REQUEST FOR PROPOSALS (RFP)

for

REGIONAL BUS TRANSFER TERMINAL
CONSTRUCTION MANAGEMENT
SERVICES

The RFP includes an overview of Construction management services required on the regions first transfer terminal construction project. It provides information on the site at 7th Street and State Street, project schedule, as well as submittal procedures and selection criteria for interested candidates. Also included are project plans and elevations of the terminal.

The City’s proposed Disadvantaged Business Enterprise (DBE) goal for this project is 3.5% percent. The City proposes to meet 100% of its goal using race-neutral methods. Consultants are strongly encouraged to obtain DBE participation on this project, although there is no contract-specific DBE goal.

A pre-proposal conference is scheduled for 10:00AM on July 16, 2012 at Conference Room B at 1275 W. Main Street, El Centro CA. Candidate submittals must be received at Engineering Division no later than 5:00 PM, July 31, 2012.

The Contract is currently out to bid.

Requested by:

City of El Centro
Public Works Department/Engineering Division
1275 W. Main Street
El Centro, CA 92243
Phone: (760) 337-5182

July 29, 2012
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A. BACKGROUND

The City of El Centro is requesting proposals from qualified engineering professionals to provide construction management services for construction of a regional bus transfer terminal. Firms interested in providing Construction Management services (CM) relating to the construction of a new regional transfer bus terminal should submit proposals. The firm ultimately selected will provide full CM services for the new transfer terminal as directed by the City.

The Request for Proposal (RFP) is available on our website (www.cityofelcentro.org) or the El Centro Engineering Office, 1275 W. Main Street, El Centro, CA 92243.

Qualified entities are invited to submit written proposals for consideration in accordance with this request. These services will be conducted under a contract with the City of El Centro, hereinafter referred to as "City." The consultant entity is hereinafter referred to as "Consultant."

The contract will be regulated according to the provisions of all Federal, State and local laws and ordinances that are applicable. This includes compliance with prevailing wage rates and their payment in accordance with the California Labor Code, and Davis-Bacon requirements. Federal and State dollars will be associated with this contract, as such, the higher prevailing wage will govern this contract. This project is FTA funded, and shall comply with FTA’s Master Agreement.

Per Public Contract code section 20103.6, the consultant is advised that this project includes provisions requiring the contracting consultant to indemnify and hold harmless the City of El Centro against any and all liability. The requirement of this indemnification can be found in the sample contract agreement attached to this document.

The intent of this Request for Proposals is to obtain proposals from qualified firms to provide services for construction management.

The City anticipates construction to begin October 2012.

B. PROJECT DESCRIPTION

Construction of a bus transfer terminal including: Clearing and grubbing of existing vacant site and removal of portions of existing asphalt and concrete pavement; removal of underlying expansive soils and replacement with non-expansive soils; removal of signs, pavement striping and markings, and other miscellaneous improvements on or adjacent to the site; and construction of concrete curbs, gutters, sidewalk, driveways, vehicular concrete pavement, decorative pedestrian pavements, utilities services, drainage facilities, landscaping and irrigation, lighting, public restroom/satellite police office building, solar power system, mister system, dumpster enclosure and passenger plaza improvements including shade canopies, benches, information kiosks, bike racks, trash receptacles, fencing, signing and striping, and other miscellaneous site amenities, all as shown on the construction plans.

The work also includes improvements to the adjacent public streets and alley including, but not limited to, removal of existing asphalt paving on State Street and 7th Street and replacement with concrete pavement; installation of storm drain improvements; removal of existing concrete pavement in alley between 6th Street and 7th street and replacement with new concrete pavement; new water, sewer, and storm drains; construction of raised median in State street with fencing; installation of truncated domes at curb ramps and new crosswalk striping at the intersection of State Street and 7th Street; and other miscellaneous signing, striping and improvements, all as shown on the construction plans.

The scope of work is more specifically described on the construction plans and specifications.
C. SCOPE OF SERVICES

The following is a representative sample of the work scope for this project. It is not meant to be all inclusive and the actual engagement will certainly require additional duties of a similar nature to those summarized below as the need arises.

The selected firm will provide construction management services that include but are not limited to those listed in this section. All work shall be performed under the direction of a licensed civil engineer registered with the State of California. No subcontractors shall be utilized without prior authorization by the City. The consultant shall employ his skillset to keep the project on schedule and within budget.

TASK A  Assist City with pre-construction meetings and activities.

TASK B  Construction Phase
1) Coordinate construction progress meetings during construction as necessary.
2) Coordinate construction activity between the various utility companies, municipal and State agencies and Contractor as necessary. Some of the entities involved may include: the City of El Centro, Imperial Irrigation District, and Time Warner Cable.
3) Provide trouble shooting with Contractor/ Project Architect and Owner and assist in finding solutions to any issues between the parties.
4) Develop and maintain a method for tracking and expediting review and approvals of shop drawings, requests for information (RFI’s) and change order requests.
5) Develop and maintain a constructions schedule showing all milestones. Schedule shall be updated and presented monthly to the City project manager.
6) The CM shall evaluate and present all change order proposals to City and architect for review. CM shall process all approved change orders.
7) The CM shall review submittals prior to Architectural review.
8) The CM shall receive and process payment requisitions for the owners and architects review.
9) The CM shall evaluate any and all claims and prepare a written response.
10) The CM shall manage the completion of the punch list to the satisfaction of the Architect and owner until the completion of all items.
11) Coordinate all owner activities and post completion activities, including, assembly of guarantees, manuals, release of liens, close-out documents and owner’s final acceptance.
12) Verify contractors’ work is being completed according to plans and specifications. Provide all inspections (including special inspection duties) as necessary according to the plans and specifications. Likewise all special inspection duties shall be performed in accordance with the California Building Code. The geotechnical inspections shall be overseen by Geotechnical Engineer licensed in the State of California and all other special inspections shall be performed by properly licensed individuals experienced in their particular construction craft. Off-site improvements shall be inspected based on the City of El Centro’s Quality Assurance Program (QAP) available at www.cityofelcentro.org/userfiles/file/QAP%20March%202010%20Final.pdf
13) The CM shall maintain project files, including but not limited to: Certified Payroll, Project Correspondence, Submittals, RFI’s, As-Builts, Meeting Minutes and Change Orders in an on-site filing system.
14) CM shall coordinate notices to the public and appropriate law enforcement and emergency medical service agencies for impacts due to construction related activities (such as lane closures). Consultant is expected to notice the public and meet with public safety agencies if required. Verify traffic control by Contractor is being performed according to approved plans and specifications. Help coordinate all road closures if necessary.
15) CM shall prepare daily and weekly reports.
16) CM shall provide labor compliance services and notify City of any discrepancies and recommend remedial actions.
17) CM shall verify contractor compliance with SWPPP and updating into SMARTS system.
TASK C. Post Construction Phase:

1) Coordinate and monitor the resolution of the Punch List until completion.
2) Coordinate, monitor, and resolve all warranty issues to the satisfaction of the owner during the one year general warranty period and beyond where applicable.
3) Develop and maintain an effective program so all operating manuals, maintenance manuals, and any preventive maintenance data are delivered to the owner.
4) Coordinate on-site staff who can address commissioning issues until the owner takes full acceptance of the system and its associated equipment.
5) Coordinate complete formal owner training of all systems.

D. PROJECT DELIVERY METHOD

The project delivery method will be design, bid, and build for each phase of the project.

E. STATEMENT OF QUALIFICATION

Each firm shall submit Standard Form 330 and complete Parts I & II as part of this RFP. SF 330 is attached as Attachment 2.

F. CONSULTANT CONTRACT ADMINISTRATION (TASK ORDER BASIS)

All consultant work will be authorized on a task order basis. In general, the first order of work for each contract will be a scoping task, which will identify the critical steps necessary and how the work will be coordinated. Budgets for each Task Order shall be negotiated based on rates and overheads identified in the Master Agreement.

G. RFP CONTENT

The submitals in response to this solicitation shall not exceed 25 total pages in length including cover letter, proposed staffing plan, previous experience, proposed approach, Levine Act Disclosure, DBE forms, and labor rate sheet. No appendices or elaborate brochures or other presentation material are desired. The RFP submittal content and format should demonstrate ability to follow direction set forth in this RFP. The RFP submittal should be organized in the following sequence:

Cover Letter - Describe the firm or team's interest in and commitment to the project.

Proposed Approach - Provide a detailed explanation of the approach you would take for completing the work, addressing the tasks above and discussing the issues, challenges and solutions you would employ during the engagement. Since there will be extensive responsibility placed on CM to effectively incorporate required processes and procedures for an FTA funded project, explain how you will perform said function. In particular describe what issues you foresee in your role as CM. Please also describe your overall approach to this role and how you anticipate interacting with the entire team including the CITY project manager, architect of record, and Contractor.

Proposed Staffing Plan - Designate the Principal, Project Manager in charge of the project, and the CITY contact throughout the duration of the contact. The submittal should describe the individuals and their roles on the team. Identify key staff members and a brief resume describing similar projects on which they have been involved, availability of the staff member over the duration of the project, and a description of the benefits the person brings to the team. Indicate recent, relevant experience and references on similar projects where a similar role was performed. Proposals shall clearly establish principal team member firms and sub consultants. An organization chart should be included. Any substitution of key staff during the project will require approval from the CITY. Evaluation of this segment of the proposals will be focused on individual members as well as the depth of your proposed team.
**Previous Experience** – Include descriptions of relevant projects previously performed by the staff proposed. The descriptions should include what services were performed, the date of the project, unique features of the project which would be beneficial to the CITY, and a client reference including email and phone contact information. Evaluation of this segment will be heavily weighted on your client reference remarks as solicited by the CITY.

**Agreement Exclusions** – Indicate in proposal any clauses, if any, in the City’s proposed Agreement, which are unacceptable to the Proposer. Federal and State requirements are non-negotiable.

**Levine Act Disclosure** - Provide required Levine Act Information. (See Section H below concerning the Levine Act.)

**Modified Scope of Work** – The Proposer should specifically indicate in its proposal any recommended changes for the “Scope of Work”.

**Lawsuit History** – List any pending or settled lawsuits or professional liability claims in which the consultant was involved during the past ten (10) years.

**Insurance** – A copy of insurance certificate, or a letter of intent to provide insurance from the issuing company (including a description of types of coverage and dollar amount limits).

**Estimated Costs** – Submit with your response your hourly rate and overhead information in a separate sealed envelope clearly labeled as follows:

Sealed Fee Schedule Proposal  
City of El Centro  
Construction Management Services for  
Regional Bus Transfer Terminal  
July 31, 2012

**Sealed fee schedule**

1. Develop costs and fees for the services based on hourly rates. Provide a clear breakdown of these costs by Task. Task order shall closely mimic the proposed scope. Each task shall include proposed staffing effort, with corresponding hourly rates. List all professional service expenses anticipated including insurance, printing, communications and travel. Billing rates shall include provision for normal office costs, including but not limited to office rental, utilities, insurance, equipment, normal supplies and materials, in-house reproduction services and local travel costs. Indirect costs shall be based on undisputed audited records complying with the requirements of FAR Part 31.

**DBE compliance** The CITY hereby notifies all respondents to this RFP that it is the policy of the CITY to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of contract. Respondents are strongly encouraged to obtain Disadvantaged Business Enterprise (DBE) participation on this project, although there is no contract-specific DBE goal. For DBE assistance, contact Abraham Campos, the DBE Program Administrator by e-mail at acampos@cityofelcentro.org

**DBE Documentation Forms** This contract will be assisted by funds from the U.S. Department of Transportation (U.S. DOT). The City’s proposed annual overall Disadvantaged Business Enterprise (DBE) goal for Fiscal Year 2012/2013 is 3.5% for FTA-assisted contracts. The City proposes to meet 100% of its goals using race-neutral methods. Consultants are strongly encouraged to obtain DBE participation on this project, although there is no contract-specific DBE goal. Please document the process used to solicit and select subcontractors/subconsultants/suppliers. Documentation must be submitted in the format shown on Attachment 3, Prime Consultant and subcontractor/Subconsultant/Supplier Report, and Attachment 3, Description of the Selection Process of Subcontractors/Sub-consultants/Suppliers. In addition, please be sure to submit proof of DBE certification for your firm, if applicable, and for any DBESubcontractors/subconsultants/suppliers proposed for this project. Submittals that fail to document the solicitation of DBE participation will not be considered. For DBE questions or assistance, contact Abraham Campos, CITY DBE Program Administrator by e-mail at acampos@cityofelcentro.org
DIVERSITY PROGRAM FOR CONTRACTS. The CITY is committed to and has adopted a Diversity Program for the participation of DBEs in CITY contracting opportunities in accordance with Federal Regulation 49 CFR, Part 26, effective March 4, 1999 as may be amended. It is the policy of the CITY to ensure nondiscrimination on the basis of race, color, sex, or national origin in the award and administration of US DOT assisted contracts.

It is the intention of the CITY to create a level playing field on which DBEs can compete fairly for Contracts and subcontracts relating to the CITY’s construction, procurement and professional services activities. To this end, the CITY has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside the DBE Program.

In connection with the performance of this Contract, the Consultant will cooperate with the CITY in meeting these commitments and objectives. The CITY reserves the right to require that the Consultant provide additional DBE information. Pursuant to 49 CFR §26.13 and as a material term of any agreement with the City, the Consultant hereby makes the following assurance and agrees to include this assurance in any agreements it makes with subconsultants in the performance of this Contract.

The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted Contracts. Failure by the Consultant or subcontractor/subconsultant to carry out these requirements is a material breach of this Contract that may result in the termination of this Contract or such other remedy as the District deems appropriate. By submitting a Proposal, the Consultant is deemed to have made the foregoing assurance and to be bound by its terms. For DBE questions or assistance, contact Abraham Campos, the DBE Program Administrator at (760)337-5182 or by e-mail at acampos@cityofelcentro.org

CIVIL RIGHTS REQUIREMENTS

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements DHS may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C.§ 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action 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. In addition, the Contractor agrees to comply with any implementing requirements DHS may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing
requirements DHS may issue. (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by DHS, modified only if necessary to identify the affected parties.

Please complete the forms shown in Attachment 3 to this RFP and submit same with your proposal.

H. LEVINE ACT

The Levine Act (Government Code 84308) is part of the Fair Political Practices Act that applies to elected officials who serve on appointed Boards such as the City of El Centro Council. The Levine Act prohibits any City Member who has received $250.00 or more within the previous twelve months from an applicant from participating in or influencing the decision on awarding a contract with the City. The Levine Act also requires a member of the City who has received such a contribution to disclose the contribution on the record of the proceeding. In addition, City Members are prohibited from soliciting or accepting a contribution from a party applying for a contract while the matter of awarding the contract is pending before the City or for three months following the date a final decision concerning the contract has been made.

Applicants must disclose on the record any contribution of $250.00 or more that they have made to a City Member within the twelve-month period preceding submission of their application. This duty applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation that is part of your team. If you have made a contribution that needs to be disclosed, you must provide written notice of the date, amount, and receipt of the contribution(s) in writing to the City's Chief Executive Officer. This information must accompany your response to this RFP.

I. CONFLICT OF INTEREST

The project designer and its principal subs, as may be selected by this RFP, are precluded from responding to this RFP for serving as the CM/Owner’s Representative for this project.

J. SUSPENSION AND DEBARMENT

The anticipated Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Proposer is required to verify that none of the Proposer, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Proposer is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

The certification in this clause is a material representation of fact relied upon by the CITY. If it is later determined that the Proposer knowingly rendered an erroneous certification, in addition to remedies available to the CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

K. RESTRICTIONS ON LOBBYING

Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any

I. SELECTION CRITERIA AND SCHEDULE

The CITY will hold a preproposal conference to review this RFP. Explanations or clarifications desired by respondents regarding the meaning or interpretation of this RFP may be requested at this conference or in written form by contacting Stacy Cox via e-mail at scox@cityofelcentro.org.

The CITY specifically requests that any questions concerning this RFP, except those concerning the DBE requirements, be directed to Stacy Cox only. Please do not contact other CITY staff. Abraham Campos is the contact person for DBE questions.

Responses will be reviewed based on the following criteria:

- Proposed approach to the project.
- Previous experience with similar projects.
- Past success with managing all processes, procedures and paperwork for similar projects, i.e. FTA funded projects.
- Qualifications of team members / Organizational chart with names and resumes.
- Satisfaction of previous clients
- Project understanding and ability to work in a collaborative environment with other consultants, the contractor(s) regulatory and oversight agencies, etc. to help solve problems and deal in a constructive manner with issues and any conflicts that may arise during the entire procurement and construction processes.
- DBE participation
- Ability to provide justification for indirect costs through an undisputed audit conducted by a Federal or State agency in compliance with FAR Part 31.
- At interview, Power point presentation highlighting the above criteria

Final staff recommendations to Council as to the proposed successful respondent to this solicitation will be based on rankings established by the evaluation committee.

The following SCHEDULE is targeted for consultant selection:

- RFP release date June 29, 2012
- Preproposal conference 10:00 AM July 16, 2012
  Conference Room B
  1275 W. Main Street, El Centro, CA 92243
- Deadline to submit requests for clarifications, corrections or modifications 5:00 PM on July 17, 2012
- Submittals due by 5:00 PM on July 31, 2012
- Interviews August 13 – 17, 2012
- Consultant Selection / Council Approval September 4, 2012

M. SELECTION PROCESS

The CM will be selected utilizing a qualification based selection (Brooks Act). A summary of the City’s selection process is as follows:

1. Qualifications will be reviewed and ranked by the selection committee.
2. A short-list will be created from the ranking.

3. Interviews will be requested from the short-list firms.

4. The committee will rank the “top three” firms to be the most highly qualified to perform the services, City Council will approve the list and authorize the contracting officer to begin negotiations with the top-ranked firm.

5. Negotiations will begin with the top-ranked firm, if no agreement is made, negotiations will move to the next top-ranked firm, and so on.

The City of El Centro reserves the right to reject any and all proposals submitted and/or request additional information for clarification.

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

Questions concerning the proposal should be sent via electronic mail to scox@cityofelcentro.org

N. PROCEDURES FOR SUBMISSION

A/E firms wishing to be considered should submit background materials in accordance with “RFP CONTENT” section of this RFP, and Standard Form 330.

Responses should be submitted to:

City Of El Centro
Department of Public Works / Engineering Division
1275 W. Main Street
El Centro, CA 92243

Six copies and one original must be received at the above address no later than 5:00PM on July 31, 2012.

The response shall be enclosed in a sealed envelope and be plainly marked on the upper left hand corner with the name and address of the bidder and bear the following:

City Engineer
Construction Management Services for
Regional Bus Transfer Terminal
July 31, 2012
5:00 p.m.

Submit with your response your hourly rate and overhead information in a separate sealed envelope clearly labeled as follows:

Sealed Fee Schedule Proposal
City of El Centro
Construction Management Services for
Regional Bus Transfer Terminal
July 31, 2012

O. ADDENDA TO RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be posted on the City’s website at www.cityofelcentro.org. It is responsibility of the Consultant to check the City of El Centro’s website for any posted Addenda.
**Attachment 1**

**SAMPLE**

**PROPOSAL EVALUATION FORM**

**DATE:** __________

**EVALUATOR:** __________________________________________

**RESPONDENT:** __________________________________________

**PROJECT:** ____________________________________________

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<th>CRITERIA</th>
<th>SCORING</th>
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<td><strong>A. Project Approach (AA%)</strong></td>
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<td><strong>B. Qualifications (BB%)</strong></td>
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<tr>
<td>Experience with FTA funded projects</td>
<td>XX</td>
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<td>Experience with related work</td>
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<td>Experience with Bus Terminal Design</td>
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<td>Team Member’s Credentials</td>
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<td><strong>C. Project Management (CC%)</strong></td>
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<td>Team Organization / Chart</td>
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<td>Ability to work in collaborative environment</td>
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<td>with other entities</td>
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<td><strong>D. Past Performance (DD%)</strong></td>
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<td>Satisfaction of previous clients/references</td>
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<td>(XX / 3) x 0.DD</td>
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<td>Claim’s History / Litigation / Response to</td>
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<td>Current FAR Part 31 Audit for Indirect Costs</td>
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<td><strong>E. DBE Participation (EE%)</strong></td>
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**TOTAL =**

**Comments:**

__________________________________________________________________________

__________________________________________________________________________

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## Part I - Contract-Specific Qualifications

### A. Contract Information
1. Title and Location (City and State)

### B. Architect-Engineer Point of Contact
1. Name and Title
2. Name of Firm
3. Telephone Number
4. Fax Number
5. E-mail Address

### C. Proposed Team
(Complete this section for the prime contractor and all key subcontractors.)

<table>
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<tr>
<th>(Check)</th>
<th>9. Firm Name</th>
<th>10. Address</th>
<th>11. Role in This Contract</th>
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### D. Organizational Chart of Proposed Team

(Arranged for local reproduction)
### E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

(Complete one Section E. for each key person.)

<table>
<thead>
<tr>
<th>12. NAME</th>
<th>13. ROLE IN THIS CONTRACT</th>
<th>14. YEARS EXPERIENCE</th>
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15. FIRM NAME AND LOCATION (City and State)

16. EDUCATION (DEGREE AND SPECIALIZATION)

17. CURRENT PROFESSIONAL REGISTRATION (STATE AND DISCIPLINE)

18. OTHER PROFESSIONAL QUALIFICATIONS (Publications, Organizations, Training, Awards, etc.)

### 19. RELEVANT PROJECTS

<table>
<thead>
<tr>
<th>1. TITLE AND LOCATION (City and State)</th>
<th>2. YEAR COMPLETED</th>
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<tbody>
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<td>PROFESSIONAL SERVICES</td>
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</table>

(a) BRIEF DESCRIPTION (brief scope, size, cost, etc.) AND SPECIFIC ROLE

Check if project performed with current firm

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<th>1. TITLE AND LOCATION (City and State)</th>
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(b) BRIEF DESCRIPTION (brief scope, size, cost, etc.) AND SPECIFIC ROLE

Check if project performed with current firm

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(c) BRIEF DESCRIPTION (brief scope, size, cost, etc.) AND SPECIFIC ROLE

Check if project performed with current firm

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(d) BRIEF DESCRIPTION (brief scope, size, cost, etc.) AND SPECIFIC ROLE

Check if project performed with current firm

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<th>2. YEAR COMPLETED</th>
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<td>PROFESSIONAL SERVICES</td>
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</table>

(e) BRIEF DESCRIPTION (brief scope, size, cost, etc.) AND SPECIFIC ROLE

Check if project performed with current firm
### F. Example Projects Which Best Illustrate Proposed Team's Qualifications for This Contract

(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F. for each project.)

<table>
<thead>
<tr>
<th>F. EXAMPLE PROJECT KEY NUMBER</th>
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<tbody>
<tr>
<td>21. TITLE AND LOCATION (City and State)</td>
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</table>

### 23. Project Owner's Information

<table>
<thead>
<tr>
<th>a. PROJECT OWNER</th>
<th>b. POINT OF CONTACT NAME</th>
<th>c. POINT OF CONTACT TELEPHONE NUMBER</th>
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</thead>
</table>

24. Brief Description of Project and Relevance to this Contract (Include scope, size, and cost)

### 25. Firms from Section C Involved with This Project

<table>
<thead>
<tr>
<th>a.</th>
<th>1) FIRM NAME</th>
<th>2) FIRM LOCATION (City and State)</th>
<th>3) ROLE</th>
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<td>b.</td>
<td>1) FIRM NAME</td>
<td>2) FIRM LOCATION (City and State)</td>
<td>3) ROLE</td>
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<td>c.</td>
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<td>2) FIRM LOCATION (City and State)</td>
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<td>f.</td>
<td>1) FIRM NAME</td>
<td>2) FIRM LOCATION (City and State)</td>
<td>3) ROLE</td>
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</table>
### G. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS

<table>
<thead>
<tr>
<th>26. NAMES OF KEY PERSONNEL (From Section E, Block 12)</th>
<th>27. ROLE IN THIS CONTRACT (From Section E, Block 13)</th>
<th>28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in &quot;Example Projects Key&quot; section below before completing table. Place &quot;X&quot; under project key number for participation in same or similar role.)</th>
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</table>

### 29. EXAMPLE PROJECTS KEY

<table>
<thead>
<tr>
<th>NO.</th>
<th>TITLE OF EXAMPLE PROJECT (FROM SECTION F)</th>
<th>NO.</th>
<th>TITLE OF EXAMPLE PROJECT (FROM SECTION F)</th>
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</table>
H. ADDITIONAL INFORMATION

30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

I. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

31. SIGNATURE

32. DATE

33. NAME AND TITLE
ARCHITECT-ENGINEER QUALIFICATIONS

PART II - GENERAL QUALIFICATIONS

If a firm has branch offices, complete for each specific branch office seeking work.

<table>
<thead>
<tr>
<th>1a. Firm (or Branch Office) Name</th>
<th>2a. STREET</th>
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<tbody>
<tr>
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<td>3a. CITY</td>
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<td>3b. STATE</td>
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<td>3c. ZIP CODE</td>
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</table>

5. OWNERSHIP

6a. POINT OF CONTACT NAME AND TITLE

7. NAME OF FIRM (If block 2a is a branch office)

6b. TELEPHONE NUMBER

6c. EMAIL ADDRESS

8a. FORMER FIRM NAME(S) (if any)

8b. YR. ESTABLISHED

8c. DUNS NUMBER

9. EMPLOYEES BY DISCIPLINE

<table>
<thead>
<tr>
<th>a. Function Code</th>
<th>b. Discipline</th>
<th>a. No. of Employees</th>
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<tbody>
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<td>(1) FIRM (2) BRANCH</td>
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10. PROFILE OF FIRM’S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS

<table>
<thead>
<tr>
<th>a. Profile Code</th>
<th>b. Experience</th>
<th>c. Revenue Index Number (see below)</th>
</tr>
</thead>
</table>

11. ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM FOR LAST 3 YEARS

|-----------------|---------------------|---------------|

12. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

<table>
<thead>
<tr>
<th>a. SIGNATURE</th>
<th>b. DATE</th>
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<th>c. NAME AND TITLE</th>
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ATTACHMENT 3
DBE Forms

CITY OF EL CENTRO
Prime Consultant and Subcontractor/Subconsultant/Supplier Report

Proposer's Name: ___________________________  RFP# and Name: ___________________________
Address: ___________________________  Is your firm a Disadvantaged Business Enterprise: Yes  No
Owner of Contact Person: ___________________________  Phone: ___________________________

Instructions:
Proposers MUST provide the following information on ALL subcontractors/subconsultants/suppliers that provided Proposer a bid, quote, or proposal for work, services or supplies associated with this RFP pursuant to the Authority’s sub-proposal reporting requirements. This information shall be provided for all sub-proposers regardless of tier for both DBEs and non-DBEs alike. Include all sub-proposal acceptance(s) AND rejection(s). Signature is required on page two of this form.

<table>
<thead>
<tr>
<th>Subcontractor/Subconsultant/Supplier Firm Name/Address/Contact Information</th>
<th>Contractor's License No. (if applicable)</th>
<th>DBE (Yes/No)</th>
<th>Portion of Work or Type of Materials/Supplies</th>
<th>Dollar Amount of Work/Materials/Supplies</th>
<th>Proposal Accepted (Yes/No)</th>
<th>DBE Amount***</th>
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Attachment 3a
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* If Yes, please also provide Unified Certification Program certification number in box. Proposers need to be aware that state and local governments may have other types of certifications with different requirements.

** Do not indicate more than one “Yes” for alternative subcontractors/subconsultants for the same work.

*** DBE participation includes that portion of the work actually performed by a certified DBE with its own forces. For example, for DBE supplier, count 60% of the costs of materials and supplies.

The undersigned will enter into a formal agreement with the subcontractor(s), subconsultant(s) and/or supplier(s) whose sub-proposal was accepted conditioned upon execution of a contract with the City of El Centro. I certify under penalty of perjury that the information included on this form is accurate and true.

Signature of Owner or Authorized Representative

Title

Date
Description of the Selection Process of
Subcontractors/Subconsultants/Suppliers

RFP # and Name: ________________________________________________
Proposer's Name: ________________________________________________
Address: _________________________________________________________
Phone: ___________________________ Fax: ___________________________
Owner or Contact Person: ___________________________ Title: ___________

Provide a narrative description of how the proposer selected its subcontractors/subconsultants/suppliers, including the following elements: (Please attach additional sheets as necessary.)

1. Soliciting small businesses, including DBEs, to participate through all reasonable and available means.
   Example: Include attendance at pre-bid meeting, advertisements, written notices and agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using small business concerns.
Attachment 4

SAMPLE AGREEMENT
AGREEMENT
between the
CITY OF EL CENTRO
and

This AGREEMENT is made and entered into as of _____________ (the “Effective Date”), by and between the CITY of El Centro, a California municipal corporation (hereinafter referred to as "CITY") and _______________ with a place of business at ____________________, (hereinafter referred to as "CONSULTANT") for the CONSULTANT to provide Consulting Services to the CITY for the Regional Bus Transfer Station located at State and 7th Streets, El Centro, California (hereinafter referred to as “PROJECT”).

RECITALS

WHEREAS, CITY has been authorized to create a regional bus transfer terminal in order to help increase service on existing routes; and

WHEREAS, CITY must build regional bus transfer terminal and related facilities; and

WHEREAS, CITY desires to secure architectural and engineering design services necessary for this purpose; and

WHEREAS, CONSULTANT represents that it possesses the professional qualifications and expertise to provide such services.

AGREEMENT

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

CITY hereby contracts with CONSULTANT and CONSULTANT hereby accepts such contract and agrees to perform the services upon the terms and subject to the conditions and in consideration of the payments set forth in this AGREEMENT. CONSULTANT promises, covenants and agrees to diligently pursue the work to completion in accordance with the schedule and under the terms and conditions set forth herein.

ARTICLE I - GENERAL PROVISIONS

A. GENERAL

1. The "PROJECT:" which is the subject of this AGREEMENT, is described in Appendix “A” “Detailed Scope of Work”, which Appendix “A” is attached hereto and incorporated herein in this AGREEMENT and made a part hereof by this reference.

2. Scope of Services: Except as may be specified elsewhere in the AGREEMENT, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the work in Appendix “A” and as further defined in Appendix “D”, “Project Cost Proposal,” which is attached hereto and incorporated herein by reference.
3. **Authorization to Proceed:** CONSULTANT will not begin work on any of the services described in ARTICLE I until CITY directs it in writing to proceed.

4. **CITY’s Representative:** CITY hereby designates its Public Works Director/City Engineer to be its representative in administering all matters relative to the AGREEMENT. The Public Works Director/City Engineer may delegate authority for specific matters to other staff members of CITY.

5. **CONSULTANT’s Representative:** CONSULTANT hereby designates __________________ to represent CONSULTANT with full authority under the AGREEMENT.

6. **CONSULTANT’s Identity and Personnel:** The key person(s) for the performance of services under this AGREEMENT for CONSULTANT are designated in Appendix “B”, which is attached hereto and made a part hereof by this reference. Any change in key personnel may be made only upon prior written notice from CONSULTANT and written approval by CITY.

CONSULTANT shall notify CITY of any proposed change of ownership or fundamental structure in CONSULTANT’s firm. Within 30 days of such notice, CITY shall notify CONSULTANT whether CITY will approve such changed firm to continue providing services under this AGREEMENT or whether CITY will terminate this AGREEMENT. Nothing in this provision shall be construed to limit CITY’s right to terminate this AGREEMENT for cause or without cause as set forth in ARTICLE I, Section B of this AGREEMENT.

7. **Preliminary Review of Work:** Where CONSULTANT is required to prepare and submit reports, working papers, etc. to CITY as products of the work described in the Scope of Work, these shall be submitted in draft form, and CITY shall have the opportunity to direct revisions prior to formal submission by CONSULTANT.

8. **Appearance at Hearings:** If and when required by CITY, CONSULTANT shall attend and render assistance at hearings related to performance of its services under the AGREEMENT as may be deemed necessary by CITY and shall be compensated to the amount as noted in the project cost proposal.

9. **Responsibility of CONSULTANT:** CONSULTANT shall be solely responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under the AGREEMENT. Neither CITY’s review, acceptance, nor payment for any of the services required under the AGREEMENT shall be construed to operate as a waiver of any rights under the AGREEMENT or of any cause of action arising out of the performance of the AGREEMENT, and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT’s performance of or failure to perform any of the services furnished under the AGREEMENT.

10. **Inspection of Work:** It is understood that authorized representatives of CITY may inspect or review CONSULTANT’s work in progress at their convenience.

11. **Suspension, Delay, or Interruption of Work:** CITY may suspend, delay, or interrupt the services of CONSULTANT for the convenience of CITY. In the event of a force majeure event or of such suspension, delay, or interruption, equitable adjustment will be made in the PROJECT schedule, commitment and cost of CONSULTANT’s personnel and subconsultants, and CONSULTANT’s compensation.
12. **No Third-Party Beneficiaries:** This AGREEMENT gives no rights or benefits to anyone other than CITY and CONSULTANT and has no third-party beneficiaries.

13. **Legal Action:** All legal actions by either party against the other arising from this AGREEMENT, or for the failure to perform in accordance with the applicable standard of care, or any other cause of action, will be subject to the applicable statutes of limitation of the State of California.

14. **Survival of Indemnities:** Notwithstanding the termination of this AGREEMENT and/or the breach of contract or warranty, fault, tort (including but not limited to torts based on negligence, statute or strict liability), CONSULTANT’s obligations of Indemnity set forth in ARTICLE I, Section F and any releases, limitations on indemnity, and any and all limitations on any remedies herein shall survive termination of this AGREEMENT for any cause, and ARTICLE I, Section A, paragraph 8 and ARTICLE I, Section F of this AGREEMENT shall take precedence over any conflicting provision of this AGREEMENT or any document incorporated into it or referenced by it.

15. **Jurisdiction:** The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

16. **Severability and Survival:** If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. ARTICLE I will survive termination of this AGREEMENT for any reason.

17. **Arbitration:** CONSULTANT shall first submit all disputes arising out of, or relating to, this AGREEMENT to CITY. If the parties are unable to resolve the dispute informally, then all claims, counterclaims, disputes, and other matters in question arising out of, or relating to, this AGREEMENT or the breach thereof may be decided by mediation and/or final, binding arbitration. Either CITY or CONSULTANT may initiate a request for such mediation or arbitration, but consent of the other party to such procedure and of any other participants thereto shall be a necessary precondition to mediation or arbitration.

18. **Attorney's Fees:** Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to recover reasonable expenses and attorney's fees from the other party.

19. **Term:** The term of AGREEMENT shall commence on the Effective Date and shall expire, unless terminated or cancelled earlier in accordance with this AGREEMENT, on ___________. This AGREEMENT may be extended upon the mutual consent of both parties subject to the approval of the City Council of the City of El Centro (hereinafter referred to as “City Council”).

**B. TERMINATION/CANCELLATION**

1. **Notice of Termination:** CITY may, by written notice to CONSULTANT in accordance with the time provisions in ARTICLE I, Section B, paragraph 2, terminate the AGREEMENT in whole or in part for CITY’s convenience. Either party by written notice to the other party, may terminate this AGREEMENT in whole or in part, because of the breach of any term, covenant or agreement herein, or failure of the other party to substantially perform its duties and obligations under the AGREEMENT, in accordance with the time provisions in ARTICLE I, Section B, paragraphs 3 and 4. In the event of notice of termination of the AGREEMENT by CITY, either
for cause or convenience, upon receipt of such notice, CONSULTANT shall deliver to CITY all data, estimates, graphs, summaries, reports, plans, such information, work product and materials as may have been accumulated by CONSULTANT in performing its services under the AGREEMENT, whether completed or in progress.

2. **By CITY For Convenience:** If the termination is for the convenience of CITY, CITY shall give CONSULTANT not less than thirty (30) days’ prior written notice. CONSULTANT shall be paid for services performed to the date of termination, to include a pro-rated amount of profits, if applicable, but no amount shall be allowed for anticipated profit on unperformed services. In addition to payment for services performed, CITY shall pay CONSULTANT the allowable costs incurred prior to termination, and other costs reasonably incurred by CONSULTANT to implement the termination, such as, but not limited to, subcontract termination costs and related closeout costs, if any.

3. **By CITY For Cause:** CITY shall give CONSULTANT seven (7) days’ prior written notice of its intent to terminate the AGREEMENT for cause. If, at the end of the seven (7) day notice, CONSULTANT has not commenced correction of its performance, CITY may immediately thereafter exercise its right of termination and such termination shall be effective immediately. If CONSULTANT commences correction within such seven (7) day period and diligently pursues such correction to completion within thirty (30) days of the date of commencement to the reasonable satisfaction of CITY, the AGREEMENT shall continue in effect.

4. **By CONSULTANT For Cause:** CONSULTANT may terminate the AGREEMENT for any material breach on the part of CITY, its officers or agents. In such case, CONSULTANT shall give CITY seven (7) days’ prior written notice of its intent to terminate the AGREEMENT. If, at the end of the seven (7) day notice, CITY has not commenced correction of its performance, CONSULTANT may immediately thereafter exercise its right of termination and such termination shall be effective immediately. If CITY commences correction within such seven (7) day period and diligently pursues such correction to completion within thirty (30) days of the date of commencement to the reasonable satisfaction of CONSULTANT, the AGREEMENT shall continue in effect.

5. **Damages/Compensation:** If the termination is due to the failure of CONSULTANT to fulfill its obligations under the AGREEMENT, CONSULTANT will be compensated for that portion of the work which has been completed and accepted by CITY, and for services performed to the date of termination including a pro-rated amount of profit, if applicable, but no allowance for anticipated profit on unperformed services. In such case, CITY may take over the work complete it, and CONSULTANT shall be liable to CITY for reasonable costs incurred by CITY in making necessary arrangements for completion of the work by others.

6. **Adjustments:** If, after notice of termination for failure to perform, it is determined by CITY that CONSULTANT had not so failed, the termination shall be deemed to have been effected for the convenience of CITY. In such event, adjustment shall be made as provided in ARTICLE I, Section B, paragraph 2.

7. **Law:** Except as otherwise provided in this AGREEMENT, the rights and remedies of the parties provided in this Section are cumulative and not exclusive, and are in addition to any and all other rights and remedies provided by law or other sections of this AGREEMENT.

8. **Waivers:** CONSULTANT, by executing the AGREEMENT, shall be deemed to have waived any and all claims for damages in the event of CITY’s termination for convenience as provided in ARTICLE I, Section B, paragraph 2, except for justifiable costs of termination, including, but
not limited to, subcontract termination costs as mutually agreed by CITY and CONSULTANT.

C. REVISIONS IN SCOPE OF SERVICES

This AGREEMENT will establish an overall budget for CONSULTANT services, as specified in Appendix “D”. CONSULTANT shall not perform any work or incur any costs beyond the total Contract Amount without prior approval of the City Council.

D. OWNERSHIP OF MATERIALS/CONFIDENTIALITY

All ideas, memoranda, specifications, plans, manufacturing procedures, drawings, descriptions, and all other written information submitted to CONSULTANT in connection with the performance of the AGREEMENT shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY, be used for any purposes other than the performance of the services under this AGREEMENT. Nothing furnished to CONSULTANT, which is otherwise known to CONSULTANT or becomes generally known to the related industry, shall be deemed confidential. CONSULTANT shall not use CITY’s name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper newspaper, or other news medium without the express written consent of CITY. CONSULTANT may use PROJECT technical information at will in the demonstration of expertise for purposes of describing PROJECT experience to others in the routine conduct of CONSULTANT’s business with CITY’s prior written consent.

E. CONSULTANT STATUS/SUBCONSULTANTS

1. Independent CONSULTANT: In the performance of the services to be provided hereunder, CONSULTANT is an independent contractor and is not an employee, agent or other representative of CITY.

2. Assignment or Transfer: Services to be furnished hereunder shall be deemed to be professional services and, except as herein provided, CONSULTANT has neither the right nor the power to assign, sublet, transfer or otherwise substitute its interest in the AGREEMENT or its obligations hereunder without the prior written consent of CITY.

F. INDEMNIFICATION

1. Duties: CONSULTANT represents and maintains that it is skilled in the practices necessary to perform the services, its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT’s representations regarding its skills and knowledge. CONSULTANT shall perform all services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

2. Responsibilities: CONSULTANT agrees to defend, indemnify and hold harmless CITY, its officers and employees, from and against any and all liability, claims, suits, loss, damages, costs and expenses (collectively “CLAIMS”) to the extent arising out of or resulting from any negligent, grossly negligent or intentional acts, errors or omissions of CONSULTANT, and its officers, employees, agents or subconsultants in the performance of their services under the AGREEMENT. In the event CITY is found by a court or arbitrator to be partially liable for a CLAIM, CITY shall reimburse CONSULTANT for its proportionate share of the reasonable costs of defense actually expended, based on its share of liability.
CITY shall provide CONSULTANT an opportunity to cure, at CONSULTANT’s expense, all errors and omissions, which may be disclosed during review of the work performed by CONSULTANT. Should CONSULTANT fail to make such corrections in a timely manner, such corrections shall be made by CITY and CONSULTANT shall pay all costs thereof. The opportunity to cure provision shall in no way limit any other right of CITY under this AGREEMENT, including but not limited to the right to terminate the AGREEMENT.

It shall be the responsibility of CONSULTANT to provide the insurance coverages and requirements indicated in Section G, INSURANCE, below.

3. **Indemnification for Professional Liability:** When the law establishes a professional standard of care for CONSULTANT’s services, to the fullest extent permitted by law, CONSULTANT shall indemnify, protect, defend and hold harmless CITY and any and all of its officials, employees and agents (“Indemnified Parties”) from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney’s fees and costs to the extent same are caused in whole or in part by any negligent or willful act, error or omission of CONSULTANT, officers, agents, employees or subconsultants (or any entity or individual that CONSULTANT shall bear the legal liability thereof) in the performance of professional services under this AGREEMENT.

4. **Indemnification for Other Than Professional Liability:** Other than in the performance of professional services and to the full extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this AGREEMENT by CONSULTANT or by any individual or entity for which CONSULTANT is legally liable, including but not limited to officers, agents, employees or subconsultants of CONSULTANT.

5. **General Indemnification Provisions:** CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this AGREEMENT. In the event CONSULTANT fails to obtain such indemnity obligations from others as required here, CONSULTANT agrees to be fully responsible according to the terms of this section. Failure of CITY to monitor compliance with these requirements imposes no additional obligations on CITY and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend CITY as set forth here is binding on the successors, assigns or heirs of CONSULTANT and shall survive the termination of this AGREEMENT or this Section F.

**G. INSURANCE**

CONSULTANT shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in Appendix “E” attached hereto and part of this AGREEMENT by this reference.

**H. PROHIBITED INTEREST**

1. **Solicitation:** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure
the AGREEMENT and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the AGREEMENT. For breach of violation of this warranty, CITY shall have the right to rescind the AGREEMENT without liability.

2. **Conflict of Interest:** CONSULTANT agrees that, for the term of this AGREEMENT, no member, officer or employee of CITY or of County of Imperial, during his/her tenure or for one (1) year thereafter, shall have any direct interest in the AGREEMENT or any direct or material benefit arising therefrom.

3. **Conflict of Employment:** Employment by CONSULTANT of any current officer, chief executive officer or other employee of CITY shall not be permitted even though such employment may be outside of the employee’s regular working hours or on weekends, holidays or vacation time. Further, for a period of one (1) year after leaving office or employment, no officer, chief executive officer or other employee of CITY shall, for compensation, be permitted by CONSULTANT to act as agent or attorney for or otherwise represent CONSULTANT by making any formal or informal appearance, or by making any oral or written communication before CITY, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding or revocation of a permit, license, grant, entitlement or contract, or the sale or purchase of goods, services or property.

4. The CONSULTANT is subject to all federal, state and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq. CONSULTANT shall complete one or more statements of economic interest disclosing relevant financial interests as described on Appendix “H” – Consultant’s Financial Disclosure Statement, attached hereto and made a part of this AGREEMENT by this reference, which may be amended from time to time by CITY. Upon the CITY’s request, the CONSULTANT shall submit the necessary supplementary documentation to the CITY.

4.1 The CONSULTANT shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

4.2 The CONSULTANT and its subconsultants having subcontracts amounting to one percent (1%) or more of the value of the Professional Services agreed to under this AGREEMENT are precluded from participating in design services, on behalf of the contractor, construction management, and any other construction services related in any way to the Professional Services without the prior written consent of the CITY.

4.3 The CONSULTANT’s personnel employed on any Task shall not accept gratuities or any other favors from any subconsultants or potential subconsultants. In connection with any Task, the CONSULTANT shall not recommend or specify any product, supplier, or contractor with whom the CONSULTANT has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4.4 If the CONSULTANT violates any conflict of interest laws or any of these provisions in Paragraph 4.1, the violation shall be grounds for immediate termination of this AGREEMENT.
Further, the violation subjects the CONSULTANT to liability to the CITY for attorney fees and all damages sustained as a result of the violation.

I. AFFIRMATIVE ACTION

In connection with the execution of the AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual orientation, age (over 40) or sex. CONSULTANT shall take affirmative action to insure that such applicants are employed and that employees are treated during their employment without regard to their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination.

J. NOTIFICATION

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

CITY of El Centro
ATTN: Terry Hagen
Public Works Director/City Engineer
1275 W. Main Street, El Centro, CA 92243

K. AUDIT OF BOOKS AND RECORDS

During the term of this AGREEMENT, CONSULTANT shall make available to CITY, its authorized agents, officers and employees, for examination, any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to CITY, and shall furnish to CITY, its agents, and employees, such other evidence or information as CITY may require with respect to any such expense or disbursement charged by CONSULTANT.

The records described in this Section shall be retained by CONSULTANT and made available for inspection by CITY for a period of three (3) years after this AGREEMENT is terminated. CITY may, in its sole discretion, conduct a periodic audit of the project costs, not more frequently than once every twelve (12) months.

L. ENTIRE AGREEMENT

This AGREEMENT constitutes the entire AGREEMENT between the parties hereto relating to the PROJECT and supersedes any previous AGREEMENT or understanding.

M. AMENDMENT

This AGREEMENT may be amended or modified only by a written amendment duly executed by each of the parties.
ARTICLE II – SCHEDULE

A. SCHEDULE OF WORK

CONSULTANT shall conform to the schedule set forth in Appendix “C”, “Schedule of Work,” which is attached hereto and incorporated herein by reference except as otherwise modified by the AGREEMENT. In the event it becomes necessary to modify the Schedule of Work, CONSULTANT and CITY shall prepare a revision for approval by the City Council. The revision shall not become effective unless and until it is approved by the City Council.

B. REPORTING

Monthly progress reports in a form acceptable to CITY, which describe work accomplished, shall be submitted with CONSULTANT’s monthly billings. Costs for services and actual costs shall be itemized in accordance with the Project Cost Proposal as specified in Appendix “D”.

C. DELAY

Neither party hereto shall be considered in default in the performance of its duties and obligations under this AGREEMENT with respect to the “Milestone Schedule”, to the extent that the performance of any obligation is prevented or delayed by an Excusable Delay as defined herein. Should CONSULTANT’s services be delayed by any mutually agreed-upon excusable cause, CONSULTANT’s schedule for completion of tasks affected by such delay shall be extended as agreed to by CITY. CONSULTANT shall take all reasonable actions to minimize any schedule extensions or additional costs to CITY resulting from such delay. Excusable Delays are defined as acts of God or of the public enemy, acts or failures to act of other agencies or CITY (in either their sovereign or contractual capacity), embargoes, unusually severe weather, or other acts as approved by CITY. In every case, the failure to perform must be reasonably beyond the control and without the fault or negligence of CONSULTANT.

D. NOTICE OF POTENTIAL DELAY

As a condition precedent to the approval of an extension of time to complete the established work schedule, CONSULTANT shall give written notice to CITY within seven (7) working days after CONSULTANT knows, or should know, of any cause or condition which might, under reasonably foreseeable circumstances, result in delay for which CONSULTANT may claim an extension of time.

ARTICLE III - COMPENSATION/PAYMENT

A. COMPENSATION

Compensation by CITY to CONSULTANT will be on the cost basis set forth in Appendix “D”, “Project Cost Proposal.”

B. AGGREGATE AMOUNT

Total compensation for services to be performed under this AGREEMENT will not exceed $________ including direct expenses.

C. INVOICES AND TIME OF PAYMENT
1. For all services described in ARTICLE I and Appendix “A”, payment is due within thirty (30) days after receipt of billing of the amount due, as prescribed in this ARTICLE III, for all services rendered during the month. Payment for service will represent the value of the completed scope of work as measured by expended costs to date.

2. If CITY disputes any portion of the amount due to CONSULTANT, it may, at its sole discretion, withhold payment up to 100% of the disputed amount. If any amount is wrongfully withheld or not paid to CONSULTANT on a timely basis, CITY shall pay to CONSULTANT 1.5% per month for the improperly withheld amount for each month which payment is wrongfully withheld or not paid. In any action for the collection of amount withheld in violation of this provision, the prevailing party shall be entitled to reasonable attorney’s fees and costs.

3. The format of payment of invoices shall be as mutually agreed upon by CONSULTANT and CITY.

4. CITY may request reasonable documentation for certain expense items. In such instances, payment for all other amounts in the invoice for which additional documentation is not required will be made.

D. SUSPENSION OF WORK

In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, CONSULTANT may, after giving fifteen (15) days’ written notice, suspend all work on all authorized services specified herein without penalty or liability of any nature for that suspension. Upon receipt of payment in full for services rendered, CONSULTANT will continue with all authorized services. Payment of all compensation due CONSULTANT pursuant to this AGREEMENT shall be a condition precedent to CITY using any of CONSULTANT’s professional service work products furnished under this AGREEMENT.

ARTICLE IV – FEDERAL CONTRACT REQUIREMENTS

A. APPLICABILITY OF FEDERAL GRANT CONTRACT

This AGREEMENT may be subject to one or more financial assistance contracts between CITY and the U.S. Department of Transportation (“U.S. DOT”), which incorporate the current Federal Transit Administration (“FTA”) Master Agreement and Circular 4220.1E, as amended. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, as amended and the Master Grant Agreement, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this AGREEMENT. CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any CITY request that would cause CITY to be in violation of the FTA terms and conditions. The FTA Master Agreement obligates CITY to incorporate certain provisions into this AGREEMENT and any lower tier subcontracts at any level and to take appropriate measures to ensure that CONSULTANT and its lower tier subcontractors at any level comply with certain applicable requirements set forth in the FTA Master Agreement. The following provisions of the FTA Master Agreement are hereby incorporated by reference into this AGREEMENT, and CONSULTANT shall comply with all such requirements. Copies of the FTA Master Agreement are available from CITY upon request thereof.
B. CIVIL RIGHTS

1. **Nondiscrimination**: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit laws at 49 U.S.C. § 5332, CONSULTANT agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, CONSULTANT agrees to comply with applicable federal implementing regulations and other implementing requirements the federal grantor agency may issue.

2. **Equal Employment Opportunity (EEO)**: The following equal employment opportunity requirements apply to the AGREEMENT:

   (a) **Race, Color, Creed, National Origin, Sex**. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, CONSULTANT agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulation, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect activities undertaken in the course of the Scope of Work. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue. During the performance of this AGREEMENT, CONSULTANT agrees as follows:

   (1) CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action 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. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

   (2) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

   (3) CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers’ representatives of CONSULTANT’s commitments under this section, and CONSULTANT shall post copies of the notice in conspicuous places available to employees and applicants for employment.

   (4) CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
(5) CONSULTANT will furnish all information and reports required by Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and CONSULTANT will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of CONSULTANT’s noncompliance with the nondiscrimination clauses of this AGREEMENT or with any of the said rules, regulations, or orders, this AGREEMENT may be canceled, terminated, or suspended in whole or in part, and CONSULTANT may be declared ineligible for further government contracts or federally assisted contracts in accordance with procedures authorized in Executive Order 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. CONSULTANT will include the portion of the sentence immediately preceding sub-paragraph (1) and the provisions of sub-paragraphs (1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including the imposition of sanctions for noncompliance; provided, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.


(c) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, CONSULTANT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the ‘Americans with Disabilities Act,’” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue. CONSULTANT also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(d) Flow Down. The Civil Rights requirements flow down to CONSULTANT’s subcontractors at every tier.

3. Certification: CONSULTANT’s signature, affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has and will continue to comply with the regulations and requirements relating to nondiscrimination and equal employment opportunity as provided in this Article IV, Section B, throughout the term of this AGREEMENT and any extensions hereof.

C. FLY AMERICA REQUIREMENT
If applicable, CONSULTANT shall to comply with 49 U.S.C. § 40018 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 30110, which provide that recipients and subrecipients of Federal Funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. CONSULTANT shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag carrier was not available or why it was necessary to use a foreign air carrier. CONSULTANT agrees to include the requirements of this section in all subcontracts that may involve international air transportation. CONSULTANT’s signature, affirmed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT shall comply with the Fly America Act throughout the term of this AGREEMENT and any extension thereof.

D. CONSERVATION

CONSULTANT shall comply with mandatory standards and policies relating to energy efficiency, contained in the state energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321 et seq.; 49 CFR Part 18). These requirements extend to all subcontractors and their contracts at every tier.

E. ENVIRONMENTAL VIOLATIONS

1. Clean Water: CONSULTANT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. CONSULTANT agrees to report each violation to CITY and understands and agrees that CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONSULTANT also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

2. Clean Air: CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONSULTANT agrees to report each violation to CITY and understands and agrees that CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONSULTANT also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

F. DEBARMENT AND SUSPENSION CERTIFICATION

1. Pursuant to Executive Orders 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 and federal regulations in 49 CFR 29, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this AGREEMENT. To assure that such entities and individuals are not involved as participants on this FTA-financed AGREEMENT, CONSULTANT shall complete and submit, as part of this AGREEMENT, the certification form attached hereto as Appendix “F”, and incorporated by reference herein. The inability of CONSULTANT to provide a certification will not necessarily result in CITY’s denial to execute this AGREEMENT. If CONSULTANT is unable to provide a certification, CONSULTANT must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation may disqualify...
CONSULTANT from participation under this AGREEMENT. CONSULTANT, in conjunction with FTA, will consider the certification or explanation in CITY’s determination to execute this AGREEMENT. This AGREEMENT will not be awarded in the event CONSULTANT submits to CITY a conditioned debarment or suspension certification, unless approved by FTA.

2. The certification is a material representation of fact upon which reliance is placed in determination of award of this AGREEMENT. If at any time CONSULTANT learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to CITY. If it is later determined that CONSULTANT knowingly rendered an erroneous certification, or failed to notify CITY immediately of circumstances which made the original certification no longer valid, CITY may disqualify CONSULTANT. If it is later determined that CONSULTANT knowingly rendered an erroneous certification, or failed to notify CITY immediately of circumstances which made the original certification no longer valid, CITY may terminate this AGREEMENT, in addition to other remedies available including FTA suspension and/or debarment.

3. CONSULTANT shall not knowingly enter into any subcontract exceeding $25,000 with an entity or person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds. As such, CONSULTANT shall require all subcontractors seeking subcontracts greater than $25,000 to complete and submit the same certification form contained in these documents before entering into any agreement with said subcontractor.

G. LOBBYING CERTIFICATION FOR FEDERAL AID CONTRACTS

This AGREEMENT is subject to Section 319, Public Law 101-121 (31 U.S.C. § 1352) and U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20, which prohibits federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federally funded contract, the making of any federal grant or loan, or the entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. In connection with this AGREEMENT, CONSULTANT and its subcontractors shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier shall certify to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant, or award covered by 31 U.S.C. § 1352. Such disclosures shall be forwarded from tier to tier up to CITY. CONSULTANT shall submit the "Lobbying Certification for Federal Aid Contracts," attached hereto as Appendix “G”, and incorporated by reference herein. CONSULTANT’s signature on this certification shall certify that: a) it has not engaged in the prohibited activity, and b) the language of the certification shall be included in all lower tier subcontracts, which exceed $100,000, and that all such subcontractors shall certify and disclose accordingly. By executing this AGREEMENT, CONSULTANT agrees to comply with these laws and regulations.

H. NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES
1. CITY and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying AGREEMENT, absent the express written consent by the Federal Government, the Federal Government is not a party to this AGREEMENT and shall not be subject to any obligations or liabilities to CITY, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provision.

I. FEDERAL CHANGES

CONSULTANT shall at all times comply with all applicable federal regulations, policies, procedures and directives, including without limitation those listed directly by or by reference in the AGREEMENT between CITY and FTA, as such regulations, policies, procedures and directives may be amended or promulgated from time to time during the term of this AGREEMENT. CONSULTANT’s failure to so comply shall constitute a material breach of this AGREEMENT.

J. FEDERAL FUNDING LIMITATIONS

CONSULTANT understands that a portion of the funds to pay for CONSULTANT’s performance under this AGREEMENT are anticipated to be made available from U.S. DOT through the FTA. All such funds must be approved and administered by FTA. CITY’s obligation hereunder is, in part, payable from funds that are appropriated and allocated by FTA for the performance of this AGREEMENT. If such funds are not allocated, or ultimately are disapproved by FTA, CITY may be required to terminate or suspend CONSULTANT’s services. In this event, the AGREEMENT will be terminated for convenience as provided herein.

K. ACCESS TO RECORDS AND REPORTS

The following access to records requirements apply to this AGREEMENT pursuant to 49 U.S.C. § 5325, 49 CFR 18.36(i) and 49 CFR 633.17:

1. CONSULTANT agrees to provide CITY, FTA, Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers, and records of CONSULTANT that are directly pertinent to this AGREEMENT for the purposes of making audits, examinations, excerpts and transcriptions.
2. CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excepts and transcriptions as reasonably needed.
3. CONSULTANT agrees to maintain all books, records, accounts, and reports required under this AGREEMENT, except in the event of litigation or settlement of claims arising from the performance of this AGREEMENT, in which case CONSULTANT agrees to maintain the same until CITY, FTA, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigations, appeals, claims or exceptions related therein.

L. FALSE OR FRAUDULENT STATEMENTS
CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this AGREEMENT. Upon execution of the AGREEMENT, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the AGREEMENT or the FTA assisted project for which this work is being performed. In addition to other penalties that may be applicable, CONSULTANT further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONSULTANT to the extent the Federal Government deems appropriate. CONSULTANT acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on CONSULTANT to the extent the Federal Government deems appropriate. CONSULTANT agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

M. AMERICANS WITH DISABILITIES ACT (ADA)

CONSULTANT agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 1201 et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 504, and any implementing requirements FTA may issue. These requirements provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this AGREEMENT.

N. ANTI-KICKBACK REQUIREMENTS

1. CITY and CONSULTANT are required to comply with the Copeland "Anti-Kickback" Act, 18 USC § 874 and 40 USC § 276(c), as supplemented in U.S. Department of Labor regulations, 29 CFR Part 3. Under state and federal law, it is a violation for CITY’s employees, proposers, bidders, contractors or subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services.

2. "Kick-Back" as defined by Federal Acquisition Regulations (FAR), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

O. ELECTRONIC INFORMATION AND TECHNOLOGY

When providing reports or other information to CITY, or to FTA, among others, on behalf of CITY, CONSULTANT agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as

P. COMPLIANCE WITH FEDERALLY REQUIRED CLAUSES AND REQUIREMENTS

CONSULTANT is responsible for ensuring compliance with all applicable FTA requirements. Additionally, CONSULTANT is responsible for ensuring that subcontractors, at as many tiers of the PROJECT as required, perform in accordance with the terms, conditions and specifications of the AGREEMENT, including FTA requirements. Upon request of the CITY, CONSULTANT shall provide evidence of the steps it has taken to ensure its compliance with the FTA requirements, as well as evidence of subcontractor’s compliance, at all tiers.

ARTICLE V - OBLIGATIONS OF CITY

A. CITY-FURNISHED DATA

CITY will provide to CONSULTANT all technical data in CITY’S possession that it considers relevant to the PROJECT, including, but not limited to, previous reports, vessel specifications, surveys, and all other information relating to CONSULTANT’s services on the PROJECT. CONSULTANT may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by CITY.

B. ACCESS TO FACILITIES

CITY will make its facilities reasonably accessible to CONSULTANT as required for CONSULTANT’s performance of its service.

C. TIMELY REVIEW

CITY will examine the studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, and other Consultants as CITY deems appropriate; and render, in writing, decisions required of CITY in a timely manner.

D. PROMPT NOTICE

CITY will give prompt written notice to CONSULTANT whenever CITY observes or becomes aware of any development that affects the scope or timing of CONSULTANT’s services, or any defect in the work of CONSULTANT.

ARTICLE VI – DISADVANTAGED BUSINESS ENTERPRISES

A. DBE REQUIREMENTS

As the FTA recipient of federal financial assistance from the U.S. DOT, CITY has implemented a Disadvantaged Business Enterprises ("DBEs") program ("Diversity Program for Contracts"), in accordance with 49 CFR Part 26, effective March 4, 1999, as may be amended (the “Regulation”). The Diversity Program for Contracts applies to all contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance, including this AGREEMENT between CITY and CONSULTANT.

B. CITY’S DBE PROGRAM POLICY
CITY is committed to a Diversity Program for the participation of DBEs in CITY contracting opportunities in accordance with the Regulations. It is the policy of CITY to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of U.S. DOT-assisted contracts. It is the intention of CITY to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to CITY’s construction, procurement and professional services activities.

The complete Diversity Program for Contracts and the annual overall DBE goals analysis are available for review at:

Engineering Office
1275 W. Main Street
El Centro CA 92243

CONSULTANT may contact the DBE Program Administrator, Mrs. Lisa Drye, by telephone at 760.337.5182 or by fax at 760.337.3856, with any questions or additional information about the Diversity Program for Contracts. (Section 26.23 of 49 CFR Part 26.)

C. NONDISCRIMINATION ASSURANCE

CONSULTANT (and each subcontractor to a subcontract with CONSULTANT) 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 the Regulation in the award and administration of U.S. DOT-assisted contracts. 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 CITY deems appropriate. (Section 26.13(b) of 49 CFR Part 26.)

D. DBE FINANCIAL INSTITUTIONS

It is the policy of CITY to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on U.S. DOT-assisted contracts to make use of these institutions. CITY has researched the website for The Federal Reserve Board at www.federalreserve.gov/releases/mob/ to identify minority-owned banks derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 through 034) and from other information on the Board’s National Information Center database. CITY will continue to use this source to continue to solicit minority-owned banks to participate in the Diversity Program for Contracts.

To date, CITY has identified the following minority-owned financial institutions that offer services in the Imperial County Area (as of_______________):

Non-found

Information on the availability of these institutions can be obtained from CITY. It is the policy of CITY to make reasonable efforts to use the above-referenced financial institutions, and CITY hereby encourages CONSULTANT to make reasonable efforts to do the same. (Section 26.27 of 49 CFR Part 26.)

E. PROMPT PAYMENT
1. **Prompt Progress Payment to Subcontractors**: CONSULTANT (and each of its subcontractors) shall pay to any subcontractor not later than ten (10) days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The ten (10) days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with CITY’s prior written approval. Any violations of Section 7108.5 of the California Business and Professions Code shall subject CONSULTANT (or any of its subcontractors) to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to CONSULTANT (and each of its subcontractors) in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause shall apply to all DBE and non-DBE subcontractors.

2. **Prompt Payment of Withheld Funds to Subcontractors**: No retainage will be held by CITY from progress payments due to CONSULTANT. Any retainage kept by CONSULTANT (or any subcontractor) must be paid in full to the earning subcontractor in thirty (30) days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with CITY’s prior written approval. Any violations of these provisions shall subject CONSULTANT (or any of its subcontractors) to the penalties, sanctions, and 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 CONSULTANT (or any of its subcontractors) in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors. (Section 26.29 of 49 CFR Part 26.)

**F. DBE DATABASE**

The website address for the DBE directory identifying all firms eligible to participate as DBEs in the Diversity Program for Contracts is: [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep). (Section 26.31 of 49 CFR Part 26.)

**G. DBE PARTICIPATION GOAL**

CITY’S DBE participation goal for the federal fiscal year FY 2007/2008 is 10% of the federal financial assistance in DOT-assisted contracts. This overall goal is broken into 100% race-neutral and 0% race-conscious components. (Section 26.45 of 49 CFR Part 26.)

**H. DBE CERTIFICATION STANDARDS**

Only DBE firms currently listed on the database as certified by the California Unified Certification Program will participate as DBEs in the Diversity Program for Contracts. (Section 26.83(a) of 49 CFR Part 26.)

**I. COUNTING AND TRACKING DBE PARTICIPATION**

Only the work actually performed by a DBE will be counted by CITY towards the DBE goal. The cost of supplies and materials purchased by the DBE or equipment leased (except supplies and materials purchased or equipment leased by the DBE subcontractor from the CONSULTANT or its affiliate) may also be counted.
1. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own work force.

2. If materials or supplies are obtained from a DBE manufacturer, 100 percent (100%) of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, 60 percent (60%) of the cost will be counted.

3. DBE achievement will not be counted toward the overall goal until the DBE has been paid. CITY will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that is considered race-neutral. Additionally, CITY will not count that portion of a DBE’s participation that is achieved after the certification of the DBE has been removed during the performance of a contract.

4. If the AGREEMENT requires the submittal of a monthly truck document, the CONSULTANT will be required to submit documentation to CITY’s Contract Manager showing the owner’s name, California Highway Patrol CA Number, and the DBE certification number of the owner of the truck for each truck used during the month for which DBE participation will be claimed.

5. CONSULTANT must request in writing to CITY’s Contract Manager for approval the substitution of a DBE firm. The letter must include the names and addresses of the firms, the dollar amounts, and the reasons for the substitution. If CITY’s Contract Manager approves the substitution, CITY will notify both CONSULTANT and the DBE firm being substituted of the substitution and a procedure for written objection from the DBE subcontractor. If CONSULTANT is to meet the AGREEMENT goal with this substitution, CONSULTANT must provide the required good faith effort to CITY’s Contract Manager for consideration. (Section 26.55 of 49 CFR Part 26.)

J. REPORTING TO U.S. DOT

CITY will continue to report DBE participation and annual overall goal setting methods to FTA as directed. Statistical data will be maintained as prescribed on a semiannual basis to provide reports to U.S. DOT agencies reflecting the DBE participation on CITY’s federally-assisted procurement activities. These reports will provide DBE participation information on CITY’S race-neutral and gender-neutral contracts; race-conscious contracts; and the combined DBE participation on all federally-assisted procurement activities including a provision ensuring that DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms. (Section 26.11 of 49 CFR Part 26.)

K. CONSULTANT’S ACKNOWLEDGEMENT AND CERTIFICATION

CONSULTANT has agreed to carry out applicable requirements of the Regulation in the award and administration of federally assisted Agreements. CONSULTANT’s signature, affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has and will continue to comply with the Regulation relating to DBE participation as provided in this Article VI, Section K throughout the terms of this AGREEMENT and any extension hereof.

L. CONTRACT REMEDIES
CITY will monitor compliance of CONSULTANT, and its other contractors on federally-assisted contracts, with the requirements of the Regulations and the Diversity Program for Contracts. CITY may impose such contract remedies as are available under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retentions, imposition of liquidated damages, and termination of this AGREEMENT in whole or in part. (Section 26.37 of 49 CFR Part 26.)

ARTICLE VII - APPENDICES, SCHEDULES, AND SIGNATURES

This AGREEMENT, including its Appendices, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

The following Appendices are hereby made a part of this AGREEMENT:

Appendix A: DETAILED SCOPE OF WORK
Appendix B: CONSULTANT’S KEY PROJECT PERSONNEL
Appendix C: SCHEDULE OF SERVICES
Appendix D: PROJECT COST PROPOSAL
Appendix E: INSURANCE REQUIREMENTS
Appendix F: CERTIFICATION FOR DEBARMENT AND SUSPENSION
Appendix G: LOBBYING CERTIFICATION FOR FEDERAL AID CONTRACTS
Appendix H: FINANCIAL DISCLOSURE STATEMENT

IN WITNESS WHEREOF, this AGREEMENT is executed by the City of El Centro, acting by and through its City Manager, pursuant to City Council Resolution No. ______, authorizing such execution, and by the CONSULTANT.

Dated this ______ day of _________, 2008.

THE CITY OF EL CENTRO

By ______________________________
City Manager

I HEREBY CERTIFY I can legally bind ____________ and that I have read all of this AGREEMENT, this ______ day of ____________, 2008.

By ______________________________
Title ______________________________

I HEREBY APPROVE the form and legality of the foregoing AGREEMENT this ___ day of ________________, 2008

APPROVED AS TO FORM:
Office of the CITY Attorney

By ______________________________
Date ______________________________
APPENDIX "A"

to the
AGREEMENT
between the
CITY OF EL CENTRO
and

DETAILED SCOPE OF WORK

Work under this AGREEMENT shall be to provide Architectural and Engineering Services for the Regional Transfer Terminal project. The CONSULTANT’s Project Manager will take the lead. Other engineers from the team will be brought in as the need arises. The team will work with CITY staff to support an efficient and smooth completion of the project. Work under this AGREEMENT in furtherance of this objective includes but is not limited to the following:
APPENDIX "B"

to the

AGREEMENT

between the

CITY OF EL CENTRO

and

CONSULTANT’S KEY PROJECT PERSONNEL

Name, Title
Name, Title:
Name, Title
APPENDIX "C"

to the

AGREEMENT

between the

CITY OF EL CENTRO

and

SCHEDULE OF SERVICES

Work under this AGREEMENT shall be performed from the Effective Date until ____________. This AGREEMENT may be extended by mutual AGREEMENT of the parties, subject to approval by the City Council.
APPENDIX "D"

to the

AGREEMENT

between the

CITY OF EL CENTRO

and

PROJECT COST PROPOSAL

Fees, including direct expenses, for the AGREEMENT will not exceed the sum of
without prior authorization. Work will be authorized by individual task orders as
specified in Appendix A in accordance with the following rates:

CONSULTANT

HOURLY BILLING RATES AND JOB CLASSIFICATIONS

Mileage is charged at FEDERAL RATE
Travel expense reimbursement
CITY FAR’s To be approved by
(transportation and hotel accommodations)
APPENDIX "E"

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, CONSULTANT will maintain insurance in conformance with the requirements set forth below. CONSULTANT will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, CONSULTANT agrees to amend, supplement or endorse the existing coverage to do so. CONSULTANT acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CITY in excess of the limits and coverage required in this AGREEMENT and which is applicable to a given loss, will be available to CITY.

I

TYPES OF INSURANCE

CONSULTANT shall provide the following types and amount of insurance:

A. Commercial General Liability.

Commercial General Liability insurance using Insurance Services Office “Commercial General Liability” policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than $1,000,000 per occurrence.

B. Business Auto Coverage.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than $1,000,000 per accident. If CONSULTANT owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If CONSULTANT or CONSULTANT’s employees will use personal autos in any way on this project, CONSULTANT shall provide evidence of personal auto liability coverage for each such person.

C. Workers’ Compensation.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits no less than $1,000,000 per accident or disease.

D. Excess or Umbrella Liability Insurance.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum $25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on
behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to CITY for injury to employees of CONSULTANT, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval of CITY following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than $3,000,000 per occurrence and in aggregate.

E. Professional Liability or Errors and Omissions Insurance.

Professional Liability or Errors and Omissions insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the CONSULTANT and “Covered Professional Services” as designated in the policy must specifically include work performed under this AGREEMENT. The policy limit shall be no less than $1,000,000 per claim and in the aggregate. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend. The policy retroactive date shall be on or before the effective date of this AGREEMENT.

II
INSURER QUALIFICATIONS

Insurance procured pursuant to these requirements shall be written by insurer that are admitted carriers in the state of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

III
GENERAL CONDITIONS

General conditions pertaining to provision of insurance coverage by CONSULTANT. CONSULTANT and CITY agree to the following with respect to insurance provided by CONSULTANT:

1. CONSULTANT agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City of El Centro, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992, or equivalent provisions as determined by the Office of the CITY Attorney for the City of El Centro in its sole discretion. CONSULTANT also agrees to require all contractors, subcontractors and anyone else involved in any way with the project contemplated by this AGREEMENT, to do likewise.

2. No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT’s employees, or agents, from waiving the right of subrogation prior to a loss. CONSULTANT agrees to waive subrogation rights against CITY regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

3. All insurance coverage and limits provided by Contractor and available or applicable to this AGREEMENT are intended to apply to the full extent of the policies. Nothing contained in this AGREEMENT or any other agreement relating to the CITY or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsements of any kind that has not been first submitted to CITY and approved of in writing.

5. No liability policy shall contain any provision or definition that would serve to eliminate so-called “third party action over” claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the CITY, as the need arises. CONSULTANT shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect CITY’s protection without CITY’s prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to CONSULTANT’s general liability policy, shall be delivered to CITY at or prior to the execution of this AGREEMENT. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, CITY has the right, but not the duty, to obtain any insurance it deems necessary to protect its interest under this or any other agreement and to pay the premium. Any premium so paid by CITY shall be charged to and promptly paid by CONSULTANT or deducted from sums due CONSULTANT, at City option.

8. Endorsements and certificate(s) are to reflect that the insurer will provide 30 days notice to CITY of any cancellation of coverage. CONSULTANT agrees to require its insurer to modify such endorsements or certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will “endeavor” (as opposed to being required) to comply with the requirements of the certificate.

9. It is acknowledged by the parties of this AGREEMENT that all insurance coverage required to be provided by CONSULTANT or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to CITY.

10. CONSULTANT agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage required of CONSULTANT. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all Agreements with subcontractors and others engaged in the project will be submitted to CITY for review.

11. CONSULTANT agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this AGREEMENT to self-insure its obligations to CITY. If CONSULTANT’s existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the CITY. At that time the CITY shall review options with the CONSULTANT, which may include reduction or elimination of
the deductible or self-insured retention, substitution of other coverage, or other solutions.

12. The CITY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the CITY will negotiate additional compensation proportional to the increased benefit to CITY.

13. For purposes of applying insurance coverage only, this AGREEMENT will be deemed to have been executed immediately upon any Party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this AGREEMENT.

14. CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of CITY to inform CONSULTANT of non-compliance with any insurance requirement in no way imposes any additional obligations on CITY nor does it waive any rights hereunder in this or any other regard.

15. CONSULTANT will renew the required coverage annually as long as CITY, or its employees or agents face an exposure from operations of any type pursuant to this AGREEMENT. This obligation applies whether or not the AGREEMENT is canceled or terminated for any reason. Termination of this obligation is not effective until CITY executes a written statement to that effect.

16. CONSULTANT shall provide proof that policies of insurance required herein expiring during the term of this AGREEMENT have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from CONSULTANT’s insurance agent to this effect is acceptable. A certificate of insurance and an additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to CITY within five days of the expiration of the coverages.

17. The provisions of any workers’ compensation or similar act will not limit the obligations of CONSULTANT under this AGREEMENT. CONSULTANT expressly agrees not to use any statutory immunity defenses under such laws with respect to CITY, its employees, officials and agents.

18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only at it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

19. These insurance requirements are intended to be separate and distinct from any other provision in this AGREEMENT and are intended by the parties here to be interpreted as such.

20. The requirements in this Exhibit supersede all other sections and provisions of this AGREEMENT to the extent that any other section or provision conflicts with or impairs the provisions of this Exhibit.
21. CONSULTANT agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge CITY or CONSULTANT for the cost of additional insurance coverage required by this AGREEMENT. Any such provisions are to be deleted with reference to CITY. It is not the intent of CITY to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto.

22. CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.
CERTIFICATION OF PRIMARY PARTICIPANTS REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

CONSULTANT certifies to the best of his or her knowledge and belief, that CONSULTANT, his or her principals, and subconsultants performing services under this AGREEMENT:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph two (2) of this certification; and

4. Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State or local) terminated for cause or default.

(If CONSULTANT is unable to certify to any of the statements in this certification, CONSULTANT shall attach an explanation to this certification).

CONSULTANT CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENT SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTION 3801 ET SEQ. ARE APPLICABLE THERETO.

Signed: ________________________________

Name of Firm: .

Name of Signatory:

Title:  

APPENDIX “G”

LOBBYING CERTIFICATION FOR FEDERAL AID CONTRACTS

The undersigned certifies, to the best of his or her knowledge and belief, that:
No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a Federal Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal Grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for assisting the political campaign of anyone running for Congress or President of the United States.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person (excluding payments of reasonable compensation made to regularly employed officers or employees, other than payments to any such officer or employee who is, or is required to be, a registered lobbyist) for influencing or attempting to influence an officer or an employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of Congress in connection with this Federal grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards and all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

Signed: ________________________________

Name of Firm:

Name of Signatory:

Title:
CONSULTANT’S FINANCIAL DISCLOSURE STATEMENT

CONSULTANT will comply with all conflict of interest laws and regulations including, without limitations, CITY’s Conflict of Interest Code (on file in the City Clerk’s Office) as required by Article I, Section H, Paragraph 4 of this AGREEMENT. It is incumbent upon the CONSULTANT to notify the CITY pursuant to Article I, Section 6 of any staff changes related to the AGREEMENT. The City Manager has made the following determination and CONSULTANT, by his/her signature, acknowledges said determination.

A. In accomplishing the scope of services of this AGREEMENT, all officers, employees and/or agents of CONSULTANT will be performing a very limited and closely supervised function, and, therefore, unlikely to have a conflict of interest arise. No disclosures are required of any officers, employees, and/or agents of CONSULTANT. CONSULTANT duties are as follows:

_______________________________  _____________________________
City Manager                                               Consultant Signature & Title

B. In accomplishing the scope of services of this AGREEMENT, CONSULTANT will be performing a specialized or general service for the CITY, and there is substantial likelihood that the CONSULTANT may make or participate in making a governmental decision which may have a foreseeable material effect on a financial interest. As a result, the CONSULTANT shall be subject to the Disclosure Category “CONSULTANT” of the CITY’s Conflict of Interest Code.

______________________________  ____________________________
City Manager                                               Consultant Signature & Title

1 Title 2, Division 6, California Code of Regulations Section 18701(a)(2). Pursuant to a contract with a local government agency, a Consultant shall be required to file a Statement of Economic Interest if that Consultant will: “(A) Make a government decision whether to: (1) Approve a rate, rule or regulation; (2) Adopt or enforce a law; (3) Issue, deny, suspend or revoke any permit, license, application, certificate, approval, order or similar authorization or entitlement; (4) Authorize the agency to enter into, modify or renew a contract provided it is the type of contract which requires agency approval; (5) Grant agency approval to a contract which requires agency approval and which the agency is the party or to the specifications for such contract; (6) Grant agency approval to a plan, design, report, study or similar item; or (7) Adopt, or grant approval of policies, standards or guidelines for the agency or for any subdivision thereof; or (B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency’s Conflict of Interest Code, under Governmental Code Section 87302.”

2 Disclosure by Consultants: Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the City’s adopted Conflict of Interest Code, subject to the following limitations: The City Manager may determine in writing that a particular consultant, although a “designated position”, is hired to perform a range of duties that is limited in scope and closely supervised, and, thus, is not required to comply with the disclosure requirements in the City’s adopted Conflict of Interest Code. Such written determination shall include a description of the consultant’s duties. The City Manager’s determination is a public record and shall be retained for public inspection in the same manner and location as the City’s adopted Conflict of Interest Code.