



Kings County Association of Governments

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www.countyofkings.com/kcag

Member Agencies: Cities of Avenal, Corcoran, Hanford and Lemoore, County of Kings

TO: Consulting Firms

DATE: October 16, 2009

SUBJECT: Request for Qualifications / Proposals:

The Kings County Association of Governments (KCAG) seeks Statements of Qualifications and Proposals from qualified firms for professional services to perform all tasks related to the Environmental Justice: Context-Sensitive Caltrans Planning Grant, Kettleman City Safety and Community Study. The Study will focus on safety and community development of this low-income and minority community in Kings County.

Firms interested in this project should send their proposals to the attention of Christina Lehn, Kings County Association of Governments, 339 W. "D" Street, Suite B, Lemoore, CA 93245 by 5:00 p.m., Monday, November 16, 2009.

If you should have any questions or require additional information regarding this project, you may contact Christina Lehn at (559) 582-3211, ext. 2677 or by email at chris.lehn@co.kings.ca.us.

REQUEST FOR PROPOSALS

Kettleman City Safety and Community Study

***An Environmental Justice: Context-Sensitive
Caltrans Planning Grant***

***FOR THE
Unincorporated Community of Kettleman City
in Kings County***

Proposal Requested By:

**KINGS COUNTY ASSOCIATION OF GOVERNMENTS
339 W "D" Street, Suite B
Lemoore, CA 93245**

October 16, 2009

INTRODUCTION

The Kings County Association of Governments (KCAG) seeks Statements of Qualifications and Proposals from qualified firms for professional services to perform all tasks related to the preparation of the Kettleman City Safety and Community Study. The Kettleman City Safety and Community Study is a joint planning effort between KCAG and the Kings County Community Development Agency. KCAG will provide the administrative oversight of the grant activities, while the Kings County Community Development Agency will oversee the day to day management and work extensively with the consultant, stakeholders, and community members.

The Kettleman City Safety and Community Study will focus on transportation and community development issues of this low-income, minority, and traditionally under-represented community. As State Route 41 divides the community, the only designated crossing for pedestrians is located at General Petroleum Avenue. Residents have expressed safety concerns when crossing SR 41 in addition to the excessive speeds of traffic and lack of advanced notice to motorists. The Kettleman City Safety and Community Study will explore traffic calming measures, identify the most commonly used paths that school children utilize while walking or biking to and from school, investigate potential pedestrian crossing warning alternatives, further examine gateway signage options, and increase traffic enforcement efforts.

This Request for Qualifications/Proposals describes the scope of services and tasks, the consultant selection process and the requested consultant activities for the Kettleman City Safety and Community Study.

BACKGROUND

Setting

Kings County and the four incorporated cities comprise nearly 1,400 square miles and have a total population of 154,743 according to the 2009 State Department of Finance estimates. Generally considered a rural agricultural county, a majority of the population (119,269) lives within the Cities of Avenal, Corcoran, Hanford and Lemoore. An additional 35,474 reside within the unincorporated areas of Kings County, including the communities of Armona, Home Garden, Kettleman City, and Stratford.

Kings County Association of Governments is the state recognized Regional Transportation Planning Agency (RTPA) and the federally designated Metropolitan Planning Organization (MPO) for Kings County. KCAG operates under a Joint Powers Agreement (JPA) between the four incorporated cities of Avenal, Corcoran, Hanford and Lemoore, and the County of Kings. KCAG provides the opportunity and an impartial setting for the state, regional, and local governments to work together to solve current problems and plan for the future. KCAG works with local agencies and the public to build consensus, prepare regional and strategic plans, obtain and allocate resources, and provide information on a broad range of topics pertinent to Kings County's quality of life.

Kettleman City is a small rural town with strong agricultural ties, located in the southwestern section of Kings County. According to the 2000 Census, Kettleman City is 92% Hispanic with a population of 1,499 residents with 320 households. A relatively high percentage of the population is considered to be living below the poverty line with the median income for a household at \$22,409 and the median income for a family at \$21,955.

Several public services in Kettleman City are provided by the County, including street maintenance, sheriff, and fire protection. The Kettleman City Community Services District is responsible for the water, sewer, and street lighting services. Kettleman City has the only Redevelopment Area within the County which provides a financial reinvestment tool.

Environmental Justice: Context-Sensitive Planning Grant

Caltrans Environmental Justice Planning Grants are intended to promote the involvement of low-income and minority communities and Native American Tribal Governments, in the planning for transportation projects to prevent or mitigate disproportionate, negative impacts while improving their mobility, access, safety, and opportunities for affordable housing and economic development. The Kettleman City Safety and Community Study is targeted at a population that should be involved in the transportation planning process.

As specified by the Caltrans grant specifications, a competitive proposal submittal and review process will be used to ensure a fair, objective, and documented process in the selection of a consultant to perform grant activities. In addition, the selection of a consultant will be in compliance with Title VI of the U. S. Civil Right Act, prohibiting discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.

Caltrans is responsible for complying with Civil Rights requirements and for monitoring compliance of any sub-recipients of its funding. This is also applicable to sub-recipients of State funding. The Federal Highway Administration and the Federal Transit Administration each have requirements that recipients must demonstrate continued compliance with Title VI. Compliance with Title VI includes conducting meetings in a fair and reasonable manner that are open to the all members of a community. Even where a city or county may not be receiving federal funding for transportation, the Civil Rights Restoration Act of 1987 also obligates that city or county comply with Title VI if it receives any other federal funding for any programs. In accordance with Code of Federal Regulation, Title 23: Highways, Part 200: Title VI Civil Rights Act of 1964, specific demographic reporting will apply to all public meetings held in fulfillment of the grant activities. The demographic reporting documents will be provided by KCAG.

PROJECT OVERVIEW

The Kettleman City Safety and Community Study will address the safety concerns of residents when crossing SR 41 at the designated painted crosswalk at General Petroleum Avenue. A minimum of 20 school children with a residence on the east side of SR 41 regularly cross this busy 2 lane highway in order to attend Kettleman City Elementary School, located on General Petroleum Avenue. As essentially all of the community buildings and retail services including the grocery stores, library, community center, and post office are located to the west of SR 41, residents regularly cross at this location and have expressed safety concerns. Residents of Kettleman City have also identified the lack of traffic speed enforcement both in the residential areas and on SR 41 as a safety concern.

The Study will evaluate traffic calming measures, explore options that would provide advanced warning to motorists, further develop the gateway signage options that began in the Kettleman City Community Plan efforts in 2007, identify the commonly used walking and bicycle paths that school children use while traveling to and from school and work with the respective law enforcement agencies to increase traffic enforcement. Once the Kettleman City Safety and Community Study is complete, Kings County intends to pursue a Safe Routes to School grant or Highway Safety Improvement Program grant, to implement the pedestrian safety improvements.

KCAG will also allocate Transportation Enhancement funds for the community gateway improvements.

The Kettleman City Safety and Community Study should include a variety of stakeholders in addition to the community residents to ensure a successful community planning outcome. The list below provides a good representation of the groups or individuals that should be included in the grant efforts.

- Adelante High School
- Adventist Health
- Assemblymember Danny Gilmore, District 30
- Caltrans
- California Highway Patrol
- Central California Regional Obesity Prevention Program (CCROPP)
- Family Resource Center
- Kettleman City Community Services District
- Kettleman City Elementary School
- Kettleman City Foundation
- Kettleman City General Plan Advisory Group
- Kettleman City Library
- Kettleman City Residents
- Kings County Association of Governments
- Kings County Board of Supervisor, Mr. Richard Valle, District 2
- Kings County Community Development Agency
- Kings County Fire, Station #9
- Kings County Health Department
- Kings County Public Works
- Proteus
- Reef- Sunset Unified School District
- State Senator Dean Florez, District 16
- Waste Management

SCOPE OF WORK

A consulting firm is being solicited to provide technical assistance during the Kettleman City Safety and Community Study. As the most important component of the Study is the public participation, the emphasis of the consultant's efforts will be spent facilitating and providing planning expertise during the many community meetings and or workshops where the community and stakeholder input will be documented. This community contribution should guide the Kettleman City Safety and Community Study draft and final reports.

At a minimum, the scope of work for the Kettleman City Safety and Community Study shall include the following major components:

1. Public Participation

Prior to the grant identified public meetings as outlined below, there will be a kick off meeting currently scheduled for December 10, 2009 between the consultant, the administrative and coordinating local government staff, and the stakeholders where the community and focus group meetings will be discussed and organized in great detail. This will also be an opportunity for the consultant to hear the respective safety and community planning concerns of the stakeholders and the best practices as learned from the Kings County General Plan update efforts.

The consultant will work with the Kettleman City stakeholders in coordinating the grant activities to include a series of focus groups, community workshops, and meetings where the consultant will be responsible for assisting staff in organizing the agenda, preparing for workshop and meeting presentations, and assembling a detailed summary and record of each public meeting. This documentation should also include the federally required demographic information that will be provided by KCAG staff.

In addition, the consultant will prepare media tools such as flyers and press releases to inform the community of the upcoming meetings. These documents will be provided to staff, where they will be copied and disseminated to the community.

2. Public Meetings

The consultant will be responsible for attending no more than two KCAG Transportation Policy Committee meetings, no more than two Kings County Board of Supervisors meetings, one KCAG Technical Advisory Committee, and the multiple community meetings to be held in the Kettleman City Community. The community meetings or workshops will consist of: a Public Safety kick off community event; four community focus groups with representatives from public safety agencies, education, local businesses, and the youth; two general community meetings focusing of safety and community development; and two to three community meetings emphasizing solutions and presenting the draft report for comments. The final meeting should be held in a similar manner as the kick off event and be structured more like a community event than a traditional workshop. The stakeholders will work with the consultant to define the specific details of the community events, workshops, and meetings.

Every effort should be made by the consultant to continue a strong public safety theme throughout the course of the public meetings and workshops in the Kettleman City Community. The various public safety agencies including the California Highway Patrol, the Kings County Sheriff's Office, and Kings County Fire, Station # 9 (located in Kettleman City) have pledged their commitment and use of their available resources over the course of the Kettleman City Safety and Community Study.

A written comment form should be developed by the consultant and available at key identified locations, where community members can provide comments in lieu of attendance at a community meeting or workshop.

The public meetings will be scheduled in the evenings to conflict the least amount with work schedules and encourage the greatest number of attendees. All public meetings will be held in Kettleman City and should include raffle and door prizes and light refreshments. Gift cards for local business are highly encouraged as potential prizes.

3. Prepare the Kettleman City Safety and Community Study Report

The consultant will prepare a draft and final report documenting the outcomes of each of the community meetings and the concerns, comments, or other input as provided by the participants. All submitted written comments and demographic data collected will also be summarized in the report. A variety of planning solutions specifically researched to address the concerns of the community will be discussed in the report, taking care to focus on illustrations and some general reference to the cost of build-out. The report should also include a chapter focusing on the public safety agencies and the specific duties that they perform in the Kettleman City Community. Statistical data from the public safety agencies may also be made available for inclusion in the report.

The draft report will be presented to the KCAG Technical Advisory Committee, KCAG Transportation Policy Committee, and the Kings County Board of Supervisors for review and comments. The consultant will be responsible for recording all comments on the draft report and including a summary of the comments in the final report from the various meetings. The consultant is also expected to present the Final Kettleman City Safety and Community Study Report to the KCAG Transportation Policy Committee for adoption and the Kings County Board of Supervisors for acceptance.

4. Prepare Documentation for Future Grant Applications

The consultant will prepare documentation that can be utilized by Kings County staff to apply for additional grant funds. This documentation may be used for, but should not be limited to the Federal and State Safe Routes to School Programs, the Federal Highway Safety Improvement Program, and the Federal Transportation Enhancement funds.

AVAILABLE RESOURCES

The following background, resource, and reference information material is available for use by consultants for the preparation of the Kettleman City Safety and Community Study.

Publications, Briefs, and Guidance:

- Draft Kettleman City Community Plan- Kings County General Plan Update, January 31, 2008 can be found at: <http://www.countyofkings.com/planning/2035%20General%20Plan.html>
- Environmental Justice Resource Guide, U.S. Environmental Protection Agency
- Kettleman City Safety and Community Study Caltrans Grant application located online at: <http://www.countyofkings.com/kcag/>
- Code of Federal Regulation, Title 23: Highways, Part 200: Title VI Civil Rights Act of 1964 <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=af1872526ab9b6fc55db2aab3e20ed78;rgn=div5;view=text;node=23%3A1.0.1.3.7;idno=23;cc=ecfr>

SCHEDULE/PROJECT TIMELINE

While many factors exist that may result in modifications to the overall schedule, Kings County Association of Governments and the Kings County Community Development Agency anticipate the following schedule:

October 16, 2009	Release of RFP to Consultants
November 16, 2009	Deadline for Submittal of Proposals
November 17-25, 2009	Review Proposals - Finalists Selected for Interviews (as needed)
November 30, 2009 or December 1, 2009	Consultant Interviews (as needed)
December 2, 2009	KCAG Board Approval of Consultant/ Contract
December 10, 2009	Contract Awarded, Notice to Proceed
December 10, 2009	Kickoff Meeting with Grant Stakeholders
TBD	Public Workshops and preparation of draft report
TBD	Present Final Report and submit to Caltrans

NOTES

As the contract between Caltrans and KCAG will expire on **February 28, 2011**, all reimbursable work must be completed prior to this time. KCAG must submit all final invoices to Caltrans for approval and reimbursement by May 1, 2011. Consequently, all consultant invoices must be submitted to KCAG no later than **March 31, 2011**.

CONTACT PERSON

Prospective proposers shall direct any questions concerning this project to:

Christina Lehn, Regional Planner
Kings County Association of Governments
339 W. D Street, Suite B
Lemoore, CA 93245
PH: (559) 582-3211, ext. 2677
FAX (559) 924-5632
Chris.lehn@co.kings.ca.us

PROPOSAL SUBMITTAL REQUIREMENTS

Proposers must submit eight (8) copies and an electronic file of their Statement of Qualifications and Proposal. Proposals should be addressed to the above KCAG contact person if delivered by mail or courier and must be received by KCAG no later than 5:00 p.m., Monday, November 16, 2009. KCAG has no authority to accept proposals submitted after the time and date. Postmarks, email submittals and faxes will not be accepted in lieu of this requirement.

BUDGET

A total of \$100,000 has been budgeted for this project. Consultants are encouraged to be creative in their strategies to encourage the greatest amount of public participation.

PROPOSAL EVALUATION AND CONSULTANT SELECTION

Proposals submitted by each consultant that meet the proposal requirements will be evaluated separately by a proposal review panel made up of staff from KCAG, the Kings County Community Development Agency, Kings County Public Works, Caltrans, and a sub-committee of Kettleman City Stakeholders. The review panel will determine the necessity for oral interviews in the first phase of the proposal evaluations. The evaluation will be based on information provided in response to the RFQ/P and information provided by former clients for whom work of a similar scope has been done. Evaluation considerations include the following:

1. Responsiveness of the proposal in clearly stating the proposer's understanding of the work to be performed.
2. Cost, although a significant factor, may not be the dominant factor. Cost is particularly important when all the other evaluation criteria are relatively equal.
3. Approach to be followed and the tasks to be performed, including detailed steps and resources required and proposed project.
4. Experience in prior environmental justice projects held in predominately minority communities.
5. Relative allocation of resources, in terms of quality and quantity, to key tasks, including the time and skills of personnel assigned to the task and the consultant's approach to managing resources and project output.

6. Past performance of the proposer on work previously performed for similar projects and governmental agencies.

KCAG reserves the right to select a consultant based solely on the written proposals and not convene oral interviews. If oral interviews are needed, the top consulting firms will be invited to make a formal presentation to a selection committee in the second phase of the proposal evaluations. Interviews will take place on one day to be determined later, during the week of November 30, 2009. At the oral interviews, proposers will be requested to make a formal presentation. A maximum of thirty (30) minutes will be made available to the consultant to present the firm's qualifications and approach to the project.

Proposals submitted by each proposer shall be evaluated separately based on how well each proposal meets the criteria listed below:

<u>CRITERIA</u>	<u>POINTS</u>
<u>Proposal Content</u>	
Comprehension of RFQ/P Project.....	10
Thoroughness of Proposal.....	20
Meeting Objectives of RFP	20
<u>Consultant Qualifications</u>	
Prior Environmental Justice: Context-Sensitive Experience	25
Qualifications and Commitment of Staff.....	15
<u>Cost</u>	
Reasonableness of Cost.....	10
<u>Total</u>	100

PROPOSAL CONTENT AND ORGANIZATION

Proposals should meet the stated requirements and propose the best methods to accomplish the work within the stated budget in the minimum length necessary. Padding the proposal with “boilerplate” materials is strongly discouraged. The organization of the proposals should follow the general outline below:

1. Transmittal Letter and Signature

The transmittal letter should include the name, title, address, phone number and original signature of an individual with authority to negotiate on behalf of and to contractually bind the proposer and who may be contacted during the period of proposal evaluation. The letter should include a brief overview of the consulting firm(s), including location, size and expertise. The letter shall also contain a statement to the effect that the proposal is a firm offer for a 90-day period. Only one transmittal letter need be prepared to accompany all copies of the proposal.

2. Title Page

Indicate RFQ/P subject, name of proposer's firm, local address, telephone number, name of contact person and date of proposal. This information must also be identified for all partnering agencies and sub-consultants.

3. Table of Contents

A listing of the major sections in the proposal and the associated page numbers.

4. Understanding of the Project

The proposal should include a brief narrative introducing the proposer's understanding of the project requirements. The contents of this section are to be determined by the particular respondent, but should demonstrate understanding of the unique characteristics of this Environmental Justice: Context-Sensitive project and the requirements of the project in the scope of work contained in the RFQ/P.

5. Project Approach

The proposer shall describe the overall approach to the project, specific public participation techniques that may be used and the specific administrative and operational management expertise that will be employed. Consultants are encouraged to be creative in their methods to encourage public participation and must be flexible in defining the community participation process with the stakeholders.

6. Schedule of Tasks

The proposal shall contain a detailed schedule identifying major tasks to be undertaken to conduct the work and time frame for each task.

7. Project Management

Prospective consultants shall designate by name the project manager to be employed. The selected consultant shall not cause substitution of the project manager without prior approval by the Executive Director of KCAG.

8. Project Personnel

The prospective consultant shall describe the qualifications of all professional personnel who will be assigned to the project, including a summary of similar work or studies performed, a resume for each professional, a statement indicating how many hours each professional will be assigned to the contract and what tasks each professional will perform. The contractor shall not cause members of the project team to be substituted without prior approval of KCAG.

9. Subcontractors

If any subcontractors are to be used, prospective consultants shall submit a description of each person or firm and the work to be done by each subconsultant. The cost of the subcontract work is to be itemized in the cost proposal.

10. Consultant Qualifications and References

The prospective consultants shall provide project manager names, addresses and telephone numbers for at least three clients/agencies for whom the prospective consultant has performed similar environmental justice work as proposed in the RFP. A summary statement for each assignment shall be provided.

11. Knowledge and Understanding of Environmental Justice: Context Sensitive Planning

Describe the consultant's experience working in the local (i.e., California – San Joaquin Valley) environment and proposed local presence for interfacing with KCAG and Kings County Community Development Agency. Describe the consultant's knowledge of, and experience with community planning efforts in minority populations in the San Joaquin Valley.

12. Project Costs

The prospective consultant shall prepare a detailed cost proposal for the work to be performed. The cost proposal shall itemize all items that will be charged to KCAG. Costs shall be segregated to show actual salary costs including hours, rates, classifications, administrative and overhead rates, and direct and indirect expenses.

If subcontractors are to be used, the prospective consultant must indicate any markup that the prospective consultant plans to take on subcontractors. The same breakdown of subcontract costs shall be provided as is required for contractor costs above.

13. Insurance

Without limiting KCAG's right to obtain indemnification from the selected consultant firm (Hereinafter "CONTRACTOR") or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and affect the following insurance policies throughout the term of the contract:

- a. Comprehensive general liability insurance with coverage of not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. Comprehensive general liability insurance policies shall name KCAG, their officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under the terms of the contract are concerned. Such coverage for additional insured shall apply as primary insurance or self-insurance and any other insurance, maintained by KCAG, their officers, agents, and employees, shall be given excess only and not contributing with insurance provided under the CONTRACTOR'S policies herein.

- b. Comprehensive automobile liability insurance with limits for bodily injury of not less than \$25,000 per person, \$250,000 per accident and for property damages of not less than \$50,000, or such coverage with a combined single limit of \$250,000.
- c. Professional liability insurance of at least \$1,000,000.
- d. Worker's compensation insurance as required by law.

This insurance shall not be canceled or changed without a minimum of thirty (30) days advance written notice given to KCAG. CONTRACTOR shall provide certification of said insurance to KCAG within twenty-one (21) days of the date of the execution of the contract. Such certification shall show, to KCAG's satisfaction, that such insurance coverages have been obtained and are in full force; that KCAG, their officers, agents, and employees will not be responsible for any premiums on the policies; that as and if required such insurance names KCAG, their officers, agents and employees individually and collectively as additional insured (comprehensive and general liability only), but only insofar as the operations under the contract are concerned, that such coverage for additional insured shall apply as primary insurance and any other insurance, or self insurance, maintained by KCAG, their officer, agents, and employees, shall be excess only and not contributing with insurance provided under the CONTRACTOR's policies herein; and that this insurance shall not be canceled or changed without a minimum of thirty (30) days advance, written notice given to KCAG.

In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, KCAG may, in addition to other remedies it may have, suspend or terminate the contract upon the occurrence of such event.

MODIFICATIONS OR WITHDRAWAL OF PROPOSALS

Any proposal received prior to the date and time specified above may be withdrawn or modified (prior to the final submission date) by written request of the consultant. All verbal modifications of these conditions or provisions are void as ineffective for proposal evaluation purposes. Only written changes submitted to the Executive Director of KCAG are authorized and binding.

REJECTION OF PROPOSALS

Failure to meet the requirements of the RFQ/P will be cause for rejection of the proposal. KCAG may reject any proposal if it is conditional, incomplete, contains irregularities, or has inordinately high costs. KCAG reserves the right to reject any and all proposals without cause. KCAG may waive an immaterial deviation in a proposal. Waiver of an immaterial deviation shall in no way modify the RFQ/P's documents or excise the proposer from full compliance with the contract requirements, if the proposer is awarded the contract.

CONTRACT AWARD

The selected consultant will execute a contract with KCAG. The official selection of the consultant will be made by the KCAG Transportation Policy Committee at its December 2, 2009 meeting. The execution of the contract and notice to proceed shall take place by December 10, 2009.

DISADVANTAGED BUSINESS ENTERPRISES

KCAG has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulations (CFR) Part 26. KCAG has received federal financial assistance from the DOT and as a condition of receiving this assistance, KCAG will sign an assurance that it will comply with 49 CFR Part 26.

It is the policy of KCAG to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

- To ensure non-discrimination in the award and administration of DOT assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards and are registered with the State of California as DBE's are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

If the prospective contractor is DBE certified, proof that the company has been certified shall be included in the proposal. Certification will be from an agency authorized Administration, State of California, National Economic Development Administration, etc.

Contract Assurance

KCAG ensures that the following clause is placed in every DOT-assisted contract and subcontract:

A prime contractor or subcontractor shall pay a sub contractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless, a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the agency's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract,

which may result in the termination of this contract or such other remedy as recipient deems appropriate.

Prompt Payment

KCAG ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

Satisfactory Performance

A prime contractor or subcontractor shall pay a subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless, a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the agency's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

Release of Retainage

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

PAYMENT SCHEDULE

The consultant will be paid based on work actually performed during the preceding month. The consultant should forward a copy of all invoices for payment for work performed and associated expenses, including salaries and overhead, travel, printing costs, postage, telephone, etc., by the 10th day of each month. KCAG will withhold ten percent (10%) of the payments due until the successful completion of the project and the delivery and acceptance of all final products by the KCAG Transportation Policy Committee.

DRAFT CONTRACT FOR THE PREPARATION OF THE KETTLEMAN CITY SAFETY AND COMMUNITY STUDY

THIS CONTRACT, entered into this _____ day of _____, 2009, by and between the Kings County Association of Governments, hereinafter referred to as "KCAG" and _____, hereinafter referred to as "Consultant" with respect to the following recitals:

WITNESSETH:

WHEREAS, KCAG is a state recognized Regional Transportation Planning Agency (RTPA) and the federally designated Metropolitan Planning Organization for Kings County; and

WHEREAS, Caltrans provides transportation planning grants for various types of planning efforts whose final products should lead to the adoption, initiation, and programming of transportation improvements that improve, access, and economic vitality; and

WHEREAS, the Environmental Justice: Context-Sensitive Planning Grant is a voluntary competitive grant program which promotes community involvement in planning to improve mobility, access, and safety while promoting economic, equity, environmental protection, and affordable housing for low-income, minority, and Native American communities; and

WHEREAS, the Kings County Community Development Agency has coordinated extensively with Kettleman City residents to develop the Kettleman City Community Plan, which reflects the vision and planning guide for the community's future growth highlighting both the community's strengths and challenges; and

WHEREAS, KCAG and the Kings County Community Development Agency have agreed to proceed with an Environmental Justice: Context-Sensitive Planning Grant and work with the various stakeholder groups to further explore the community's concerns as documented in the Kettleman City Community Plan; and

WHEREAS, the preparation of the Kettleman City Safety and Community Study, hereinafter referred to as "PROJECT" is desired by KCAG; and

WHEREAS, on October 16, 2009 KCAG issued a document entitled "Request for Proposals – Kettleman City Safety and Community Study", which shall hereinafter be referred to as the "RFP"; and

WHEREAS, Consultant timely submitted a proposal which includes a "Scope of Work" setting forth a description of the tasks to be performed for the Project (a copy of the Consultant's Proposal is attached hereto as Exhibit "A" and shall hereinafter be referred to as the "Proposal"); and

WHEREAS, Consultant has represented its firm as having the experience and knowledge necessary to perform the tasks identified in the RFP and Proposal and is willing to provide such services pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, IT IS AGREED, by and between KCAG and Consultant as set forth below.

1. SERVICES TO BE PROVIDED BY CONSULTANT:

A. Scope of Work: Consultant shall complete each of the tasks described in the Proposal attached hereto as Exhibit "A" and in accordance with the terms and conditions of this Agreement. Should any term or condition of the exhibits contradict any term or condition of this Agreement, the Agreement shall control. KCAG shall determine in its sole and absolute discretion which shall prevail, and Consultant shall be bound thereby.

B. Work Standard/Warranty: The Consultant warrants that Consultant shall perform the services with the standard of care and thoroughness normally exercised by nationally recognized professional consulting organizations engaged in performing comparable work. Consultant shall perform all services to the satisfaction of KCAG. The Consultant shall be liable to KCAG for any loss, damages, or costs incurred by KCAG for the correction of any part of the Scope of Work which is deficient or defective as a result of any failure of the Consultant to comply with said warranty and which is discovered to be so deficient or defective.

C. Time for Completion: Time is of the essence in provision of professional services by Consultant under this Agreement. Tasks shall be completed by Consultant in compliance with the Project Schedule set forth in Exhibit "B" attached hereto.

D. Personnel in Charge: The Consultant's services pursuant to this Agreement shall be provided primarily by _____. Other duties to be provided by Consultant personnel are indicated in the Proposal, with specific personnel performing the duties as indicated therein.

E. Project Status Reporting: Consultant shall report to KCAG monthly the status of work progress made by task. The report shall contain at least the following:

- i. Comparison of actual time taken versus time allowed by task;
- ii. Discussion of tasks completed and the ones currently underway; and,
- iii. Discussion of any problems encountered or anticipated which may result in additional time or expenses.

2. COMPENSATION:

A. Payment Amount: As compensation for services rendered by Consultant hereunder, KCAG shall compensate Consultant as set forth in Section ___ of the Proposal. The total compensation shall not exceed \$ _____, which amount shall include all expenses incurred by Consultant.

B. Invoices: KCAG shall make progress payments to Consultant in accordance with the invoice submitted by Consultant on a monthly basis indicated percent complete by task. If KCAG disagrees with any aspect of the invoice, including amount, percent complete or supporting documents, KCAG will notify Consultant in writing within ten days of receipt of invoice. If invoice is not contested, invoice shall be paid within 30 days of date of invoice.

C. Withholding: A retention shall be withheld from payments to Consultant as follows:

- i. Ten percent of invoices shall be held from conveyance pending acceptance by KCAG of the complete Kettleman City Safety and Community Study.
- ii. Consultant shall submit a final invoice for this Contract within _____ days after acceptance and approval of the final Kettleman City Safety and Community Study by the KCAG Transportation Policy Committee. Upon receipt of final invoice and approval of final Kettleman City Safety and Community Study, KCAG will pay in full the remaining balance due.

D. Additional Services: KCAG shall compensate Consultant only upon prior written approval by KCAG for any additional services and/or direct expenses which are not detailed in the Scope of Work and which could not have been reasonably foreseen by Consultant as being necessary to complete the Scope of Work. Except as provided herein, KCAG shall not be bound for payment for such additional services, and Consultant shall not be obligated to perform such additional services, if the services are not specifically authorized on the form entitled "Authorization Request for Additional Services" shown as Exhibit "C".

3. ADMINISTRATION OF AGREEMENT BY KCAG:

A. Project Manager: The Executive Director of KCAG shall act as the Project Manager and represent KCAG in carrying out the provisions of this Agreement. The Consultant will communicate with and receive instructions only through the Project Manager or designated representative.

B. Document Review: KCAG shall give reasonable prompt consideration to all documents and matters submitted by the Consultant for approval to the end that there will be no substantial delays in the Consultant's program of work.

C. Materials for Consultant: KCAG shall be responsible for providing information and any materials described in the section of the RFP entitled "Available Reference Information". KCAG will provide the Consultant with access to and copies of pertinent records and documents possessed by KCAG. KCAG shall furnish Consultant with currently existing data and reports and shall research KCAG records for information requested by Consultant and needed for completion of Consultants obligations under this Agreement.

D. Communications: Communications between the Consultant and KCAG officials and employees shall be provided through the Project Manager or designee. Access to pertinent KCAG records and documents shall also be provided through the Project Manager or their designee.

E. KCAG Delays: KCAG shall not be liable to consultant for any damages on account of any delay of KCAG. The Consultant shall notify KCAG in writing at least five working days after the Consultant believes that KCAG has caused the Consultant damages because of delays by KCAG specifying the cause thereof and detailing the related costs. The Consultant shall not be entitled to any damages for delay, but shall be entitled to additional time for completion of any tasks for this Project impacted by any such delay.

4. NOTICES:

All notices, claims, correspondence, reports and/or statements authorized required by the terms of this Agreement shall be addressed to the parties as follows:

To KCAG:

To the Consultant:

Terri King, Executive Director
Kings County Association of Governments
339 W. D Street, Suite B
Lemoore, CA 93245

5. TERMINATION OF AGREEMENT:

A. For Convenience: KCAG may terminate this Agreement at any time by giving no less than fifteen days prior written notice to the Consultant of such termination and specifying the effective date thereof. Consultant may terminate this Agreement only upon three months written notice to KCAG. In either event, all finished or unfinished documents and other materials become the property of KCAG. If the Agreement is terminated by KCAG as provided herein, the Consultant shall be paid an amount which reflects costs incurred for services provided to the date of termination set forth in the notice not to exceed tasks or partial tasks completed by Consultant.

B. For Cause: If through any cause the Consultant fails to fulfill in a timely and proper manner its obligations under this Agreement, or if Consultant violates any of the covenants, agreements or stipulations of this Agreement, KCAG shall thereupon have the right to immediately terminate this Agreement. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by Consultant under this Agreement shall be immediately turned over to KCAG in any format requested by KCAG.

6. OWNERSHIP OF DOCUMENTS:

All documents, drawings, maps, models, photographs, reports or other materials prepared by Consultant in relation to the project are and shall remain the property of KCAG. Consultant shall provide KCAG with all documents in an electronic format specified by KCAG at any time upon request. Consultant shall not withhold such documents due to any disputes with KCAG regarding payment or services under this Agreement. Consultant may retain a copy of such documents for archival purposes.

7. INDEMNITY:

Consultant agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release KCAG and its officers, agents and employees from and against any and all actions, claims, damages, disabilities or expenses that may be asserted by any person or entity, including Consultant, to the extent arising out of or in connection with any negligent acts or omissions or other misconduct in the performance of services by Consultant or its agents or assigns hereunder, whether or not there is concurrent negligence on the part of KCAG, but excluding liability due to the gross negligence or willful misconduct of KCAG.

8. INSURANCE:

A. General Liability Insurance: The Consultant shall, at his sole expense, obtain and keep in full force and effect for the duration of this Agreement, general public liability and property damage insurance which includes automobile liability insurance in a combined single limit of not less than \$1,000,000. Said insurance coverage shall name KCAG, its officers, employees and agents, as additional insured and shall contain a provision that the insurance shall not be canceled without thirty days prior written notice to KCAG.

B. Professional Liability Insurance: The Consultant shall also carry an "occurrence" policy form of Professional Liability Insurance at his sole expense for the duration of this Agreement in an amount not less than \$1,000,000, which insurance shall contain a 30-day notice of cancellation provision.

C. Worker's Compensation: The Consultant shall at its sole cost and expense obtain and keep in full force and effect for the duration of this Agreement workers' compensation insurance as required by law.

D. Term of Coverage: The Consultant shall at his own expense maintain coverage in conformance with above requirements with the carrier providing the coverage pursuant to this Agreement for a period of three years after the termination of this Agreement. In lieu of maintenance of coverage with the same carrier, Consultant shall secure coverage of the extended recovery period with a carrier approved by KCAG for a period ending not earlier than three years after the term of this Agreement.

E. Certificates of Insurance: A Certificate for each such insurance policy shall be submitted to KCAG within thirty days of execution of this Agreement.

9. RECORDS:

Consultant agrees to make available upon reasonable notice to KCAG, its books, records, documents, and any and all other evidence of all work or services performed or accounting of costs or expenses incurred in the performance of this Agreement, for inspection, examination and copying at all reasonable times, at Consultant's place of business, or other mutually agreeable location in California. Consultant agrees to organize and maintain in accordance with general business standards any and all pertinent books and records pertaining to the goods and services furnished under the terms of this Agreement.

10. CONFLICT OF INTEREST:

Consultant, its employees, contractors, and assigns, shall have no interest, nor acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement.

11. ASSIGNMENT AND SUBCONTRACTING:

Except as otherwise allowed expressly hereunder, Consultant shall not assign, transfer, or subcontract this Agreement or any interest herein without prior written approval of KCAG.

12. INDEPENDENT CONTRACTOR:

Consultant is an independent contractor and neither Consultant nor any employee or subcontractor of Consultant is an employee of KCAG. Consultant shall retain the right to exercise full control and supervision of its officers, employees and agents in the provision of services hereunder, and full control over the employment, direction, compensation and discharge of officers, employees and agents. Consultant shall be solely responsible for payment of its employees and compliance with social security, workers compensation, unemployment insurance, and income tax withholding and all laws and regulations governing such matters.

13. NONDISCRIMINATION:

In performing under this Agreement, Consultant shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

14. DISADVANTAGED BUSINESS ENTERPRISE (DBE):

KCAG has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. KCAG has received federal financial assistance from the DOT, and as a condition of receiving this assistance, KCAG will sign an assurance that it will comply with 49 CFR Part 26.

It is the policy of KCAG to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

- i. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- ii. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- iii. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- iv. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- v. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- vi. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

a. Nondiscrimination

KCAG will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, KCAG will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to

individuals of a particular race, color, sex, or national origin.

b. Contract Assurance

KCAG ensures that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

[Note – This language is to be used verbatim, as is stated in §26.13(b). See Caltrans Sample Boiler Plate Contract Documents on the Internet at www.dot.ca.gov/hq/LocalPrograms under “Publications.”]

c. Prompt Progress Payment to Subcontractors

The local agency shall require contractors and subcontractors to be timely paid as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency’s prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

d. Prompt Payment of Withheld Funds to Subcontractors

The local agency shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor’s work is satisfactorily completed and accepted. This shall be accompanied by including either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency’s prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency’s

prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

15. JURISDICTION AND VENUE:

This Agreement shall be administered and interpreted under the laws of the State of California. Venue for any litigation arising from the Agreement shall be the Superior Court for the State of California in Kings County, California. Consultant hereby waives the provisions of section 394 of the California Code of Civil Procedure.

16. SEVERABILITY:

If any part of Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall be in full force and effect.

17. INTEGRATION:

This Agreement including the recitals and attachments represents the entire understanding of the parties as to those matters contained herein and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument, signed by both KCAG and Consultant.

18. USE OF KCAG PROPERTY:

Consultant shall not use KCAG premises, property (including equipment, instruments and supplies), or personnel for any purpose other than in the performance of Consultant's obligations under this Agreement.

IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

Terri King, Executive Director
KINGS COUNTY ASSOCIATION
OF GOVERNMENTS

Date

Consultant

Date

APPROVED AS TO FORM:

Counsel
KINGS COUNTY ASSOCIATION
OF GOVERNMENTS

Date

EXHIBIT A

Consultant's Proposal

DRAFT

EXHIBIT B

Project Schedule

DRAFT

EXHIBIT C

Authorization Request for Additional Services

DRAFT

KINGS COUNTY ASSOCIATION OF GOVERNMENTS

AUTHORIZATION REQUEST FOR
ADDITIONAL SERVICES

Date: _____

Project: _____

Consultant: _____

Request No. _____

DESCRIPTION:

COST ESTIMATE:

Original Budget: _____

Contract Cost: _____

Prior Requests: _____

This Request: _____

TOTAL: _____

REQUESTED BY:

APPROVED BY:

Consultant

KCAG Executive Director