

# **ATTACHMENT A**

**CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT  
BY AND BETWEEN  
THE CITY OF VICTORVILLE  
AND  
PADILLA & ASSOCIATES, INC.  
FOR  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND LABOR  
COMPLIANCE SERVICES, PROJECT ESC21-094**

THIS CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT (hereinafter "Agreement"), is made and entered into by and between THE CITY OF VICTORVILLE, a municipal corporation located in the County of San Bernardino, State of California, hereinafter referred to as the "City", and **Padilla & Associates, Inc., a California corporation**, hereinafter referred to as "Consultant." City and Consultant are sometimes hereinafter referred to individually as a "Party" and collectively referred to as the "Parties."

**RECITALS:**

**WHEREAS**, the City requires Consultant/Professional Services for **Disadvantaged Business Enterprise (DBE) and Labor Compliance Services**; and

**WHEREAS**, Consultant represents that it is fully qualified to perform the consulting and/or professional services required for performance under this Agreement by virtue of its experience and the training, education and expertise of its principals and its employees; and

**WHEREAS**, in light of the facts set forth above, the City desires to retain the services of a qualified Consultant to provide, on an independent contractor basis, **DBE and Labor Compliance Services**; and

**NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:**

**Section 1.                      RECITALS**

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth fully herein.

**Section 2.                      SCOPE OF SERVICES**

Consultant shall provide to the City those services set forth in the Scope of Services, attached hereto as Exhibit "A" and incorporated as part of this Agreement by this reference.

**Section 3.                      COMPENSATION**

The City shall pay to Consultant a sum not to exceed **Sixty-nine Thousand Six Hundred Forty-three and 43/100 Dollars (\$69,643.43)** for faithful performance of the services

to be rendered under this Agreement, subject to the Proposal provisions of Section 4, below. No expense reimbursements, including, but not limited to, reimbursements for travel, parking, lodging, and/or meals shall be paid to Consultant unless such expense reimbursements: (i) are specifically provided for and described by nature and type in Exhibit "B", below; (ii) appear on Consultant's monthly invoices to City; (iii) are supported by the appropriate receipts and other such documentation as the City shall require; and (iv) are directly related to the Scope of Services to be performed under this Agreement. In addition, any and all reimbursements shall be made in accordance with any City policy governing same.

#### **Section 4.                      CONSULTANT'S PROPOSAL**

The City shall pay Consultant as provided in the Proposal, attached hereto as Exhibit "B" and incorporated as part of this Agreement by this reference. The provisions of Exhibit "B" notwithstanding, in order to receive payments, Consultant shall be required to submit to the City detailed monthly invoices which include, if applicable, a description of all services/tasks performed, the number of hours expended on each service/task, the name of the person performing the service/task, and expense reimbursement information, if any, as required by Section 3, above. Provided that services have been satisfactorily rendered, invoices shall be paid by the City approximately thirty (30) working days following receipt of Consultant's invoice.

#### **Section 5.                      RESERVED**

#### **Section 6.                      TERM OF AGREEMENT**

This Agreement shall be for an Initial Term commencing on **the date of full execution of the Agreement** (the "Commencement Date") and expiring on **June 30, 2024** (the "Termination Date") (the "Term"), unless terminated earlier pursuant to Section 21 of this Agreement. From and after the Termination Date, and upon subsequent Agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 21 below.

#### **Section 7.                      INDEPENDENT CONTRACTOR STATUS**

It is the express intention of the Parties that Consultant is an independent contractor and not an employee, agent, joint venture, or partner of the City. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the City and Consultant or any employee or agent of Consultant. Both Parties acknowledge that Consultant is not an employee for state or federal tax purposes or any other purpose. Consultant shall retain the right to perform services for others during the term of this Agreement.

#### **Section 8.                      REPRESENTATIONS AND ACKNOWLEDGMENTS REGARDING INDEPENDENT CONTRACTOR'S STATUS OF CONSULTANT**

a.        Consultant represents and acknowledges the following:

(1)       The City is not required to provide any training or legal counsel to Consultant or its employees in order for Consultant to perform the services described in this Agreement.

(2) Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the City.

(3) The services described in this Agreement can be performed without the use of City equipment, materials, tools, or facilities, unless otherwise provided under a separate Agreement.

(4) Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Consultant on a continuing basis after termination of this Agreement.

(5) The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage, or other such compensation to any person employed by Consultant to perform the services described in this Agreement.

(6) Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the City.

b. The City represents and acknowledges the following:

(1) Consultant is solely responsible for determining who, under the supervision or direction of Consultant, will perform the services set forth in this Agreement.

(2) The City will not hire, supervise, or pay any employees or assistants working for Consultant pursuant to this Agreement. Nothing contained in this Agreement shall prevent the City from hiring Consultant's employees or assistants after termination of this Agreement.

(3) Nothing in this Agreement shall be interpreted to imply that Consultant must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(4) It is the sole responsibility of Consultant to set the hours in which Consultant performs or plans to perform the services set forth in this Agreement.

(5) Consultant is not required to devote full time to the business operations of the City in order to perform the services set forth in this Agreement.

(6) Unless deemed necessary under certain circumstances, Consultant is not required to perform the services set forth in this Agreement at City Hall or on City-owned property.

(7) Other than attendance at required public meetings and public hearings, and complying with the provisions of the Proposal set forth in Exhibit B and any procedural requirements set forth by law, Consultant is not required to perform the services set forth in this Agreement in any particular order or sequence.

(8) Nothing in this Agreement shall be interpreted to preclude Consultant from working for other persons or firms, provided that such work does not create a conflict of interest.

## **Section 9. NOT AGENT OF THE CITY**

a. Nothing contained in this Agreement shall be deemed, construed, or represented by the City or Consultant or by any third person to create the relationship of principal and agent.

b. Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind the City to any obligation whatsoever.

## **Section 10. LICENSES AND PERMITS**

Consultant represents that it has obtained and will maintain at all times during the Initial Term (and during the Option Period, if applicable) of this Agreement all business licenses, including but not limited to a City of Victorville business license, professional licenses or certifications, or permits necessary for performing the services described in this Agreement.

## **Section 11. STANDARD OF PERFORMANCE; WARRANTY**

a. Consultant agrees to perform all services required by this Agreement in a professional and competent manner, in accordance with the degree of skill and diligence which is normally employed by reputable professionals performing similar services under similar conditions in the same or similar locality. Such services shall also be performed in a manner which is reasonably satisfactory to **Brian Gengler, City Engineer**, or his designee.

b. By executing this Agreement, Consultant warrants that it:

(1) Has thoroughly investigated and considered the services and work to be performed;

(2) Has investigated the issues regarding the scope of services to be provided;

(3) Has carefully considered how the services and related work should be performed; and

(4) Fully understands the facilities, difficulties and restrictions associated with performance of the services required by this Agreement.

## **Section 12. FAMILIARITY WITH WORK**

Should Consultant discover any latent or unknown conditions materially differing from those inherent in the services or as represented by the City, Consultant shall immediately inform the City of such fact and shall not provide any services, except at Consultant's risk, until written instructions are received from **Brian Gengler, City Engineer**, or his designee.

## **Section 13. CONFLICTS OF INTEREST**

Consultant covenants that it does not have any interest, nor shall it acquire any interest, directly or indirectly, which would conflict in any manner with the performance of Consultant's services under this Agreement. Consultant further covenants that in the performance of services under this Agreement, no officer, employee or agent of Consultant having such interest

shall be employed by it. In the event the City determines that Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file such Form 700 with the City Clerk's Office pursuant to the written instructions provided by the City Clerk. Acquisition or maintenance of a conflicting interest by Consultant may result in termination of this Agreement by the City.

#### **Section 14.**                    **COMPLIANCE WITH LAWS**

Consultant shall comply with all local, state, and federal laws and regulations applicable to the services to be rendered hereunder, including any rule, regulation, or bylaw governing the conduct or performance of Consultant or its employees, officers, or board members.

#### **Section 15.**                    **COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY INSURANCE**

a.        Consultant shall procure and maintain at its own expense, during the Initial Term of this Agreement (and during the Option Period, if applicable), Commercial General Liability Insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Consultant or its officers, employees, servants, volunteers, and agents and independent contractors.

b.        Consultant shall further procure and maintain, at its own expense, during the Initial Term of this Agreement, (and during the Option Period, if applicable), Commercial Vehicle Liability Insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit, covering any vehicle utilized by Consultant or its officers, employees, servants, volunteers, agents and independent contractors in performing the services required by this Agreement.

#### **Section 16.**                    **WORKERS' COMPENSATION INSURANCE**

a.        Consultant shall procure and maintain at its own expense, during the Initial Term of this Agreement (and during the Option Period, if applicable), Workers' Compensation Insurance, providing coverage as required by the California State Workers' Compensation Law.

b.        If any class of employees employed by the Consultant pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Consultant shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

#### **Section 17.**                    **PROFESSIONAL LIABILITY INSURANCE**

Professional Liability Insurance or Errors and Omissions insurance as appropriate to Consultant's profession shall be required and written on a policy form specifically designed to provide coverage for and protect against the negligent acts, errors and omissions of the Consultant in the performance of the services required by this Agreement. A minimum limit of \$1,000,000 per claim and in the aggregate must be provided.

**Section 18.**                    **ADDITIONAL INSURED**

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, all insurance policies, except for the Workers' Compensation and Professional Liability, shall be endorsed to name the City and its officers, employees, servants, volunteers, agents and independent contractors, including, without limitation, the City Attorney, as Additional Insureds.

**Section 19.**                    **WAIVER OF SUBROGATION RIGHTS**

Consultant shall require the carriers of all required insurance policies, with exception to Professional Liability, to waive all rights of subrogation against the City and its officers, employees, servants, volunteers, agents, and independent contractors and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

**Section 20.**                    **PROOF OF INSURANCE COVERAGE; REQUIRED ENDORSEMENTS**

a.        Consultant shall secure from a good and responsible company or companies authorized to transact insurance business in the State of California, the policies of insurance required by this Agreement and furnish to the City Clerk certificates of insurance evidencing the required coverage, and policy endorsements at least one (1) business day prior to the commencement of any services to be performed under this Agreement.

b.        The policies and certificates of insurance shall be endorsed to provide that in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of cancellation for non-payment, ten (10) days advance written notice shall be given.

c.        Each policy and certificate of insurance shall be endorsed to provide that the policy shall not be terminated or expire without first providing thirty (30) days written notice to the City of such termination or expiration.

d.        Each policy and certificate of insurance shall be endorsed to provide that the policy will be maintained throughout the Initial Term (and during the Option Period, if applicable), of this Agreement.

e.        The Commercial General Liability and Vehicle Liability policies shall be endorsed to contain the following provision: "For any claims related to this Agreement, Consultant's coverage shall be primary with respect to the City. Any insurance maintained by the City shall be in excess of Consultant's insurance and shall not contribute with it."

**Section 21.**                    **TERMINATION OR SUSPENSION**

a.        This Agreement may be terminated or suspended without cause by either Party at any time, provided that the Party initiating the termination provides the other Party at least thirty (30) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

b. This Agreement may be terminated or suspended with cause by either Party at any time, provided that the Party initiating termination provides the other Party at least ten (10) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

## **Section 22. TIME OF THE ESSENCE**

Time is of the essence in the performance of this Agreement.

## **Section 23. INDEMNIFICATION**

a. Except as set forth in Subsection b of this Section 23, and to the fullest extent permitted by law, Consultant shall immediately defend, indemnify, and hold harmless the City, its officers, employees, representatives, and agents (the "City Indemnitees"), from and against those actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and reasonable attorneys' fees, for any personal injuries, deaths, or property damage, including property owned by the City (collectively "Claims") which may arise out of Consultant's negligence or willful misconduct in the performance of the services described in this Agreement, unless such Claims are proven to be caused by the negligence or willful misconduct of the City Indemnitees.

b. The provisions of this Subsection b apply only in the event that Consultant is a design professional within the meaning of California Civil Code section 2782.8 ("Design Professional"). The term Design Professional, as defined in said section, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code.

(1) Notwithstanding the provisions of Subsection a above, to the extent that the services to be provided under this Agreement are those of a Design Professional, Consultant's duty to indemnify, hold harmless, and defend the City Indemnitees shall be limited to the extent that any Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, its officers, agents, employees or subconsultants in the performance of the services described in this Agreement.

(2) In no event shall the costs of defense charged to Consultant exceed the Consultant's proportionate percentage of fault, except as otherwise set forth in said Civil Code section 2782.8, the provisions of which are incorporated into this Agreement by this reference. Nothing in this Subsection b shall be construed to require Consultant to provide indemnification for Claims caused by the active negligence or willful misconduct of the City Indemnitees.

c. The City does not and shall not waive any rights that it may have against Consultant under this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions of this Section 23 shall apply regardless of whether said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense described herein.

d. The obligation to indemnify and defend, as set forth in this Section 23, is binding on the successors, assigns, or heirs of Consultant and shall survive the expiration or any early termination of this Agreement.

#### **Section 24. REPORTS**

Upon request by **Brian Gengler, City Engineer**, or his designee, or as otherwise required by this Agreement, including but not limited to, the Scope of Services set forth in Exhibit "A", Consultant shall prepare and submit reports to the City concerning Consultant's performance of the services required by this Agreement.

#### **Section 25. RECORDS**

a. Consultant shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **Brian Gengler, City Engineer**, or his designee, to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles.

c. **Brian Gengler, City Engineer**, or his designee, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to Consultant hereunder shall be retained by Consultant and made available to **Brian Gengler, City Engineer**, or his designee, for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

#### **Section 26. RESERVED**

#### **Section 27. CONFIDENTIALITY; OWNERSHIP OF WORK**

a. Any and all documents and information obtained from the City or prepared by Consultant for the City shall be kept strictly confidential unless otherwise provided by applicable law. All City data, documents and information shall be returned to the City upon termination of the Agreement.

b. Any drawings, specifications, reports, records, documents, or other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of **Brian Gengler, City Engineer**, or his designee, or as required by applicable law.

c. Consultant shall not disclose to any other entity or person any information regarding the activities of the City, except with the prior written approval of **Brian Gengler, City Engineer**, or his designee, or as required by applicable law.

d. All original documents, reports, designs, computer files and all other materials prepared by Consultant in the course of performing the services pursuant to this Agreement, whether completed or in progress, are the property of the City and shall be surrendered to the City upon the completion of Consultant's services or when requested by **Brian Gengler, City**

**Engineer**, or his designee. Such materials may be used, reused or otherwise disposed of by the City without the permission of Consultant.

e. Consultant's covenants under this Section 27 shall survive the termination of this Agreement.

#### **Section 28. PRINCIPAL REPRESENTATIVES**

a. **Patricia K. Padilla, President** is designated as the principal representative of Consultant for purposes of communicating with the City on any matter associated with the performance of the services set forth in this Agreement.

b. **Brian Gengler, City Engineer**, or his designee, shall be the principal representative of the City for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.

c. Either Party may designate another individual as its principal representative by giving written notice of such designation to the other Party.

#### **Section 29. MODIFICATIONS AND AMENDMENTS; EXTRA SERVICES**

a. This Agreement may be modified or amended only by a written instrument signed by both Parties.

b. During the Initial Term, the City may request that the Consultant perform Extra Services. As used herein, "Extra Services" means any services, which are determined by the City to be necessary for the proper completion of **Green Tree Blvd. Extension Disadvantaged Business Enterprise (DBE) and Labor Compliance Services**, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. A written instrument signed by both Parties shall be required to authorize performance of and payment for Extra Services.

#### **Section 30. ENTIRE AGREEMENT**

a. This Agreement supersedes any and all prior or contemporaneous Agreements, either oral or written, between the City and Consultant with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and Agreements between the Parties with respect to the subject matter of this Agreement, and each Party to this Agreement acknowledges that no representations, inducements, promises, or Agreements have been made by or on behalf of any Party, except those covenants and Agreements in this Agreement.

c. No Agreement, statement, or promise with respect to the subject matter of this Agreement, which is not contained in this Agreement, or in a valid modification or amendment to this Agreement, shall be valid or binding on either Party.

#### **Section 31. AMBIGUITIES**

This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree

that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

Notwithstanding the foregoing, the Parties agree that **Exhibits “A” and “B”** are attached hereto for reference purposes and to the extent there are any ambiguities, inconsistencies or conflicts between the terms of this Consultant/Professional Services Standard Provider Agreement and **Exhibits “A” and “B”** the terms of this Consultant/Professional Services Standard Provider Agreement shall control and nothing set forth in **Exhibits “A” and “B”** shall be deemed to supersede any of the provisions of this Consultant/Professional Services Standard Provider Agreement.

### **Section 32.                   NOTICES**

a.       Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the Parties as follows:

To the City:	Brian Gengler, City Engineer Engineering Department City of Victorville 14343 Civic Drive Victorville, CA 92392
--------------	---

To Consultant:	Patricia K. Padilla Padilla & Associates, Inc. 211 E. City Place Drive Santa Ana, CA 92705
----------------	---

b.       Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

### **Section 33.                   NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of the City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to Consultant or to its successor(s), or for any breach of any obligation of the terms of this Agreement.

### **Section 34.                   REVIEW BY ATTORNEYS**

Each Party hereto has had its attorney(s) review this Agreement and all related documents. Each Party hereto has consulted with its attorney(s) and has negotiated the terms of this Agreement based on such consultation.

**Section 35.**                    **WAIVER**

a.        No waiver shall be binding unless executed in writing by the Party making the waiver.

b.        No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c.        Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of such provision or any of the remaining provisions of this Agreement.

**Section 36.**                    **ASSIGNMENT**

This Agreement shall not be assigned by either Party without prior written consent of the other Party.

**Section 37.**                    **CARE OF WORK**

The performance of services by Consultant or the payment of money by the City shall not relieve Consultant from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the City, when such incomplete, inaccurate or defective work is due to the negligence of Consultant.

**Section 38.**                    **CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

**Section 39.**                    **SUCCESSORS, HEIRS, AND ASSIGNS**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties.

**Section 40.**                    **GENDER**

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

**Section 41.**                    **SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

**Section 42.**                    **GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

**Section 43.**                    **DEFAULT**

a. Failure or delay by any Party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the Party who is otherwise claimed to be in default by the other Party commences to cure, correct, or remedy the alleged default within fifteen (15) days after receipt of written notice specifying such default and shall diligently complete such cure, correction, or remedy, such Party shall not be deemed to be in default hereunder.

b. The Party claiming that a default has occurred shall give written notice of default to the Party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured Party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default by any Party to this Agreement may remain uncured for more than fifteen (15) days following written notice, as provided above, the injured Party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

**Section 44.**                    **CUMULATIVE REMEDIES**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other Party.

**Section 45.**                    **VENUE**

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

**Section 46.**                    **ATTORNEYS' FEES**

In the event any action, suit, or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement, or as a result of any alleged breach of any provision of this Agreement, the prevailing Party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the

losing Party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

**Section 47.**                    **EFFECTIVENESS OF AGREEMENT**

This Agreement shall not be binding upon the City, until signed by the authorized representative(s) of Consultant, approved by the City's Risk Manager, and executed by the authorized City personnel or Mayor.

**Section 48.**                    **REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT**

a.        Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

b.        The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

**Section 49.**                    **COUNTERPARTS**

This Agreement may be executed by the Parties in counterparts, and when executed by each of the Parties, each counterpart shall be deemed to be a part of this Agreement.

(END OF THIS PAGE)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

THE CITY OF VICTORVILLE

PADILLA & ASSOCIATES, INC.

By: \_\_\_\_\_  
**Debra S. Jones,**  
**Mayor**

By: \_\_\_\_\_  
**Patricia K. Padilla,**  
**President**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_  
**Charlene Robinson,**  
**City Clerk**

Dated: \_\_\_\_\_

THE CITY OF VICTORVILLE

APPROVED AS TO STANDARD  
FORM:

By: \_\_\_\_\_  
**John Preston,**  
**Risk Manager**

By: \_\_\_\_\_  
**Andre de Bortnowsky,**  
**City Attorney**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

## **EXHIBIT A**

### **SCOPE OF SERVICES**

***See Attachment***

## Exhibit A

### Scope of Services

DBE and Labor Compliance Implementation (Greentree and Bear Valley Road Projects)	
Scope of Work to be included within the Identified Task	Fixed-fee Cost
<b>1. City Staff Labor Compliance and Disadvantaged Business Enterprise (DBE) Program Implementation Training (FHWA and FAA-Assisted Projects):</b> Pre- and Post-award training regarding the City of Victorville's Labor Compliance and DBE obligations to maintain funding compliance with funding agreements. Requirements, best practices and implementation processes will be reviewed to ensure compliance, uniform implementation and on-going funding. Training will include power-point presentation and key exhibits for later reference.	<b>\$4,080.00 Each (In-person)</b>
<b>2. Electronic Reporting Through Proprietary Software (ECAT*):</b> Online electronic DBE compliance monitoring tool (Monitoring Green Tree Boulevard Extension Project, Bear Valley Road (BVR) Construction Project, Bear Valley Road CM Project and up to 7 additional projects).  Contractor Monthly Reporting through ECAT, Subcontractor Automated Validation of Prompt Payment, Real-time Commitment and Attainment Tables by Project, per project Contract Modification tracking, automated contractor delinquent reporting notices, automated of Caltrans Exhibit 9-F "Disadvantaged Business Enterprise Running Tally of Payments" and automated Caltrans' Exhibit 17-f.	<b>\$9,640.00 2 Year Subscription</b> <b>(Annual Value: \$4,820)</b>
<b>3. Monthly Monitoring of Three Projects for DBE Compliance (Greentree and BVR Projects):</b> Work with the City to confirm receipt of compliance documents and reporting, review reporting for errors or discrepancies, monitor DBE commitments and attainments, confirm payment verifications to DBE firms and compliance with prompt payment provisions, issue discrepancy notifications as needed and ensure contractors compliance with contract and DBE requirements.  (Telephonic/Virtual CUF, no travel. If travel requested, will be billed at hourly rate. DOT has currently approved CUFs to be performed virtually through July 2021)	<b>\$14,040.00 (3 projects for 24 months @ \$195*)</b>
<b>4. Good Faith Effort Reviews:</b> Review submittals for compliance with DBE requirement of RFP/IFB, confirm eligibility and certification of proposed DBE firms, confirm proper crediting of proposed DBE firms, ensure proposed firms meet CUF crediting requirements, confirm proper calculation of DBE participation, perform supplemental review of good faith efforts documents to determine responsiveness to the DBE goal.	<b>BVR Construction and Construction Management Projects:</b> <b>\$960.00 (2 projects @ \$480.00)</b> <b>Bidders Met the Goal \$480.00 (up to 3 firms)</b> <b>Bidder did not meet the Goal (Review of the full GFE package required)</b> <b>\$1,250.00 per firm</b>

<b>5. Participate and Present in Pre-Job/Pre-Construction Kick-off Meeting:</b> Prepare documents as applicable and participate virtually in the City's pre-construction kickoff meeting with the contractors to present and discuss the DBE and Labor Compliance requirements associated with the subject contract. The City will notify Padilla & Associates at least ten business days prior to the kickoff meeting.	<b>\$4,500</b> <b>In-Person Presentation</b> <b>(3 projects at \$1,500 each)</b>
<b>6. LC Monitoring and Enforcement Oversight Quarterly Review:</b> Provide Labor Compliance Program Oversight and corresponding review process that will be undertaken to ensure that the selected CM Firms are effectively monitoring and performing labor compliance activities in accordance with the State of California and Federal Labor Compliance / Prevailing Wage requirements on projects as applicable based on funding.	<b>\$29,619.38**</b> <b>(Greentree &amp; BVR</b> <b>Projects – 14 Reviews</b> <b>Quarterly Reviews @</b> <b>\$2,116567)</b>
<b>7. Public Works Project Registration:</b> Assist the City in submitting the Public Works Project Registration to the DIR, via DIR's website following contract award	<b>\$1,054.05 (3 projects @</b> <b>\$351.35)</b>

\*\$235 Per Project Per Month (Discounted monitoring based on pairing with electronic reporting through ECAT) Monthly compliance monitoring rate reduced to \$195.00 per project if three or more projects are monitored.

\*\*8% courtesy discount applied for 3 or more projects.

#### **Assumptions:**

We have carefully examined the project requirements to determine these costs. Items requested outside of scope will be billed at the listed hourly rates. Factors that would affect the above lump sum cost estimates include new requirements, changes in scope, or if any of the following assumptions are found to be untrue:

- Review of DBE Additions or DBE Change Requests (increase, decrease, substitution, termination) are outside of monthly monitoring fixed-fee scopes of work and will be billed at hourly rates.
- GFE fixed-fee pricing assumes all proposers/bidders met the goal. Supplemental review of full GFE packages will be billed at \$1,250.00 per proposer/bidder. Review of additional proposers/bidders that met the goal will be billed at \$160.00 per bidder/proposer.
- GFE fixed-fee pricing for up to three bidders/proposers. Additional assistance outside fixed-fee scope including any notices of determination, GFE reconsideration or responses to funding agencies or City leadership will be billed at hourly rates.
- GFE reviews must include all necessary documentation to complete the review. Any requests for clarification or review of additional documentation not provided with the proposal/bid documents will be billed at hourly rate.
- Electronic reporting does not include registering contracts in ECAT or contractor/subcontractor registration. Registration of contracts and contractors/subcontractor in ECAT will be billed at hourly rates.
- Any revisions or edits to contract, contractor, or subcontractor information entered by others in ECAT necessary for the on-going monthly monitoring of contracts will be billed at hourly rates.
- Any technical assistance or training provided to contractors, subcontractors, or City Staff for ECAT is outside of the fixed-fee scope and billed at hourly rates.
- Hourly rates to be billed in 30-minute increments at one half the hourly rate for every 30 minutes or portion thereof.

SB/DBE Outreach Event	
Contract Task	Scope of Work to be included within the Identified Task
I. Coordinate and Host Virtual SB outreach event	<ul style="list-style-type: none"> <li>➤ Review Scopes of Work (NAICS/WCC on Exhibit 9-D) for three upcoming projects to develop a listing of SB/DBE firms in the City's market area.</li> <li>➤ Draft Outreach Event Announcement for City review and approval.</li> <li>➤ Issue event announcement to SB/DBE Listing. Additional outreach to minority trade organizations and local unions will be completed.</li> <li>➤ Identify appropriate web-based platform for hosting Outreach Event Presentation.</li> <li>➤ Work with the City to develop Outreach Event presentation, inclusive of project overviews and identified subcontracting opportunities.</li> <li>➤ Develop draft Agenda for City review and approval.</li> <li>➤ Coordination with prospective prime contractors to attend, participate in event and provide available subcontracting opportunities.</li> <li>➤ Padilla to develop and provide script for opening and closing comments and segments of outreach presentation focused on SB/DBE resources, certification and how to best prepare for teaming.</li> <li>➤ Incorporate City and City primes' presentations (project overviews, subcontracting opportunities, and submittal timelines) into Outreach Presentation City to provide.</li> <li>➤ Facilitate rehearsal "dry run" presentation.</li> <li>➤ Identify local bonding and insurance resources to include in event and to provide assistance to SB/DBE attendees.</li> <li>➤ Identify local Small Business associations and organization resource information to include in event and provide assistance to SB/DBE attendees.</li> <li>➤ Send out thank you e-mail to attendees.</li> <li>➤ Provide City with recorded video of event and listing of attendees.</li> </ul>

### Assumptions

We have carefully examined the project requirements to determine this lump sum cost. Factors that would affect these cost estimates include new requirements, changes in scope, or if any of the following assumptions are found to be untrue:

- Scopes of work/Subcontracting Areas, Prospective Prime Contractors, Project Overview content, Contact Information to be provided by Client.
- Assistance with the speaking notes, presentation scripts or development of presentation slides (beyond what is included in proposal) will be billed at hourly rates.
- Logo, photos, and branding colors for announcements, advertisements, and presentation (power-point) will be provided by client. City Logo and project photos to be provided in a high-resolution format by the City.
- The cost of third-party services, software, or stock photography is not included.

**EXHIBIT “B”**  
**CONSULTANT’S PROPOSAL**  
***See Attachment***

## Exhibit B Cost Proposal

<b>Lump Sum Fix Fee Items</b>	
Total Fixed-Fee Costs - DBE and Labor Compliance Implementation for Greentree and Bear Valley Road Projects	\$63,893.43
Coordination of SB Outreach Event (Lump Sum Fee)	\$5,750.00
Total	\$69,643.43
<b>Staff Rates for Non-Fixed Fee SB/DBE Consulting Assistance*</b>	
Lauren Jaquith, Project Manager	\$155.14
Jared Pappas, Deputy Project Manager – DBE	\$96.78
Antonio Dupre, Project Manager/Technical Advisor – Labor Compliance	\$143.44
Compliance Officer I	\$70.27-\$84.45
<b>Contract Items to be Reimbursed at Cost**</b>	
Cost for Advertisements and publications (If Print Required)	\$35 (online trade publication) to \$540 (general print publication)
Online Registration	Free if utilizing Eventbrite, website registration development and maintenance varies.

*\* These hourly rates are subject to a 2% annual cost of living increase per calendar year. The above hourly rate schedule is here-in included as part of Padilla & Associates' Proposal.*

*\*\*Contract items to be reimbursed at cost are not included in lump sum values provided above.*

**The above pricing is a firm offer valid for a 120-day period from the date of the proposal submission. Padilla & Associates agrees to perform the proposed work at the not-to-exceed price. This includes all deliverables and meeting attendance as laid out in the scope of services.**

Padilla & Associates  
Proposer

Patricia Padilla  
Name

\_\_\_\_\_  
Signature of Authorized Person

4/9/2021  
Date