



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** January 26, 2016

From: Brad Miller, Town Engineer **Item No:** 4
Engineering Department

Subject: AUTHORIZATION TO AWARD A PROFESSIONAL SERVICES AGREEMENT FOR THE APPLE VALLEY SAFE ROUTES TO SCHOOL MASTER PLAN - PROJECT NO. 2015-05

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

Award a Professional Services Agreement to KOA Corporation for the Apple Valley Safe Routes to School Master Plan - Project No. 2015-05 subject to "Approval as to Form" by the Town Attorney and "Approval as to Content" by the Town Manager.

BACKGROUND:

The proposed project will result in a prioritized Master Plan for improving the highest risk school routes, enabling more students to walk or ride a bike to school. The planning process will include comprehensive evaluation of conditions at ten (10) K-8 schools, risk analyses, community workshops and developing a Safe Routes to Schools Coalition. The consultant will oversee the planning process in which the Town and Apple Valley Unified School District (AVUSD) will achieve a united vision for addressing the most serious risks and opportunities for improving school routes.

SUMMARY:

On September 22, 2015, the Town received proposals from seven (7) candidates for the subject project. Upon receipt, the proposals were reviewed and scored by engineering and AVUSD staff using the following criteria:

- Understanding of the work to be done
- Experience with similar kinds of work
- Quality of staff for work to be done
- Capability of developing innovative or advanced techniques

- Familiarity with state and federal procedures
- Financial responsibility
- Demonstrated technical ability

Based on the results of the proposal review, the top three (3) candidates were David Evans and Associates, KOA Corporation and Ryan Snyder Associates. An interview panel conducted interviews with each of the three (3) short-listed candidates.

After extensive analysis, evaluation and consultation on October 22, 2015, the Engineering Department and AVUSD selected KOA Corporation as the most qualified candidate for this project. Although each of the candidates interviewed submitted strong proposals, it was the actual interviews that distinguished KOA Corporation from the other firms. KOA Corporation was the unanimous choice of the interview panel for the following reasons:

- KOA Corporation displayed a clear understanding of the need for strong public outreach and provided creative ideas for maximizing stakeholder input;
- Strength of the project team members and balance of engineering, research and public outreach experience;
- Understanding of the project area and depth of research conducted prior to the interview.

With a consultant selected, staff opened their sealed cost proposal. KOA's estimated costs for this project are \$179,930.00 which is below the estimated cost of \$225,000.00.

For all the reasons mentioned above, staff recommends that KOA Corporation be awarded a Professional Services Agreement for the Apple Valley Safe Routes to School Master Plan - Project No. 2015-05.

FISCAL IMPACT:

Funding for this project was appropriated in the Town Council approved 2015-2016 Capital Improvement Projects Budget utilizing a Sustainable Communities Grant from the California Department of Transportation (Caltrans) in the amount of \$199,350.00. A local match of \$25,650.00 will be divided equally between the Town and AVUSD.

ATTACHMENT:

1. Agreement for Professional Services

**TOWN OF APPLE VALLEY
PROFESSIONAL SERVICES AGREEMENT
WITH KOA CORPORATION**

1. PARTIES AND DATE.

This Agreement is made and entered into this 26th day of January, 2016, by and between the Town of Apple Valley, a municipal corporation organized under the laws of the State of California with its principal place of business at 14955 Dale Evans Parkway, Apple Valley, California 92307 ("Town") and KOA Corporation, a Corporation, with its principal place of business at 3190 C Shelby Street, Ontario, CA 91764 ("Consultant"). Town and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the Town on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Engineering services to public clients, is licensed in the State of California, and is familiar with the plans of Town.

2.2 Project.

Town desires to engage Consultant to render such services for the Town of Apple Valley Safe Routes to School Master Plan ("Project") as set forth in this Agreement.

The Project is funded in part by the State of California through the California Department of Transportation ("Caltrans"), pursuant to a Sustainable Communities Grant (Restricted Grant Agreement) (the "Grant Agreement").

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the Town all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional engineering consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from September 1, 2015 to June 30, 2016, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.1.3 Caltrans Requirements. Since the Services under this Agreement are funded, in whole or in part, by Caltrans, Consultant shall fully and adequately comply with the Caltrans requirements included in Exhibit "D" attached hereto and incorporated herein by reference. In the case of any conflict between the terms of this Agreement, and the Caltrans requirements contained in Exhibit "D", the terms and conditions contained in Exhibit "D" shall govern.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Town retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of Town and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Town shall respond to Consultant's submittals in a timely manner. Upon request of Town, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Town.

3.2.4 Substitution of Key Personnel. Consultant has represented to Town that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of Town. In the event that Town and Consultant cannot agree as to the substitution of key personnel, Town shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to

perform the Services in a manner acceptable to the Town, or who are determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the Town. The key personnel for performance of this Agreement are as follows: Min Zhou, Joel Falter, Ming Guan, Charlie Schwinger, Walter Okitsu, Rogelio Pelayo, Frank Barrera, Allan Crawford (Sub-Consultant), and Leslie Scott (Sub-Consultant).

3.2.5 Town's Representative. The Town hereby designates Richard Pedersen, or his or her designee, to act as its representative for the performance of this Agreement ("Town's Representative"). Town's Representative shall have the power to act on behalf of the Town for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the Town's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Min Zhou or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with Town staff in the performance of Services and shall be available to Town's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a Town Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the Town, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Town, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting

the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Town, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Town, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9.1 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.9.2 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the Town that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the Town that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the Town to terminate this Agreement for cause.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability* \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the Town to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the Town, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the Town, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Town, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the Town, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Town, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Town, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Town, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be canceled except after thirty (30) days, except 10 days notice for non-payment, prior written notice by mail, has been given to the Town; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Town, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section where the Town is an additional insured shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the Town, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. Consultant shall guarantee that, at the option of the Town, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the Town.

3.2.10.8 Verification of Coverage. Consultant shall furnish Town with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Town. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the Town if requested. All certificates and endorsements must be received and approved by the Town before work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.9 Reporting of Claims. Consultant shall report to the Town, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices,

equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.12 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of Town during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed One Hundred Seventy Nine Thousand, Nine Hundred Thirty Dollars (\$179,930.00) without written approval of Town's Town Engineer. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to Town a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Town shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Town.

3.3.4 Extra Work. At any time during the term of this Agreement, Town may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Town to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from Town's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Town shall provide Consultant with a copy of the prevailing rates of per diem wages in

effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Town, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. Town may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to Town, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, Town may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, Town may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5 Ownership of Materials and Confidentiality.

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Town to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of Town, and shall not be used in whole or in substantial part by Consultant on other projects without the Town's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to Town reproducible copies of all Documents & Data, in a form and amount required by Town. Town reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by Town at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to Town upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to Town any such documents pending resolution of the dispute. In addition, Consultant shall retain

copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to Town upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify Town and provide Town with the opportunity to obtain the documents.

3.5.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that Town is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the Town.

3.5.3 Right to Use. Town shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at Town's sole risk. If Town uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the Town upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.5.4 Indemnification. Consultant shall defend, indemnify and hold the Town, Caltrans and their directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Caltrans or Town of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of Town, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Town's name or insignia, photographs of the Project, or any publicity pertaining to the Services

or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Town.

3.6 General Provisions.

3.6.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

KOA Corporation
3190 C Shelby Street
Ontario, CA 91764
Min Zhou, P.E.

Town:

Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, California 92307
Richard Pedersen, P.E., Engineering Department

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.2 Indemnification.

3.6.2.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold the Town, Caltrans and their directors, officials, officers, employees, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged negligent or reckless acts, errors, or omissions or the willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation reasonable attorney's fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.6.2.2 Additional Indemnity Obligations. Consultant shall defend, with Counsel of Town's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.6.2.1 that may be brought or instituted against Town or its directors, officials, officers, employees, and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Town or its

directors, officials, officers, employees, and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse Town for the cost of any settlement paid by Town or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Town's attorney's fees and costs, including expert witness fees. Consultant shall reimburse Town and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the Town, its directors, officials officers, employees, agents, or volunteers.

3.6.3 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.6.4 Time of Essence.

a. Time is of the essence for each and every provision of this Agreement.

b. Extension of time for unforeseen circumstances. In the event that the Consultant is unable to meet the completion date or schedule of services, if any, due to circumstances beyond the Consultant's reasonable control, such as war, riots, strikes, lockouts, work slowdown or stoppage, except strikes, lockouts or work slowdown or stoppage of Consultant's employees or subcontractors, acts of God, such as floods, or earthquakes, and electrical blackouts or brownouts, Consultant shall inform the Town's Representative of the additional time required to perform the work and the Town's Representative, upon proper Town approval, may adjust the schedule as contemplated under Section 3.1.2 of this Agreement.

3.6.5 Town's Right to Employ Other Consultants. Town reserves right to employ other consultants in connection with this Project.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.6.7 Assignment or Transfer. Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Town. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.6.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to Town include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are

for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.6.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.6.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.13 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it 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 other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the Town's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.15 Attorney's Fees. If either Party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.6.16 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE
TO
TOWN OF APPLE VALLEY
PROFESSIONAL SERVICES AGREEMENT**

TOWN OF APPLE VALLEY

KOA CORPORATION

By: _____
Barb Stanton
Mayor

By: _____
Min Zhou, PE
Vice President

By: _____
Chuck Stephan, PE
Vice President

ATTEST:

Ms. La Vonda M. Pearson, Town Clerk

APPROVED AS TO CONTENT:

Frank Robinson, Town Manager

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

John Brown, Town Attorney

EXHIBIT "A"

SCOPE OF SERVICES

Task 1.1: Staff Coordination

Participate in monthly project team meetings with the Town staff and Caltrans staff to monitor project progress, prepare for upcoming tasks, debrief on completed tasks, conduct problem-solving, and ensure the project remains on schedule and within budget.

Task 1.2: Project Kick-off Meeting with Consultant (Caltrans will be invited to attend).

The Town of Apple Valley, a selected representative from AVUSD, and the successful Consultant will meet to review the overall vision for the Plan and determine members for a Safe Routes to School Coalition (to include a representative from the AVUSD superintendent's office, and one representative from each of the 10 schools in the proposed Plan). The Safe Routes to School Coalition (SRTS Coalition) will aid the Consultant during the data collection and community outreach phases. During the Project Kick-off Meeting, the Town, AVUSD, and the Consultant will review the project's goals, objectives, tasks, and timeline, the Town's expectations, AVUSD's expectations, and Caltrans' grant requirements. The Project Kick-off Meeting will outline the plan for completing all tasks. The Project Kick-off Meeting will be led by the Town and all key staff (Town, AVUSD, and Consultant) will be required to attend.

1. Data Collection

Task 2.1: Accident Data Collection

The Consultant will obtain relevant available data and will use, at a minimum, information from:

- Statewide Integrated Traffic Records System (SWITRS) database;
- Transportation Information Mapping System (TIMS);
- Local Police Department accident reports, not included in the SWITRS database;
- Interviews with local California Highway Patrol lieutenants, and police and fire department personnel for historical and personal observations of problem areas, accident frequency and types;
- Interviews with individual school administrators for personal observational data regarding problem areas, accident frequency and types.

Task 2.2: School Interviews, Surveys, and Field Observations

The Consultant will work with the SRTS Coalition to distribute parent surveys at each of the 10 project schools.

- The Consultant will provide the following survey in English and Spanish:

- *The National Center for Safe Routes to School Parent Survey.* The survey asks parents questions regarding issues that affect their decision to allow their children to walk to school, including speed of traffic, sidewalks, safety of intersections, etc. The Consultant will develop a timeline and action item list for members of the SRTS Coalition to ensure that collected data is provided to the Consultant in an efficient and timely manner. The Consultant will compile the data into a readable table or graph format.
- The Consultant will work with the SRTS Coalition to collect student travel data from each school.
- The Consultant will obtain and summarize available field data to include (but, not be limited to) obtaining maps; collecting information about routes students take to school via bus, car, foot, or bike; the availability of bicycle racks; taking photos, measurements, and documenting safety barriers; and hazards and substandard conditions on each school campus, especially during student “pick-up” and “drop-off” times for each school.

Task 2.3: Community Data Collection

The Consultant will collect comprehensive data regarding the Apple Valley community, and each of the micro-communities of the individual schools. This data will include, but not be limited to:

- Population characteristics;
- Projected population growth;
- Land use policies;
- Traffic, bicycle, and pedestrian counts;
- Traffic circulation patterns and projected growth; and
- Gaps in alternative transportation system connectivity.

The Consultant will summarize and provide a comprehensive analysis of the collected data to present to the Town, AVUSD, the SRTS Coalition, and the community.

Task	Deliverable
2.1	<i>Interview notes, photos, accident lists, maps, photos</i>
2.2	<i>Summary Table of data from parent surveys, Student Travel Data Table</i>
2.3	<i>Community Data Table, summary of findings, maps, photos</i>

2. Community Outreach

Task 3.1: Community Outreach Plan

The consultant will develop the Community Outreach Plan based on the outline developed during the Project Kick-off Meeting (Task 1.4). The Community Outreach

Plan will outline the specifics for conducting the following 12 meetings and presentations:

1. Community Meeting at Desert Knolls Elementary
2. Community Meeting at Mariana Academy
3. Community Meeting at Phoenix Academy
4. Community Meeting at Rio Vista Elementary
5. Community Meeting at Rancho Verde Elementary
6. Community Meeting at Sandia Elementary
7. Community Meeting at Sitting Bull Academy
8. Community Meeting at Sycamore Rocks Elementary
9. Community Meeting at Vanguard Prep
10. Community Meeting at Yucca Loma Elementary
11. Presentation at Apple Valley Town Council Meeting
12. Presentation at AVUSD Board of Trustees Meeting

The Community Outreach Plan will be a simple, but comprehensive Technical Memorandum provided to the Town and AVUSD, and will include at a minimum, the following elements: meeting format (workshop, walking tour, etc.); topics to be covered; strategy for community outreach (public announcements, flyers, social media, public events); costs of community outreach strategy; suggested times and duration of meetings; points of contact for each meeting (in coordination with SRTS Coalition), and method for collecting feedback. Both students and parents will be encouraged to attend community meetings.

Task 3.2: Flyers, Announcements, and Social Media

The Consultant will utilize the strategies outlined in the Community Outreach Plan (Task 3.1) to develop and disperse bilingual announcements for community meetings throughout the Town and project area, including PTA/PTO meetings, take-home announcements in student daily folders, school campus marquees, posts on school and Town websites and social media sites, public events including the Healthy Apple Valley Safety Fair and Bike Rodeo, and local community groups and churches.

Task 3.3: Direct Mail Announcements

The Town and Consultant will conduct a direct mail campaign to key stakeholders in the community including AVUSD board members, local home owners, and after-school care programs. The direct mail announcements will provide an outline of topics to be discussed at community meetings, and a comprehensive list of all community meetings including dates, times, and locations, allowing residents throughout the 205-square mile area to choose which meeting to attend.

Task 3.4: 12 Community Planning Meetings and Presentations

The Town of Apple Valley (in coordination with the AVUSD), and the Consultant will conduct **10 community-based meetings** (one at each of the project schools) as identified in the Community Outreach Plan (Task 3.1). Each meeting will:

- Introduce the Safe Routes to School planning project to the public, define project parameters, and solicit opinions from the community to help inform the development of the 'Apple Valley Safe Routes to School Master Plan;'
- Include small-group charrettes and walking tours, and be open to the public;
- Include an evaluation form to allow for participant feedback and additional suggestions.

The Consultant will also conduct presentations to the AVUSD Board of Trustees and Apple Valley Town Council (one presentation each) via scheduled meetings to allow for feedback.

Task	Deliverable
3.1	<i>Community Outreach Plan</i>
3.2	<i>Copies of flyers, a log of where flyers were posted/disseminated, social media announcements, photos</i>
3.3	<i>Direct mail list and dissemination dates</i>
3.4	<i>Meeting agendas, participant lists, comments, summary, photos</i>

3. Project Analysis and Development of Plan

Task 4.1: Identify Countermeasures

Data collected from Tasks 2.1 (Accident Data), 2.2 (School Interviews, Surveys, and Field Observations), 2.3 (Community Data) and 3.4 (Community Planning Meetings and Presentations) will be used to guide the Consultant in selecting and prioritizing countermeasures for SRTS deficiencies. Appropriate countermeasures will include:

- Engineering strategies including the addition of sidewalks, safe crossings, traffic calming measures, and other pedestrian and bicycle infrastructure;
- Education strategies;
- Enforcement strategies;
- Encouragement strategies.

The Caltrans Safe Routes to School website will inform the Consultant's decisions. The Consultant will also estimate preliminary costs for the most appropriate countermeasures identified, including construction and maintenance costs.

Task 4.2: Benefit Cost Analysis

Using the TIMS system (and other benefit costs analysis tools available on the open market), the Consultant will prepare Benefit Cost Analyses for each proposed capital improvement and proposed alternative.

Task 4.3: Prioritize Projects

Using preliminary costs and data collected (Task 4.1), and information from the Benefit Cost Analysis (Task 4.2), the Consultant will develop a list of Priority Projects to be

listed in priority order in the draft and final 'Apple Valley Safe Routes to School Master Plan' (Tasks 4.4 and 4.6).

Task 4.4: Draft Apple Valley Safe Routes to School Master Plan

The Consultant will develop the draft 'Apple Valley Safe Routes to School Master Plan,' which will integrate health, fitness, traffic relief, environmental awareness, and safety, as suggested by the California Department of Public Health. The Plan will include a list of Priority Projects; encouragement, enforcement, education, and engineering strategies; a time schedule for implementation strategies; a map of the areas covered by the plan; and an explanation of how the program will be evaluated. The Plan will also identify next steps including environmental work, permitting, and preliminary engineering.

Task 4.5: Presentation of Draft Plan

The Consultant will present the draft plan to key stakeholders, including Town staff, AVUSD staff, AVUSD Board of Trustees, and Caltrans. The Consultant will gather feedback from all stakeholders.

Task 4.6: Final Apple Valley Safe Routes to School Master Plan

The Consultant will develop the final 'Apple Valley Safe Routes to School Master Plan' for review and approval by the Town, AVUSD staff, and AVUSD Board of Trustees. The final Plan will include next steps for environmental work, permitting, and engineering, and will be presented at one Apple Valley Town Council Meeting and one AVUSD Board of Trustees Meeting. The community will be encouraged to attend these open, public meetings, to provide final comments on the Plan. The Consultant will invite Caltrans staff to a final Plan presentation and acknowledge Caltrans for making the planning effort possible.

Task	Deliverable
4.1	<i>Countermeasures Technical Memorandum, preliminary cost estimates for next steps</i>
4.2	<i>Benefit Cost Analyses Technical Memorandum (tabular format), TIMS Benefit Cost Analysis printouts</i>
4.3	<i>List of priority projects</i>
4.4	<i>Draft Apple Valley Safe Routes to School Master Plan</i>
4.5	<i>Meeting agendas, participation lists, comments, list of action items</i>
4.6	<i>Final Apple Valley Safe Routes to School Master Plan, final comments</i>

EXHIBIT "B"
SCHEDULE OF SERVICES

28314.00015\22040180.2



SECTION 3 – TIME SCHEDULE

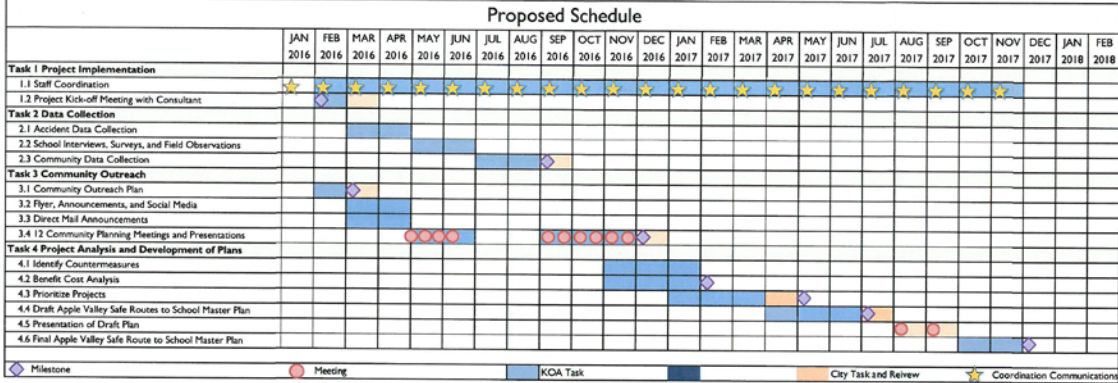


EXHIBIT "C"
COMPENSATION

28314.0001522040180.2



COST PROPOSAL

for

TOWN OF APPLE VALLEY SAFE ROUTES TO SCHOOL MASTER PLAN

BASE TASKS / DELIVERABLE	Principal/PM	Senior Engineer Planner	Associate Planner	Assistant Engineer	Other Support	TOTAL HOURS	KOA Labor	Other Direct Costs	KOA TOTAL	Leslie Scott Consulting	TOTAL COSTS BY TASK
Hourly Rates (Fully Burdened)	\$ 185.00	\$ 150.00	\$ 125.00	\$ 100.00	\$ 80.00						
Task-1 Project Implementation											
1.1 Staff Coordination	40		20		40	100	\$13,100	\$500	\$13,600	\$500	\$14,100
1.2 Project Kick-off Meeting with Consultant	4	4	2	2	4	16	\$2,110	\$200	\$2,310	\$500	\$2,810
SUBTOTAL	44	4	22	2	44	116	\$15,210	\$700	\$15,910	\$1,000	\$16,910
Task-2 Data Collection											
2.1 Accident Data Collection	2	4	8	20		34	\$3,970	\$0	\$3,970		\$3,970
2.2 School Interviews, Surveys, and Field Observations	20	16	40	40	40	156	\$18,300	\$1,000	\$19,300		\$19,300
2.3 Community Data Collection	8	16	40	20	20	104	\$12,480	\$1,000	\$13,480		\$13,480
SUBTOTAL	30	36	88	80	60	294	\$34,750	\$2,000	\$36,750		\$36,750
Task-3 Community Outreach											
3.1 Community Outreach Plan	4	10				14	\$2,240		\$2,240	\$1,000	\$3,240
3.2 Flyer, Announcements, and Social Media	1	8	10	10	40	69	\$6,835	\$1,000	\$7,835	\$1,000	\$8,835
3.3 Direct Mail Announcements	1	4	10	10	40	65	\$6,235	\$2,500	\$8,735	\$500	\$9,235
3.4 Twelve (12) Community Planning Meetings and Presentations	80	80		40	40	240	\$34,000	\$1,000	\$35,000	\$16,000	\$51,000
SUBTOTAL	86	102	30	60	120	388	\$49,310	\$4,500	\$53,810	\$18,500	\$72,310
Task-4 Project Analysis and Development of Plans											
4.1 Identify Countermeasures	16	16		40		72	\$9,360		\$9,360		\$9,360
4.2 Benefit Cost Analysis			40		20	60	\$6,600		\$6,600		\$6,600
4.3 Prioritize Projects	16	16	14		8	54	\$8,000		\$8,000		\$8,000
4.4 Draft Apple Valley Safe Routes to School Master Plan	24	24	40		40	128	\$16,240	\$500	\$16,740		\$16,740
4.5 Presentation of Draft Plan	8	8		8		24	\$3,480	\$500	\$3,980		\$3,980
4.6 Final Apple Valley Safe Routes to School Master Plan	8	8	20	20	20	76	\$8,780	\$500	\$9,280		\$9,280
SUBTOTAL	72	72	116	68	88	414	\$52,460	\$1,500	\$53,960		\$53,960
TOTAL	232	214	246	210	312	1,214	\$151,730	\$8,700	\$160,430	\$19,500	\$179,930

Exhibit "D"

Sustainable Communities Grant Requirements

1. Grant Agreement. The Sustainable Communities Grant (Restricted Grant) Agreement between the Town and Caltrans ("Grant Agreement") is on file at the offices of the Town, and is incorporated herein by reference. Consultant shall comply with all applicable terms and conditions of the Grant Agreement, whether or not expressly set forth below.

2. Allowable Costs.

a. Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual Project cost items and Consultant and its subconsultants shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Consultant and its subcontractors shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards to the extent applicable.

b. Any Project costs for which Consultant has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, and/or Part 48, Chapter 1, Part 31, are subject to repayment by Consultant to the Town (for repayment to Caltrans). In addition to any other available remedies, should Consultant fail to reimburse moneys due as set forth in the foregoing, within thirty (30) days of discovery or demand, or within such other period as may be agreed in writing between the parties hereto, the Town may withhold future payments due Consultant under this Agreement.

c. Prior to Consultant seeking reimbursement of indirect costs, Consultant must prepare and submit annually to the Town, for submission to CALTRANS for review and approval, an indirect cost rate proposal and a central service cost allocation plan (if any) in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and Chapter 5 of the Local Assistance Procedures Manual which may be accessed at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>.

d. Consultant agrees and shall require that all of its agreements with its subconsultants and contain provisions requiring adherence to this section in its entirety.

e. Travel and per diem reimbursements and third-party contract reimbursements to Consultant will be allowable as Project costs if approved in writing, in advance, by the Town, and only after those costs are incurred and paid for by Consultant and/or its subcontractors. If authorized by the Town, travel expenses and per diem rates for Consultant shall be reimbursed pursuant to the following:

Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Human Resources for similar employees (i.e. non-represented employees) unless written verification is supplied that government hotel rates were not then commercially available to Consultant and/or subcontractors, at the time and location required as specified in the California Department of Transportation's Travel Guide Exception Process at the following link: http://www.dot.ca.gov/hq/asc/travel/ap_b/bul.htm Also see website for summary of travel reimbursement rules.

3. Invoicing.

- a. Invoices shall include the following information:
 - 1) Names of the Consultant personnel performing work
 - 2) Dates and times of project work
 - 3) Locations of project work
 - 4) Itemized costs as set forth in Exhibit "A" of this Agreement, including identification of each Consultant staff who provided services during the period of the invoice, the number of hours and hourly rates for each Consultant staff member, authorized travel expenses with receipts, and receipts for authorized materials or supplies.
 - 5) Consultant shall submit written progress reports with each set of invoices to allow the CALTRANS' Contract Manager to determine if Consultant is performing to expectations, is on schedule, is within funding cost limitations, to communicate interim findings, and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed.
- b. Incomplete or inaccurate invoices shall be returned to Consultant unapproved for correction. Failure to submit invoices on a timely basis may be grounds for termination of this Agreement for cause.

4. Retention of Records/Audits

- a. Consultant shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs by line. The accounting system of Consultant shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of Consultant connected with Project performance shall be maintained for a minimum of three (3) years from the date of final payment to Consultant and shall be held open to inspection, copying, and audit by representatives of CALTRANS, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by Consultant upon receipt of any request made by CALTRANS or its agents. In conducting an audit of the costs claimed under this Agreement, CALTRANS will rely to the maximum extent possible on any prior audit of Consultant pursuant to the provisions of State law. In the absence of such an audit, any acceptable audit work performed by Consultant's external and internal auditors may be relied upon and used by CALTRANS when planning and conducting additional audits.

b. Consultant shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement. Consultant shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to Consultant under this Agreement. CALTRANS, the California State Auditor, or any duly authorized representative of CALTRANS or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to Project for audits, examinations, excerpts, and transactions, and Consultant shall furnish copies thereof if requested.

c. Consultant will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by CALTRANS, for the purpose of any investigation to ascertain compliance with this Agreement.

d. Additionally, this Agreement may be subject to a pre-award audit prior to ensure Consultant has an adequate financial management system in place to accumulate and segregate reasonable, allowable and allocable costs.

5. State-Owned Data

a. As may be applicable, Consultant agrees to comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:

1) Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect CALTRANS data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space.

2) Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.

3) Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.

4) Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.

5) Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.

- 6) Notify the Town immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.
 - 7) Advise the Town of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that State-owned data.
- b. Consultant agrees to use the State-owned data only for State purposes under this Agreement.
 - c. Consultant agrees to not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s). (State Administrative Manual (SAM) Section 5335.1)

6. Ownership of Proprietary Property

Notwithstanding any other provision of this Agreement, the following terms shall govern intellectual property developed or created under this Agreement. Any reference to “Contractor” below shall be interpreted to refer to “Consultant”. Any reference to “Department” below shall be interpreted to refer to “Caltrans”.

a. Definitions

- 1) Work: The work to be directly or indirectly produced by Consultant under this Agreement.
- 2) Work Product: All deliverables created or produced from Work under this Agreement including but not limited to, all Work and Deliverables conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of this Agreement and during a period of six (6) months after the termination thereof, which relates to the Work commissioned or performed under this Agreement. “Work Product” includes all deliverables, inventions, innovations, improvements, or other works of authorship Contractor may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret, or other legal protection.
- 3) Inventions: Any idea, methodologies, design, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Contractor or jointly with the Contractor’s Subcontractor and/or the Contractor’s Subcontractor’s employee’s with one or more employees of the Department of Transportation (herein after referred to as “the Department”), during the term of this Agreement and in performance of any Work under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in performance of Work issued under this Agreement.

b. Ownership of Work Product and Rights.

1) Ownership of work product: Except in regard to Pre-existing Works, all Work Product derived by the Work performed by the Contractor, its employees or by any of the Contractor's Subcontractor's employees under this Agreement, shall be owned by the Department and shall be considered to be works made for hire by the Contractor's Subcontractor for the Department. The Department shall own all United States and international copyrights in the Work Product.

As such, all Work Product shall contain, in a conspicuous place, a copyright designation consisting of a "c" in a circle followed by the four-digit year in which the Work Product was produced, followed by the words "California Department of Transportation." For example, a Work Product created in the year 2012 would contain the copyright designation © 2012 California Department of Transportation.

2) Vesting of copyright rights: Contractor, its employees or any of Contractor's Subcontractor's employees agrees to perpetually assign, and upon creation of each Work Product automatically assigns, to the Department, its successors and assigns, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Contractor's Subcontractor from the Department. From time to time upon the Department's request, the Contractor's Subcontractor and/or its employees, shall confirm such assignments by execution and delivery of such assignments, confirmations or assignment, or other written instruments as the Department may request. The Department, its successors and assigns, shall have the right to obtain and hold in its or their own name(s) all copyright registrations and other evidence of rights that may be available for Work Product. Contractor hereby agrees to waive all moral rights relating to identification of authorship restriction or limitation on use, or subsequent modifications of the Work.

c. Inventions.

1) Vesting of patent rights: The Contractor, its employees and any Contractor's Subcontractor hereby agrees to assign to the Department, its successors, and assigns, all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority there under, and the same shall become and remain the Department's property regardless of whether such protection is sought. The Contractor, its employees and Contractor's Subcontractor shall promptly make a complete written disclosure to the Department of each Invention not otherwise clearly disclosed to the Department in the pertinent Work Product, specifically pointing out features or concepts that the Contractor, its employees and Contractor's Subcontractor believes to be new or different. The Contractor, its employees and Contractor's Subcontractor shall, upon the Department's request and at the Department's expense, cause patent applications to be filed thereon, through solicitors designated by the Department, and shall sign all such applications over to the Department, its successors, and assigns. The Contractor, its employees and Contractor's Subcontractor shall give the Department and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or documents as the Department may consider necessary or appropriate to carry out the intent on this Agreement.

2) In the event that the Department is unable for any reason whatsoever to secure the Contractor's, its employees' and/or Contractor's Subcontractor's signature to any lawful or necessary document required or desirable to apply for or prosecute any United States application (including renewals or divisions thereof), Contractor, its employees and Contractor's Subcontractor hereby irrevocably designates and appoints the Department and its duly authorized officers and agents, as its agent and attorney-in-fact, to act for and on Contractor, its employees and Contractor's Subcontractor's behalf and stead, to execute and file such applications and to do all other lawfully permitted acts to further the prosecution and issuance of any copyrights, trademarks or patents thereon with the same legal force and effect as if executed by Contractor, its employees and/or Contractor's Subcontractor. The Department shall have no obligations to file any copyright, trademark or patent applications.

d. Additional Provisions.

1) Avoidance of infringement: In performing services under this Agreement, Contractor and its employees agree to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor or its employees becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor or its employees shall immediately notify the Department in writing.

2) Pre-existing works and license: Contractor acknowledges that all Work Product shall be the sole and exclusive property of the Department, except that any pre-existing works created by Contractor and third parties outside of the Agreement but utilized in connection with the Agreement (the "Pre-existing Works") shall continue to be owned by Contractor or such parties. Contractor agrees to notify the Department in writing of any Pre-existing Works used in connection with any Work Product produced under this Agreement and hereby grants to the Department a non-exclusive, perpetual, royalty-free license to utilize the Pre-existing Works in connection with the Work Product.

3) Subcontractors: Contractor shall affirmatively bind by contract any of its subcontractors or service vendors (hereinafter "Contractor's Subcontractor") providing services under this Agreement to conform to the provisions of this Exhibit. Contractor's Subcontractor shall then provide the signed contract to the Contractor, who shall provide it to the Department's Contract Manager prior to the commencement of any work. In performing services under this Agreement, Contractor's Subcontractor agrees to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor's Subcontractor becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor's Subcontractor shall immediately notify the Contractor in writing, Contractor will then immediately notify the Department in writing.

e. Ownership of Data.

1) Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates, produced as part of this Agreement will automatically be vested in Caltrans and no further agreement will be

necessary to transfer ownership to Caltrans. The Consultant shall furnish Caltrans all necessary copies of data needed to complete the review and approval process.

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

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

4) Any sub-agreement in excess of \$25,000.00, entered, into as a result of this Agreement, shall contain all of the provisions of this clause.

7. Non-Discrimination

a. During the performance of this Agreement, Consultant and all its sub-contractors, if any, shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family and medical care leave, and denial of pregnancy disability leave. Consultant and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code [GC] Section 12900 et seq.) and the applicable regulations promulgated hereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing GC Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by this reference and are made a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other collective bargaining agreements in place.

b. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.