

High Desert Corridor  
Joint Powers Authority

October 29, 2020

Meeting Materials

Item 6

Approve Agreement between the  
High Desert Corridor Joint Powers Authority  
and  
AVS Consulting



# High Desert Corridor Joint Powers Authority



## E-220 HIGH DESERT CORRIDOR

October 29, 2020

Subject: Approve a one-year contract to AVS Consulting for consulting and administrative services in the amount not to exceed \$11,500 per month.

On July 6, 2020, the High Desert Corridor Joint Powers Authority (JPA) terminated an agreement with San Bernardino County for employment of a staff coordinator position, creating a vacancy. To fill the vacancy and ensure the JPA continues to advance the goal of improving east-west mobility within the High Desert region of Southern California, a Request for Proposal (RFP) was sent out for consulting and administrative services. Two consulting firms responded to the RFP, OPR Communications and AVS Consulting.

A committee comprised of representatives from Los Angeles County, San Bernardino County, City of Palmdale and the Town of Apple Valley, evaluated the proposals and determined AVS Consulting's experience in transportation and administrative support of the North County Transportation Coalition would be an asset based on the current needs of the JPA.

Founded in 1997, AVS Consulting specializes in transportation project management and advocacy to achieve the needs of their clients. The approved contract will be in place for one year starting on Oct 29, 2020 through October 31, 2021 with an option for the JPA to extend the length after the term expires. AVS Consulting will be paid in an amount not be exceeded of \$11,500 per month.

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## **AGREEMENT BETWEEN HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY AND AVS CONSULTING**

This Agreement is entered into this 29th day of October, 2020, between the High Desert Corridor Joint Powers Authority, hereinafter called “HDC,” and AVS Consulting, hereinafter called “Contractor.”

\* \* \*

Whereas, HDC is a Joint Powers Authority by and among the County of Los Angeles and the County of San Bernardino created pursuant to California’s Joint Exercise of Powers Act (Gov’t Code sections 6500 et seq.) for the general purpose of planning, operation, and maintenance of transportation and utility corridors throughout the Counties’ high deserts, as more specifically stated in the HDC Joint Powers Agreement (“JPA”).

Whereas, under the JPA HDC possesses the power to contract with independent contractors for various services; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of consulting and administrative services relating to the purpose of the HDC JPA, and as stated in HDC’s Request for Proposals.

**Now, therefore, it is agreed by the parties to this Agreement as follows:**

### **1. Exhibits and Attachments**

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services

Exhibit B—Payments and Rates

### **Services to be performed by Contractor**

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for the HDC in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

### **2. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, the HDC shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. The HDC reserves the right to withhold payment if the organization determines that the quantity or quality of the work performed is unacceptable. In no event shall the HDC total fiscal obligation under this Agreement exceed \$11,500 per

month. In the event that the HDC makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the HDC at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

### **3. Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 29, 2020 through October 31, 2021, with the option to extend, if agreed to by both parties, for additional one year term.

### **4. Termination**

This Agreement may be terminated by the HDC at any time without a requirement of good cause upon thirty (30) days' advance written notice to the Contractor. Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

The HDC may terminate this Agreement for cause. In order to terminate for cause, HDC must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, HDC may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that HDC provides notice of an alleged breach pursuant to this section, HDC may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. The HDC has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and HDC shall use reasonable judgment in making that determination.

### **5. Contract Materials**

At the expiration of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of the HDC and shall be promptly delivered to the HDC. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

### **6. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of the HDC and that neither

Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of HDC employees.

## **7. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of HDC. Any subcontracting shall be subject to the same terms and conditions as the Contractor. The Contractor shall be fully responsible for the performance and payments of any subcontractor's contract.

Any such assignment or subcontract without the HDC's prior written consent shall give the HDC the right to automatically and immediately terminate this Agreement without penalty or advance notice.

## **8. Indemnification**

The Contractor agrees to indemnify, defend (with counsel reasonably approved by HDC and hold harmless HDC and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by HDC on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of

indemnities. The proposer indemnification obligation applies to HDC's "active" as well as "passive" negligence but does not apply to HDC's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

## **9. Insurance**

### **a. General Requirements**

#### **(1) Additional Insured**

All policies, except for the Workers' Compensation, Errors and Omissions, and Professional Liability policies shall contain additional endorsements naming HDC JPA and its officers, employees, agents, and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for HDC JPA to vicarious liability but shall allow coverage for HDC JPA to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

**(2) Waiver of Subrogation Rights**

The Contractor shall require the carriers of the required coverages to waive all rights of subrogation against the HDC JPA, its officers, employees, agents, volunteers, Contractors, and Subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the HDC JPA.

**(3) Severability of Interests**

The proposer agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and HDC JPA or between HDC JPA and any other insured or additional insured under the policy.

**(4) Proof of Coverage**

The proposer shall furnish Certificates of Insurance to HDC JPA administering the contract evidencing the insurance coverage at the time the contract is executed. Additional endorsements, as required, shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to HDC JPA, and the proposer shall maintain such insurance from the time the proposer commences performance of services hereunder until the completion of such services.

**(5) Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII."

**(6) Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

**(7) Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, HDC JPA has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by HDC will be promptly reimbursed by the proposer or HDC JPA payments to the proposer(s) will be reduced to pay for HDC JPA purchased insurance.

**b. Insurance Specifications**

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend,

supplement, or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

**(1) Workers' Compensation/Employers Liability**

A program of Workers' Compensation insurance or a state-approved self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the proposer and all risks to such persons under this Contract.

If the proposer has no employees, it may certify or warrant to HDC that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by HDC.

With respect to proposers that are non-profit corporations organized under California or federal law,

volunteers for such entities are required to be covered by Workers' Compensation insurance.

**(2) Commercial/General Liability Insurance**

The proposer shall carry General Liability Insurance covering all operations performed by or on behalf of the proposer providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal Injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

**(3) Automobile Liability Insurance**

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and nonowned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the proposer is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If the proposer owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**(4) Umbrella Liability Insurance**

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**(5) Professional Services Requirements**

Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits.

Or

**(6) Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits.**

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after agreement completion.

**10. Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, HDC, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or HDC financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, HDC, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

## **11. Non-Discrimination and Other Requirements**

### **a. General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

### **b. Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to HDC upon request.

### **c. Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

### **d. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

### **e. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide UCC with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the UCC.

**f. Reporting; Violation of Non-discrimination Provisions**

Contractor shall report to the HDC the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the UCC Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a HDC contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by HDC.

To effectuate the provisions of this Section, HDC shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and HDC.

**12. Retention of Records; Right to Monitor and Audit**

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after HDC makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by the HDC, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by the HDC.

(c) Contractor agrees upon reasonable notice to provide to the HDC, to any Federal or State department having monitoring or review authority, to HDC's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

### **13. Merger Clause; Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

### **14. Controlling Law; Venue; Attorney Fees and Costs**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued in the Superior Court of the State of California, San Bernardino County. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under section 7. Indemnification.

### **15. Conflict of Interest**

HDC recognizes that the Contractor currently represents other clients. In the event that issues arise with the Contractor where specific interests from existing clients might conflict with each other, the Contractor will notify both clients of such conflict for the purpose of full disclosure.

In the event a conflict is determined to exist by the HDC, the Contract shall forfeit funds for the specific conflicted issue and a sub-contractor determined by the HDC shall be retained.

### **16. Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of HDC, to:

Name/Title: Jessica Trillo, Administrative Analyst III  
Address: 385 N. Arrowhead Ave, San Bernardino, CA 92415  
Telephone: 909-387-4222  
Email: Jessica.Trillo@cao.sbcounty.gov

In the case of Contractor, to:

Name/Title: Arthur Sohikian, Owner  
AVS Consulting  
Address: 1055 W. 7th Street, Suite 3300, Los Angeles, CA 90017  
Telephone: 213-640-7272  
Email: arthur@avsconsultinginc.com

\* \* \*

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: AVS Consulting

\_\_\_\_\_  
Contractor Signature                      Date                      Contractor Name (Please Print)

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For High Desert Corridor Joint Powers Authority: \_\_\_\_\_

Date: \_\_\_\_\_ Title: \_\_\_\_\_

## Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following consulting and administrative services:

1. Schedule and administer HDC Board Meetings to consider policy positions and participate in discussions with Project Development Team and/or the Policy and Technical Advisory Committee on items to move the Project forward.
2. Provide professional analysis, governmental relations and/or other services for the HDC as directed by the HDC Board Members.
3. Educate and build political, business and stakeholder coalitions in support of the Project; identify and coordinate meetings with key federal elected officials and agency officials to develop and advance the Project.
4. Identify funding opportunities, form coalitions of support and work with funding agencies to secure financing for the HDC project.
5. Oversee and provide direction to contracted consultants hired by the HDC in such areas as specialized legal, financial and environmental services to ensure work is performed in accordance with contract requirements.
6. Act as spokesperson; provide input to determine press strategy and content; prepare presentations, speeches, and authorship of articles on the Project.
7. Maintain routine communication with HDHDC's governing board and key staff regarding issues of importance to the HDC.
8. Actively participate, coordinate and monitor appropriate coalitions and working groups of other agencies/entities as well as their respective activities to help further the interests and objectives of HDC (i.e. Metro, Metrolink, CHSRA, SBCTA, Caltrans, Nevada Rail Authority, etc.).
9. Respond expeditiously to HDC inquiries and/or requests.
10. Monitor Regional, State, and Federal activities related to transportation programs and funding, and report these activities to the HDC member agencies.
11. Prepare position papers on proposed activities representing the HDC's position.
12. Provide technical information and planning assistance to the HDC regarding transportation matters.
13. Prepare meeting agendas and minutes.
14. Other duties as assigned and/or deemed necessary by the HDC.

## **Exhibit B**

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, the HDC shall pay Contractor based on the following fee schedule and terms:

The contractor will be paid in an amount not to exceed \$11,500 per month, based on the billed hourly rates below, beginning October 29, 2020 through October 31, 2021. The hourly billing rate for the executive/staffing coordinator shall be \$165.00, and the hourly billing rate for administrative services is \$80.00. Payments will be issued upon receipt of a monthly invoice and submission of a monthly report of activities/services.

All invoices and monthly reports are to be submitted to the HDC.