

**TOWN OF  
APPLE VALLEY, CALIFORNIA**

**AGENDA MATTER**

**Subject Item:**

**AWARD CONTRACT FOR PROFESSIONAL ENGINEERING AND DESIGN SERVICES FOR THE HIGHWAY 18 RAISED MEDIAN PROJECT FROM NAVAJO ROAD TO CENTRAL ROAD**

**Summary Statement:**

At the May 12, 2009 Council meeting, the Council approved the FY 2009/2010 CDBG (Community Development Block Grant) program. The program included the "Highway 18 Raised Median Project" from Navajo Road to Central Road. Recently, the Engineering Division received three responses to a Request for Proposals (RFP) for professional engineering and design services for the project. Work for this project generally consists of providing the professional and technical services required to design complete Median Improvement Plans, prepare Specifications and Engineer's Estimate (PS&E), and obtain a permit from Caltrans for the construction of the raised landscaped median on State Highway 18 from Navajo Road to Central Road. It is proposed that the project be constructed over a period of 4-5 years due to budgetary constraints. It is the Town's intention to obtain one Caltrans Permit for the whole project but construct the project in four (4) phases. The Proposed Phases/Segments are as follows:

1. Navajo Road to Pawnee Road
2. Tonikan Road to Central Road
3. Pawnee Road to Quinnault Road
4. Quinnault Road to Tonikan Road

(continued on page 2)

**Recommended Action:**

Award a contract to Hall & Foreman, Inc. for Professional Engineering and Design Services in the amount of \$85,600, subject to "Approval as to Form" by the Town Attorney and "Approval as to Content" by the Town Manager.

**Proposed by:** Engineering Division \_\_\_\_\_ **Item Number** \_\_\_\_\_

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

Summary Statement  
Page Two

As indicated, the Town received three proposals from:

Merrell-Johnson Engineering, Inc.,  
Hall & Foreman, Inc., and;  
Altec Engineering Corp.

The Engineering Division recommends that Hall & Foreman, Inc. be awarded the contract for this project. This recommendation is based on specific review and evaluation procedures. The Engineering Division rated the three proposals on a point scale that had been previously developed by staff. The allotted points were allocated to the proposal evaluation criteria, which included the following:

- Qualifications – Based upon the overall experience of the firm working on projects of a similar nature.
- References – Based upon the quality of references provided and the feedback received from the references and other sources.
- Project Understanding/Scope of Work – Based upon the respondents' understanding of the scope of work set forth in the RFP document and respondents' understanding of the project requirements.
- Department of Local Assistance (DLA)/Caltrans and Federal Highway Administration (FHWA) Experience – Based upon the experience working with or for these agencies.
- Schedule – Based upon the thoroughness and reasonableness of the Work Schedule provided.
- Staffing – Based upon the background and experience of the individuals proposed to be working on the project.

The Engineering Division believes that Hall & Foreman, Inc. is the best choice to provide for all the Town's needs for this project. The fee, per Hall & Foreman's Cost Proposal, is \$85,600.

Though each firm is highly qualified and has presented a detailed work plan, Hall & Foreman, Inc. stood out in many areas. The primary reasons for staff recommending Hall & Foreman, Inc. are as follows:

- 1) Hall & Foreman has excellent qualifications and the experience including previous work experience at various government agencies, such as Caltrans, District 8. (Free-Right Turn Lane Project at Highway 18 and Apple Valley Road and the Corwin Road/ Highway 18 New intersection Project.) This type of experience is crucial to perform the necessary engineering and design work for this project.

- 2) Hall & Foreman has the clearest and best understanding of the scope of work. They not only demonstrate an understanding of the design elements of the project but an understanding of the necessary Caltrans coordination required for this type of project.
- 3) The fee schedule and work schedule shows a clear understanding of the work required and time needed to complete all phases of this project. Its costs are reasonable and represent knowledge of the amount of work involved.
- 4) Hall & Foreman has demonstrated exemplary professionalism and communication skills in dealing with all affected participants.

This proposed project is to be jointly funded by both the Community Development Block Grant (CDBG) program and the Apple Valley Village Property Owners Business Improvement District (PBID) funds. It is estimated that the annual potential revenue from both of these funds is roughly \$150,000/yr. As mentioned previously, the construction of the mile long median would need to be spread out over 4-5 years due to the availability of both the CDBG funds and PBID funds. It is recommended, due to a significant cost savings, to design and obtain a Caltrans permit for the entire project with the first phase of construction.

Because the PBID will be financing the design services of the median and the landscaping, the PBID Board recently reviewed the recommendation to contract with Hall and Forman Inc. for design services and concurred with staff's recommendation. The PBID Board also accepted the landscape architect, who will provide design services for the landscaping of the median. Hall and Forman Inc. will coordinate with the Landscape Architect for submitting all plans, both landscape plans and improvement plans, for the Caltrans Permit.

The initial design costs covered under this contract will be paid with the PBID's first year's allotment. The construction costs, which are estimated to start next calendar year, will be covered by the CDBG funds. The following is a chart of projected estimated costs and revenues.

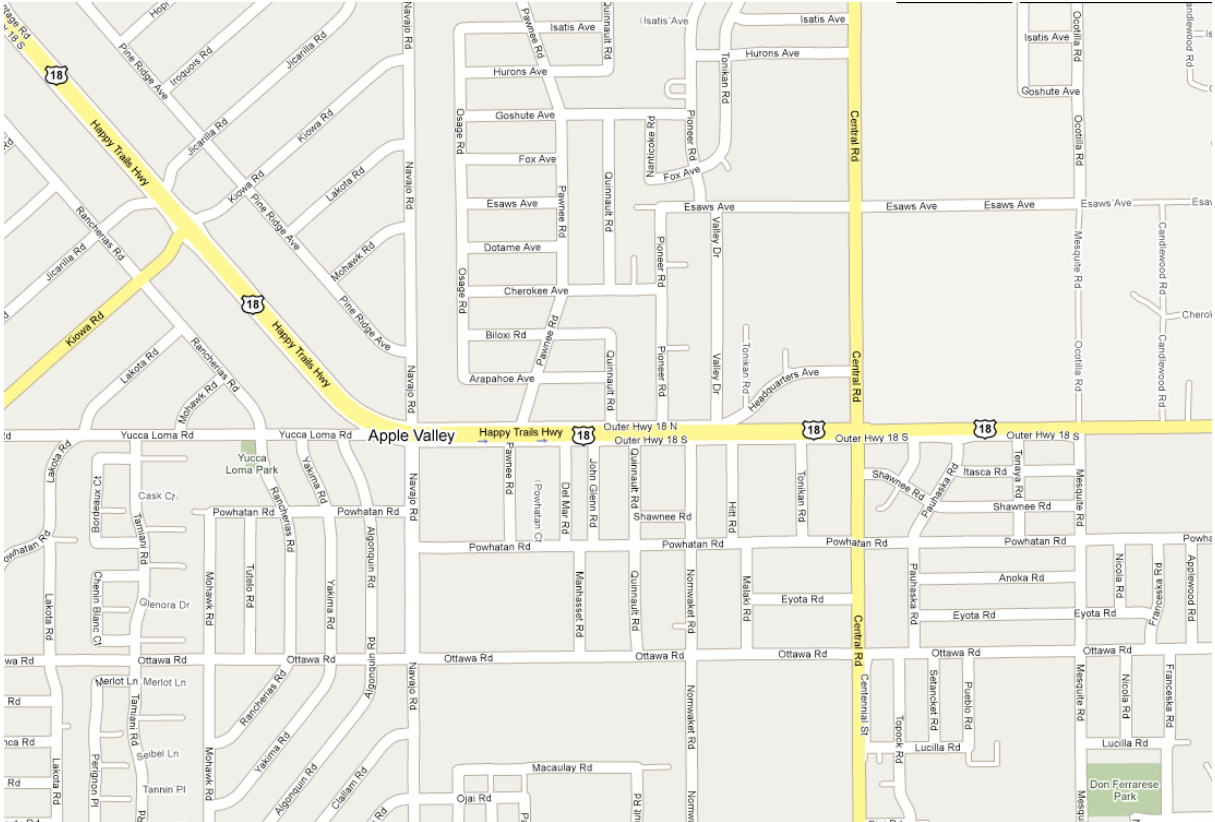
<b>Itemized Costs</b>	<b>2008/2009</b>	<b>09/10</b>	<b>10/11</b>	<b>11/12</b>	<b>12/13</b>
Median Design	\$85,600	\$0	\$0	\$0	\$0
Landscaping Design	\$50,000	\$0	\$0	\$0	\$0
Administration	\$14,400	\$15,000	\$15,000	\$15,000	\$15,000
Construction	\$0	\$250,000	\$250,000	\$250,000	\$250,000
<b>Total</b>	<b>\$150,000</b>	<b>\$265,000</b>	<b>\$265,000</b>	<b>\$265,000</b>	<b>\$265,000</b>

**Funding Sources**

CDBG	\$0	\$148,000	\$140,000*	\$140,000*	\$140,000*
PBID	\$150,000	\$125,000	\$125,000	\$125,000	\$125,000
<b>Total</b>	<b>\$150,000</b>	<b>\$273,000</b>	<b>\$265,000</b>	<b>\$265,000</b>	<b>\$265,000</b>

\*Potential funding sources

# LOCATION MAP



CONTRACT SERVICES AGREEMENT  
FOR PROFESSIONAL ENGINEERING AND DESIGN SERVICES  
FOR THE HIGHWAY 18 RAISED MEDIAN PROJECT FROM NAVAJO  
ROAD TO CENTRAL ROAD

Town of Apple Valley  
and  
Hall & Foreman, Inc.

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**CONTRACT SERVICES AGREEMENT  
FOR PROFESSIONAL ENGINEERING AND DESIGN SERVICES  
FOR THE HIGHWAY 18 RAISED MEDIAN PROJECT FROM NAVAJO ROAD TO CENTRAL ROAD**

**0.0 INTRODUCTION**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement"), is made and entered into by and between the TOWN OF APPLE VALLEY (herein "Town"), a municipal corporation, and HALL & FOREMAN, INC. (herein "Consultant"), and effective on this the 14th day of April, 2009. The parties hereto agree as follows:

- Consultant was incorporated in [REDACTED], California.
- Consultant's address is 14297 Cajon Avenue, Suite 101, Victorville, California 92392.
- The work to be performed under this contract is described in Section 1.1 entitled Scope of Work and the approved Consultant's Cost Proposal dated March 19, 2009, which are attached hereto (Exhibits A) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.
- The consideration to be paid to Consultant as provided herein, shall be in compensation for all of Consultant's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

**1.0 STATEMENT OF WORK**

1.1 Scope of Work – In compliance with all terms and conditions of this Agreement, the Consultant shall provide the services specified per attached Exhibit A, "Highway 18 Raised Median Project from Navajo Road to Central Road, Apple Valley, CA Scope of Work," and incorporated herein by this reference, which services may be referred to herein as the "Work" hereunder. Consultant warrants that all Work will be performed in a competent, professional, and satisfactory manner, in accordance with standards prevalent in the State of California.

1.2 Compliance with Law – All Work rendered hereunder shall be provided in accordance with all applicable ordinances, resolutions, statutes, rules, and regulations of the United States of America, State of California, Town, and other applicable agencies.

1.3 Licenses, Permits, Fees, and Assessments – Consultant shall obtain at its sole cost and expense such business licenses, permits, and approvals as may be required by law for the operation of Consultant's business.

1.3.1 Consultant shall ensure that the responsible engineer shall sign all plans, specifications, estimates (PS&E), and engineering data furnished by him/her and, where appropriate, indicate his/her California registration number.

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1.4 Familiarity With Work – By executing this Contract, Consultant warrants that Consultant has thoroughly investigated and considered the Work to be performed, and fully understands the difficulties and restrictions attending performance of the Work under this Agreement. Consultant warrants that its Work will be performed in accordance with professional standards of practice set forth in Section 1.1 above.

1.5 Care of Work – Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the Work, and the materials, papers, documents, plans, studies, and/or other components thereof to prevent loss or damage, and it shall be responsible for all such damages until acceptance of the Work by Town.

1.6 Further Responsibilities of Consultant – Consultant agrees to use reasonable care and diligence to perform its obligations under this Agreement. Consultant agrees to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

1.7 Non-Disclosure of Confidential Information – Consultant agrees not to disclose to third parties confidential information, proprietary information, or trade secrets; financial, statistical, personnel, technical, or other data and information; or that which is not in the public domain or a public record and that has been provided by the Town or its agents or subconsultants to the Consultant in order to carry out this contract, without Town's prior written consent. Consultant shall use its professional efforts to safeguard from unauthorized disclosure to third parties any such information given to it.

1.7.1 Permission to disclose information on one occasion or in public hearings held by Town relating to the contract shall not authorize Consultant to further disclose such information or disseminate the same on any other occasion.

1.7.2 Consultant shall not comment publicly to the press or any other media regarding the contract or the Town's actions on the same, except to the Town's staff, Consultant's own personnel involved in the performance of this contract, at public hearings, or in response to questions from a Legislative committee.

1.7.3 Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding Work performed or to be performed under this contract without prior review of the contents thereof by the Town and receipt of the Town's written permission.

1.7.4 Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.



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1.8 Local Agency Obligations – All data applicable to the Project and in possession of Town have been provided to Consultant with the RFP (Attachment 1). Consultant is directed to coordinate with the Apple Valley Business Improvement District through all phases of the Project, including but not limited to public hearings and community outreach.

1.9 Documentation – Consultant shall document the results of the Work to the satisfaction of Town and, if applicable, the state and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Agreement objectives. See Section 7.2, Records, of this contract for record retention requirements.

1.10 Number of Copies – Consultant shall provide [10] copies of project documents to Town.

## **2.0 COMPENSATION**

2.1 Contract Sum – For the Work rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the Cost Proposal attached hereto as Exhibit A, in the amount of \$85,600.

All payments for Work and products under this Agreement are contingent upon the Town's approval of authorized completed Work and acceptance of submitted products. Payment requests for work not within the scope of this Agreement will not be honored or paid unless such extra work and payment is authorized in writing by the Town Council.

Increases or decreases in Work requirements, changes in product format or detail shall be approved in advance in writing by the Contract Administrator. The Town, through its Contract Administrator designated by the Town Manager, reserves the right to direct any changes in the order of performance of any of the work requirements set forth in the Scope of Work, and, where deemed to be in the best interests of the Town, said Administrator may direct termination of the performance of the Work or any portion thereof, as required in Section 8.3, Termination, upon written notice to Consultant. In the event of such termination, Consultant shall be paid only for the Work performed prior to the effective date of said termination.

2.2 Fixed-Fee Cost– The basis of payment for the services provided under this Agreement shall be fixed fee:

- (a) Total expenditures made under this Agreement shall not exceed the sum of \$85,600.

2.3 Invoices

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2.3.1 Invoices – Consultant shall invoice (in triplicate) the Town **monthly** for Work accomplished in accordance with the payment schedule, as approved by the Town's Contract Administrator. Consultant will be reimbursed as promptly as fiscal procedures will permit upon receipt by Contract Administrator of itemized invoices. Invoices shall be submitted no later than 45 calendar days after the performance of Work for which Consultant is billing. Invoices shall detail the Work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and Project title.

2.3.2 Final Invoice – Final invoice must contain the final cost and all credits due Town, including any equipment purchased under the provisions of Section 4.6, Equipment Purchase, of this contract. The final invoice should be submitted within 60 calendar days after completion of Consultant's work. Invoices shall be mailed to Town's Contract Administrator at the following address:

Town of Apple Valley  
Brad Miller, Town Engineer  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

2.4 Progress Payments – Progress payments will be made monthly in arrears based on Work provided and allowable incurred costs. A pro rata portion of Consultant's fixed fee will be included in the monthly progress payments. If Consultant fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, Town shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions of Section 8.3, Termination.

2.5 Salary Increases – Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by Town's Contract Administrator. For personnel subject to prevailing wage rates as described in California's Labor Code, all salary increases which are the direct result of changes in the prevailing wage rates are reimbursable.

2.6 All subcontracts in excess of \$25,000 shall contain the above provisions.

2.7 Cost Principles

2.7.1 Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

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2.7.2 Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

2.7.3 Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to Town.

### **3.0 PERFORMANCE SCHEDULE**

3.1 Time of Essence – Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance – Consultant shall immediately upon execution hereof provide Town with proof of insurance as required under Section 6.0, Insurance, and shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed after execution of this Agreement by Town. Any recommendation for contract award is not binding on Town until the contract is fully executed and approved by Town.

Town may request Consultant to perform additional work not contemplated by the Scope of Work. Prior to the commencement of such additional work, the exact nature of such work and the cost to the Town thereof shall be set forth in writing, approved by the Town Council, and signed by the parties hereto.

Consultant shall complete the Work pursuant to the terms of this Agreement, in accordance with the approved schedule described in Exhibit A, "Scope of Work," with all work to be completed on or before January 2010.

Both Consultant and Town acknowledge that adjustments to the schedule for the Scope of Work may be made subject to Town's written authorization for said change through its Contract Administrator. However, the maximum contract price described in Section 2.1 cannot be exceeded without the prior written consent of the Town Council.

3.3 Term – Unless earlier terminated in accordance with Section 8.3 of this Agreement, this Agreement shall continue in full force and effect until completion of the Work as described above.

### **4.0 COORDINATION OF WORK**

4.1 Representatives of Consultant – The following employee of Consultant is hereby designated as being the representative of Consultant authorized to act in its behalf

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with respect to the Work specified herein and make all decisions in connection therewith: **Rob Kilpatrick, Project Manager.**

It is expressly understood that the experience, knowledge, capacity, and reputation of the foregoing employee was a substantial inducement for Town to enter into this Agreement. Therefore, the foregoing employee shall be responsible during the term of this Agreement for devoting significant time pertaining to and supervising Work hereunder. The foregoing employee may not be changed by Consultant without the express written approval of Town.

4.2 Contract Administrator – The Contract Administrator shall be such person as may be designated by the Town Manager. As of the date of this Agreement's execution, the Town's Contract Administrator is **Brad Miller, Town Engineer.**

It shall be the Consultant's responsibility to ensure that the Contract Administrator is kept informed of the progress of the performance of the Work and the Consultant shall refer any decisions which must be made by Town to the Contract Administrator.

4.3 Inspection of Work – Consultant and any subcontractor shall permit Town, the state, and the FHWA to review and inspect the Project activities and files at all reasonable times during the performance period of this contract, including review and inspection on a daily basis.

4.4 Prohibition Against Subcontracting or Assignment/Certain Exceptions – The experience, knowledge, capability, and reputation of Consultant, its principals, and employees were a substantial inducement for the Town to enter into this Agreement. Consultant shall not contract with any other person or entity to perform in whole or in part the Work required hereunder without the express written approval of the Town. In addition, neither this Agreement nor any interest herein or performance hereunder may be transferred, assigned, conveyed, delegated, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of the Town. As to any unapproved transfer, including bankruptcy proceeding, rights of the transferor and transferee under this Agreement shall be void. No transfer shall release the surety of Consultant of any liability hereunder to the Town without the express consent of the Town.

It is understood and agreed that the following subcontractor(s) of Consultant may be providing the following described services:

As shown in consultant's Cost Proposal dated March 19, 2009.

All fees, charges, costs, or expenses for any and all Work done by any subcontractors or subconsultants under the provisions of this Agreement shall be the sole responsibility of Consultant, and the Town shall in no manner be liable for any

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fees, charges, costs, or expenses due to or claimed by any subcontractors or subconsultants for Work done under the provisions of this Agreement unless otherwise specifically agreed to in writing by the Town. The provisions of this paragraph shall be inserted into all subcontracts to which Consultant or its agents, contracting parties, or designates are parties.

4.4.1 Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all the provisions stipulated by this contract to be applicable to subcontractors.

4.4.2 Any substitution of subcontractors must be approved in writing by Town's Contract Administrator.

4.5 Independent Contractor – Neither the Town nor any of its employees shall have any direct control over the manner, mode, or means by which Consultant, its agents, or employees, perform the services required herein. Subject to Town's approval rights hereunder, Town shall have no voice in the selection, discharge, supervision, or control of Consultant's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Consultant shall perform all services required herein as an independent contractor of Town and shall remain at all times as to Town a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are employees of Town. Town shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.6 Equipment Purchase – It is not anticipated that Consultant will purchase equipment for performance of Work under this contract. If the need to purchase equipment arises, the purchase shall be governed by these provisions.

4.6.1 Prior authorization in writing by Town's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order or subcontract exceeding \$5000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

4.6.2 For purchase of any item, service, or consulting work not covered in Consultant's Cost Proposal and exceeding \$5000, prior authorization by Town's Contract Administrator is required. Three (3) competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.

4.6.3 Any equipment purchased as a result of this contract is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5000 or more. If the purchased equipment needs

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replacement and is sold or traded in, Town shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit the Town in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established Town procedures, and credit Town in an amount equal to the sale price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to Town and Consultant. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by Town."

4.6.4 All subcontracts in excess of \$25,000 shall contain all the provisions of this Article.

## **5.0 SAFETY**

5.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by the Town Safety Officer and other Town representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the Project construction site.

5.2 Pursuant to the authority contained in Section 591 of the Vehicle Code, Town has determined that certain areas within the limits of the Project are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

5.3 Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

5.4 Consultant must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s) as outlined in the California Labor Code Sections 6500 and 6705 prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

## **6.0 INSURANCE**

6.1 Insurance – Consultant shall procure from an admitted insurer and maintain, at its cost, comprehensive general liability and property damage insurance, including owned or non-owned automobile insurance, against all claims for injuries or death against persons or damages to property resulting from Consultant's act or omissions arising out of or related to Consultant's performance under this Agreement.

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Consultant shall also carry Workers' Compensation insurance in the statutory amount prescribed under State Workers' Compensation laws.

Such insurance shall be kept in effect during the term of this Agreement and shall not be subject to reduction in coverage, cancellation, or termination without thirty days prior written notice received by Town and the liability insurance shall be primary and not contributing with other insurance available to Town. The procuring of such insurance or the delivery of policies or certificate evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify the Town and its contractors or employees. The amount of insurance required hereunder for personal injury, automobile liability, and property damage shall be a combined single limit (CSL) of no less than \$1,000,000.00 per occurrence.

6.1.1 A Certificate or Certificates of Insurance evidencing the foregoing shall be delivered to and approved by the Town prior to commencement of the services hereunder. The Certificate of Insurance will provide:

- (a) That the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the Town.
- (b) That the Town, its officers, agents, employees, and servants are included as additional insured, but only insofar as the operations under this contract are concerned.
- (c) That the Town will not be responsible for any premiums or assessments on the policy.

6.1.2 In the event Consultant's insurance coverage expires at any time or times during the term of this contract, a new Certificate of Insurance must be issued to Town evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract or for a period of not less than one (1) year.

6.1.3 In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, Town may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

6.1.4 "Insurance Requirements for Contractors," attached hereto as Attachment 2 was provided to bidders with the Town's RFP and is made a part of this contract.

6.2 Indemnity – Consultant shall hold harmless, indemnify, and defend at Consultant's expense the Town, its Council, servants, boards and commissions, officers, agents, representatives, and employees from and against any damages or liability (whether bodily injury, including death, property damage, and/or wrongful or negligent Work performed under this Agreement), loss, cost, or expenses arising or alleged to arise out of or resulting from any wrongful or negligent act or omission of Consultant or its officers, agents, employees, subcontractors, subconsultants, or

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representatives in the performance of, arising out of, concerning, or relating to any performance under this Agreement.

**7.0 REPORTS / RECORDS / MEETINGS**

7.1 Reports – Consultant shall submit progress reports to the Contract Administrator at least once a month. The reports should be sufficiently detailed for the Contract Administrator to determine if Consultant is performing to expectations or is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or special problems encountered so that remedies can be developed. In addition, reports are to be made available to the state and FHWA as necessary.

7.1.1 Final Report – Upon completion of Work, Consultant is to prepare and submit to the Contract Administrator a final report evidencing attainment of the Project's objectives.

7.2 Records – Consultant shall keep, and require subcontractors to keep, such books and records as shall be necessary to perform the services required by this Agreement and to enable the Contract Administrator, the state, the State Auditor, FHWA, or any duly authorized representative of the federal government to have full and free access to such books and records at all times during normal business hours of Town, including the right to inspect, copy, audit, and make records and transcripts from such records. Copies of such books and records shall be furnished if requested. Such records shall be maintained for a period of three (3) years following completion of the Work hereunder or the termination of the contract or any longer period as may be required by law, and the Town shall have access to such records in the event any audit is required.

7.3 Meetings – Consultant shall meet on a monthly basis (or more frequently if needed) with the Town's Team to provide status reports and to ensure progress. These scheduled monthly meetings will be held at the Town Hall in Apple Valley.

7.4 Subcontracts in excess of \$25,000 shall contain the provisions of this Article.

7.5 Ownership of Data

7.5.1 All drawings, specifications, reports, records, documents, and other materials prepared by Consultant, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of Town and shall be delivered to Town upon request of the Contract Administrator or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by Town of its full rights of ownership of the documents and materials hereunder. Consultant may retain at its expense copies of such documents for its own use. All Subcontractors shall provide for transfer to Town of any documents or materials prepared by them, and in the event Consultant



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fails to secure such transfer, Consultant shall indemnify Town for all damages suffered thereby.

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

7.5.3 Consultant is not liable for claims, liabilities, or losses arising out of or connected with the modifications or misuse by Town of the machine-readable information and data provided by Consultant under this Agreement. Further, Consultant is not liable for claims, liabilities, or losses arising out of or connected with any use by Town of the Project documentation on other projects for additions to this Project, or for the completion of this Project by others, except only such use as may be authorized in writing by Consultant.

7.5.4 Town may permit copyrighting reports or other Agreement products. If copyrights are permitted, the Agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for government purposes.

7.5.5 Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain the provisions of this Article.

7.6 Release of Documents – The drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of Work under this Agreement shall not be released publicly without the prior written approval of the Contract Administrator.

7.7 Performance Evaluation of Consultant – Consultant's performance will be evaluated by Town. A copy of the evaluation ("Consultant Performance Evaluation," Attachment 3) will be sent to Consultant for comments. The evaluation together with comments shall be retained as part of the contract record.

7.8 Closeout of Consultant Contract – Town at its discretion may elect to complete the closeout of the Consultant contract after the physical construction of the Yucca Loma Bridge is complete.

## **8.0 ENFORCEMENT OF AGREEMENT**

8.1 Waiver – No delay or omission in the exercise of any right or remedy by the Town on any default shall impair such right or remedy or be construed as a waiver; Town's consent to or approval of any act by Consultant requiring Town's consent or approval shall not be deemed to waive or render unnecessary Town's consent to or approval by any subsequent act of Consultant. Any waiver by the Town of any

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default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.2 Rights and Remedies are Cumulative – Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Town are cumulative and the exercise by the Town 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 or any other default by Consultant, unless provided for herein.

8.3 Termination – Town may terminate this Agreement without fault on the part of Consultant by giving at least thirty (30) days written notice to Consultant. The written notice shall specify the date of and reasons for termination. Upon receipt of such notice, Consultant may continue work on the Project through the date of termination, provided any unfinished items of Work which the Town Manager determines are necessary to be completed by Consultant shall be completed to allow the Project itself to be completed in a timely, logical, and orderly manner. Town shall pay Consultant within thirty (30) days after the date of termination of all non-objected to, approved Work performed by Consultant in accordance herewith through the date of termination.

If Consultant materially breaches the terms of this Agreement, Town shall have the following rights, which are not mutually exclusive:

- (a) Immediately terminate the Agreement with Consultant; and
- (b) Retain all materials, including documents prepared by Consultant for Town; and
- (c) Complete the unfinished Work under this Agreement with a different Consultant and charge Consultant with the difference between the cost of completion of the unfinished work herein and the amount that would otherwise be due Consultant had Consultant completed the Work; and
- (d) All other rights and remedies otherwise permitted by law.

If events occur beyond Consultant's control to complete the Project, Consultant and Town shall meet to confer and determine the best way to remedy the situation, including review of the Scope of Work and/or Schedule, or substitution of another firm if necessary, based on the provisions of this Agreement.

8.4 Governing Law / Attorneys Fees / Venue – This Agreement is to be governed by and construed in accordance with the laws of the State of California. In the event any action shall be instituted by either of the parties hereto for the enforcement of any of its rights or otherwise, the party in whose favor a judgment shall be rendered

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therein shall be entitled to recover from the other party reasonable fees of attorneys, accountants, appraisers, and expert witnesses ("litigation expenses") and costs incurred by said prevailing party in said action as may be established by the Court, as applicable. The proper venue for the filing of any such action shall be the County of San Bernardino.

**8.5 Funding Requirements**

8.5.1 It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

8.5.2 This Agreement is valid and enforceable only if sufficient funds are made available to Town for the purpose of this contract. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by Congress, State Legislature, or Town governing board that may affect the provisions, terms, or funding of this contract in any manner.

8.5.3 It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

8.5.4 Town has the option to void the contract under the 30-day cancellation clause or by mutual agreement to amend the contract to reflect any reduction in funds.

**9.0 CONFLICT OF INTEREST / NON-DISCRIMINATION**

9.1 Conflict of Interest – Consultant warrants that it will strictly comply with all conflict of interest laws.

9.1.1 Consultant shall disclose any financial, business, or other relationship with Town that may have an impact upon the outcome of this contract or any ensuing Town construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract or any ensuing Town construction project which will follow.

9.1.2 Consultant hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

9.1.3 Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all of the above provisions.

9.2 Covenant Against Discrimination – Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that

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there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

**10.0 SUBCONTRACTORS**

10.1 Subcontractors

10.1.1 Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Town and any subcontractors, and no subcontract shall relieve Consultant of his/her responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to Town for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subcontractors is an independent obligation from Town's obligation to make payments to Consultant.

10.1.2 Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.

10.1.3 Consultant shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Consultant by Town.

10.1.4 Any substitution of subcontractors must be approved in writing by Town's Contract Administrator in advance of assigning work to a substitute subcontractor.

**11.0 MISCELLANEOUS PROVISIONS**

11.1 Notice – All notices and communications regarding interpretation of the terms of this contract and changes thereto, shall be effected by registered or certified mail, return receipt requested, postage prepaid to:

Consultant:                    Rob Kilpatrick  
   Hall & Foreman, Inc.  
   14297 Cajon Avenue, Suite 101  
   Victorville, CA 92392

Town:                            Town Manager

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Attn: Brad Miller, Town Engineer  
Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

Any other notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the above parties at the addresses indicated.

Either party may change its address by notifying the other party of the change of address in writing.

Notice shall be deemed communicated at the time personally delivered or seventy-two hours from the time of mailing if mailed as provided in this Section.

11.2 Integration – It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

11.3 Amendment – This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing. Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by Town's Contract Administrator.

11.4 Severability – In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not effect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

11.5 Authority of Persons Executing Agreement – Consultant, in executing this Agreement on its behalf, warrants that (i) it is duly organized and existing, (ii) it is duly authorized to execute and deliver this Agreement on its behalf, (iii) by so executing this Agreement, Consultant is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which Consultant is bound.

11.6 Contingent Fee – Consultant warrants by execution of this contract that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding, for a commission, percentage,

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brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, Town has the right to annul this contract without liability; pay only for the value of the Work actually performed; or in its discretion to deduct from the contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee. A "Certification of Consultant" signed by Consultant has been attached hereto as Exhibit D.

11.7 National Labor Relations Board Certification – In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued within the immediately preceding two-year period against Consultant because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

11.8 Statement of Compliance – Consultant's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

11.9 Debarment and Suspension Certification

11.9.1 Consultant's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the Town.

11.9.2 Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant's responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

11.10 State Prevailing Wage Rates

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11.10.1 Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 177, and all federal, state, and local laws and ordinances applicable to the Work.

11.10.2 Any subcontract entered into as a result of this contract if for more than \$250,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

11.11 Rebates, Kickbacks, or Other Unlawful Consideration – Consultant warrants that this contract was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any Town employee. For breach or violation of this warranty, Town shall have the right in its discretion to terminate the contract without liability; to pay only for the value of the Work actually performed; or to deduct from the contract price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration. A "Certification of Local Agency" signed by Town has been attached hereto as Exhibit E.

11.12 Prohibition of Expending Local Agency, State, or Federal Funds for Lobbying

11.12.1 Consultant certifies to the best of his or her knowledge and belief that:

- (a) No state- federal- or local agency-appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than federal- appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

11.12.2 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by

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Section 1352, Title 31, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

11.12.3 Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

## **12.0 DISPUTE RESOLUTION**

### **12.1 Town Governing Board**

12.1.1 Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the Town's Contract Manager and the Town Council, who may consider written or verbal information submitted by Consultant.

12.1.2 Not later than thirty (30) days after completion of all Work under the contract, Consultant may request review by the Town Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

12.1.3 Neither the pendency of a dispute, nor its consideration by the Town Governing Board will excuse Consultant from full and timely performance in accordance with the terms of this contract.

### **12.2 Mediation**

12.2.1 If the parties are unable to reach agreement via the Town's Governing Board, both parties agree that claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to mediation unless both sides agree to forego mediation and go to arbitration.

12.2.2 Neither the pendency of a dispute, nor its consideration by mediation will excuse Consultant from full and timely performance in accordance with the terms of this contract.

### **12.3 Arbitration**

12.3.1 If the parties are unable to reach agreement via the Mediation, claims, disputes or other matters in question which are solely between the parties to this



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Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

12.3.2 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statutes of limitations.

12.3.3 No arbitration arising out of or relating to this Agreement shall be required if it is necessary for a complete resolution to include, by consolidation, joinder, or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by Consultant's signatory and any other person or entity shall sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute, or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

12.3.4 Neither the pendency of a dispute, nor its consideration by arbitration will excuse Consultant from full and timely performance in accordance with the terms of this contract.

12.4 Audit Review Procedures

12.4.1 Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the Town's Chief Financial Officer.

12.4.2 Not later than thirty (30) days after issuance of the final audit report, Consultant may request a review by Town's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

12.4.3 Neither the pendency of a dispute nor its consideration by Town will excuse Consultant from full and timely performance in accordance with the terms of this contract.

**13.0 UNAVOIDABLE DELAYS AND EXTENSIONS**

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13.0 Circumstances are not contemplated that would cause unavoidable delays in Engineering and Environmental Services; however, if such circumstance should occur, Town and Consultant will meet to determine a revised Scope of Work and timeline and to consider corresponding warranted adjustment in payment.

**14.0 AGREEMENT**

14.0 The two parties to this Agreement who are the before-named Consultant and the before-named Town, hereby agree that this Agreement constitutes the entire agreement which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and Work to be performed, each agrees to diligently perform in accordance with the terms and conditions of this Agreement as evidenced by the signatures below.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date stated below for execution.

**TOWN OF APPLE VALLEY**

By:

\_\_\_\_\_  
[Name], Town Manager

\_\_\_\_\_  
Date

**HALL & FOREMAN, INC.**

By:

\_\_\_\_\_  
[Name], President

\_\_\_\_\_  
Date

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List of Exhibits:

- A. Proposal to Provide Professional Engineering and Design Services for the Highway 18 Raised Median Project, from Navajo Road to Central Road  
Dated: March 19, 2009

List of Attachments:

- 1. Request for Proposal