



SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

REQUEST FOR PROPOSALS (RFP) 12-193

FOR

PROFESSIONAL AUDITING SERVICES

KEY RFP DATES

RFP Issue Date:	February 2, 2012
Pre-Proposal Conference Date:	Not Applicable
Question Submittal Deadline:	February 15, 2012 @ 5:00 P.M.
Proposal Due Date:	March 2, 2012 @ 2:00 P.M.
Interview Date:	April 2, 2012 - Tentative
Board Of Directors Approval:	June 6, 2012
Notice To Proceed:	June 6, 2012



San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Fl, San Bernardino, CA 92410
Phone: (909) 884-8276 Fax: (909) 885-4407
Web: www.sanbag.ca.gov



•San Bernardino County Transportation Commission •San Bernardino County Transportation Authority
•San Bernardino County Congestion Management Agency •Service Authority for Freeway Emergencies

February 2, 2012

**SUBJECT: NOTICE OF REQUEST FOR PROPOSALS (RFP) 12-193,
“PROFESSIONAL AUDITING SERVICES”, (hereinafter referred to as
“Project”)**

San Bernardino Associated Governments (“SANBAG”), acting as San Bernardino County Transportation Authority (“Authority”) invites proposals from qualified firms to provide the following professional auditing services as identified in this RFP.

Firms intending to submit a proposal should note the procurement schedule contained in the RFP. It is our intention, subject to Board approval, to have the selected firm under contract by June 2012. Firms submitting proposals for this Project will be evaluated based on qualifications, prior experience, proposed staffing, the firm’s understanding of the Project’s needs and requirements, and overall value to the Authority as identified in this RFP.

Included with this RFP is the following:

- Contract with Scope of Work (hereinafter “Contract”)

The RFP and the materials listed below are available on SANBAG’s website: www.sanbag.ca.gov under “Bids, RFP’s & RFQ’s”. Proposers are requested to check the website periodically, and no less frequently than weekly, for RFP schedule updates, addenda, and other information. Proposers are responsible for accessing information posted on SANBAG’s website.

- SANBAG’s Contracting and Procurement Policy (Policy No. 11000).

One (1) original plus four copies of the proposal must be submitted to SANBAG on or before **2:00 P.M. on March 2, 2012.**

Proposals shall be submitted to:

**William Stawarski
Chief Financial Officer
San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, California 92410-1715**

All questions related to the RFP must be put in writing and submitted to Authority no later than **5:00 P.M., February 15, 2012**. All questions must be clearly labeled, “Written Questions for RFP 12-193” and submitted electronically to:

**Hilda Flores
Accounting Manager
hflores@sanbag.ca.gov**

Questions received after the deadline may not be responded to. Questions received by the deadline, including Authority’s written responses will be posted via written addendum and posted on SANBAG’s website at www.sanbag.ca.gov, under “Bids, RFP’s & RFQ’s”. Firms are solely responsible for checking the website, at least weekly, for additional information related to this RFP.

The firm, who is awarded the Contract, if awarded, will be required to comply with all applicable equal opportunity laws and regulations.

Firms are encouraged to subcontract with small and disadvantaged businesses to the maximum extent possible.

The award of this Contract is subject to the receipt of federal, State and/or local funds sufficient to carry out the work identified in this RFP.

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
REQUEST FOR PROPOSALS 12-193

FOR

“PROFESSIONAL ADUTING SERVICES”

I. INTRODUCTION

San Bernardino Associated Governments (“SANBAG”), acting as the San Bernardino County Transportation Authority (“Authority”) is soliciting proposals from qualified firms to assist the Authority with professional auditing services as identified in this RFP.

The contract, if awarded, will be awarded without consideration of race, religion, color, age, sex, or national origin.

II. PROJECT AND SERVICES DESCRIPTION

SANBAG is requesting proposals from qualified certified public accountants to audit SANBAG’s financial statements for the fiscal year ending June 30, 2012. SANBAG requires an audit of its Comprehensive Annual Financial Report in accordance with generally accepted accounting principles and the governmental auditing standards as promulgated by the Comptroller General of the United States. Additionally, this audit should include compliance with covenants and related testing as required by any indenture for SANBAG’s Sales Tax Revenue Bonds.

Proposals are requested for a three year period starting with the Fiscal Year ending June 30, 2012 and two one-year extensions. After the initial year, the engagement shall be renewed, subject to SANBAG’s Board of Directors approval, on a year-to-year basis.

Services

The audit shall be performed so as to satisfy the audit requirements in accordance with the generally accepted government auditing standards set forth for financial audits in the General Accounting Office’s (GAO) Government Auditing Standards (1994), the Single Audit Act of 1984, as amended, and U.S. office of Management and Budget (OMB) Circular A-133 and OMB’s Compliance Supplement titled Uniform Requirements for Grants to State and Local Governments.

The examination shall also include an audit of the County’s Local Transportation Fund (LTF) and the State Transit Assistance Fund (STAF) in accordance with California Code of Regulations Section 6661 for LTF and Section 6751 for STAF.

Following completion of the audit of the fiscal year’s financial statements, the Auditor shall issue the following reports and letters:

1. Independent Auditor's report on Comprehensive Financial Report (CAFR)
2. Independent Auditor's Single Audit Report
3. Local Transportation Fund (LTF) Financial Compliance Report
4. State Transit Assistance Fund (STAF) Financial and Compliance Report
5. Audit Committee Letter
6. Management Letter (if required).

III. MATERIALS FURNISHED BY AUTHORITY

All software, data, reports, surveys, drawings, and other documents furnished to the Consultant by Authority for the Consultant's use in the performance of services shall be made available for use in performing the assignment and shall remain the sole property of Authority. All such materials shall be returned to Authority upon completion of services, termination of the Contract, or other such time as Authority may determine.

IV. CONTACT INFORMATION

All inquiries, contacts or questions related to this RFP shall be directed to:

**Hilda Flores
Accounting Manager
San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715**

Proposers are cautioned not to discuss this RFP with any official, Board Member or employee of SANBAG, other than the staff identified herein. Neither proposers, nor anyone representing the proposer, are to discuss this RFP with any consultant or contractor engaged by SANBAG for assistance in preparing a response to the RFP. Violation of this prohibition may result in disqualification of the proposer.

V. CONTRACT TYPE

A Time and Materials Contract, with a not-to-exceed amount, if awarded, will be issued for the Project. Rates will be fixed for the term of this Contract. Any services provided by the Consultant, which are not specifically covered by the Contract, will not be reimbursed. Please refer to the Authority's contract in this RFP for more detailed information.

VI. MINORITY BUSINESS OPPORTUNITIES

Though no UDBE/DBE goal is set for this Project, SANBAG encourages participation from Disadvantaged Business Enterprise (DBE) and Underutilized Disadvantaged Business Enterprise (UDBE), all of their contracting activities. Firms interested in the SANBAG's DBE/UDBE program may contact Ellen Pollema at (909) 884-8276.

VII. INFORMED PROPOSER

Proposer's shall review the Scope of Services (identified herein as Attachment A) and the Contract (identified herein as Attachment C), for a complete understanding of the terms and conditions included herein. Proposers are expected to be fully aware of the conditions, requirements, and scope of services before submitting any proposal. Failure to do so will be at the Proposer's own risk. By submitting a proposal, the Proposer represents that it is capable of performing quality work to achieve the Authority's objectives identified in this RFP.

VIII. CONFLICT OF INTEREST

Any person or firm that has assisted the Authority in preparing any aspect of this RFP or any cost estimate associated with this procurement is prohibited from submitting a proposal in response to this RFP. Firms that received assistance from any such person or entity, or who will use the services of such person or entity in performing the services will be disqualified. The determination of a conflict of interest, direct or incidental, shall be at the sole discretion of Authority.

IX. PRE-PROPOSAL CONFERENCE

Not Applicable.

X. ADDENDA

Any changes to this RFP will be made by written Addenda. The Authority will not be bound to any modifications to or deviations from the requirements set forth in this RFP as a result of any oral discussions and or instructions. Proposers shall acknowledge receipt of any addenda in their proposal.

XI. WRITTEN QUESTIONS/CLARIFICATIONS

All questions and or clarifications to this RFP, including questions that could not be specifically addressed at the Pre-Proposal conference must be put in writing and must be received by the Authority no later than **5:00 P.M., February 15, 2012**. Questions received after the date and time specified may or may not be responded to, within the sole discretion of Authority. All questions/clarifications must be clearly labeled "Written Questions". The Authority is not responsible for failure to respond to questions that are not appropriately marked. The Authority's responses to the questions received by the date and time identified herein, including the Authority's answers will be posted on SANBAG's website at www.sanbag.ca.gov.

XII. PRE CONTRACTUAL EXPENSES

The Authority shall not be liable for any pre-contractual expenses incurred by the

firms in preparation of their proposals. The Proposer shall not include any such expenses as part of their price proposal. Pre-contractual expenses are defined as follows; a) preparing a proposal in response to this RFP; b) submitting a price proposal to Authority; and c) any and all expenses incurred by the Proposer to award this Contract.

XIII. PROPOSAL INSTRUCTIONS

Proposals are due at or before **2:00 P.M. on March 2, 2012**. One original and four (4) copies are to be submitted to:

**William Stawarski
Chief Financial Officer
San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410-1715**

All proposals are to be submitted in a sealed package, clearly marked with RFP number and title and clearly marked with the company's name and address. **Proposals received after the date and time specified herein will not be accepted and will be returned to the firm unopened.**

Proposers shall include the following information in their proposals:

A. Cover Letter

- A statement requesting Authority to evaluate the submitted proposal.
- Identification of all proposed subcontractors including description of the work to be performed by the firm and each subcontractor proposed for the Project and an estimate of the percentage of work to be performed by each firm.
- Indicate the location of the office from which the work will be performed.
- In accordance with SANBAG Policy No. 11000, Sect. VII.A.2.f, provide a response to the following question: Has your firm ever been terminated from a contract? **If the answer is yes, see item B below.**
- A memorandum from a principal from each subcontractor indicating the specific portion of services the subcontractor will be performing.
- Acknowledgement of receipt of all addenda, if any.
- A signed statement by an officer of the prime firm attesting that all information in the proposal is true and correct.
- Signature of an authorized person within the prime firm who can bind the firm to the terms and conditions of the RFP.

- That the proposal shall remain valid for 120 days from the date of submission.

B. Contract Termination Circumstances:

If Proposer has ever been terminated from a contract, describe the facts and circumstances in detail, on a separate sheet. See SANBAG Policy No. 11000, Sect. 7.A.2.f. for details. Firms may download the Policy on SANBAG'S website at www.sanbag.ca.gov, under "Bids, RFP's & RFQ's".

C. Technical Proposal Content:

1. Qualifications, Related Experience, and References

This section of the proposal should establish the ability of the proposed team to satisfactorily perform the required work by reasons of: experience in performing work of the same or similar nature; demonstrated experience working with agencies and cities directly involved in this Project; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references. Specifically:

- a. Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; number of employees.
- b. Provide a general description of the firm's current financial condition; identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede ability to complete the Project.
- c. Describe the firm's experience in performing work of a similar nature to that solicited in this RFP, and the participation in such work by the key personnel proposed for assignment to this Project. Highlight the firm's and key personnel's experience with government accounting and auditing requirements.
- d. Describe experience in working with the various government agencies that may have jurisdiction over the approval of the work specified in this RFP. Please include specialized experience and professional competence in areas directly related to this RFP.
- e. Provide a list of past joint work by the Proposer and each subcontractor, if applicable. The list should clearly identify the project and provide a summary of the roles and responsibilities of each party.
- f. Provide a minimum of three (3) references. Furnish the name, title, address and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. References may also be supplied from other work not cited in this section as related experience.

2. Proposed Staffing and Project Organization

This section of the proposal should establish the method that will be used to manage the Project as well as identify key personnel assigned. Specifically:

- a. Provide education, experience and applicable professional credentials of Project staff.
- b. Furnish brief resumes (not more than two [2] pages each) for the proposed Project Manager and other key personnel.
- c. Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, proposed position for this Project, current assignment, level of commitment to that assignment, availability for this assignment, and how long each person has been with the firm.
- d. Include a Project organization chart that clearly delineates communication/reporting relationships among the Project staff, including subcontractors.
- e. Include a statement that key personnel will be available to the extent proposed for the duration of the contract, acknowledging that no person designated as "key" to the Project shall be removed or replaced without the prior written concurrence of Authority. In addition, the firm will have flexibility of assigning staff as needed to fulfill timelines.

3. Work Plan

This section of the proposal shall provide a narrative that addresses the Scope of Services and shows understanding of the Project needs and requirements.

Specifically:

- a. Describe the approach and work plan for completing the tasks specified in the Scope of Services. The work plan shall be of such detail to demonstrate ability to accomplish the project objectives and overall schedule.
- b. Outline sequentially the activities that would be undertaken in completing the tasks and specify who in the firm would perform them.
- c. Furnish a Project schedule for each task and subtask in terms of elapsed weeks from commencement dates.
- d. Identify methods that will be used to ensure quality control as well as budget and schedule control for the Project.
- e. Identify any special issues or problems that are likely to be encountered during this Project and how will they be addressed.

- f. Proposers are encouraged to propose enhancements or innovations to the Scope of Services that do not materially deviate from the objectives or required content of the Project.

4. Appendices

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

5. Price Proposal – Attachment B

Proposers shall complete all pricing documents in this RFP identified as Attachment B, herein with their Proposal.

6. Contract Comments

Proposers are asked to include in their proposals a written discussion of proposed exceptions to or deviations from the Authority's Contract. Please note that Authority reserves the right to disqualify any Consultant that does not provide a complete written discussion of its contractual objections or to disqualify any Consultant based on objections that Authority considers non-negotiable. Authority does not anticipate making substantive changes to its Terms and Conditions. Should a firm not identify any proposed exceptions in their proposal, they will be deemed to have accepted the contract terms and conditions without exception.

D. Entire Proposal Package:

The proposal is limited to 50 (8 ½" x 11") pages single-sided or 25 pages double sided in 11-point font. Charts and schedules may be included in 11" x 17" format. Proposals shall not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged, and presentations should be brief and concise. The page limit does not include the outside cover, section dividers, cover letters and sub-consultant commitment memorandum, or appendices. Proposals that do not contain the required information or do not contain the required number of copies will be rejected and will not be considered. Proposals are not to be copy righted.

E. Changes:

At any time during the procurement process, a firm makes any changes to proposed key personnel or subcontractors, the firm must notify the Authority in writing of those proposed changes. Authority reserves the right to accept or reject such proposed changes or to revise the evaluation scoring to reflect the proposed staffing changes.

XIII. ACCEPTANCE OF PROPOSALS

Authority reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals. Authority reserves the right to withdraw or cancel this RFP at any time without prior notice and Authority makes no representation that any contract will be awarded to any firm responding to this RFP. Authority reserves the right to re-issue a new RFP for the same or similar services. Authority reserves the right to postpone proposal openings for its own convenience. Proposals received by Authority are public information and must be made available to any person upon request. Submitted proposals are not to be copyrighted. Consultant may withdraw its proposal before the opening of proposals by submitting a written request signed by an authorized representative of the firm and delivered to William Stawarski, Chief Financial Officer.

XIV. CONSULTANT SELECTION

The primary objective of Authority is to select a qualified firm to perform the services identified herein for Authority at a fair and reasonable cost. Firms may obtain a copy of the selection policy by accessing the Authority's website. In addition, Authority has established the following criteria for the selection process:

- A. The selection process shall be fair, open, and competitive.
- B. The selection of the firm will be based on clearly stated objectives identified in this RFP.
- C. Selection of the firm shall be based upon demonstrated competence, professional qualifications, experience, and capabilities and overall best value to perform the required services identified in Scope of Services.
- D. Upon review of the proposals, a shortlist of firms will be invited to an interview scheduled for **Monday, April 2, 2012** at the SANBAG's Office located at 1170 W. 3rd Street, San Bernardino, CA 92410. The Contract will be awarded to the firm who offers the overall best value, best conforming to the RFP, and in the opinion of Authority, most advantageous to Authority.
- E. Authority reserves the right to reject any and all proposals and to negotiate with any responsible, responsive firm. Authority is under no obligation to award a contract for the subject services. At the conclusion of the evaluation process, the evaluation committee will recommend to Authority's Board of Directors the firm that offers the best overall value to Authority. The Authority may or may not engage in negotiations with firms who submit a proposal, therefore, the Offeror's proposal should contain the most favorable terms and conditions including pricing, since the selection and award may be made without any discussion with any firm.

- F. Proposals will be evaluated based on the criteria identified in this RFP, including, but not limited to current client list and the potential for a conflict of interest.
- G. Firms who were not awarded a contract may obtain a debriefing concerning the strengths and weaknesses of their proposals after the Authority's Board of Directors authorizes an award. A request for debriefing must be submitted in writing to: Hilda Flores at hflores@sanbag.ca.gov.
- H. The AUTHORITY has on file written protest procedures (Policy 11007). Firms may download a copy from www.sanbag.ca.gov, under "Bids, RFPs & RFPs".

XIV. NEGOTIATIONS AND AWARD

The contract, Scope of Services and Cost Proposal may be negotiated with the selected Consultant. Consultants are to identify in their proposal any comments relating to the Scope of Services and/or the terms and conditions of Authority's standard contract. Authority reserves the right to disqualify any firm that does not provide written discussions of any disagreements it has relative to Authority's Terms and Conditions. Authority does not anticipate making any substantive changes to its Terms and Conditions. Consultant is advised that any recommendation for contract award is not binding on Authority until the Contract is approved by the Authority's Board of Directors, and fully executed.

XV. PROCUREMENT SCHEDULE

RFP Issue Date:	February 2, 2012
Pre-Proposal Conference Date:	Not Applicable
Question Submittal Deadline:	February 15, 2012 @ 5:00 P.M.
Proposal Due Date:	March 2, 2012 @ 2:00 P.M.
Interview Date:	April 2, 2012- Tentative
Board Of Directors Approval:	June 6, 2012
Notice To Proceed:	June 6, 2012

Dates are subject to change. Schedule updates will be posted on SANBAG's website at: www.sanbag.ca.gov under "Bids, RFP's & RFQ's".

ATTACHMENT A

“SCOPE OF SERVICES”

General:

San Bernardino Associated Governments (SANBAG) is requesting proposals from qualified certified public accounting firms to audit its financial statements beginning with the Fiscal Year ending June 30, 2012. SANBAG requires an audit of its Comprehensive Annual Financial Report in accordance with generally accepted accounting principles and the governmental auditing standards as promulgated by the Comptroller General of the United States.

Additionally, this audit should include compliance with covenants and related testing as required by indenture for SANBAG's Sales Tax Revenue Bonds.

Auditing Standards to be Followed-

The audit shall be performed so as to satisfy the audit requirements in accordance with the generally accepted government auditing standards set forth for the financial audits in the General Accounting office's (GAO) Government Auditing Standards (1994), the Single Audit Act of 1984, as amended, and U.S. Office of Management and Budget (OMB) Circular A-133 and OMB's Compliance Supplement titled Uniform Requirements for Grants to State and Local Governments.

Reports to be Issued –

Following the completion of the audit of the fiscal year's financial statements, the Auditor shall issue the following reports and letters:

1. Independent Auditor's Report on Comprehensive Annual Financial Report (CAFR);
2. Independent Auditor's Single Audit Report;
3. Local Transportation Fund (LTF) Financial and Compliance Report
4. State Transit Assistance Fund (STAF) Financial and Compliance Report
5. Report on Applying Agreed Upon Procedures for Appropriations Limit Calculation
6. Audit Committee Letter
7. Management Letter (if required)

Additional Considerations –

1. SANBAG will complete its first CAFR for FY 11-12, and the Auditor is expected to provide information to SANBAG to ensure completeness of report.
2. It is expected that the Auditor shall keep SANBAG informed of new state and Federal

Developments affecting municipal and local government finance. Additionally, reporting standards and trends including changes in federal or state grant program accounting and reporting requirements shall be communicated to SANBAG.

3. SANBAG may require other generalized auditing requirements as needed by SANBAG.

SCHEDULE –

Annual audit schedule, subject to change:

May/June	– Interim field work
September/October	– Year-end field work
October/November	– Review drafts of all reports and finalize them by month-end
	November/December - Financial statements presented to Audit Committee and Administrative Committee
December/January	– Financial statements presented to the SANBAG Board of Directors

* Note: Auditors should be prepared to attend meetings as requested:

- Audit Committee meetings (Normally held twice a year – end of interim work and end of year-end to present financial reports),
- Administrative Committee meetings (Held after the Audit Committee meetings. The meetings are held on the second Wednesday of the month), and
- Board of Directors meetings (held on the first Wednesday of the month).

ATTACHMENT B

PRICE FORM

Total Maximum Price

	2011-12	2012-13	2013-14	Extensions		5-Year Total
				2014-15	2015-16	
CAFR	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Annual State Controller's Report	-	-	-	-	-	-
LTF Financial & Compliance Report	-	-	-	-	-	-
STAF Financial & Compliance Report	-	-	-	-	-	-
GANN Limit Report	-	-	-	-	-	-
Single Audit	-	-	-	-	-	-
Management Letter	-	-	-	-	-	-
Total	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

Key Personnel:

Name	Classification/Title	Job Function	Hourly Rate	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	

Other Direct Cost Schedule (ODC)

All ODC's are to be proposed at cost-without mark-ups.

Type of ODC	Unit Cost		Estimated Budget Amount	
	\$		\$	
	\$		\$	
	\$		\$	
	\$		\$	
	\$		\$	

Proposer

Signature of Authorized Person

Date

ATTACHMENT C

CONTRACT NO: C12-193

By and Between

**San Bernardino Associated Government/ San Bernardino County
Transportation Authority**

And

For

PROFESSIONAL AUDITING SERVICES

CONTRACT # C12-193

BY AND BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND

FOR

PROFESSIONAL AUDITING SERVICES

This Contract, is effective on the Effective Date as defined herein, by and between the San Bernardino Associated Governments/ San Bernardino Transportation Authority (hereinafter referred to as "AUTHORITY") whose address is: 1170 W. 3rd Street, 2nd Floor, San Bernardino, California 92410-1715; and the firm of _____ whose address is: _____ (Hereinafter referred to as "CONSULTANT"). AUTHORITY and CONSULTANT are each a "Party" and collectively "Parties" herein.

RECITALS:

WHEREAS, AUTHORITY requires certain governmental auditing services as described in Attachment A of this Contract and;

WHEREAS, CONSULTANT has confirmed that they have the requisite personnel and experience and is fully capable and qualified to do the work described herein; and

WHEREAS, CONSULTANT desires to do so for the compensation in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE 1. DESCRIPTION OF SERVICES

CONSULTANT agrees to perform services set forth in Attachment "A", Scope of Services, (hereinafter referred to as "Services"), which is incorporated herein by reference, in accordance with standards which are generally accepted in the State of California, in accordance with the terms and conditions expressed herein and in the sequence, time, and manner defined therein. The word "Services," as used herein, includes without limitation, the performance, fulfillment and discharge by CONSULTANT of all obligations, duties, tasks, and services imposed upon or assumed by CONSULTANT hereunder; and the Services performed hereunder shall be completed to the satisfaction of AUTHORITY, with their satisfaction being based on prevailing standards in the industry.

ARTICLE 2. PERIOD OF PERFORMANCE

The Period of Performance by CONSULTANT under this Contract shall commence upon issuance of a written Notice To Proceed (NTP) issued by AUTHORITY, unless agreed otherwise, and shall continue in full force and effect through June 30, 2014 audit with two one-year extensions, or until otherwise terminated, or unless extended as hereinafter provided by written amendment.

ARTICLE 3. PRICE

3.1 Total compensation to CONSULTANT for full and complete performance of Services, in compliance with all the terms and conditions of this Contract, payment by CONSULTANT of all obligations incurred in, or application to, CONSULTANT'S performance of Services, and for which CONSULTANT shall furnish all personnel, facilities, equipment, materials, supplies, and services (except as may be explicitly set forth in this Contract as furnished by AUTHORITY), shall not exceed the amount set forth in 3.2 below.

3.2 The total Not-To-Exceed Amount is _____ Dollars, (\$ _____), for Services to be provided under this Contract. Services to be provided under this Contract are to be performed as set forth in Attachment "A", Scope of Services, and shall be reimbursed pursuant to the rates identified in Attachment B "Billing Rate Schedule", which is which is the AUTHORITY's approved CONSULTANT' Cost Proposal and incorporated in and made part of this Contract. The hourly labor rates identified in Attachment B shall remain fixed for the term of this Contract and include CONSULTANT's direct labor costs, indirect costs, and profit. All expenses shall be reimbursed for the amount identified in Attachment B. The AUTHORITY will not reimburse for any expenses not shown in Attachment B.

3.3 CONSULTANT's overhead rates will be fixed, as agreed upon in Attachment "B" for the duration of this Contract and include all costs associated with the administration of this Contract. The fixed overhead rate will not be subject to adjustment. Any percentage increase over the direct labor rate in Attachment "B" is not permitted without prior written authorization from AUTHORITY.

3.4 Intentionally Left Blank

3.5 The cost principles set forth in Part 31, Contract Cost Principles and Procedures, in Title 48, Federal Acquisition Regulations System of the Code of Federal Regulations (CFR) as constituted on the effective date of this Contract shall be utilized to determine allowableness of costs under this Contract and may be modified from time to time by written amendment of the Contract.

3.5.1 CONSULTANT agrees to comply with Federal Department of Transportation procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

- 3.5.2 Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Part 31, Contract Cost Principles and Procedures, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments shall be repaid by CONSULTANT to AUTHORITY.
- 3.5.3 Any subcontract, entered into as a result of this Contract shall contain all of the provisions of this Section 3.5.
- 3.6 Any services provided by CONSULTANT not specifically covered by the Scope of Services (Attachment "A") shall not be compensated without prior written authorization from AUTHORITY. It shall be CONSULTANT's responsibility to recognize and notify AUTHORITY in writing when services not covered by the Scope of Services have been requested or are required. All changes and/or modifications to the Scope of Services shall be made in accordance with the "Changes" provision in this Contract.

ARTICLE 4. PAYMENT

- 4.1 The compensation of CONSULTANT as provided herein shall be payable in 4 week billing period payments, forty-five (45) calendar days after receipt by AUTHORITY of an invoice prepared in accordance with instructions below. Payment shall not be construed to be an acceptance of Services.
- 4.2 CONSULTANT shall prepare all invoices in a form satisfactory to and approved by AUTHORITY and it shall be accompanied by documentation supporting each element of measurement and/or cost. Each invoice will be for a four-week billing period and will be marked with AUTHORITY'S Project name, contract number and task order number, if applicable. Invoices shall be submitted within fifteen (15) calendar days for the period covered by the invoice. Invoices shall include request for payment for Services (including additional Services authorized by AUTHORITY) completed by CONSULTANT during each billing period. Any invoice submitted which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to CONSULTANT. Any costs incurred by CONSULTANT in connection with the resubmission of a proper invoice shall be at CONSULTANT' sole expense.
- 4.3 CONSULTANT shall furnish evidence, satisfactory to AUTHORITY, that all labor and materials furnished and equipment used during all periods prior to the period covered by any invoice have been paid in full. AUTHORITY shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such evidence. Upon furnishing such evidence, satisfactory to AUTHORITY, AUTHORITY shall pay CONSULTANT the full amount of the invoice less disputed amounts.
- 4.4 Intentionally Left Blank.
- 4.5 CONSULTANT shall include a statement and release with each invoice, satisfactory to AUTHORITY, that CONSULTANT has fully performed the Services invoiced pursuant

to this Contract for the period covered and that all claims of CONSULTANT and its subcontractors for Services during the period will be satisfied upon the making of such payment. AUTHORITY shall not be obligated to make payments to CONSULTANT until CONSULTANT furnishes such statement and release.

- 4.6 No payment will be made prior to approval of any work, nor any work shall be performed prior to approval of this Contract by AUTHORITY's Board of Directors.
- 4.7 CONSULTANT agrees to promptly pay each subcontractor for the satisfactory completion of all work performed under this Contract, no later than thirty (30) calendar days from the receipt of payment from AUTHORITY. AUTHORITY reserves the right to request documentation from CONSULTANT showing payment has been made to its subcontractors.

ARTICLE 5. TAXES, DUTIES AND FEES

Except to the extent expressly provided elsewhere in this Contract, CONSULTANT shall pay when due, and the compensation set forth in "Article 3" shall be inclusive of all a) local, municipal, state, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONSULTANT; and d) all other governmental fees and taxes or charges of whatever nature applicable to CONSULTANT to enable it to conduct business.

ARTICLE 6. AVAILABILITY OF FUNDS

The award and performance of this Contract is contingent on the availability of funds. If funds are not allocated and available to AUTHORITY for the continuance of Services performed by CONSULTANT, Services directly or indirectly involved may be suspended or terminated by AUTHORITY at the end of the period for which funds are available. When AUTHORITY becomes aware that any portion of Services, which will or may be affected by a shortage of funds, it will immediately so notify CONSULTANT. Nothing herein shall relieve AUTHORITY from its obligation to compensate CONSULTANT for Services performed pursuant to this Contract. No penalty shall accrue to AUTHORITY in the event this provision is exercised.

ARTICLE 7. DOCUMENTATION AND RIGHT TO AUDIT

- 7.1 CONSULTANT shall provide AUTHORITY, or other authorized representatives or agents of AUTHORITY, access to CONSULTANT's records, which are directly related to this Contract for the purpose of inspection, auditing or copying. CONSULTANT shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by AUTHORITY, except in the event of litigation or settlement of claims arising out of this Contract in which case CONSULTANT agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. CONSULTANT further agrees to maintain separate records for costs of work performed by amendment. CONSULTANT shall allow AUTHORITY or its representatives or agents to reproduce any materials as reasonably necessary. This Article applies to all subcontractors at any tier that is

performing work under this Contract.

- 7.2 The cost proposal for this Contract is subject to audit at any time. After CONSULTANT receives any audit recommendations the Cost Proposal shall be adjusted by CONSULTANT and approved by AUTHORITY's Project Manager to conform to the audit recommendations. CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into this Contract at AUTHORITY' sole discretion. Refusal by the CONSULTANT to incorporate the audit or post award recommendations will be considered a breach of the Contract terms and cause for termination of the Contract.

ARTICLE 8. RESPONSIBILITY OF CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy, and assurance of compliance with all applicable Federal, state and local laws and regulations and other services furnished by CONSULTANT under the terms of this Contract.

ARTICLE 9. REPORTING AND DELIVERABLES

All reports and deliverables shall be submitted in accordance with Attachment "A", Scope of Services.

ARTICLE 10. TECHNICAL DIRECTION

- 10.1 Performance of Services under this Contract shall be subject to the technical direction of the AUTHORITY's Chief Financial Auditor, ("CFO") or designee, as identified in Attachment "A", Scope of Services, attached to this Contract. AUTHORITY' CFO will identify a designee as Project Manager, in writing to CONSULTANT, with the NTP and subsequently with any changes during the Contract term. The term "Technical Direction" is defined to include, without limitation:

10.1.1 Directions to CONSULTANT, which redirect the Contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Scope of Services.

10.1.2 Provision of written information to CONSULTANT, which assists in the interpretation of reports, or technical portions of the services identified herein.

10.1.3 Review and, where required by the Contract, approval of technical reports, and technical information to be delivered by CONSULTANT to AUTHORITY under the Contract.

- 10.2 Technical Direction must be within the Scope of Services under this Contract. AUTHORITY's Project Manager does not have the authority to, and may not, issue any Technical Direction which:

10.2.1 Constitutes an assignment of additional Services outside the Scope of Services;

- 10.2.2 Constitutes a change as defined in the Contract Article entitled "Changes";
- 10.2.3 In any manner causes an increase or decrease in the Contract's estimated cost or price or the time required for contract performance;
- 10.2.4 Changes any of the expressed terms, conditions or specifications of the Contract;
or
- 10.2.5 Interferes with CONSULTANT's right to perform the terms and conditions of the Contract.
- 10.3 Failure of CONSULTANT and AUTHORITY's Project Manager to agree that the Technical Direction is within the scope of the Contract, or a failure to agree upon the Contract action to be taken with respect thereto shall be subject to the provisions of "Disputes" Article herein.
- 10.4 All Technical Direction shall be issued in writing by the AUTHORITY's Project Manager.
- 10.5 CONSULTANT shall proceed promptly with the performance of technical direction issued by the AUTHORITY's Project Manager, in the manner prescribed by this Article and within their Authority under the provisions of this Article. If, in the opinion of CONSULTANT, any instruction or direction by the AUTHORITY's Project Manager, falls within one of the categories defined in 10.2.1 through 10.2.5 above, CONSULTANT shall not proceed but shall notify the Project Manager in writing within five (5) working days after receipt of any such instruction or direction and shall request the Project Manager to modify the Contract accordingly. Upon receiving the notification from CONSULTANT, the Project Manager shall:
- 10.5.1 Advise CONSULTANT in writing within thirty (30) days after receipt of CONSULTANT's letter that the technical direction is or is not within the scope of Article 11, "Changes";
- 10.5.2. Advise CONSULTANT within a reasonable time that AUTHORITY will or will not issue a written amendment.

ARTICLE 11. CHANGES

- 11.1 The Services shall be subject to changes by additions, deletions, or revisions made by AUTHORITY. CONSULTANT will be advised of any such changes by written notification from AUTHORITY describing the change.
- 11.2 Promptly after such written notification of change is given to CONSULTANT by AUTHORITY, CONSULTANT and AUTHORITY will attempt to negotiate a mutually agreeable change in compensation or time of performance and amend the Contract accordingly.

**ARTICLE 12. EQUAL EMPLOYMENT OPPORTUNITY/DRUG FREE
WORKPLACE**

- 12.1 During the term of this Contract, CONSULTANT shall not willfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, gender, marital status, sexual orientation, age, political affiliation or disability. CONSULTANT agrees to comply with the provisions of Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practice Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.
- 12.2 CONSULTANT agrees to comply with the Drug Free Workplace Act of 1990 per Government Code section 8350 et seq.

ARTICLE 13. CONFLICT OF INTEREST

CONSULTANT agrees that it presently has no interest financial or otherwise and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. CONSULTANT further agrees that in the performance of this Contract, no person having any such interest shall be employed. CONSULTANT is obligated to fully disclose to the AUTHORITY, in writing, of any conflict of interest issues as soon as they are known to CONSULTANT and to comply with AUTHORITY's policy 10102 regarding disclosure.

ARTICLE 14. KEY PERSONNEL

The personnel specified below are considered to be essential to Services being performed under this Contract. Prior to diverting any of the specified individuals to other projects, or reallocation of tasks and hours of Services, which are the responsibility of key personnel to other personnel, CONSULTANT shall notify AUTHORITY reasonably in advance and shall submit justifications (including proposed substitutions) in sufficient detail to permit evaluation of the import on the Project. Diversion or reallocation of key personnel shall be subject to written approval by AUTHORITY. The CONSULTANT must have flexibility of assigning staff as needed to fulfill timelines. AUTHORITY also reserves the right to approve proposed substitutions for key personnel. In the event that AUTHORITY and CONSULTANT cannot agree as to the substitution of key personnel, AUTHORITY shall be entitled to terminate this Contract. Key Personnel are:

Name	Function

ARTICLE 15. REPRESENTATIONS

Services supplied by CONSULTANT under this Contract shall be supplied by personnel who are careful, skilled, experienced and competent and possess all relative licenses and permits in their respective trades or professions. CONSULTANT agrees that they are supplying professional services, findings, and/or recommendations in the performance of this Contract and agrees with AUTHORITY that the same shall conform to professional standards, which are generally accepted in the industry.

ARTICLE 16. PROPRIETARY RIGHTS/CONFIDENTIALITY

- 16.1 If, as a part of this Contract, CONSULTANT is required to produce materials, documents data, or information ("Products"), then CONSULTANT, if requested by AUTHORITY, shall deliver to AUTHORITY the original of all such products which shall become the sole property of AUTHORITY.
- 16.2 All materials, documents, data or information obtained from AUTHORITY's data files or any AUTHORITY medium furnished to CONSULTANT in the performance of this Contract will at all times remain the property of AUTHORITY. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONSULTANT without the express written consent of AUTHORITY.
- 16.3 Except as reasonably necessary for the performance of Services, CONSULTANT and its employees and agents shall hold in confidence the materials and information referred to in this Article which are produced by CONSULTANT for AUTHORITY in the performance and completion of CONSULTANT' Services under this Contract, until released in writing by AUTHORITY, except to the extent such materials and information become a part of public domain information through no fault of CONSULTANT, or its employees or agents.
- 16.4 CONSULTANT shall not use AUTHORITY's name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of AUTHORITY.
- 16.5 All press releases, or press inquiries relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by AUTHORITY unless otherwise agreed to by CONSULTANT and AUTHORITY.
- 16.6 CONSULTANT agrees that it, and its employees, agents, and subcontractors will hold confidential and not divulge to third parties without the prior written consent of AUTHORITY, any information obtained by CONSULTANT from or through AUTHORITY in connection with CONSULTANT's performance of this Contract, unless (a) the information was known to CONSULTANT prior to obtaining same from AUTHORITY pursuant to a prior contract; or (b) the information was obtained at the time of disclosure to CONSULTANT, or thereafter becomes part of the public domain, but not as a result of the fault or an unauthorized disclosure of CONSULTANT or its employees, agents, or subcontractors, or (c) the information was obtained by

CONSULTANT from a third party who did not receive the same, directly or indirectly, from AUTHORITY and who had, to CONSULTANT's knowledge and belief, the right to disclose the same.

ARTICLE 17. TERMINATION

- 17.1 Termination for Convenience- AUTHORITY shall have the right at any time, with or without cause, to terminate further performance of Services by written notice to CONSULTANT specifying the date of termination. On the date of such termination stated in said notice, CONSULTANT shall discontinue performance of Services and shall preserve work in progress and completed work ("Work"), pending AUTHORITY's instruction, and shall turn over such Work in accordance with AUTHORITY's instructions.
- 17.1.1 CONSULTANT shall deliver to AUTHORITY, all deliverables prepared by CONSULTANT or its subcontracts or furnished to CONSULTANT by AUTHORITY. Upon such delivery, CONSULTANT may then invoice AUTHORITY for payment in accordance with the terms hereof.
- 17.1.2 If CONSULTANT has fully and completely performed all obligations under this Contract up to the date of termination, CONSULTANT shall be entitled to receive from AUTHORITY as complete and full settlement for such termination a pro rata share of the contract cost and a pro rata share of any fixed fee, for such Services satisfactorily executed to the date of termination.
- 17.1.3 CONSULTANT shall be entitled to receive the actual cost incurred by CONSULTANT to return CONSULTANT's field tools and equipment, if any, to it or its suppliers' premises, or to turn over work in progress in accordance with AUTHORITY's instructions plus the actual cost necessarily incurred in effecting the termination.
- 17.2 Termination for Cause - In the event CONSULTANT shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy court shall be filed against CONSULTANT or a receiver shall be appointed on account of its solvency, or if CONSULTANT shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice thereof, AUTHORITY may, without prejudice to any other rights or remedies AUTHORITY may have, and in compliance with applicable Bankruptcy Laws; (a) hold in abeyance further payments to CONSULTANT; (b) stop any services of CONSULTANT or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONSULTANT specifying the date of termination. In the event of such termination by AUTHORITY, AUTHORITY may take possession of the deliverables and finish Services by whatever method AUTHORITY may deem expedient. A waiver by AUTHORITY of one default of CONSULTANT shall not be considered to be a waiver of any subsequent default of CONSULTANT, nor be deemed to waive, amend, or modify any term of this Contract.

17.2.1 In the event of termination CONSULTANT shall deliver to AUTHORITY all finished and unfinished products prepared under this Contract by CONSULTANT or its subcontractors or furnished to CONSULTANT by AUTHORITY.

17.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to AUTHORITY, satisfactory in form and content to AUTHORITY and verified by AUTHORITY. In no event shall CONSULTANT be entitled to any prospective profits or any damages because of such termination.

ARTICLE 18. STOP WORK ORDER

Upon failure of CONSULTANT or its subcontractors to comply with any of the requirements of this Contract, AUTHORITY shall have the authority to stop any services of CONSULTANT or its subcontractors affected by such failure until such failure is remedied or to terminate this Contract in accordance with Article 17, "TERMINATION".

ARTICLE 19. CLAIMS

AUTHORITY shall not be bound to any adjustments in the Contract amount or time for CONSULTANT's claim unless expressly agreed to by AUTHORITY in writing and any such adjustments in the Contract amount so agreed to in writing shall be paid to CONSULTANT by AUTHORITY. No claim hereunder by CONSULTANT shall be allowed if asserted after final payment has been made under this Contract.

ARTICLE 20. INSURANCE

Without any way affecting the indemnity provision identified in this Contract, CONSULTANT shall, at the CONSULTANT's sole expense, and prior to the commencement of any work, procure and maintain in full force, insurance through the entire term of this Contract. The policies shall be written by a California admitted carrier with a Best rating of A-VII or better, and shall be written with a least the following limits of liability:

20.1 Professional Liability – Professional Liability insurance shall be provided in an amount not less than \$1,000,000.

20.2 Workers' Compensation – Worker's Compensation insurance shall be provided in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability in an amount not less than \$1,000,000 limits covering all persons providing services on behalf of CONSULTANT and all risks to such persons under this Contract.

20.3 Commercial General Liability – To include coverage for Premises and Operations, Contractual Liability, Products/Completed Operations Liability, Personal Injury Liability, Broad-Form Property Damage and Independent Contractors' Liability, in an amount of not less than \$1,000,000 per occurrence, combined single limit, and \$2,000,000 in the

aggregate written on an occurrence form. For products and completed operations a \$2,000,000 aggregate shall be provided.

- 20.4 Automobile Liability – To include owned, non-owned and hired automobiles, in an amount of not less than \$1,000,000 combined single limit.
- 20.5 Proof of Coverage - CONSULTANT shall furnish certificates of insurance to AUTHORITY evidencing the insurance coverage required above, prior to the commencement of performance of Services hereunder, and such certificates shall include San Bernardino Associated Governments/San Bernardino County Transportation Authority and its officers, employees, agents and volunteers, as additional insured on Commercial General Liability Insurance and auto insurance. Prior to commencing any work, CONSULTANT shall furnish AUTHORITY with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth in this Article. If the insurance company elects to cancel or non-renew coverage for any reason, CONSULTANT will provide AUTHORITY thirty (30) days written notice of cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium CONSULTANT will provide AUTHORITY ten (10) days written notice. CONSULTANT shall maintain such insurance for the entire term of this Contract. The certificate(s) of insurance are to include the Contract number and Project Manager' name on the face of the certificate(s).
- 20.6 Additional Insured - All policies, except for Worker's Compensation and Professional Liability policies, shall contain endorsements naming AUTHORITY and its officers, employees, agents, and volunteers as additional insureds with respect to liabilities arising out of the performance of Services hereunder. The additional insured endorsements shall not limit the scope of coverage for AUTHORITY to vicarious liability but shall allow coverage for AUTHORITY to the full extent provided by the policy.
- 20.7 Waiver of Subrogation Rights - CONSULTANT shall require the carriers of Commercial General Liability, Automobile Liability and Workers Compensation to waive all rights of subrogation against AUTHORITY, its officers, employees, agents, volunteers, contractors, and subcontractors. Such insurance coverage provided shall not prohibit CONSULTANT or CONSULTANT'S employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against AUTHORITY.
- 20.8 Commercial General Liability required herein are to be primary and non-contributory with any insurance carried or administered by AUTHORITY.

ARTICLE 21. INDEMNITY

Except as provided below for those services falling within the scope of Civil Code section 2782.8, CONSULTANT agrees to indemnify, defend (with counsel reasonably approved by Authority) and hold harmless the AUTHORITY and its authorized officers, employees, agents and volunteers, from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including acts, errors, or omissions of any person and for any costs or expenses incurred by the AUTHORITY on account of any claim except where such

indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CONSULTANT's indemnification obligation applies to AUTHORITY "active" as well as "passive" negligence but does not apply to the AUTHORITY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. To the extent CONSULTANT's services fall within the scope of Civil Code section 2782.8, the following indemnification is applicable. CONSULTANT shall defend and indemnify AUTHORITY for claims that arise out of, pertain to, or related to the negligence, recklessness, or willful misconduct of CONSULTANT.

ARTICLE 22. ERRORS AND OMISSIONS

- 22.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all services required under this Contract. CONSULTANT may be liable for AUTHORITY costs resulting from errors or deficiencies, fines, penalties and damages in services furnished under this Contract.
- 22.2 Intentionally Left Blank.
- 22.3 AUTHORITY shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the AUTHORITY's interest. AUTHORITY shall include in the Contract file a written statement of the reasons for the decision to recover or not recover the costs from CONSULTANT.

ARTICLE 23. OWNERSHIP OF DOCUMENTS

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONSULTANT under this Contract shall become the sole property of AUTHORITY when prepared, whether delivered to AUTHORITY or not.

ARTICLE 24. SUBCONTRACTS

- 24.1 CONSULTANT shall not subcontract performance of all or any portion of Services under this Contract, except those subcontractors listed in the CONSULTANT'S proposal, without first notifying AUTHORITY of the intended subcontracting and obtaining AUTHORITY's written approval of the subcontracting and the subcontractor. The definition of subcontractor and the requirements for subcontractors hereunder shall include all subcontracts at any tier.
- 24.2 CONSULTANT agrees that any and all subcontractors of CONSULTANT will comply with the terms of this Contract applicable to the portion of Services performed by them. If requested by AUTHORITY, CONSULTANT shall furnish AUTHORITY a copy of the proposed subcontract for AUTHORITY'S approval of the terms and conditions thereof and shall not execute such subcontract until AUTHORITY has approved such terms and conditions. AUTHORITY approval shall not be unreasonably withheld.
- 24.3 Approval by AUTHORITY of any services to be subcontracted and the subcontractor to perform said Services will not relieve CONSULTANT of any responsibility or liability in regard to the acceptable and complete performance of said Services. Any substitution of

subcontractors must be approved in writing by AUTHORITY' Project Manager.

ARTICLE 25. RECORD INSPECTION AND AUDITING

AUTHORITY, or any of its designees shall at all times have access during normal business hours to CONSULTANT's operations and products wherever they are in preparation or progress, and CONSULTANT shall provide sufficient, safe, and proper facilities for such access and inspection thereof. Inspection or lack of inspection by AUTHORITY shall not be deemed to be a waiver of any of their rights to require CONSULTANT to comply with the Contract or to subsequently reject unsatisfactory services or products.

ARTICLE 26. INDEPENDENT CONTRACTOR

CONSULTANT is and shall be at all times an independent contractor. Accordingly, all Services provided by CONSULTANT shall be done and performed by CONSULTANT under the sole supervision, direction and control of CONSULTANT. AUTHORITY shall rely on CONSULTANT for results only, and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's employees in the performance of Services or as to the manner, means and methods by which Services are performed. All workers furnished by CONSULTANT pursuant to this Contract, and all representatives of CONSULTANT, shall be and remain the employees or agents of CONSULTANT or of CONSULTANT's subcontractor(s) at all times, and shall not at any time or for any purpose whatsoever be considered employees or agents of AUTHORITY.

ARTICLE 27. ATTORNEY'S FEES

If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing party, must bear its own costs and attorneys' fees. This Article shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of this Contract.

ARTICLE 28. GOVERNING LAW AND VENUE

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this Contract will be the Superior Court of California, San Bernardino County, District Civil Division. Each Party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, District Civil Division.

ARTICLE 29. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Contract, it shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations.

ARTICLE 30. PRECEDENCE

- 30.1 The Contract documents consist of these General Terms and Conditions, Attachment "A", Scope of Services, and Attachment "B", Billing Rate Schedule. AUTHORITY's Request for Proposal and CONSULTANT's proposal are incorporated herein by this reference.
- 30.2 The following order of precedence shall apply: This Contract, its General Terms and Conditions and Attachments; AUTHORITY's Request for Proposal; and CONSULTANT's Proposal. In the event of a conflict between the Contract and the Scope of Services, the Contract will prevail.
- 30.3 In the event of an express conflict between the documents listed in this Article, or between any other documents, which are a part of the Contract, CONSULTANT shall notify AUTHORITY in writing within three (3) business days of its discovery of the conflict and shall comply with AUTHORITY's resolution of the conflict.

ARTICLE 31. COMMUNICATIONS AND NOTICES

Any and all notices permitted or required to be given hereunder shall be deemed duly given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), fax or private courier including overnight delivery services. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective parties may designate from time to time by a notice given in accordance with this Article. A change in address may be made by notifying the other Party in writing.

To CONSULTANT	To AUTHORITY
	San Bernardino Associated Governments
	1170 W. 3rd Street, 2nd Floor
	San Bernardino, CA 92410-1715
Attn:	Attn: William Stawarski, CFO
Phone:	Phone: (909) 884-8276

ARTICLE 32. DISPUTES

- 32.1 In the event any dispute arises between the Parties in connection with this Contract (including but not limited to disputes over payments, reimbursements, costs, expenses, services to be performed, Scope of Services and/or time of performance), the dispute shall be decided by the AUTHORITY within thirty (30) calendar days after notice thereof in writing which shall include a particular statement of the grounds of the dispute. If CONSULTANT does not agree with the decision, then CONSULTANT shall have thirty (30) calendar days after receipt of the decision in which to file a written appeal thereto with the Executive Director of AUTHORITY. If the Executive Director fails to resolve the dispute in a manner acceptable to CONSULTANT, then such appeal shall be decided by a court of competent jurisdiction.
- 32.2 During resolution of the dispute, CONSULTANT shall proceed with performance of this Contract with due diligence.

ARTICLE 33. GRATUITIES

CONSULTANT, its employees, agents, or representatives shall not offer or give to an officer, official, or employee of AUTHORITY, gifts, entertainment, payments, loans, or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

ARTICLE 34. REVIEW AND ACCEPTANCE

All Services performed by CONSULTANT shall be subject to periodic review and approval by AUTHORITY at any and all places where such performance may be carried on. Failure of AUTHORITY to make such review, or to discover defective work, shall not prejudice the rights of AUTHORITY at the time of final acceptance. All Services performed by CONSULTANT shall be subject to periodic and final review and acceptance by AUTHORITY upon completion of all Services.

ARTICLE 35. CONFIDENTIALITY

Any AUTHORITY materials to which CONSULTANT or its subcontractors or agents have access to or materials prepared by CONSULTANT under the terms of this Contract shall be held in confidence by CONSULTANT, who shall exercise reasonable precautions to prevent the disclosure of confidential information to anyone except as authorized by AUTHORITY. CONSULTANT shall not release any reports, information of promotional material or allow for the use of any photos related to this Contract for any purpose without prior written approval of AUTHORITY.

ARTICLE 36. EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by AUTHORITY at the completion of certain milestones as identified in Attachment "A" to this Contract. A copy of the evaluation will be given to CONSULTANT for their information. The evaluation information shall be retained as part of the Contract record.

ARTICLE 37. SAFETY

CONSULTANT shall strictly comply with all local, municipal, state, and federal safety and health laws, orders and regulations applicable to CONSULTANT's operations in the performance of Services hereunder.

ARTICLE 38. ASSIGNMENT

CONSULTANT shall not assign this Contract in whole or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of AUTHORITY. AUTHORITY's exercise of consent shall be within its sole discretion. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the Parties hereto.

ARTICLE 39. AMENDMENTS

This Contract may only be changed by a written amendment duly executed by CONSULTANT and AUTHORITY except, that changes to the Contract to implement administrative changes such as approved changes in key personnel as provided in Article 14, “KEY PERSONNEL” above, may be made by administrative amendment signed by CONSULTANT and AUTHORITY's Project Manager or other duly authorized representative.

ARTICLE 40. CONTINGENT FEE

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

ARTICLE 41. FORCE MAJEURE

CONSULTANT shall not be in default under this Contract in the event that the Services provided/work performed by CONSULTANT are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, severe weather or other catastrophic events which are beyond the reasonable control of CONSULTANT and which CONSULTANT could not reasonably be expected to have prevented or controlled. Other catastrophic events do not include the financial inability of the CONSULTANT to perform or failure of the CONSULTANT to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of CONSULTANT.

ARTICLE 42. ENTIRE DOCUMENT

- 42.1 This Contract and its attachments constitute the sole and only agreement governing Services and supersedes any prior understandings, written or oral, between the Parties respecting the subject matter herein. All previous proposals, offers, and other communications, written or oral, relative to this Contract, are superseded except to the extent that they have been incorporated into this Contract.
- 42.2 No agent, employee or representative of AUTHORITY has any authority to bind AUTHORITY to any affirmation, representation or warranty outside of, or in conflict with, the stated terms of this Contract, and CONSULTANT hereby stipulates that it has not relied, and will not rely, on same.

42.3 As this Contract was jointly prepared by both Parties, the language in all parts of this Contract will be construed, in all cases, according to its fair meaning, and not for or against either Party.

ARTICLE 43. EFFECTIVE DATE

The date that this Contract is executed by AUTHORITY shall be the Effective Date of the Contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day and year below written, but effective as of the day and year first set forth above.

CONSULTANT

**SAN BERNARDINO ASSOCIATED
GOVERNMENTS**

By: _____
Name
Title

Date: _____

By: _____
Larry McCallon
President, Board of Directors

Date: _____

APPROVED AS TO FORM

By: _____
Penny Alexander-Kelley
General Counsel

CONCURRENCE

By: _____
Kathleen Murphy-Perez
Contracts Manager