr>
<td>October 26 – November 2, 2017</td>
<td>Review and rank proposals</td>
</tr>
<tr>
<td>November 6 – 9, 2017</td>
<td>Interviews (if necessary)</td>
</tr>
<tr>
<td>November 15, 2017</td>
<td>Select top ranked consultant, negotiate contract</td>
</tr>
<tr>
<td>December 6, 2017</td>
<td>Present consultant contract to TAMC Board for approval</td>
</tr>
</tbody>
</table>

MISCELLANEOUS

A. Modification or Withdrawal of Submittals
   Any Proposals received prior to the date and time specified above for receipt may be withdrawn or modified by written request of the proposer. To be considered, however, the modified Proposal must be received by the time and date specified above.

B. Property Rights
   Any Proposals received within the prescribed deadline become the property of TAMC and all rights to the contents therein become those of TAMC.

C. Confidentiality
   Before award of the contract, all Proposals will be designated confidential to the extent permitted by the California Public Records Act. After award of the contract (or if not awarded, after rejection of all Proposal), all responses will be regarded as public records and will be subjected to review by the public. Any language purporting to render all or portions of the Proposal confidential will be regarded as non-effective and will be disregarded.

D. Amendments to Request for Qualifications
   TAMC reserves the right to amend the Request for Proposals by addendum before the final Proposal submittal date.

E. Non-Commitment of TAMC
   This Request for Proposals does not commit TAMC to award a contract, to pay any costs incurred in the preparation of a Proposal for this request, or to procure or contract for services.

   All products used or developed in the execution of any contract resulting from this Request for Proposals will remain in the public domain at the completion of the contract.

F. Conflict of Interest
   The prospective consultant shall disclose any financial, business or other relationship with TAMC that may have an impact upon the outcome of this contract or TAMC construction project. The prospective consultant shall also list current clients who may
have a financial interest in the outcome of this contract or TAMC projects that will follow. In particular, the prospective consultant shall disclose any financial interest or relationship with any construction company that might submit a bid on TAMC projects.

G. Nondiscrimination
The prospective consultant must certify compliance with nondiscrimination requirements of TAMC pertaining to the development, implementation and maintenance of a nondiscrimination program. The prospective consultant's signature affixed to and dated on the cover letters shall constitute a certification under penalty of perjury under the laws of the State of California that the proposer has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

H. Final Selection and Protests
The RFP process is considered concluded when a letter is sent to all participating consultants indicating which consultant will be recommended for Board approval. The firm recommended is not a final selection and no contract is certain until approved by TAMC Board of Directors.

Protestants shall submit a detailed written statement of protest to:

Transportation Agency for Monterey County
55-B Plaza Circle
Salinas, CA 93901

no later than five (5) days prior to the Board meeting to enable proper consideration by the Board.

QUESTIONS

If you need assistance or have any questions, please email Hank Myers, Senior Transportation Planning Engineer, at hank@tamcmonterey.org.

Attachments:
A. Scope of Work
B. Sample TAMC Standard Agreement for Professional Services
C. Sample of Cost Proposal
ATTACHMENT A
SCOPE OF WORK

PROJECT DESCRIPTION

TAMC is requesting proposals from qualified and interested consultant firms for professional services to implement Pavement Management Programs for the nine local agencies in Monterey county participating in the procurement of services. There is a total of 1376 centerline miles in the nine agencies included in this project. A breakdown of the centerline miles for each of agency is listed below. TAMC will be the responsible agency in contracting and administering the project work.

The overall goal of this program is to provide each agency the tools and training to develop and maintain their Pavement Management Program for future years, and to report the results in compliance with Measure X.

The development of the Pavement Management Program will be implemented in two phases. The first phase will include acquiring the pavement management software and getting the necessary database setup for each participating agency. The second phase would include acquiring the additional consultant services to assist each participating agency in the further implementation of the Pavement Management Program as outlined in the scope of work included in this RFP.

Through a separate procurement with MTC, the Agency will acquire the latest MTC StreetSaver software, training and software support services for each agency; and have MTC provide the services for the set up and conversion of a database for each agency, including maintenance and repair history, and including the GIS integration and linkage for the software. It is expected that the first phase work will be completed in approximately 2 to 3 months and prior to authorization of the start of second phase.

In the second phase the consultant shall provide the additional services to assist each participating agency in the further implementation of the Pavement Management Program as outlined in the scope of work included in this RFP. In this phase the consultant shall provide current pavement condition surveys for the roads within each agency jurisdiction; recommend appropriate treatment strategies; provide budget analysis and future year funding scenarios; provide personnel training; and provide final reports for each agency. The consultant shall also provide each agency a breakdown of costs for items provided by the consultant. Once cost proposals are received from the consultant, each agency will have the opportunity opt in or out of their portion of the proposed program in accordance with their cost sharing agreement with the TAMC.

A final Scope of Work will be made a part of the professional services agreement between TAMC and the consultant. A copy of the template agreement anticipated to be used by TAMC is included in Attachment B. A sample cost proposal is included in Attachment C. A single document will be prepared between the Consultant and TAMC consistent with the provisions of these attachments.
It is important that the consultant have the capability to work closely with the Transportation Agency staff. The consultant or consultant team must be prepared to undertake whatever liaison and meetings are required to satisfy this requirement.

**TASK A - Kickoff Meeting**

The consultant shall conduct a kick-off meeting with the 9 agencies (8 cities and 1 county) participating in the Pavement Management Program (PMP) being implemented by the Transportation Agency for Monterey County (TAMC). In addition to the kick-off meeting, other meetings may be held throughout the course of the project as needed. The consultant will provide a progress schedule with milestone activities.

The participating agencies include:

- Carmel by the Sea
- Del Rey Oaks
- Greenfield
- King City
- Marina
- Pacific Grove
- Sand City
- Seaside
- County of Monterey

**Deliverables:**

Progress Schedule, Meeting Minutes

**TASK B - Pavement Condition Surveys**

The consultant shall conduct field surveys on all paved streets and roads within the city and county networks for all 9 agencies (8 cities and 1 county). This will include the paved roads within the County of Monterey road system, and within the cities of Carmel by the Sea, Del Rey Oaks, Greenfield, King City, Marina, Pacific Grove, Sand City, and Seaside, totaling approximately 1376 centerline miles.

<table>
<thead>
<tr>
<th>PARTICIPATING AGENCIES</th>
<th>CENTERLINE MILES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carmel by the Sea</td>
<td>27</td>
</tr>
<tr>
<td>Del Rey Oaks</td>
<td>10</td>
</tr>
<tr>
<td>Greenfield</td>
<td>23</td>
</tr>
<tr>
<td>King City</td>
<td>28</td>
</tr>
<tr>
<td>Marina</td>
<td>78</td>
</tr>
<tr>
<td>Pacific Grove</td>
<td>56</td>
</tr>
<tr>
<td>Sand City</td>
<td>5</td>
</tr>
<tr>
<td>Seaside</td>
<td>68</td>
</tr>
<tr>
<td>Monterey County</td>
<td>1080</td>
</tr>
<tr>
<td><strong>Total Miles</strong></td>
<td><strong>1376</strong></td>
</tr>
</tbody>
</table>
Condition surveys shall be performed to identify pavement distress in accordance with the latest MTC Pavement Distress Identification Manuals (AC 4th Edition, PCC 3rd Edition, March 2016). The survey information to be collected and/or verified shall at a minimum include: Street geometric (length, width, section area), functional class, surface type, surface condition, surface distress, and pavement condition index (PCI). Eight pavement distresses of flexible pavement to be inspected will include but are not limited to: alligator cracking, block cracking, distortions, longitudinal and transverse cracking, patching and utility cuts, rutting and depressions, weathering, and raveling. Rigid pavements will include seven distresses: corner break, divided (shattered) slab, faulting, linear cracking, patching and utility cuts, scaling/map cracking/crazing, and spalling.

Upon completion of field surveys, consultant shall verify and update all agency’s database. The consultant shall confirm with MTC that the roadway data is compatible with the StreetSaver database before it is uploaded into the database.

**Deliverables:**
Inventory and condition information for each paved road and street with breakdown by agency. The consultant shall provide a list with a breakdown of costs by agency.

**TASK C - Update Maintenance and Rehabilitation Strategies**
The consultant shall review maintenance and rehabilitation strategies with local representatives. This shall include the recommendation and selection of appropriate treatments such as slurry seals, chip seals, overlays, reconstructions, and the determination of treatment unit costs.

**Deliverables:**
Maintenance and rehabilitation decision trees for each agency. The consultant shall provide a list of all costs associated with this deliverable, including a breakdown of such costs by each agency.

**TASK D – Budget Analysis and Funding Scenarios**
The consultant shall an initial prepare budget needs and funding scenario reports for each agency (8 cities and 1 county).

**Deliverables:**
A minimum of five initial budget scenarios shall be prepared for each agency. The consultant shall provide a list of all costs associated with this deliverable, with a breakdown of such costs by agency. This shall include the following scenarios:

- Budget Needs Assessment
- Utilize Existing Budget
- Maintain Current Pavement Condition Index (PCI)
- Improve Network PCI (by 5 pts)
- Improve Network to Regional Target PCI
**TASK D – Training**
The consultant shall provide one full day (8 hours) of hands on computer training. The training will be hosted at the TAMC facility. Each agency will provide their own laptop computers and internet access (Wi-Fi) will be provided. The training shall include all aspects of the StreetSaver Program, including data entry and editing, performing PCI calculations and budget analysis, generating reports, and use of the GIS toolbox.

**Deliverables:**
On-site training and training manuals. The consultant should provide a list of all costs associated with this deliverable, including a breakdown of such costs per specific agency.

**TASK I - Final Reports/Council Presentations (Optional)**
Upon completion of the project, the consultant shall prepare a final project report for each agency (8 cities and 1 county), for a total of nine (9) reports. The consultant shall also prepare a PowerPoint presentation for each final report, after the final reports are completed. The presentation shall be tailored to City Council/County Board/management staff. The presentation shall provide a summary of the pavement network and shall include budgets and planning recommendations. The participating agencies and TAMC will review and provide input on the final presentations.

The consultant shall provide a list of all costs associated with this deliverable, with a breakdown of such costs by agency. *Note: The additional cost of consultant attendance at a Council/Board presentation shall also be provided for each agency.*

*This task is optional under the proposal. TAMC will determine if this work will be included during contract negotiations.*

**Deliverables:**
A total of five copies of each agency report shall be provided by the consultant and distributed as follows: 4 copies to the agency, 1 copy to TAMC. In addition, a digital copy of the reports and presentations shall be provided to each agency and to TAMC.

**TASK J- Breakdown of Costs by Agency**
The consultant shall provide each agency a breakdown of costs for items provided by the consultant. Once cost proposals are received from the consultant, each agency will have the opportunity opt in or out of their portion of the proposed program in accordance with their cost sharing agreement with the TAMC. The consultant shall prepare a spreadsheet with an individual breakdown of costs for each agency included in this joint procurement of PMP services. The breakdown of costs shall include all of the above listed tasks (Tasks A- I). After reviewing the cost information, each agency will be provided the opportunity to continue participation in the joint procurement of PMP services. Upon receipt of the cost information each agency wishing to proceed will execute an agreement authorizing TAMC to procure the PMP services on their behalf. The final consultant scope of work will be revised accordingly to include only those agencies that have executed authorizing agreements with TAMC. The costs provided for each agency shall be considered as fixed prices and no increases shall be allowed for any reduction in the final scope of services based the number of participating agencies.
ATTACHMENT B
Sample TAMC Standard Agreement for Professional Services

TRANSPORTATION AGENCY FOR MONTEREY COUNTY
AND (Consultant’s NAME)
AGREEMENT FOR PROFESSIONAL SERVICES
APPROVED BY THE TAMC BOARD ON: _________
[Actual Cost Plus Fixed-Fee]

This is an agreement between the Transportation Agency for Monterey County, hereinafter called “TAMC,” and [consultant’s name], a [indicate legal status of entity, e.g., a California corporation, an individual dba …, a California partnership, etc.], [consultant’s address], hereinafter called “Consultant.”

The parties agree as follows:

1. Employment of Consultant. TAMC hereby engages Consultant and Consultant hereby agrees to perform the services set forth in Exhibit A, in conformity with the terms of this Agreement. Consultant will complete all work in accordance with the work schedule set forth in Exhibit A.

   (a) The work is generally described as follows:

   PROJECT NAME. The work to be performed under this Agreement is described in Exhibit A: Statement of Work and Schedule.

   (b) Consultant represents that Consultant and its agents, subcontractors and employees performing work hereunder are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required by this Agreement.

   (c) Consultant, its agents, subcontractors, and employees, shall perform all work in a safe, skillful, and professional manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements. Consultant shall ensure for itself and for any subcontractors under this Agreement that the applicable requirements of Labor Code section 1725.5, concerning the registration of contractors for public works, shall be in force and maintained for the term of this Agreement.

   (d) Consultant shall furnish, at its own expense, all materials and equipment necessary to carry out the terms of this Agreement, except as otherwise provided herein. Consultant shall not use TAMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations hereunder.
(e) Consultant’s project manager shall be the person specified in Exhibit A. If Consultant desires to change the project manager, Consultant shall get written approval from TAMC of the new project manager.

(f) Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Administrator to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

(g) Consultant’s Project Manager shall meet with TAMC’s Contract Administrator, as needed, to discuss progress on the contract.

2. Term of Agreement. This Agreement shall go into effect on (DATE), contingent upon approval by TAMC, and Consultant shall commence work after notification to proceed by TAMC’s Contract Administrator. The Agreement shall end on (DATE), unless extended by contract amendment or terminated early, as provided herein. Consultant is advised that any recommendation for contract award is not binding on TAMC until the Agreement is fully executed and approved by TAMC.

3. Method of Payment. The method of payment for this Agreement will be based on actual cost plus a fixed fee.

A. TAMC will reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Consultant in performance of the work. Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant’s Cost Proposal, unless additional reimbursement is provided for by Agreement amendment. In no event, will Consultant be reimbursed for overhead costs at a rate that exceeds TAMC’s approved overhead rate set forth in the Cost Proposal. In the event, that TAMC determines that a change to the work from that specified in the Cost Proposal and Agreement is required, the Agreement time or actual costs reimbursable by TAMC shall be adjusted by Agreement amendment to accommodate the changed work. The maximum total cost as specified in Paragraph “H” shall not be exceeded, unless authorized by Agreement amendment.

B. In addition to the allowable incurred costs, TAMC will pay Consultant a fixed fee of $\text{AMOUNT}. The fixed fee is nonadjustable for the term of the Agreement, except in the event of a significant change in the scope of work and such adjustment is made by Agreement amendment.

C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
D. When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of Consultant’s fixed fee will be included in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, TAMC shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Article VI Termination.

F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.

G. Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by TAMC’s Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due TAMC including any equipment purchased under the provisions of Paragraph 25 (Equipment Purchase) of this Agreement. The final invoice should be submitted within 60 calendar days after completion of Consultant’s work. Invoices shall be mailed to TAMC’s Contract Administrator at the address contained in Paragraph 34 (Notices).

H. The total amount payable by TAMC including the fixed fee shall not exceed $(Amount).

I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by TAMC’s Contract Administrator.

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

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

4. Retention of Funds.

A. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

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

5. Cost Principles and Administrative Requirements.

A. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

B. Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to TANC.

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

6. Indemnification. To the fullest extent permitted by law, including California Civil Code sections 2782 and 2782.6 Consultant shall defend (with legal counsel reasonably acceptable to TANC), indemnify and hold harmless TANC, its officers, agents, and employees, from and against any and all claims, losses, costs, damages, injuries (including injury to or death of an employee of Consultant or its subcontractors), expenses and liabilities of every kind, nature and description (including incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively “Liabilities”). Such obligations to defend, hold harmless and indemnify TANC, its officers, agents, and employees, shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of TANC, its officers, agents, and employees. To the extent there is an obligation to indemnify under this Paragraph, Consultant shall be responsible for incidental and consequential damages resulting directly or indirectly, in whole or in part, from Consultant’s negligence, recklessness, or willful misconduct. Notwithstanding any other provision of this Agreement, Consultant’s obligation to defend, indemnify and hold harmless TANC shall survive the termination or expiration of the Agreement for a term to include the applicable statute of limitations related to the Consultant’s performance pursuant to the Agreement.
7. **Insurance.**

(a) Without limiting Consultant’s duty to indemnify as set forth in this Agreement, Consultant shall maintain, at no additional cost to TAMC, throughout the term of this Agreement a policy or policies of insurance with the following coverage and minimum limits of liability (check if applicable):

- Commercial general liability insurance, including but not limited to premises, personal injury, products, and completed operations, with a combined single limit of One Million Dollars ($1,000,000) per occurrence.

- Professional liability insurance in the amount of not less than One Million Dollars ($1,000,000) per claim and Three Million Dollars ($3,000,000) in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims made” basis rather than an “occurrence” basis, Consultant shall, upon the expiration or termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three years following the surviving term of Consultant’s obligation to defend, indemnify and hold harmless TAMC as set for in Paragraph 6.

- Comprehensive automobile insurance covering all motor vehicles, including owned, leased, hired and non-owned vehicles used in providing services under this Agreement, with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence.

(b) All insurance required under this Agreement shall be with a company acceptable to TAMC and authorized by law to transact insurance business in the State of California. Unless otherwise provided in this Agreement, all such insurance shall be written on an occurrence basis; or, if any policy cannot be written on an occurrence basis, such policy shall continue in effect for a period of two years following the date of Consultant’s completion of performance hereunder.

(c) Each policy of insurance required under this Agreement shall provide that TAMC shall be given written notice at least thirty days in advance of any change, cancellation or non-renewal thereof. Each policy shall provide identical coverage for each subcontractor performing work under this Agreement, or be accompanied by a certificate of insurance for each subcontractor showing identical insurance coverage.

(d) Commercial general liability and automobile liability policies shall provide an endorsement naming TAMC, its officers, agents, and employees, as additional insureds and shall further provide that such insurance is primary to any insurance or self-insurance maintained by TAMC, and that no insurance of any additional
insured shall be called upon to contribute to a loss covered by Consultant’s insurance.

8. **Workers’ Compensation Insurance.** If during the performance of this Agreement, Consultant employs one or more employees, then Consultant shall maintain a workers’ compensation plan covering all of its employees as required by Labor Code Sec. 3700, either (a) through workers’ compensation insurance issued by an insurance company, with coverage meeting the statutory limits and with a minimum of One Million Dollars ($1,000,000) per occurrence for employer’s liability, or (b) through a plan of self-insurance certified by the State Director of Industrial Relations, with equivalent coverage. If Consultant elects to be self-insured, the certificate of insurance otherwise required by this Agreement shall be replaced with consent to self-insure issued by the State Director of Industrial Relations. The provisions of this paragraph apply to any subcontractor employing one or more employees, and Consultant shall be responsible for all subcontractors’ compliance herewith.

9. **Safety Provisions.**
   
   (a) Consultant shall comply with Division of Occupational Safety and Health (CAL-OSHA) regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by TARC Safety Officer and other TARC representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on a construction project site.

   (b) If applicable to work to be performed by Consultant identified in the Statement of Work (Exhibit A), and pursuant to the authority contained in Section 591 of the Vehicle Code, TAMC has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

   (c) Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Section.

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

10. **Certificate of Insurance and Taxpayer Identification.** Prior to the execution of this Agreement by TAMC, Consultant shall submit a completed federal W-9 form, Request for Taxpayer Identification Number and Certification, and file certificates of insurance with TARC’s contract administrator evidencing that Consultant has in effect the insurance required by this Agreement. Consultant shall file a new or amended certificate promptly after any change is
made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify any indemnification provision of this Agreement.

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

12. **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 TAMC’S Chief Financial Officer.

   B. Not later than 30 days after issuance of the final audit report, Consultant may request a review by TAMC’S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

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

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

   D. Consultant and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant’s responsibility to ensure federal, state, or local government officials are allowed full access to the CPA’s work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by TAMC contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by TAMC at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to
ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

13. Inspection of Work. Consultant and any subconsultant shall permit TAMC, the state, and the FHWA if federal participating funds are used in this Agreement; to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

14. Confidentiality; Return of Records. Consultant and its officers, employees, agents, and subcontractors shall comply with all federal, State and local laws providing for the confidentiality of records and other information. Consultant shall not disclose any confidential information received from TAMC or prepared in connection with the performance of this Agreement without the express permission of TAMC. Consultant shall promptly transmit to TAMC all requests for disclosure of any such confidential information. Consultant shall not use any confidential information gained through the performance of this Agreement except for the purpose of carrying out Consultant’s obligations hereunder. When this Agreement expires or terminates, Consultant shall return to TAMC all records, which Consultant utilized or received from TAMC to perform services under this Agreement.

15. Termination.

(a) TAMC reserves the right to terminate this Agreement upon thirty (30) calendar days’ written notice to Consultant with the reasons for termination stated in the notice.

(b) TAMC may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, TAMC may proceed with the work in any manner deemed proper by TAMC. If TAMC terminates this Agreement with Consultant, TAMC shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to TAMC exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

(c) The maximum amount for which TAMC shall be liable if this Agreement is terminated is zero (0) dollars.

(d) It is also mutually understood between TAMC and Consultant that this Agreement may have been written before ascertaining the availability of funds, or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to TAMC for the purpose of this Agreement. It is mutually agreed that if sufficient funds are not appropriated, this Agreement
may be amended to reflect any reduction in funds. TAMC retains the right to

direct Consultant immediately to stop work and to terminate this Agreement for

convenience, pursuant to Section 14(a) above, in order to address any reduction of

funds.

(e) Termination of this Agreement shall not terminate Consultant’s duty to defend,

indemnify and hold harmless TAMC, as provided in Paragraph 6.

16. Amendments and Modifications. No modification or amendment of this Agreement shall be

valid unless it is set forth in writing and executed by the parties hereto.

17. Statement of Compliance.

A. Consultant’s signature affixed herein, and dated, shall constitute a certification under

penalty of perjury under the laws of the State of California that Consultant has, unless

exempt, complied with, the nondiscrimination program requirements of Government Code

Section 12990 and Title 2, California Administrative Code, Section 8103.

B. During the performance of this Agreement, Consultant and its subconsultants shall not

unlawfully discriminate, harass, or allow harassment against any employee or applicant for

employment because of sex, race, color, ancestry, religious creed, national origin, physical

disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age

(over 40), marital status, and denial of family care leave. Consultant and subconsultants shall

insure that the evaluation and treatment of their employees and applicants for employment

are free from such discrimination and harassment. Consultant and subconsultants shall

comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-

f) et seq.) and the applicable regulations promulgated there under (California Code of

Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair

Employment and Housing Commission implementing Government Code Section 12990 (a-f),

set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are

incorporated into this Agreement by reference and made a part hereof as if set forth in full.

Consultant and its subconsultants shall give written notice of their obligations under this

clause to labor organizations with which they have a collective bargaining or other

Agreement.

C. Consultant shall comply with regulations relative to Title VI (nondiscrimination in

federally-assisted programs of the Department of Transportation – Title 49 Code of Federal

Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI

provides that the recipients of federal assistance will implement and maintain a policy of

nondiscrimination in which no person in the state of California shall, on the basis of race,

color, national origin, religion, sex, age, disability, be excluded from participation in, denied

the benefits of or subject to discrimination under any program or activity by the recipients of

federal assistance or their assignees and successors in interest.

D. Consultant, with regard to the work performed by it during the Agreement shall act in

accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of
race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT’s Regulations, including employment practices when the Agreement covers a program whose goal is employment.


A. This Agreement is subject to 49 CFR, Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”. Consultants who obtain DBE participation on this Agreement will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. The goal for DBE participation for this Agreement is 0%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Agreement. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as TAMC deems appropriate.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

E. A DBE firm may be terminated only with prior written approval from TAMC and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting TAMC consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

I. Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

J. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, “Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants” CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by Consultant or Consultant’s authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory “Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants” is submitted to the Contract Administrator.

K. If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to TAMC’s Contract Administrator within 30 days.

19. **Independent Contractor.** In its performance under this Agreement, Consultant is at all times acting and performing as an independent contractor and not as an employee of TAMC or any of its member jurisdictions. No offer or obligation of employment is intended in any manner, and Consultant shall not become entitled by virtue of this Agreement to receive any form of benefits accorded to employees including without limitation leave time, health insurance, workers’ compensation coverage, disability benefits, and retirement contributions. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, including without limitation federal and State income taxes and social security arising out of Consultant’s performance of this Agreement. In connection therewith, Consultant shall defend, indemnify, and hold harmless TAMC from any and all liability, which TAMC may incur because of Consultant’s failure to make such payments.
20. **Delegation of Duties; Subcontracting.**

   A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between TAMC and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to TAMC 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 TAMC’S obligation to make payments to the Consultant.

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

   C. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by TAMC.

   D. Any subcontract in excess of $25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

   E. Any substitution of subconsultant(s) must be approved in writing by TAMC’s Contract Administrator prior to the start of work by the subconsultant(s).

21. **Ownership of Data.**

   A. Upon completion of all work under this Agreement, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this Agreement will automatically be vested in TAMC; and no further agreement will be necessary to transfer ownership to TAMC. Consultant shall furnish TAMC all necessary copies of data needed to complete the review and approval process.

   B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.

   C. Consultant is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by TAMC of the machine-readable information and data provided by Consultant under this Agreement; further, Consultant is not liable for claims, liabilities, or losses arising out of, or connected with any use by TAMC of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by Consultant.

   D. Applicable patent rights provisions regarding rights to inventions shall be included in the Agreements as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
E. TAMC may permit copywriting reports or other agreement products. If copyrights are permitted, FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the data, and may authorize others to use the work for government purposes.

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

22. **Confidentiality of Data.**

A. All financial, statistical, personal, technical, or other data and information relative to TAMC’s operations, which are designated confidential by TAMC and made available to Consultant in order to carry out this Agreement, shall be protected by Consultant from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by TAMC relating to the Agreement, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.

C. Consultant shall not comment publicly to the press or any other media regarding the Agreement or TAMC’s actions on the same, except to TAMC’s staff, Consultant’s own personnel involved in the performance of this Agreement, at public hearings or in response to questions from a Legislative committee.

D. Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by TAMC, and receipt of TAMC’S written permission.

E. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

23. **Compliance with Terms of Federal or State Grant.** If any part of this Agreement has been or will be funded pursuant to a grant from the federal or State government in which TAMC is the grantee, Consultant shall comply with all provisions of such grant applicable to Consultant’s work hereunder, and said provisions shall be deemed a part of this Agreement as though fully set forth herein.

24. **Prevailing Wages.** Consultant shall comply with the all prevailing wage requirements, including California Labor Code section 1770, et seq., and any Federal or local laws or ordinances, that may be applicable to the work to be performed pursuant to this Agreement.
25. **Equipment, Supplies or Consultant Services Purchases.**

   (a) Prior authorization in writing by TAMC’s Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding Five Thousand Dollars ($5,000) for supplies, equipment, or unbudgeted Consultant services. Consultant shall provide an evaluation of desirability of incurring such costs.

   (b) For purchase of any items, service or consulting work not covered in Consultant’s Cost Proposal and exceeding Five Thousand Dollars ($5,000), prior authorization is required by TAMC’s Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

   (c) Any equipment purchased as a result of this Agreement is subject to the following:

      i. Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of Five Thousand Dollars ($5,000) or more. If the purchased equipment needs replacement and is sold or traded in, TAMC shall receive a proper refund or credit for such equipment at the conclusion of the Agreement, or if the Agreement is terminated. Consultant may either keep the equipment and credit TAMC in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established TAMC procedures for such sales and then credit TAMC in an amount equal to that sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant’s expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from and appraiser mutually acceptable to TAMC and Consultant; if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by TAMC.

      ii. Consultant acknowledges that, if federal funds are used in this Agreement, 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than Five Thousand Dollars ($5,000) is credited to the project.

   (d) Consultant shall include these provisions into any subcontract in excess of Twenty-Five Thousand Dollars ($25,000).

26. **Conflict of Interest.**

   A. Consultant shall disclose any financial, business, or other relationship with TAMC that may have an impact upon the outcome of this Agreement, or any ensuing TAMC construction project. Consultant shall also list current clients who may have a financial
interest in the outcome of this Agreement, or any ensuing TAMC construction project, which will follow.

B. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

C. Any subcontract in excess of $25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

27. **Governing Laws.** This Agreement shall be construed and enforced according to the laws of the State of California, and the parties hereby agree that the County of Monterey shall be the proper venue for any dispute arising hereunder.

28. **Construction of Agreement.** The parties agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any exhibit or amendment. To that end, it is understood and agreed that this Agreement has been arrived at through negotiation, and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654. Section and paragraph headings appearing herein are for convenience only and shall not be sued to interpret the terms of this Agreement.

29. **Waiver.** Any waiver of any term or condition hereof must be in writing. No such waiver shall be construed as a waiver of any other term or condition herein.

30. **Successors and Assigns.** This Agreement and all rights, privileges, duties and obligations hereunder, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and heirs.

31. **Time is of the Essence.** The parties mutually acknowledge and agree that time is of the essence with respect to every provision hereof in which time is an element. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act, nor shall any such extension create a precedent for any further or future extension.

32. **Contract Administrators.** Consultant’s designated principal responsible for administering Consultant’s work under this Agreement shall be [NAME and TITLE]; TAMC’s designated administrator of this Agreement shall be Grant Leonard, Assistant Transportation Planner. TAMC’s Project Manager under this Agreement shall be Grant Leonard, Assistant Transportation Planner.
33. **Notices.** Notices required under this Agreement shall be delivered personally or by electronic facsimile, or by first class or certified mail with postage prepaid. Notice shall be deemed effective upon personal delivery or facsimile transmission, or on the third day after deposit with the U.S. Postal Service. Consultant shall give TAMC prompt notice of any change of address. Unless otherwise changed according to these notice provisions, notices shall be addressed as follows:

   To TAMC: 
   
   Tel: 
   Fax: 
   Email: 

   To Consultant: 
   
   Tel: 
   Fax: 
   Email:

34. **Non-exclusive Agreement.** This Agreement is non-exclusive and both parties reserve the right to contract with other entities for the same or similar services.

35. **Execution of Agreement.** Any individual executing this Agreement on behalf of an entity represents and warrants that he or she has the requisite authority to enter into this Agreement on behalf of such entity and to bind the entity to the terms and conditions hereof. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

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

37. **Debarment and Suspension Certification.** Consultant’s signature affixed below shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has complied with CFR Title 49, Part 29, Debarment and Suspension Certificate which certifies that Consultant or any person associated with Consultant in the capacity of owner, partner, director, officer, or manager is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by an federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the TAMC.

38. **Rebates, Kickbacks or Other Unlawful Consideration.** Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any TAMC employee. For breach or violation of
this warranty, TAMC shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

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

40. **Prohibition of Expending Local Agency, State or Federal Funds for Lobbying.**

(a) Consultant certifies to the best of his, her or its knowledge and belief that:

i. No State, Federal or local agency appropriated funds have been paid, or will be paid, by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a member of the State Legislature or United States Congress; an officer or employee of the State Legislature or United States Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any State or Federal contract; in connection with the making of any State or Federal grant; in connection with the making of any State or Federal loan; in connection with the entering into of any cooperative agreement, and in connection with the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan or cooperative agreement.

ii. If any funds other than Federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress; or an employee of a Member of Congress, in connection with this contract, grant, loan or cooperative agreement, then Consultant shall complete and submit a Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(b) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Consultant acknowledges that 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 such failure.

(c) By signing this Agreement, Consultant also agrees that Consultant will require that the language of this certification will be included in all lower-tier subcontracts which exceed One Hundred Thousand Dollars ($100,000), and that all recipients of such subcontracts shall certify and disclose accordingly.

41. Exhibits. The following Exhibits are attached hereto and incorporated by reference:
   Exhibit A – Statement of Work and Work Schedule
   Exhibit B – Budget

42. Entire Agreement. This document, including all exhibits hereto, constitutes the entire agreement between the parties, and supersedes any and all prior written or oral negotiations and representations between the parties concerning all matters relating to the subject of this Agreement.
IN WITNESS WHEREOF, TAMC and Consultant execute this agreement as follows:

TAMC

__________________________________________
Consultant’s Business Name*

By: ________________________________
    Debra L. Hale
    Executive Director

Dated: ____________________________

Consultant

__________________________________________

By: ________________________________

By: ________________________________

Name: ______________________________

Title: ______________________________

Dated: ____________________________

INSTRUCTIONS: If Consultant is a corporation (including limited liability and nonprofit corporations), the full legal name of the corporation shall be set forth together with the signatures of two specified officers. If Consultant is a partnership, the name of the partnership shall be set forth together with the signature of a partner with authority to execute this Agreement on behalf of the partnership. If Consultant is contracting in an individual capacity, the individual shall set forth the name of his or her business, if any, and shall personally sign the Agreement.

* * * * * * * * * * * * * * * * * * * * * *

Approved as to form:

__________________________________________
TAMC Counsel

Dated: ____________________________

For TAMC internal use:

Work Element number to be used for the contract: ________________________________
ATTACHMENT C

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1)  Page 1 of 2

Actual Cost-Plus-Fixed Fee or lump sum (Firm Fixed Price) contracts
(Design, Engineering and Environmental Studies)

Note: Mark-ups are Not Allowed

Consultant ____________________________________  Contract No. ______________  Date __________

DIRECT LABOR

<table>
<thead>
<tr>
<th>Classification/Title</th>
<th>Name</th>
<th>Hours</th>
<th>Actual Hourly Rate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Project Manager)</td>
<td>____________________________</td>
<td>_____</td>
<td>$___________</td>
<td>$ ______</td>
</tr>
<tr>
<td>(Sr. Civil Engineer)</td>
<td>____________________________</td>
<td>_____</td>
<td>$___________</td>
<td>$ ______</td>
</tr>
<tr>
<td>(Envir. Scientist)</td>
<td>____________________________</td>
<td>_____</td>
<td>$___________</td>
<td>$ ______</td>
</tr>
<tr>
<td>(Jr. Highway Engr)</td>
<td>____________________________</td>
<td>_____</td>
<td>$___________</td>
<td>$ ______</td>
</tr>
</tbody>
</table>

LABOR COSTS

a) Subtotal Direct Labor Costs $ ______________
b) Anticipated Salary Increases (see page 2 for sample) $ ______________
c) TOTAL DIRECT LABOR COSTS [(a) + (b)] $ ______________

FRINGE BENEFITS

d) Fringe Benefits (Rate: _____%)  e) TOTAL FRINGE BENEFITS [(c) x (d)] $ ______________

INDIRECT COSTS

f) Overhead (Rate: _____%)  g) Overhead [(c) x (f)] $ ______________
h) General and Administrative (Rate: _____%)  i) Gen & Admin [(c) x (h)] $ ______________

j) TOTAL INDIRECT COSTS [(e) + (g) + (i)] $ ______________

FEE (Profit)

q) (Rate: _____%)  k) TOTAL FIXED PROFIT [(c) + (j)] x (q)] $ ______________

OTHER DIRECT COSTS (ODC)

<table>
<thead>
<tr>
<th>Description</th>
<th>Unit(s)</th>
<th>Unit Cost</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>l) Travel/Mileage Costs (supported by consultant</td>
<td>_____</td>
<td>$_____</td>
<td>$______</td>
</tr>
<tr>
<td>actual costs)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>m) Equipment Rental and Supplies (itemize)</td>
<td>_____</td>
<td>$_____</td>
<td>$______</td>
</tr>
<tr>
<td>n) Permit Fees (itemize), Plan sheets (each), Test</td>
<td>_____</td>
<td>$_____</td>
<td>$______</td>
</tr>
<tr>
<td>Holes (each), etc.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
o) Subconsultant Costs (attach detailed cost proposal |         |           |        |
in same format as prime consultant estimate for each subconsultant)

___ $___ $___________

p) TOTAL OTHER DIRECT COSTS [(l) + (m) + (n) + (o)] $___

TOTAL COST [(c) + (j) + (k) + (p)] $___

NOTES:
- Employees subject to prevailing wage requirements to be marked with an *.
- ODC items should be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered “tools of the trade” are not reimbursable.
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost.
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate.
EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1)

Actual Cost-Plus-Fixed Fee or Lump Sum (Firm Fixed Price) Contracts
(Sample Calculations for Anticipated Salary Increases)

Consultant ____________________________ Contract No.______________ Date _____________

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

<table>
<thead>
<tr>
<th>Direct Labor Subtotal per Cost Proposal</th>
<th>Total Hours per Cost Proposal</th>
<th>Avg Hourly Rate</th>
<th>5 Year Contract Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>$250,000.00</td>
<td>5000</td>
<td>$50.00</td>
<td>Year 1 Avg Hourly Rate</td>
</tr>
</tbody>
</table>

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

| Year 1 | $50.00 + 2% = $51.00 | Year 2 Avg Hourly Rate |
| Year 2 | $51.00 + 2% = $52.02 | Year 3 Avg Hourly Rate |
| Year 3 | $52.02 + 2% = $53.06 | Year 4 Avg Hourly Rate |
| Year 4 | $53.06 + 2% = $54.12 | Year 5 Avg Hourly Rate |

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

<table>
<thead>
<tr>
<th>Estimated % Completed Each Year</th>
<th>Total Hours per Cost Proposal</th>
<th>Total Hours per Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1 20.0%</td>
<td>* 5000</td>
<td>1000</td>
</tr>
<tr>
<td>Year 2 40.0%</td>
<td>* 5000</td>
<td>2000</td>
</tr>
<tr>
<td>Year 3 15.0%</td>
<td>* 5000</td>
<td>750</td>
</tr>
<tr>
<td>Year 4 15.0%</td>
<td>* 5000</td>
<td>750</td>
</tr>
<tr>
<td>Year 5 10.0%</td>
<td>* 5000</td>
<td>500</td>
</tr>
<tr>
<td>Total 100%</td>
<td>Total</td>
<td>5000</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Avg Hourly Rate (calculated above)</th>
<th>Estimated hours (calculated above)</th>
<th>Cost per Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1 $50.00</td>
<td>* 1000</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>Year 2 $51.00</td>
<td>* 2000</td>
<td>$102,000.00</td>
</tr>
<tr>
<td>Year 3 $52.02</td>
<td>* 750</td>
<td>$39,015.00</td>
</tr>
<tr>
<td>Year 4 $53.06</td>
<td>* 750</td>
<td>$39,795.30</td>
</tr>
<tr>
<td>Year 5 $54.12</td>
<td>* 500</td>
<td>$27,060.80</td>
</tr>
<tr>
<td>Total Direct Labor Cost with Escalation</td>
<td>= $257,871.10</td>
<td></td>
</tr>
<tr>
<td>Direct Labor Subtotal before Escalation</td>
<td>= $250,000.00</td>
<td></td>
</tr>
<tr>
<td>Estimated total of Direct Labor Salary Increase</td>
<td>= $7,871.10 Transfer to Page 1</td>
<td></td>
</tr>
</tbody>
</table>

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