

COUNTY OF KERN

DEPARTMENT OF PUBLIC WORKS

REQUEST FOR QUALIFICATIONS

To provide on-call Right of Way Consultant Services,  
including for State and Federal-Aid Projects.

DATE DUE . . . . . October 24, 2024

TIME DUE . . . . . Before 11:00 a.m.

**COUNTY OF KERN**

**DEPARTMENT OF PUBLIC WORKS**

**Request for Qualifications to Provide: Right of Way Consultant Services**

The County of Kern is issuing this Request for Qualifications (RFQ) to qualified firms to be used in the selection of a Land Right of Way (Row) Services company (consultant) capable of providing right of way acquisition services, land survey services, appraisal services, title and escrow services, property management services, relocation services, and eminent domain acquisition services.

The County will review responses to this RFQ and anticipates ranking the firms based on the firm’s Statement of Qualifications (SOQ), experience, and history of performance using predetermined selection criteria.

The attached Exhibit “A” contains a general outline of the Scope of Work that may be performed under the on-call agreement.

Consultants are specifically directed not to contact any County personnel, other than the Contact Person indicated below, for any purpose related to this RFQ. **Unauthorized contact of any County personnel may be cause for rejection of a consultant’s SOQ.**

**All inquiries concerning this RFQ should be directed to the following Contact Person:**

Kerri Paulson  
Contract Specialist  
Kern County Public Works Department  
2700 M Street, Suite 500, Bakersfield, CA 93301  
(661) 862-8705  
pw-financecontracts@kerncounty.com

**Envelopes/packages containing the SOQs are to be marked:**

SOQ: “Right of Way Consultant Services” and **delivered to:**  
Kern County General Services Division  
1115 Truxtun Ave., 3<sup>rd</sup> Floor  
Bakersfield, CA 93301  
Telephone (661) 868-3000

**Projected Timetable**

The following dates are set forth for information and planning purposes only. These dates may be changed by County upon notice to prospective consultants:

Issuance Date . . . . .Tuesday, September 24, 2024  
RFQ inquiries from responding firms . . . . .Tuesday, October 8, 2024  
County’s response to RFQ inquiries. . . . . Wednesday, October 16, 2024  
Statement of Qualifications Due Date . . . . .Thursday, October 24, 2024  
Statement of Qualifications Due Time . . . . . Before 11:00 a.m.

*Postmark date will NOT constitute timely delivery. Responses received after the above time **WILL NOT** be considered. Consultants are solely responsible for ensuring timely receipt of their SOQs.*

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**I. GENERAL INFORMATION**

**A. Request for Qualifications/Rules for Competition**

The competitive method used for this solicitation is known as a ‘Request for Qualifications’ (RFQ). Firms shall be ranked and selected according to their Statement of Qualifications (SOQ).

**B. Requests for Additional information and site visits**

Inquiries regarding the RFQ shall be made in the following way:

By mail or email to:

County of Kern Public Works Department

Attn: Kerri Paulson

2700 M Street, Suite 500

Bakersfield, CA 93301

[pw-financecontracts@kerncounty.com](mailto:pw-financecontracts@kerncounty.com)

**Any inquiries shall be accepted no later than ten (10) working days prior to the RFQ due date. Written responses to the inquiries shall be issued no later than seven (7) calendar days prior to the RFQ due date.**

**C. Statement of Qualifications (SOQ)**

Response to this solicitation will be in the form of a Statement of Qualifications according to the work described in section E below and the attached **Exhibit A**. The SOQ shall document the firm’s qualifications as they apply to the Scope of Work found in **Exhibit A**.

The County will evaluate all responses using the evaluation criteria stated in Section F; sub-section 3 paragraph h below-. The selection panel will consist of representatives from various County departments associated with or having expertise relating to the project. Composition of the selection panel is subject to change at the sole discretion of the County. Firms will be ranked in numerical order based on the scoring of the firm in relation to the evaluation criteria.

**D. Project Background and Description**

The Kern County Public Works Department is in need of qualified professional consultants to provide right of way services for various upcoming public works projects. Public Works intends to engage professional consultants to provide right of way acquisition services, land survey services, appraisal services, title and escrow services, property management services, relocation services, and eminent domain acquisition services.

**E. Consultant Scope of Work**

Attached in **Exhibit A** is a general outline of the Scope of Work that this project requires. It is anticipated that the final scope of work will be a product created through the negotiation process with changes based upon the professional input from the selected consultant.

The successful consultant(s) will provide right of way services for various upcoming public works projects. The professional firm(s) selected shall provide assistance in conducting analysis, making recommendations, preparing draft reports, presenting findings to groups or individuals and incorporating comments received into the final reports and findings.

**F. Statement of Qualifications Requirements and Format**

In responding to this Request for Qualifications, the responding firm is expected to demonstrate knowledge, experience and ability to perform the scope of work and provide the services being requested. If the responding firm makes no response on an item, the evaluators will assume that the firm has no expertise in that area.

**Cover must be titled:                   Statement of Qualifications  
For Right of Way Consultant Services**

**1. General**

a. The Statement (SOQ) shall be concise, well organized and demonstrate an understanding of the Scope of Services. The SOQ shall be limited to 35 one-sided pages (8 1/2 inches X 11 inches), inclusive of resumes, graphics, forms, photographs, dividers, front and back covers, cover letter, etc. Type size and margins for text pages should be in keeping with accepted standard formats for desktop publishing and processing.

b. The Statement (SOQ) will be evaluated in accordance with the required services indicated above and in the attached **Exhibit A**.

**2. Content**

Elements of Statements submitted in response to this RFQ shall be in the following order and shall include:

a. Executive Summary

Include a 1–2-page overview of the entire Statement of Qualifications describing its most important elements.

b. Identification of the Project Team

- Legal name and address of company
- Legal form of company (partnership, corporation, joint venture, etc.). If joint venture, identify the members of the joint venture and provide all information required within this section for each member. Identify if the firm is the primary corporation or a subsidiary and, if a subsidiary, of what parent firm.
- Address(es) of office(s) working on the project.

- Name, title, address and telephone number of the person to contact concerning the submittal.

c. Experience and Technical Competence

The consultant shall describe his or her experience in completing similar consulting efforts. Identify the duration of time the firm has conducted business and the duration of time the firm has been performing services similar to those solicited under this RFQ.

- The consultant shall list five (5) successful projects of a similar nature completed in the last ten years - Limit: one page per project.

The name of the client, project manager, client references, telephone numbers, the type of work performed, and the value of the consulting contracts shall be included.

- Provide a matrix referencing work performed relative to projects listed indicating key personnel responsible for performance and the extent of their involvement in the project they are listed under. Differentiate which work was performed by the responding firm, and which work was performed by the sub-consultants, if sub-consultants are proposed.

- Describe in detail, work the firm has directly performed on a maximum of four projects that shows a demonstrated ability to meet internal and project deadlines, budget constraints, major milestones and overall project schedules.

- Describe any litigation involvement in the last five years. List all publicly recorded legal actions stemming from performance of professional responsibilities in which the firm or individuals assigned to this project have been named (even if actions occurred under the employment of others). Specifically describe the outcome of all actions or declare the current status if litigation is pending.

- Provide documentation of consultant, and sub-consultants, DBE experience, including examples of completed Caltrans LAPM Exhibit 10-O2 or 15-H forms

d. Methods Proposed to Accomplish the Work

- Describe the operational/organizational approach of the firm to fulfill the scope of work and the goals of the project.

- Outline the basic technical procedures and the managerial approach which the project team leadership will adopt to incorporate these methods into the overall project effort.

- Provide assurance that adequate staffing is available to provide the services efficiently and in a timely fashion.

- Firms are encouraged to present suggestions that they believe will simplify the project and result in lower costs in the performance of the work.

e. Knowledge and Understanding of the Local Environment

- Describe the project team's experience working in the local environment. The environment may be defined as the County's, other similar local agencies, and the State's policies, practices, design criteria and standards which will be drawn upon to accomplish the project.

- The consultant shall describe the local presence it has established for maintaining communication between the County's Project Manager and staff.

f. Project Organization and Key Personnel

The written SOQ must include a discussion of the consultant's staffing plan and level of personnel to be involved, their qualifications, experience, resumes, roles, and the name of the individual who will be overall in charge and responsible for coordination with the County.

- Indicate the role and responsibility of the prime consultant and all sub-consultants. Describe the ability of the firm to provide staffing continuity throughout the duration of the project.

- If applicable, indicate how local firms are being utilized to ensure a strong understanding of local laws, ordinances, regulations, policies, requirements and permitting.

- The County's evaluation of the SOQ will consider the consultant's entire team. Once proposed, no changes in the team composition will be allowed without prior written approval of the County. Sub-consultant letters of commitment may be required.

- Identify proposed sub-consultants (if any) which will be retained to perform specified items of work listed in the Scope of Services.

g. Schedule of Fees

The County has budgeted \$999,999.00 over a term of five years for these services.

The actual fee will be negotiated with the selected firm(s). If a fee for the required services cannot be negotiated with the selected firm(s), the County reserves the right to discontinue negotiations, and begin negotiations with the next ranked firm(s).

The SOQ must include a “Sample Cost Proposal 2” form which lists each personnel classification that will work on the project, and the hourly rate charged for each classification, including any sub-consultants. **The cost proposal forms must be submitted in a separate sealed envelope.**

The “Sample Cost Proposal 2” form can be located here:

<https://dot.ca.gov/programs/local-assistance/guidance-and-oversight/consultant-selection-procurement>

The negotiated fee will be based upon the number of hours each personnel classification works on the required services. It will be the responsibility of the consultant to outline an efficient schedule to accomplish the required services. Prior to contract execution, all prime and subconsultants must have the Office of Inspector General, Independent Office of Audits and Investigations (IOAI) review the Indirect Cost Rate (ICR) financial documents to either accept or adjust the indirect cost rate. Prior to contract execution, the prime and subconsultants are responsible for submitting both the Financial Document Review (FDR) Request Form and the Certification of Indirect Costs and Financial Management System Form to the IOAI. The consultant shall provide to the County the ICR Acceptance ID Number. If the consultant cannot provide the ICR Acceptance ID Number, then the consultant shall provide to the County the FDR Request Form, the Indirect Costs and Financial Management System Form, the PPP Questionnaire, the ICR Schedule, and the Cognizant Approval Letter.

Selected Consultant shall comply with Chapter 10.1.3 of the Local Assistance Procedures Manual regarding the A&E Consultant Contract Audit and Review process. A pre-award or post-award may be performed on any contract issued as a result of this RFQ. Financial Document Review Request form must be completed and approved by the Independent Audits and Investigations (IOAI) prior to contract execution.

The FDR Request form can be located here: [https://ig.dot.ca.gov/-/media/ig-media/documents/fdr/ig\\_fdr\\_request\\_form.pdf](https://ig.dot.ca.gov/-/media/ig-media/documents/fdr/ig_fdr_request_form.pdf)

h. Exceptions to this Request for Qualifications

The consultant shall certify whether or not it takes any exceptions to this RFQ, including, but not limited to, the sample Standard Professional Services Contract, which is attached as **Exhibit “B”**. Any and all such exceptions must be clearly identified in the SOQ. The identification of significant exceptions in a SOQ, as determined in the sole discretion of the County, may be cause for rejection of the consultant’s SOQ.

i. DBE Goal

The DBE Goal for this RFQ for all federal-aid projects is 20%.

### 3. Selection Process

- a. All SOQ's received by the specified deadline will be reviewed by a Consultant Selection Committee. Each member of the Committee will evaluate each of the Statement of Qualifications according to the criteria stated in sub-paragraph h below.
- b. Based upon the SOQ submitted, the Committee may select a short list of firms qualified for this project to participate in oral interviews.
- c. Based upon the SOQ and any oral interview, the Committee will rank the finalists as to qualifications. The top ranked firm(s) will be the selected firm(s). The County may enter into contracts with more than one qualified firm. The County intends to select a minimum of one, and a maximum of three, qualified firms.
- d. Consultants are advised that the County, at its option, may award a contract strictly on the basis of the SOQ, and not create a short list of firms or conduct oral interviews.
- e. The Committee, or a representative, will enter into negotiations with the selected firm(s). The negotiations will cover: scope of work, contract schedule, contract terms and conditions, technical specifications, and fees. If the Committee or representative is unable to reach an acceptable agreement with the selected firm(s), the negotiations will be terminated, negotiations with the next ranked firm(s) will be initiated, or a new procurement process will be initiated with a revised scope of work.
- f. After negotiating a proposed agreement, the County department will recommend to the Board of Supervisors that the County enter into the proposed agreement(s) with the selected firm(s), but the Board is not bound to accept the recommendation or approve the proposed agreement(s).
- g. If one or more of the consultants is a local vendor as defined herein, said consultant(s) shall be entitled to a local vendor preference as herein described, provided: (i) said consultant(s) achieved a score of at least seventy percent (70%) during the initial scoring phase by the Selection Committee; and (ii) they were included in the short list of consultants for further consideration by the Selection Committee, if the Selection Committee elected to create a short list of SOQ's.

All local vendors meeting the above stated criteria shall have their final evaluation score increased by one rank for purposes of determining the Selection Committee's final selection for recommendation to the Board of Supervisors.

A local vendor is defined as a consultant who:

- 1) Has maintained a local office address within Kern County for the six months immediately prior to the issuance date of the RFQ; and
- 2) Employs at least one (1) full-time or two (2) part-time employees whose primary residence is located within Kern County, or if the business has no employees shall be at least fifty percent (50%) owned by one or more persons whose primary residence is located within Kern County.
- 3) Will credit all sales taxes generated pursuant to the contract resulting from this RFP to its business location in Kern County.

This local vendor preference shall not apply to any contracts funded in whole or in part with federal or state funds which do not allow the use of local preferences, or any other contracts which are statutorily or otherwise precluded from the use of local preferences during the selection process.

h. The following is a list of general criteria that may be used by the Selection Committee in making its selection(s). **Please note that the Selection Committee may consider any information they deem relevant in making a selection(s), and may give each of the criteria considered as little or as much weight as they consider appropriate.**

- 1) Project Understanding:
  - a) Comprehension of the Scope of Services
  - b) Awareness of the County's needs
  - c) Familiarity with the project
  - d) Overall interest in the project
- 2) Operational/Organizational approach of the responding firm to fulfill the scope of work and the goals of the project.
  - a) Capability of developing innovative or advanced techniques.
  - b) Stature in industry of consultant.
- 3) Experience:
  - a) Familiarity with scope of work required.
  - b) Relevant technical experience
  - c) Relevant projects completed
  - d) Past performance on related assignments
- 4) Financial Responsibility, Budgeting, and Scheduling:
  - a) Outline of project schedule
  - b) Cost control techniques
  - c) On time/within budget
  - d) Ability to complete the project on time
- 5) Client references.

6) Project Team and Staffing Qualifications:

- a) A combination of experience, education, and background in undertaking similar type projects.
- b) Level of involvement by firm's principals

7) Demonstrated Familiarity with State and Federal Procedures, including DBE requirements.

- i. The County reserves the right to reject any and all SOQ's and to waive informalities and irregularities in any SOQ received. Absence of required information may render a SOQ non-responsive, in the sole discretion of the County, resulting in rejection of the SOQ.
- j. The County may, during the evaluation process, request from any consultant additional information which the County deems necessary to determine the consultant's ability to perform the required services. If such information is requested, the consultant shall be permitted five (5) working days to submit the information requested.
- k. An error in the SOQ may cause the rejection of that SOQ; however, the County may, in its sole discretion, retain the SOQ and make any corrections it deems appropriate. In determining if a correction will be made, the County will consider the conformance of the SOQ to the format and content required by the RFQ, and any unusual complexity of the format and content required by the RFQ. If the consultant's intent is clearly established based on review of the complete SOQ submittal, the County may, at its sole option, correct an error based on that established content. The County may also correct obvious clerical errors. The County may also request clarification from a consultant on any item in a SOQ that County believes to be in error, and make corrections accordingly.
- l. The County reserves the right to select the SOQ which in its sole judgment best meets the needs of the County. The recommendation by the Selection Committee, and the final selection of a consultant by the Board of Supervisors, shall be based on any information and criteria the Selection Committee and Board consider relevant, which may include criteria not listed in sub-paragraph h above. **The schedule of costs is not a criteria for the initial selection(s) by the Selection Committee.**
- m. All firms responding to this RFQ will be notified of their selection or non-selection in writing after the Selection Committee has completed the selection process. All consultants shall have seven days from the date of the notice to submit any additional information **not previously submitted** to the County for final consideration.
- n. County employees will not participate in the selection process when those employees have a relationship with a person or business entity submitting a SOQ which would subject those employees to the

prohibition of Section 87100 of the Government Code. Any person or business entity submitting a SOQ who has such a relationship with a County employee who may be involved in the selection process shall advise the County of the name of the County employee in the SOQ.

- o. Any person or business entity which engages in practices which might result in unlawful activity relating to the selection process including, but not limited to, kickbacks or other unlawful consideration paid to County employees, will be disqualified from the selection process.
- p. The process, procedures and evaluation criteria used by County staff and the Selection Committee in developing and issuing this RFQ and evaluating the SOQ's received for purposes of completing the selection process shall be determined in the sole discretion of the County. Potential consultants shall have no rights whatsoever regarding the processes and procedures used by the County relating to this RFQ or the manner in which a consultant is selected by either the Selection Committee or the Board of Supervisors, provided their decisions are not arbitrary and capricious, and there is some reasonable basis for the selection(s) made.

**G. Solicitation Caveat**

The issuance of this solicitation does not constitute an award commitment on the part of the County, and the County shall not pay for costs incurred in the preparation or submission of a SOQ. **The County reserves the right to reject any or all SOQ's or portions thereof if the County determines that it is in the best interest of the County to do so.**

Failure to furnish all information requested or to follow the format requested herein, or the submission of false information, may disqualify the consultant, in the sole discretion of the County. The County may waive **any** deviation in a SOQ. The County's waiver of a deviation shall in no way modify the RFQ requirements nor excuse the successful consultant from full compliance with any resultant agreement requirements or obligations.

**H. Time**

Time and the time limits stated in this RFQ are of the essence of this Request for Qualifications.

**I. Form of Agreement**

No agreement with the County is in effect until a contract has been signed by both parties. Attached to this RFQ as Exhibit "B" is a sample agreement which is in substantially the form the successful consultant will be expected to sign. The final agreement may include the contents of this RFQ, any addenda to this RFQ, portions of the successful consultant's SOQ and any other modifications determined by the County to be necessary prior to its execution by the parties.

Until such time as the Evaluation Committee has completed its deliberative process and the matter has been set for consideration before the Board of Supervisors, the agreement and all documents and materials relating thereto, the negotiation and execution thereof, including, without limitation, the existence of the Agreement and the negotiations taking place between the parties, shall be confidential.

The sample agreement included in this RFQ is for informational purposes and should not be returned with a SOQ; however, the SOQ shall include a statement that the consultant has reviewed the sample agreement and either i) will agree to the terms contained therein if selected, or ii) indicate those specific provisions of the sample agreement to which the consultant takes exception and why. Raising of significant exceptions in a SOQ, as determined in the sole discretion of the County, may be cause for rejection of the consultant's SOQ.

The selected consultant(s) will be required to execute an agreement with the County for the services requested within 20 days of the award. If agreement on the terms and conditions of the contract that are acceptable to the County including, but not limited to, compensation, cannot be achieved within that timeframe, the County reserves the right to continue negotiations or to award the bid to another consultant and begin negotiations with that consultant.

Consultant must identify and provide contact information in their SOQ of the individual within their organization who is authorized to negotiate the terms and conditions of any agreement between consultant and County.

**J. Modifications to Scope of Work**

In the event that sufficient funds do not become available to complete all the services identified in this RFQ, the scope of services may be amended, as determined in the sole discretion of the County. The County may also, from time-to-time, request changes in and/or additions to the services to be provided by the successful consultant. Such changes, including any increase or decrease in compensation, which are mutually agreed upon by and between the County and the successful consultant, shall be incorporated into the contract prior to execution of the contract, and by written amendments thereto after execution.

**K. News Releases**

News releases pertaining to any award resulting from this RFQ may not be made without prior written approval of the Director of Public Works.

**L. Payment Schedule**

Periodic payments will be made to the consultant upon submission of an invoice, based on a payment schedule to be developed and included in the final agreement for services.

**M. Statutes and Rules**

The terms and conditions of this RFQ, and the resulting consulting services and activities performed by the successful consultant, shall conform to all applicable statutes, rules and regulations of the federal government, the State of California and the County of Kern.

**N. Background Review**

The County reserves the right to conduct a background inquiry of each consultant that may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories, reputation in the business community and financial condition. By submitting a SOQ to the County, the consultant consents to such an inquiry and agrees to make available to the County such books and records the County deems necessary to conduct the review.

**O. Organizational Conflict of Interest**

Contractor warrants, to the best of its knowledge, that neither Contractor nor its officers, agents or employees presently has any consulting or contractual arrangement with any firm or organization that would give rise to an organizational conflict of interest with respect to the work to be performed under this Agreement. Neither Contractor nor its officers, agents or employees shall enter into any contractual arrangement that would give rise to any potential conflict of interest, without first obtaining County's prior written approval before entering the agreement. If any organizational conflict of interest is discovered by Contractor relating to this Agreement, Contractor shall immediately notify County, and attempt to present a suitable mitigation plan. County may, at its sole discretion, terminate this agreement in the event that Contractor has any actual or potential organizational conflict of interest. As used in this paragraph, "**Organization conflict of interest**" means any relationship whereby Contractor has present or planned interests related to the work to be performed under this Agreement which: (1) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or (2) may result in its being given an unfair advantage.

**II. SOQ INFORMATION AND REQUIREMENTS**

**A. General Instructions**

To receive consideration, SOQs shall be made in accordance with the following general instructions:

1. The completed SOQ shall be without alterations or erasures. Errors may be crossed out and corrections printed in ink or typed adjacent and must be initialed in ink by an authorized representative of the consultant.

2. No oral, telephonic, telegraphic, e-mailed or faxed SOQ's will be considered.
3. The submission of a SOQ shall be an indication that the consultant has investigated and satisfied him/herself as to the selection process to be used by the County, the conditions to be encountered, the character, quality and scope of the work to be performed, and the requirements of the County.
4. All SOQs shall remain firm for one hundred and eighty (180) days from the SOQ submission deadline.

**B. Business Address**

Consultants shall furnish their business street address. Any communications directed either to the address so given, or to the address listed on the sealed SOQ container and deposited in the U.S. Postal Service by Certified Mail, shall constitute a legal service thereof upon the consultant.

**C. Corrections and Addenda**

If a consultant discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFQ, the consultant shall immediately notify the Contact Person of such error in writing and request clarification or modification of the document. Modifications will be made by addenda as indicated below to all parties in receipt of this RFQ.

If a consultant fails to notify the Contact Person prior to the date fixed for submission of SOQs of a known error in the RFQ, or an error that reasonably should have been known, the consultant shall submit a SOQ at their own risk, and if the consultant is awarded a contract they shall not be entitled to additional compensation or time by reason of the error or its subsequent correction.

Addenda issued by the County interpreting or changing any of the items in this RFQ, including all modifications thereof, shall be incorporated in the SOQ. The consultant shall sign and date the Addenda Cover Sheet and submit same with the SOQ (or deliver them to the Kern County Public Works Department, 2700 M Street, Suite 500, Bakersfield, CA 93301, if the consultant has previously submitted a SOQ to the department).

**Any oral communication by the County's designated Contact Person or any other County staff member concerning this RFQ is not binding on the County and shall in no way modify this RFQ or the obligations of the County or any consultants.**

**D. SOQ SUBMITTAL REQUIREMENTS**

Six copies of the SOQ shall be submitted to the address indicated below. SOQ's submitted by email or facsimile are not acceptable and will not be considered. Envelopes/Packages containing the SOQs are to be marked:

**SOQ: “Right of Way Consultant Services” and delivered to:**

Kern County General Services Division  
1115 Truxtun Ave., 3<sup>rd</sup> Floor  
Bakersfield, CA 93301  
Telephone (661) 868-3000

SOQ’s may be delivered in person, by courier service or by mail to the address indicated above. ALL SOQ’s MUST BE SEALED AND RECEIVED BEFORE 11:00 A.M. on October 24, 2024, at the above office and address. SOQ’s submitted after the above deadline will not be accepted. It is strongly suggested that any consultants intending to hand deliver a SOQ on the last day for submission arrive at the General Services Division third floor main lobby at least ten (10) minutes prior to the SOQ receipt deadline to receive a “test” time stamp to validate the official current time. The time stamp clock in the main lobby of General Services will be the official time. Any SOQ received at or after 11:00 a.m. will be returned unopened.

Only one (1) SOQ may be submitted from each consultant. For purposes of this RFQ, a consultant is defined to include a parent corporation of the consultant and any other subsidiary of that parent corporation. If a consultant submits more than one (1) SOQ, all SOQs from that consultant shall be rejected.

SOQ’s are not publicly opened.

**E. Withdrawal and Submission of Modified SOQ**

A consultant may withdraw a SOQ at any time prior to the submission deadline by submitting a written notification of withdrawal signed by the consultant or his/her authorized agent. The consultant must, in person, retrieve the entire sealed submission package. Another SOQ may be submitted prior to the deadline. A SOQ may not be changed after the designated deadline for submission of SOQ’s.

**F. Confidential Information:**

Proposers are cautioned that because the County is a public entity, materials designated as “confidential” may nevertheless be subject to disclosure. Proposers are advised that the County does not wish to receive confidential or proprietary information and that proposers are not to supply such information except when it is absolutely necessary.

**IF CONFIDENTIAL INFORMATION IS SUBMITTED:**

1. ALL CONFIDENTIAL INFORMATION MUST BE STAMPED WITH A “CONFIDENTIAL” WATERMARK AND PLACED IN A SEPARATE TABBED SECTION #9 OF THE RFP MARKED “CONFIDENTIAL”.

2. Any documents labeled “CONFIDENTIAL” shall include the following statement signed and placed on the first page of the CONFIDENTIAL material:

“\_\_\_\_\_ (legal name of proposer) shall indemnify, defend and hold harmless the County of Kern, its officers, agents and employees from and against any request, action or proceeding of any nature and any damages or liability of any nature, specifically including attorneys' fees awarded under the California Public Records Act (Government Code §6250 et seq.) arising out of, concerning or in any way involving any materials or information in this Proposal that (legal name of proposer) has labeled as confidential, proprietary or otherwise not subject to disclosure as a public record.”

By:\_\_\_\_\_ Date:\_\_\_\_\_

Confidential information as discussed in this section II.D.9 may include:

**Technical Information**

- (i) Any trade secret, know-how, invention, software program, application, documentation, schematic, procedure, contract, information, knowledge, data, process, technique, design, drawing, program, formula or test data, work in progress, engineering, manufacturing, marketing, financial, sales, supplier, customer, employee, investor, or business information;
- (ii) Any non-public business information, including, without limitation, personnel data; correspondence with governmental agencies; historical customer information and data; historical cost information such as budgets and operating expenses and capital costs; and projected capital additions and operating cost information;

**Financial Information**

- (i) financial statements, business plans, strategic plans, proprietary market information, analyses, compilations and any other strategic, competitively sensitive or proprietary information shared between the parties as a result of the discussions contemplated by this Agreement;

**Business Development-Related Information**

- (i) All trade secrets or proprietary information protected as intellectual property that relates to the business of the Vendor and is not generally available to the public, or generally known in the industry;

- (ii) Customers' identities and requirements, customer lists, suppliers' identities and products, pricing information, product price discount information, manufacturing processes and procedures, new product research, financial information not generally available to the public; and
- (iii) Any techniques, know how, processes or combinations thereof, or compilations of information, records and specifications, utilized or owned by the vendor regarding business development, marketing, pricing, business methods, strategies, financial or other analyses, policies or business opportunities.

**G. Disposition of SOQ's and Proprietary Data**

All materials submitted in response to this RFQ become the property of the County. Any and all SOQ's received by the County shall be subject to public disclosure and inspection, except to the extent the consultant designates trade secrets or other proprietary data to be confidential, after the Selection Committee has completed its deliberative process and either the consultant has been informed that they are not the vendor selected by the Selection Committee, or the matter has been set for consideration before the Board of Supervisors, whichever comes first.

Material designated as proprietary or confidential shall accompany the SOQ and each page shall be clearly marked and readily separable from the SOQ in order to facilitate public inspection of the non-confidential portion of the SOQ. Prices, makes and models or catalog numbers of the items offered, deliverables, and terms of payment shall be publicly available regardless of any designation to the contrary. The County will endeavor to restrict distribution of material designated as confidential or proprietary to only those individuals involved in the review and analysis of the SOQ's.

# EXHIBIT A

## I. BACKGROUND & OBJECTIVES

The Kern County Public Works Department (COUNTY) is in need of a qualified professional consultant (CONSULTANT) to provide right-of-way services on an On-Call basis. CONSULTANT services will support federally funded projects to comply with requirements of Federal Highway Administration (FHWA) and the California Department of Transportation (CALTRANS).

A CONSULTANT is required for large scale projects such as road widening, grade separations or new road construction which have the potential to require numerous property acquisitions. Numerous right-of-way factors must be addressed through preparation of various instruments and experience in services including but not limited to: Record of Survey, Legal Descriptions, & Plats, Estimating, Right of Way costs, Appraisals (and review), Negotiation, Property Acquisition, Title & Escrow, Property Management, Demolition and Hazardous material removal, Relocation Assistance Program, Eminent Domain and Condemnation. These services will be the focus of this contract.

Projects are eligible for federal reimbursement; therefore, COUNTY and the successful proposer must be in compliance with specific provisions of the Code for Federal Regulations (CFR). Firms are advised to read and understand the requirements of:

- 49 CFR, Part 26, regarding Disadvantaged Business Enterprise participation (see Caltrans Local Assistance Procedures Manual Exhibits 10A, 10-I, 10-01, 15-H, 17-F and 17-0 that are attached to the Sample Agreement. Fillable forms can be found at <http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.html>
- 48 CFR, Federal Acquisition Regulations,
- Section 1518, Moving Ahead for Progress in the 21st Century Buy America Statutes
- Davis-Beacon Act, regarding prevailing wages.

Federal projects must follow Caltrans approved formats or the applicable oversight agency requirements and must incorporate best management practices. Contracts will only be awarded to consultants that demonstrate they maintain an adequate financial management system as required by 48 CFR Part 16.301-3, 49 CFR Part 18 and 48 CFR Part 31.

## II. SCOPE OF WORK

A Project Manager will be provided by the COUNTY to coordinate and provide information in its possession, including past studies & other compiled data that may be required for this scope of work. COUNTY will also review and approve all services, draft documents, and final versions of prepared documents. CONSULTANT must show ability to submit clear, concise, and accurate reports, surveys and proposals. Electronic versions of prepared reports are the preferred deliverable of this contract; however, paper copies may be required for large documents that need to be submitted to oversight agencies. For large projects, up to three (3) hard copies will be required. CONSULTANT will be responsible for record keeping and providing all records and files at contract completion.

Project work will be assigned through work orders. The final cost of each task service will be determined by the complexity and scope of work described herein. Each Work Authorization Form will detail specific scope of work, requirements, and deliverables for assigned project. CONSULTANT must perform right-of-way functions to the same standards, practices, rules and regulations as a Local Agency. This includes compliance with all applicable State and Federal law and regulations, including but not limited to the provisions of the Uniform Act and regulations in 49 Code of Federal Regulations (CFR) part 24 and the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4). Templates & formats established by Caltrans are available at: <http://www.dot.ca.gov/hq/row/localprog/index.htm>. Professional qualified staff and/or sub-consultants licensed or certified by the state of California for engineering, land surveying, appraisals, acquisitions, real estate, property management and related services will be required.

Services to be provided include various maps, documents, reports & services may include, but are not limited to:

- Land Survey for the identification of boundaries for maps, plats, legal descriptions, cost estimates, and land survey reports, record of survey maps, monument preservation maps and the final R/W record maps.
- Appraisals services (including review) for developed or undeveloped residential, commercial, industrial, agricultural properties, including specialty appraisals for furniture, fixtures, machinery, equipment and goodwill. Appraisal reports may be for full/partial acquisitions, valuations/estimating of the highest best use, severance damages & remainders, easements, temporary construction easements, leased or licensed properties, and/or sale or disposition of excess/surplus properties.
- Title & Escrow services including providing title reports, litigation guarantees, conveyance deeds, deed restrictions, easement deeds, quitclaim deeds, and the like to process and acquire good title to the property or its interests to be purchased free from liens and encumbrances. All documents are to be recorded by CONSULTANT.
- Right of Way Acquisition including real property searches, setting just compensation prior to negotiation using the R/W Estimate Worksheet (Exhibit 4-EX-2 of the Caltrans Manual), written offers without coercive action, and delivery of Title VI information.
- Relocation services for displaced persons and businesses. This include hardship investigation for Relocation Assistance Program eligibility and identification of benefits for replacement housing/valuations, moving and related expenses.
- Property management for maintenance, hazardous material removal, demolition and clearance services needed to support the project including fair market rental rates & procedures, temporary lease agreements, rent collection, terminating tenancies, inventory reports, fence & secure property, environmental site assessment remediation work for proper removal of hazards.
- Eminent Domain and Condemnation including processing Resolutions of Necessity and Order of Possession.
- Staff proficient in the use of ESRI ArcGIS software.

### **Additional Requirements:**

- Permits, licenses and fees are the responsibility of the CONSULTANT.
- Reports and documents may be reviewed for acceptance and approval. In the event of non-acceptance due to errors or omissions, CONSULTANT shall have seven (7) calendar days to make corrections and return the revised document to the Project Manager.
- If any legal issues are discovered during the course of the project, CONSULTANT shall notify COUNTY who will request a legal opinion. All legal opinions shall be rendered by COUNTY's legal counsel.

### **Additional Qualifications (for Appraisal Services):**

- CONSULTANT and/or its subconsultants, shall have a minimum five years' experience as a full-time appraiser (and appraisal review) including specialty appraisals for furniture, fixtures, machinery, equipment and goodwill.
- CONSULTANT shall be a member of a professionally recognized appraisal society or institute, such as the Appraisal Institute.
- CONSULTANT shall have completed a minimum of ten appraisal assignments in California involving potential acquisitions pursuant to the laws of eminent domain, goodwill valuations and/or specialty appraisals.)
- CONSULTANT shall certify that CONSULTANT has not been disciplined in the last five years as an appraiser by any government or professional association.
- CONSULTANT must be qualified to provide expert witness testimony in California and defend the conclusions reached in the appraisal at any Administrative or Judicial proceeding.

### **III. DELIVERABLES**

All deliverables, including payment schedule and milestones, will be specific to each assigned project and will be fully detailed in the Work Authorization Form.

### **IV. CONSTRAINTS TO PROSPER'S APPROACH AND METHODOLOGY**

- Location of work sites could be in remote locations throughout Kern County.
- Work sites may be subjected to extreme conditions.
- Consultant shall be assigned to work on projects that may be federal aid projects with DBE goals. Consultant shall submit a Consultant Contract DBE information form (Exhibit 10-O2) for each specific project. **Consultant must also submit Good Faith Effort form ("15-H") for each specific federal aided project if DBE goal is not met.**

### **V. COMMUNICATIONS**

Consultant will provide names and contact information of staff that will have access to real-time information regarding the status of all projects currently assigned. Consultant will be responsive to all project inquiries. Public Works and Consultant will schedule project meetings, as necessary.

**VI. SUMMARY**

Qualified professional consultants will provide right of way services for various upcoming Public Works projects, including many federally funded projects. Services provided will include right of way acquisition services, land survey services, appraisal services, title and escrow services, property management services, relocation services, and eminent domain acquisition services. All inquiries during the term of this Contract will be directed to the project representative identified below:

Local Agency Contract Administrator:

Name: Kerri Paulson  
Phone: (661) 862-8705  
E-Mail: pw-financecontracts@kerncounty.com

Consultant Project Manager:

Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

## EXHIBIT B

### SAMPLE AGREEMENT FOR RIGHT-OF-WAY CONSULTING SERVICES (Kern County – CONSULTANT )

**THIS AGREEMENT**, for reference purposes effective on this \_\_\_ day of \_\_\_\_\_, 201\_\_ (“**Effective Date**”), is between the COUNTY OF KERN, a political subdivision of the State of California, (“**COUNTY**”), as represented by the Public Works Department, located at 2700 M Street, Suite 400, Bakersfield, California 93301 and \_\_\_\_\_, (“**CONSULTANT**”), whose principal place of business is located at \_\_\_\_\_.

#### RECTIALS:

**WHEREAS**, Government Code Sections 31000 and 53060 permit the County Board of Supervisors to contract for the furnishing of special services with individuals specially trained and experienced and competent to perform those services; and

**WHEREAS**, COUNTY issued a Request for Qualifications and CONSULTANT submitted a proposal concerning Right-of-Way Consultant Services as needed for various projects, as specified in the attached **Exhibit “A”** and incorporated herein by reference; and

**WHEREAS**, CONSULTANT has submitted a cost proposal in response to the COUNTY’s Request for Qualifications, and said proposal is attached as “Sample Cost Proposal 2” form and incorporated herein by referenced; and

**WHEREAS**, CONSULTANT has represented that they have the qualifications, experience, and facilities for doing the type of work herein contemplated and has offered to provide the required services on the terms set forth herein; and

**WHEREAS**, COUNTY desires to engage CONSULTANT to provide the services described in Exhibit “A” on the terms set forth herein; and

#### **AGREEMENT:**

##### **1. Scope of Work:**

CONSULTANT shall competently and thoroughly provide the Services in COUNTY’s Request For Qualifications, as provided in CONSULTANT’s Statement of Qualifications, as described in Exhibit “A”. CONSULTANT’s services shall include all the procedures necessary to properly complete the tasks called upon to perform, whether specifically included in the Scope of Services or not.

Specific projects will be assigned to CONSULTANT through issuances of Work Authorization Forms, the form of which is attached as **Exhibit “B”**. Federal-Aid project work will be assigned based on an additional competitive process, referred to as mini-RFP. As

projects are identified, the County will request proposals from all prequalified consultants. Proposal requests will include, but not be limited to, projected start and end dates, specify names and classifications for all staff working on the project, including sub-consultants, and describe experience with similar projects. All information will be factored into the evaluation criteria. The subsequent task orders are negotiated based on specific rates of compensation, or lump sum, which is derived from the wage rates per the “Sample Cost Proposal 2” form. Project work should not begin until the consultant receives a fully executed Work Authorization form.

For contracts exceeding \$150,000, if CONSULTANT is assigned to work on a project that is State or Federal aided, CONSULTANT, and any subconsultants listed on the contract, shall submit a Consultant Certificate of Contract Costs and Financial Management Review, attached as Exhibit “10-K”.

CONSULTANT shall thoroughly review Caltrans Exhibit 10-R: A&E Boilerplate Agreement Language (Exhibit C of RFQ) and shall agree to all terms and conditions in the Exhibit 10-R.

## **2. Performance Period:**

This contract shall go into effect on the Effective Date, contingent upon approval by COUNTY, and CONSULTANT shall commence work after notification to proceed by COUNTY’S Contract Administrator. The contract shall end on (DATE), unless extended by contract amendment.

CONSULTANT is advised that any recommendation for contract award is not binding on COUNTY until the contract is fully executed and approved by COUNTY.

The period of performance for each specific project shall be in accordance with the Work Authorization Form for that project. If work on a Work Authorization Form is in progress on the expiration date of this contract, the terms of the contract shall be extended by contract amendment for a period not to exceed 5 years. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by Agreement amendment prior to the expiration of the contract to cover the time needed to complete the task order in progress only. The maximum term shall not exceed five (5) years.

## **3. Allowable Costs and Payments:**

CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANTs Cost Proposal (“**Sample Cost Proposal 2” form**). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.

In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Work Authorization Form.

Specific projects will be assigned to CONSULTANT through issuance of Work Authorization Forms.

After a project to be performed under this contract is identified by COUNTY, COUNTY will prepare a draft Work Authorization Form; less the cost estimate. A draft Work Authorization Form will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a COUNTY Project Coordinator. The draft Work Authorization Form will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Work Authorization Form within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Work Authorization Form shall be signed by both COUNTY and CONSULTANT.

Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

Progress payments for each Work Authorization Form will be made monthly in arrears based on services provided and actual costs incurred.

CONSULTANT shall not commence performance of work or services until this contract has been approved by COUNTY, and notification to proceed has been issued by COUNTY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this contract.

A Work Authorization Form is of no force or effect until returned to COUNTY and signed by an authorized representative of COUNTY. No expenditures are authorized on a project and work shall not commence until a Work Authorization Form for that project has been executed by COUNTY.

CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Work Authorization Form. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Work Authorization Form. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number, project title and Work Authorization Form number. Credits due COUNTY that include any equipment purchased under the provisions of Section 18, Equipment Purchase of this contract, must be reimbursed by CONSULTANT prior to the expiration or termination of this contract. Invoices shall be mailed to COUNTY at the following address:

Kern County Public Works Department  
Attn: Finance  
2700 M Street, Suite 400  
Bakersfield, CA 93301

The period of performance for Work Authorization Forms shall be in accordance with dates specified in the Work Authorization Form. No Work Authorization Form will be written which extends beyond the expiration date of this Contract.

The total amount payable by COUNTY for an individual Work Authorization Form shall not exceed the amount agreed to in the Work Authorization Form, unless approved by COUNTY.

If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Work Authorization Form, no payment will be made until the deliverable has been satisfactorily completed.

Work Authorization Forms may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.

The total amount payable by COUNTY for all Work Authorization Forms resulting from this contract shall not exceed \$(999,999.00). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Work Authorization Forms.

COUNTY shall pay CONSULTANT, subject to prior COUNTY approval, reasonable travel expenses at rates not exceeding the rates COUNTY reimburses its own employees. Said travel expenses shall be billed on a monthly basis.

#### **4. Change in Terms:**

This contract may be amended or modified only by mutual written agreement of both parties.

CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by COUNTY.

There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, without prior written approval by COUNTY.

#### **5. Indemnification:**

**A. General:** CONSULTANT agrees to indemnify, defend and hold harmless COUNTY and COUNTY's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives ("**County Indemnified Parties**") from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of County Counsel and counsel retained by COUNTY, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of CONSULTANT or CONSULTANT's officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons;

damage to any property, regardless of where located, including the property of COUNTY; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of CONSULTANT by any person or entity.

**B. Patent Infringement:** If any claim is asserted or action or proceeding brought against COUNTY which alleges that all or any part of the services or products in the form supplied by CONSULTANT and any subconsultant or COUNTY's use thereof, infringes or misappropriates any United States or foreign patent of copyright, or any trade secret or other proprietary right, COUNTY shall give CONSULTANT prompt written notice thereof. CONSULTANT shall defend any such claim or action with counsel of CONSULTANT's choice and at CONSULTANT's expense and shall indemnify COUNTY for any costs, including reasonable attorney's fees and damages actually incurred by COUNTY in connection therewith, including steps COUNTY may take to avoid entry of any default judgment or other waiver of COUNTY's rights. COUNTY shall cooperate fully with and may monitor CONSULTANT in the defense of any claim, action or proceeding and will make employees available as CONSULTANT may reasonable request with regard to such defense, subject to reimbursement by CONSULTANT of all costs and expenses occasioned by COUNTY's cooperation in such defense.

This indemnity does not extend to modifications or additions to the services or products made by COUNTY or any third party without written consent of CONSULTANT, or to any unauthorized use of the services or products by COUNTY.

If the services or products are, in CONSULTANT's opinion, likely to become or do become the subject of a claim of infringement or misappropriation of a United States or foreign patent, copyright, trade secret or other proprietary right, or if a temporary restraining order or other injunctive relief is entered against the use of part or all of the services or products, CONSULTANT shall within ninety (90) days:

- 1) **Replace:** Promptly replace the services or products with compatible, functionally equivalent and non-infringing services or products;
- 2) **Modify:** Promptly modify the services or products to make them non-infringing without materially impairing COUNTY's ability to use the services or products as intended;
- 3) **Procure Rights:** Promptly procure the right of COUNTY to continue using the services or products; or
- 4) **Refund:** As a last resort, if none of the foregoing alternatives are reasonably available to CONSULTANT and COUNTY is enjoined or otherwise precluded legally from using the services or products, CONSULTANT will within 120 days of the judgment or other court action promptly refund to COUNTY all fees and costs paid for the services or products under this Agreement and amendments thereto whereupon this Agreement shall terminate. All determined by COUNTY if the court does not so direct.

**C. Survival of Indemnification Provisions:** Upon completion of this Agreement, the provisions of this **Section 5** shall continue to survive.

## **6. Insurance:**

CONSULTANT shall secure and maintain insurance as described below in order to protect COUNTY and County Indemnified Parties against all claims and liability for death, injury, loss and damage as a result of CONSULTANT's actions in connection with the performance of CONSULTANT's obligations, as required in this Agreement. CONSULTANT shall not perform any work under this Agreement until CONSULTANT has obtained all insurance required under this section and the required certificates of insurance have been filed with and approved by COUNTY. CONSULTANT shall pay any deductibles and self-insured retentions under all required insurance policies.

### **A. Workers' Compensation and Employer's Liability Insurance Requirement:**

In the event CONSULTANT has employees who may perform any services pursuant to this Agreement, CONSULTANT shall submit written proof that CONSULTANT is insured against liability for workers' compensation in accordance with the provisions of Section 3700 of the Labor Code.

CONSULTANT shall require any sub-contractors to provide workers' compensation for all of the sub-contractors' employees, unless the sub-contractors' employees are covered by the insurance afforded by CONSULTANT. If any class of employees engaged in work or services performed under this Agreement is not covered by Labor Code Section 3700, CONSULTANT shall provide and/or require each sub-contractor to provide adequate insurance for the coverage of employees not otherwise covered.

CONSULTANT shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

### **B. Liability Insurance Requirements:**

**1) Types of Liability Coverage:** CONSULTANT shall maintain in full force and effect, at all times during the term of this Agreement, the following types of liability insurance:

**a) Commercial General Liability Insurance,** including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement), Products Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of work under this Agreement. Said insurance coverage shall have minimum limits for Bodily injury and Property Damage liability of two million dollars (\$2,000,000) each occurrence and four million dollars (\$4,000,000) aggregate.

**b) Automobile Liability Insurance,** against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement with minimum limits for Bodily Injury and Property Damage of one million dollars (\$1,000,000) each occurrence.

**c) Professional Liability (Errors and Omissions) Insurance,** for liability

arising out of, or in connection with, the performance of all required services under this Agreement, with limits of not less than one million dollars (\$1,000,000) each occurrence.

**2) Endorsements:** The required Commercial General Liability and Automobile Liability Insurance shall include an endorsement naming COUNTY and County Indemnified Parties as additional insureds for liability arising out of this Agreement and any related operations. The endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

**3) Claims-Made Insurance:** If any of the insurance coverages required under this Agreement is written on a claims-made basis, CONSULTANT, at CONSULTANT's shall either (i) maintain said coverage for at least one (1) year following the termination of this Agreement with coverage extending back to the effective date of this Agreement; or (ii) purchase an extended reporting period of not less than one (1) year following the termination of this Agreement.

**4) Proof of Insurance:** Prior to CONSULTANT commencing any of its obligations under this Agreement, evidence of insurance in compliance with the requirements above shall be furnished to the COUNTY by Certificate of Insurance. Receipt of evidence of insurance that does not comply with above requirements shall not constitute a waiver of the insurance requirements set forth above. The required documents must be signed by the authorized representative of the insurance company shown on the certificate and bear a notation evidencing payment of the premium if so requested. Upon request, Consultant shall supply proof that the designated person is an authorized representative, and is authorized to bind the named underwriter(s) and their company to the stated coverage, limits and termination provisions.

**C. Cancellation of Insurance:**

The above stated insurance coverages required to be maintained by CONSULTANT shall be maintained until the completion of all of CONSULTANT's obligations under this Agreement. Each insurance policy supplied by CONSULTANT shall include an endorsement providing that they shall not be terminated, suspended, voided, canceled, non-renewed or reduced in coverage or in limits without 10 days prior written notice to COUNTY in the case of non-payment of premiums, or 30 days prior written notice in all other cases. This notice requirement does not waive these insurance requirements. CONSULTANT shall immediately obtain replacement coverage for any insurance policy that is terminated, suspended, voided, canceled, reduced in coverage, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

**D. Insurer Rating:**

All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum of a "A-, VII" rating. Any exception to these requirements must be approved by the County Risk Manager.

**E. Self-Insurance Pool:**

If CONSULTANT is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, CONSULTANT shall provide coverage equivalent to the required insurance coverages and endorsements. COUNTY will not accept the coverages unless the County Risk Manager determines, in its sole discretion and by written acceptance, that the coverages proposed to be provided by CONSULTANT are equivalent to the required coverages. Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to COUNTY and must be approved in writing by the County Risk Manager.

**F. Primary Coverage/Waiver of Subrogation:**

All insurance carried by CONSULTANT shall be primary to and not contributing to any insurance or self-insurance maintained by COUNTY. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against COUNTY.

**G. Coverage Not A Waiver to Indemnification:**

Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve CONSULTANT for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the COUNTY from taking such other actions as are available to it under any other provision of this Agreement or otherwise under any applicable law.

**H. Material Breach/Failure to Maintain Required Insurance:**

Failure by CONSULTANT to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by CONSULTANT. COUNTY, at its sole option, may terminate this Agreement and obtain damages from CONSULTANT resulting from said breach. Alternatively, COUNTY may purchase such required insurance coverage, and without further notice to CONSULTANT, COUNTY shall deduct from sums due to CONSULTANT any premiums and associated costs, CONSULTANT agrees to reimburse COUNTY for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by COUNTY to take this alternative action shall not relieve CONSULTANT of its obligation to obtain and maintain the insurance coverages required by this Agreement.

**7. Termination:**

COUNTY reserves the right to terminate this contract upon thirty (30) calendar days' written notice to CONSULTANT with the reasons for termination stated in the notice.

COUNTY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If COUNTY terminates this contract with CONSULTANT, COUNTY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to COUNTY exceeds the funds remaining in the contract. In which case

the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

**8. Notices:**

All notices required or provided for in this Agreement shall be provided to the Kern County Public Works Department at 2700 "M" Street, Suite 400, Bakersfield, California 93301 and to the CONSULTANT at \_\_\_\_\_. Delivery shall be by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified herein above. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices required or permitted under this Agreement by leaving such notice with the receptionist or other person of like capacity employed in Consultant's office, or the receptionist for the Kern County Roads Department.

**9. Representations:**

CONSULTANT makes the following representations which are agreed to be material to and form a part of the inducement for this Agreement:

- a. CONSULTANT has the expertise, support staff and facilities necessary to provide the services described in this Agreement; and
- b. CONSULTANT does not have any actual or potential interests adverse to COUNTY nor does CONSULTANT represent a person or firm with an interest adverse to COUNTY with reference to the subject of this Agreement; and
- c. CONSULTANT shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions stated in this Agreement.

**10. Cost Principles and Administrative Requirements:**

- a. 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 cost allowability of individual items.
- b. 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.
- c. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, are

subject to repayment by CONSULTANT to COUNTY.

d. These provisions also apply to all subcontracts in excess of \$25,000.

**11. Disputes:**

If CONSULTANT has any dispute concerning a question of fact arising under this Agreement, CONSULTANT shall provide COUNTY with written notification of the dispute and supporting documentation within 30 days of the claimed action, or inaction, creating the dispute. In no event shall CONSULTANT submit a claim later than 30 days after completion of all deliverables required under this Agreement. CONSULTANT's failure to provide timely notice and support for a dispute shall act as a waiver to the claim. The pendency of a dispute shall not excuse CONSULTANT from fully and timely performing in accordance with the terms of this Agreement.

**12. Work Place Safety:**

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

Pursuant to the authority contained in Section 591 of the Vehicle Code, COUNTY has determined that such areas are within the limits of the project and 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.

Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Section. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in 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.

**13. Inspection of Work:**

CONSULTANT and any subconsultant shall permit COUNTY, (and state and federal officials if federal participating funds are used in this contract) access to review and inspect the project activities and files at all reasonable times during the term of this Agreement including review and inspection on a daily basis.

**14. Audit, Inspection and Retention of Records:**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT and any subconsultant agrees to maintain and make available to COUNTY accurate books and records relative to all its activities under this Agreement. CONSULTANT and any subconsultant shall permit COUNTY to audit, examine and make excerpts and transcripts from such records, and to conduct audits of all invoices, materials, and records of personnel or other data related to all other matters covered by this Agreement. CONSULTANT and any subconsultant shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The state, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon COUNTY herein.

This provision shall also apply to all subcontracts in excess of \$25,000.

#### **15. Audit Review Procedures:**

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 COUNTY

Not later than 30 days after the issuance of a final audit report, CONSULANT CONSULTANT may request a review by the COUNTY of any unresolved audit issues so long as the request is provided in writing.

Neither the pendency of a dispute nor its consideration by COUNTY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this Agreement

In the event the compensation provided for in this Agreement including any amendment hereto cumulatively becomes \$150,000 or more, CONSULTANT and subconsultant contracts, including cost proposals and indirect cost rates (ICR) are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Work paper Review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit Work paper Review it is CONSULANT's responsibility to ensure federal, state or local government officials are allowed full access to the CPA's work papers. The Agreement, cost proposal and ICR shall be adjusted by CONSULTANT and approved by COUNTY to conform to the audit or review recommendation. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by the COUNTY at its sole discretion. CONSULANT's CONSULTANT's refusal to incorporate audit or review recommendations, or to ensure that the Federal, State or local

government have access to CPA work papers, will be considered a material breach of this Agreement and cause for termination and disallowance of prior reimbursed costs.

The provisional ICR will apply to this contract and all other contracts executed between COUNTY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

#### **16. Subcontracting:**

Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to the County for the acts and omissions of its subconsultant(s) 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 subconsultant(s) is an independent obligation from COUNTY'S obligation to make payments to the CONSULTANT.

Except as identified in this Agreement, CONSULTANT shall perform all of the work contemplated in this Agreement with resources available within its organization and no portion of the work pertinent to this Agreement shall be subcontracted without express written authorization from the COUNTY, except that, which is expressly identified in the approved Cost Proposal. Any subcontract entered into as a result of this Agreement shall be approved by the COUNTY and it shall include certain required provisions which apply to work and funding sources of this type. Any substitution of subconsultant must be approved in writing by COUNTY prior to the start of work by subconsultant.

CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by COUNTY.

#### **17. Disadvantaged Business Enterprises Participation:**

This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

If the Scope of Work or any amendment therefore provides that the work to be accomplished is funded in part with federal participation funds, when engaging sub-consultants, CONSULTANT must give consideration to Disadvantage Business Enterprises (DBE) firms as specified in 23 CFR section 172.5(b), 49 CFR, Part 26. The goal for DBE participation for this contract is to be determined on a project per project basis. Specific project DBE goals will be established during the mini-RFP process. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If the Work Authorization Form provides that the project has a DBE goal, CONSULTANT must meet the goal by using DBE's as sub-consultants or document a good faith effort to have met the goal.

Refer to Exhibit 15-H for information regarding good faith effort requirements. If a DBE sub-consultant is unable to perform, CONSULTANT must make a good faith effort to replace them with another DBE sub-consultant if the goal is not otherwise met. Refer to attached Caltrans Local Assistance Procedures Manual Exhibits “10-I”, “10-O1”, “10-O2”, “15-H” , “17-F” and “17-O” for DBE Requirements.

If CONSULTANT is assigned to work on a project that is federal aided, CONSULTANT shall submit a Consultant Contract DBE Information form (Exhibit “10-O2” for each specific project. CONSULTANT must also submit Good Faith Effort form (“15-H”) for each specific federal aided project if DBE goal is not met.

DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT 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 COUNTY deems appropriate.

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

A DBE may be terminated only with written approval of COUNTY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting COUNTY’s consent for the proposed termination, the CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of each federal-aid project, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice, along with the form entitled "Disadvantaged Business Enterprise (DBE) Certification Status Change [Exhibit 17-o, of the LAPM]. Failure to provide both forms with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the forms are submitted. The amount will be returned to CONSULTANT when a satisfactory "17-F" and "17-O" are submitted to the COUNTY.

If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to COUNTY within 30 days.

#### **18. Equipment Purchase:**

Prior authorization in writing by COUNTY shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000, prior authorization by COUNTY; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

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 \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY 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 COUNTY 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 COUNTY procedures; and credit COUNTY in an amount equal to the sales 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 by

COUNTY and CONSULTANT; if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY.” 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

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

#### **19. Confidentiality of Data:**

All financial, statistical, personal, technical, or other data and information relative to COUNTY’s operations, which are designated confidential by COUNTY and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.

Permission to disclose information on one occasion, or public hearing held by COUNTY relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

CONSULTANT shall not comment publicly to the press or any other media regarding the contract or COUNTY’s actions on the same, except to COUNTY’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.

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 COUNTY, and receipt of COUNTY’s written permission.

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

#### **20. Ownership of Data:**

Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this contract will automatically be vested in COUNTY; and no further agreement will be necessary to transfer ownership to COUNTY. CONSULTANT shall furnish COUNTY all necessary copies of data needed to complete the review and approval process.

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.

CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by COUNTY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by COUNTY of the project

documentation on other projects for additions to these projects, or for the completion of these projects by other, except only such use as may be authorized in writing by CONSULTANT.

Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts for federal-aid contracts).

COUNTY 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; and to authorize others to use, the work for government purposes.

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

## **21. Rights to Contracted Products:**

For no additional fee or charge, products developed, prepared, generated or gathered by CONSULTANT or CONSULTANT's employees or subcontractors pursuant to this Agreement, but not including CONSULTANT's original licensed software or administrative communications and records which shall remain the exclusive property of CONSULTANT, shall be considered creative works for hire and shall be delivered to and become the exclusive property of the COUNTY and may be used by COUNTY in any way it may deem appropriate. CONSULTANT shall thereafter have no rights whatsoever in such products, except the right to use such products for the exclusive purpose of providing services to COUNTY under this Agreement, and CONSULTANT shall not copy or disclose to any third party any such product or any portion thereof, except as is expressly set forth in this Agreement or by separate written agreement between the parties.

The ideas, concepts, expertise, or techniques developed during the course of this Agreement may be used by COUNTY in any way it may deem appropriate, so long as that use does not violate any term in this Agreement or any state or federal law or regulation.

CONSULTANT or CONSULTANT's assigned employees or subcontractors shall not publish or disseminate information gained through participation in this Agreement without specific prior review and written consent by the COUNTY.

Upon termination or expiration of this Agreement, CONSULTANT shall immediately deliver to COUNTY any COUNTY owned programs any documentation developed pursuant to this Agreement. In addition, CONSULTANT grants to COUNTY a perpetual, royalty-free, non-exclusive, irrevocable, and non-transferable license to use, solely for COUNTY purposes, any CONSULTANT owned program, including system software, utilized by CONSULTANT in performance of this Agreement.

Upon completion of this Agreement, the provisions of this Section shall continue to survive.

**22. Compliance with Law:**

CONSULTANT shall observe and comply with all applicable County, State and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.

**23. Conflict of Interest:**

CONSULTANT is aware of the Conflict of Interest laws in the State of California including, but not limited to, the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code. CONSULTANT agrees that they are unaware of any financial or economic interest of any public officer or employee of the COUNTY in relation to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the COUNTY may immediately terminate this Agreement by giving written notice thereof and the COUNTY may seek any other remedy provided in law. CONSULTANT shall comply with the requirements of Government Code Section 87100 et seq. during the term of this Agreement.

CONSULTANT hereby certifies under penalty of perjury that it does not have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

CONSULTANT shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this Agreement, or any ensuing COUNTY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement, and any ensuing County construction projection which will follow.

CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

**24. Non-Collusion Unlawful Consideration Covenant:**

CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY 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.

**25. Covenant Against Contingent Fees:**

CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT; to solicit or secure this Agreement; and that CONSULTANT has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability, or at its discretion; to deduct from the Agreement compensation or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**26. Lobbying Prohibition:**

In the event the compensation provided for in this Agreement including any amendment hereto cumulatively becomes \$150,000 or more, 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 or agent of any state or federal agency; a Member of the State Legislature or the 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 any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any state or federal contract, grant loan or cooperative agreement.
- B. In 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 or 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 instructions.
- C. 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 Section 1352, Title 31, U.S. 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.

- D. 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.

**27. 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 non-appealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, 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.

**28. Evaluation of Consultant:**

CONSULTANT understands the COUNTY is required to evaluate the CONSULTANT's performance in writing. A copy of the evaluation will be sent to CONSULTANT and copy of the evaluation along with any comments of the CONSULTANT will be retained for the file.

**29. Negation of Partnership:**

In the performance of all services under this Agreement, CONSULTANT shall be, and acknowledges that CONSULTANT is, in fact and law, and independent CONSULTANT and not an agent or employee of the COUNTY. CONSULTANT has and retains the right to exercise full supervision and control of the manner and methods of providing services to COUNTY under this Agreement. CONSULTANT retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting CONSULTANT in the provision of services under this Agreement. With respect to Consultant's employees, if any, CONSULTANT shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employee taxes, whether federal, state or local, and compliance with any and all other laws regulating employment.

**30. No Authority to Bind County:**

It is understood that CONSULTANT is an independent contractor and CONSULTANT shall have no authority to bind the COUNTY to any agreements or undertakings.

**31. No Third Party Beneficiaries:**

It is expressly understood and agreed that the enforcement of these terms and conditions and all rights of action relating to such enforcement, shall be strictly reserved to COUNTY and CONSULTANT. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of COUNTY and CONSULTANT that any such person or entity, other than COUNTY or CONSULTANT, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

**32. Assignment:**

CONSULTANT shall not assign, sublet or transfer this Agreement, or any part hereof. CONSULTANT shall not assign any monies due or which become due to CONSULTANT under this Agreement without the prior express and written approval of the COUNTY.

**33. Sole Agreement:**

This document, including the attachments hereto, contains the entire agreement of the parties relation to the services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

**34. Modifications of Agreement:**

This Agreement may only be modified by written amendment signed by the parties in interest at the time of the modification. CONSULTANT shall only commence any work covered by an amendment after the amendment is executed and written notification to proceed has been provided by the COUNTY.

**35. Non-waiver:**

No covenant or condition of this Agreement can be waived except by the express written consent of COUNTY. Forbearance or indulgence by COUNTY in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by CONSULTANT. COUNTY shall be entitled to invoke any remedy available to COUNTY under this Agreement or by law or in equity despite said forbearance or indulgence.

### **36. Enforcement of Remedies:**

No right or remedy herein conferred on or reserved to COUNTY is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

### **37. Nondiscrimination:**

The applicable provisions of the Fair Employment and Housing Act (Government Code Section 12990 et seq.) and the applicable regulations promulgated thereunder are incorporated into this Agreement and made an a part hereof as if set forth in full.

CONSULTANT hereby states under penalty of perjury that Consultant has, unless exempted, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

During the performance of this Agreement, CONSULTANT and its officers, agents, employees, or subcontractors shall not discriminate, harass, or allow harassment against any employee, applicant for employment, individual, or groups of individuals, because of sex, sexual orientation, race, ancestry, color, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g. cancer), age, marital status, denial family care leave or any other classification protected by law, either directly, indirectly or through contractual or other arrangements. CONSULTANT and sub-consultants shall ensure that the evaluation and treatment of employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and sub-consultants shall comply with the applicable provisions of the Fair Employment and Housing Act (Government Code Section 12990 et seq.) and the applicable regulations promulgated thereunder which are hereby incorporated into this Agreement and made an a part hereof as if set forth in full. CONSULTANT and sub-consultants shall give written notice of their obligations under this clause to any labor organizations with which they have a collective bargaining or other Agreement.

The CONSULTANT shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

The CONSULTANT, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5

of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

The CONSULTANT shall include this nondiscrimination clause and the compliance provisions in all subcontracts.

### **38. Debarment and Suspension Certification:**

CONSULTANT hereby states under penalty of perjury that Consultant has complied with Title 2 CFR Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (non-procurement)" which certifies that CONSULTANT, or any person associated with them 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 and 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 them 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 COUNTY.

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

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

### **39. State Prevailing Wage Rates:**

CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1771, and all Federal, State, and local laws and ordinances applicable to the work. CONSULTANT is familiar with the requirements of the California Labor Code, including without limitation registration with the Department of Industrial Relations and the applicability of prevailing wage laws to preconstruction and post-construction phases of work.

Any subcontract entered into as a result of this contract, if for more than \$25,000 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 Section, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

**40. Immigration Reform and Control Act:**

CONSULTANT acknowledges that CONSULTANT, and all subcontractors hired by CONSULTANT to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act (“IRCA”). CONSULTANT is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by CONSULTANT to perform services under this Agreement are in compliance with the IRCA. In addition, CONSULTANT agrees to indemnify, defend and hold harmless the COUNTY, its agents, officers and employees, from any liability, damages or causes of action arising out of or relation to any claims that Consultant’s employees, or the employees of any subcontractor hired by CONSULTANT, are not authorized to work in the United States for CONSULTANT or its subcontractor and/or any other claims based upon alleged IRCA violations committed by CONSULTANT or Consultant’s subcontractor(s).

**41. Signature Authority:**

Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

**42. Counterparts:**

This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**43. Captions and Interpretation:**

Section headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. This Agreement is the product of negotiation and both parties are equally responsible for its authorship. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision and Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

**44. Severability:**

Should any part, term, portion or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or

provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.

**45. Choice of Law/Venue:**

The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California and the venue of any action relating to this Agreement shall be in the County of Kern.

**46. Time of Essence:**

Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

*Signatures follow on next page.*

**WHEREFORE, IN WITNESS HEREOF**, the parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of such signature duly authorized by all necessary and appropriate corporate and public action to execute this Agreement.

COUNTY OF KERN

APPROVED AS TO CONTENT  
Kern County Public Works

By: \_\_\_\_\_  
Chairman  
Board of Supervisors

By: \_\_\_\_\_  
Joshua Champlin, Interim Director

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

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

APPROVED AS TO FORM  
Office of County Counsel

CONSULTANT

By: \_\_\_\_\_  
Brian Van Wyk, Deputy

By: \_\_\_\_\_

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

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

SAMPLE

# EXHIBIT C

## Exhibit 10-R: A&E BOILERPLATE AGREEMENT LANGUAGE

(For Local Assistance Federal-Aid Projects)

THE FISCAL AND FEDERAL PROVISIONS ARE REQUIRED IN ALL FEDERALLY FUNDED CONTRACTS. THE ORIGINAL INTENT OF THE ARTICLE SHALL REMAIN, IF MODIFIED BY YOUR LEGAL STAFF.

THIS EXHIBIT CONTAINS FISCAL REQUIREMENTS FROM 2 CFR 200 AND IS TO BE USED FOR STATE-ONLY FUNDED CONTRACTS AS WELL.

*[Note: italic text within brackets throughout the Articles is intended for instructional purposes only]*

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SAMPLE

**ARTICLE I INTRODUCTION**

- A. This AGREEMENT is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:

**(NAME OF CONSULTANT)**

Incorporated in the State of **(NAME OF STATE)**

The Project Manager for the "CONSULTANT" will be **(NAME)**

The name of the "LOCAL AGENCY" is as follows:

**(NAME)**

The Contract Administrator for LOCAL AGENCY will be **(NAME)**

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal dated **(DATE)**. The approved CONSULTANT's Cost Proposal is attached hereto **(Attachment #)** and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.
- E. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively

under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the LOCAL AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. 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.

## **ARTICLE II CONSULTANT'S REPORTS OR MEETINGS**

- A. CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for LOCAL AGENCY's Contract Administrator or Project Coordinator 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 remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

## **ARTICLE III STATEMENT OF WORK**

*[Insert Appropriate Statement of work including a Description of the Deliverables in the following sections. If a section does not apply to the AGREEMENT, state "Not Applicable to this AGREEMENT."]*

### **A. CONSULTANT Services**

*[Detail based on the services to be furnished should be provided by CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in CONSULTANT AGREEMENT should be included.]*

*Describe acceptance criteria, and if the responsible CONSULTANT/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the AGREEMENT including registration number.*

*Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the Finding of No Significant Impact, or the Caltrans District Director signs the Record of Decision (see [LAPM Chapter 6: Environmental Procedures](#), and the Standard Environmental Reference).]*

**B. Right of Way**

*[State whether Right of Way requirements are to be determined and shown by CONSULTANT, whether land surveys and computations with metes and bounds descriptions are to be made, and whether Right of Way parcel maps are to be furnished.]*

**C. Surveys**

*[State whether or not the CONSULTANT has the responsibility for performing preliminary or construction surveys.]*

**D. Subsurface Investigations**

*[State specifically whether or not CONSULTANT has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of CONSULTANT, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in the Standard Environmental Reference.]*

**E. Local Agency Obligations**

All data applicable to the project and in possession of LOCAL AGENCY, another agency, or government agency that are to be made available to CONSULTANT are referred to in the AGREEMENT. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.

**F. Conferences, Site Visits, Inspection of Work**

This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

**G. Checking Shop Drawings**

*[For AGREEMENTs requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by CONSULTANT may be included in the AGREEMENT fee, or provision may be made for separate payment.]*

**H. CONSULTANT Services During Construction**

The extent, if any of CONSULTANT's services during the course of construction as material testing, construction surveys. etc., are specified in the AGREEMENT together with the method of payment for such services.

**I. Documentation and Schedules**

AGREEMENTs where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, 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.

J. Deliverables and Number of Copies

The number of copies or documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way parcel maps shall be specified. Provision may be made for payment for additional copies.

#### ARTICLE IV PERFORMANCE PERIOD

*[A time must be set for beginning and ending the work under the AGREEMENT. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the AGREEMENT. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by CONSULTANT, they should be identified and incorporated into the AGREEMENT.]*

- A. This AGREEMENT shall go into effect on **(DATE)**, contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on **(DATE)**, unless extended by AGREEMENT amendment.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.
- C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the task order in progress only. The maximum term shall not exceed five (5) years.

#### ARTICLE V ALLOWABLE COSTS AND PAYMENTS

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT'S approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- D. After a project to be performed under this AGREEMENT is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate,

including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.

- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.

- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.
- K. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator

at the following address:

**(NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR)**  
**(ADDRESS)**

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.
- M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- N. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend the language (or the terms) of this AGREEMENT nor to exceed the scope of work under this AGREEMENT.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed \$ **(Amount)**. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.

#### **ARTICLE VI TERMINATION**

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work,

including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

#### **ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. The CONSULTANT agrees that 48 CFR 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR 31 or 2 CFR 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

#### **ARTICLE VIII RETENTION OF RECORD/AUDITS**

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

#### **ARTICLE IX AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.

- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

#### **ARTICLE X SUBCONTRACTING**

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants 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 the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the

provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.

- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.
- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.
- F. Prompt Progress Payment

CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

- G. Prompt Payment of Withheld Funds to Subconsultants  
The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

The LOCAL AGENCY shall hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY of the contract work and pay retainage to CONSULTANT based on these acceptances. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the LOCAL AGENCY. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT; deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non- DBE subconsultants.

Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant.

## **ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES**

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
  - 1. 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 five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY 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 LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales 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 by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
  - 2. Regulation 2 CFR 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

## **ARTICLE XII STATE PREVAILING WAGE RATES**

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent

amendments.

- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
    - a. The information contained in the payroll record is true and correct.
    - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
  2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
    - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
    - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls

submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.

- c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
  1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
  2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall

be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
  - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
  - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
  - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those

employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTs and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

**ARTICLE XIII CONFLICT OF INTEREST**

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. The 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.

- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

#### **ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

#### **ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, 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 or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
  2. 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. 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 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The 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 subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

## **ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant 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 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant 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 Plan with respect to individuals of a particular race, color, sex, or national origin.

**ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION**

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
  - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  - 3. Does not have a proposed debarment pending; and
  - 4. 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.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

**ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. CONSULTANT, subrecipient (LOCAL AGENCY), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the LOCAL AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes or work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is **23**%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-O2: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- D. Contract Assurance  
Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry

out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the CONSULTANT 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 the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying CONSULTANT from future proposing as non-responsible

E. Termination and Substitution of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the LOCAL AGENCY's written consent. CONSULTANT shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the LOCAL AGENCY. Unless the LOCAL AGENCY's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02: Consultant Contract DBE Commitment form, included in the Bid.

The LOCAL AGENCY authorizes a request to use other forces or sources of materials if CONSULTANT shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The LOCAL AGENCY determines other documented good cause.

CONSULTANT shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise CONSULTANT and the LOCAL AGENCY of the reasons why the use of other forces or sources of materials should not occur.

CONSULTANT's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. Notices from the DBEs to CONSULTANT regarding the request.

If a listed DBE is terminated or substituted, CONSULTANT must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

#### F. Commitment and Utilization

The LOCAL AGENCY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier subconsultant
  - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the LOCAL AGENCY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the LOCAL AGENCY within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F: Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the LOCAL AGENCY within 90 days of contract acceptance. The LOCAL AGENCY will withhold \$10,000 until the form is submitted. The LOCAL AGENCY will release the withhold upon submission of the completed form.

In the LOCAL AGENCY's reports of DBE participation to Caltrans, the LOCAL AGENCY must display both commitments and attainments.

- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a CUF when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.

- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10<sup>th</sup> of the following month, the prime contractor/consultant shall complete and email the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the Agency.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

**ARTICLE XIX INSURANCE**

The Consultant shall agree with all of the insurance requirements in the County of Kern’s Sample Agreement.

**ARTICLE XX FUNDING REQUIREMENTS**

- A. It is mutually understood between the parties that this AGREEMENT 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.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

**ARTICLE XXI CHANGE IN TERMS**

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY’s Contract Administrator.
- C. There shall be no change in CONSULTANT’s Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY’s Contract Administrator.

**ARTICLE XXII CONTINGENT FEE**

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, 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, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

### **ARTICLE XXIII DISPUTES**

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five

(45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and **(Insert Department Head or Official)**, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, or of deliverables necessary to complete the plans, specifications and estimate of a PS&E AGREEMENT, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

### **ARTICLE XXIV INSPECTION OF WORK**

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

### **ARTICLE XXV SAFETY**

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and 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.

- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §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 (5) feet or deeper.

#### **ARTICLE XXVI OWNERSHIP OF DATA**

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal- aid contracts).
- E. LOCAL AGENCY 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; and to authorize others to use, the work for government purposes.

## **ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

## **ARTICLE XXVIII CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.
- F. For Plans, Specifications, and Estimates (PS&E) AGREEMENTs, all information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are

confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

#### **ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code §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 against CONSULTANT within the immediately preceding two-year period, 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.

#### **ARTICLE XXX EVALUATION OF CONSULTANT**

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

#### **ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT**

The LOCAL AGENCY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY shall pay interest to the contractor,

which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the LOCAL AGENCY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

#### **ARTICLE XXXII TITLE VI ASSURANCES**

##### **APPENDICES A - E of the TITLE VI ASSURANCES**

*[The U.S. Department of Transportation Order No.1050.2A requires all federal-aid Department of Transportation contracts between an agency and a consultant to contain Appendices A and E of the Title VI Assurances. Include Appendices B, C, and D if applicable as shown below. In addition, the consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract.]*

*The clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a LOCAL AGENCY.*

*The clauses set forth in Appendix C and Appendix D of this Assurance shall be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the LOCAL AGENCY with other parties:*

- a. *for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and*
- b. *for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.]*

## **APPENDIX A**

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set

forth what efforts CONSULTANT has made to obtain the information.

- e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## **APPENDIX B CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

**(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the

U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

### **APPENDIX C**

#### **CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said

facilities.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**APPENDIX D**  
**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED**  
**UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration

hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

## APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non- discrimination statutes and authorities, including, but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English

Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).

**ARTICLE XXXIII NOTIFICATION**

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

**(CONSULTANT)** \_\_\_\_\_  
**(NAME)** \_\_\_\_\_, Project Manager  
**(ADDRESS)** \_\_\_\_\_  
\_\_\_\_\_

LOCAL AGENCY:

**(LOCAL AGENCY)** \_\_\_\_\_  
**(NAME)** \_\_\_\_\_, Contract Administrator  
**(ADDRESS)** \_\_\_\_\_  
\_\_\_\_\_

**ARTICLE XXXIV CONTRACT**

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, 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 agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

**ARTICLE XXXV SIGNATURES**

(Name of LOCAL AGENCY)

(Name of CONSULTANT)

\_\_\_\_\_  
(Signature)  
(Name of Signer)

\_\_\_\_\_  
(Signature)  
(Name of Signer)

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

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

SAMPLE

# EXHIBIT D

## EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: \_\_\_\_\_ 2. Contract DBE Goal: \_\_\_\_\_
3. Project Description: \_\_\_\_\_
4. Project Location: \_\_\_\_\_
5. Consultant's Name: \_\_\_\_\_ 6. Prime Certified DBE:

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
<b>Local Agency to Complete this Section</b>		<b>11. TOTAL CLAIMED DBE PARTICIPATION</b>	
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____  Consultant's Ranking after Evaluation: _____  Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
21. Local Agency Representative's Signature _____ 22. Date _____ 23. Local Agency Representative's Name _____ 24. Phone _____ 25. Local Agency Representative's Title _____		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.  12. Preparer's Signature _____ 13. Date _____ 14. Preparer's Name _____ 15. Phone _____ 16. Preparer's Title _____	

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, Sacramento, CA 95814.

## EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

### CONSULTANT SECTION

1. **Local Agency** – Enter the name of the local or regional agency that is funding the contract.
2. **Contract DBE Goal** – Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Location** – Enter the project location as it appears on the project advertisement.
4. **Project Description** – Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
5. **Consultant's Name** – Enter the consultant's firm name.
6. **Prime Certified DBE** – Check box if prime contractor is a certified DBE.
7. **Description of Work, Services, or Materials Supplied** – Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
8. **DBE Certification Number** – Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
9. **DBE Contract Information** – Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
10. **DBE %** – Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count
11. **Total Claimed DBE Participation %** – Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information – Good Faith Efforts of the LAPM).
12. **Preparer's Signature** – The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
13. **Date** – Enter the date the DBE commitment form is signed by the consultant's preparer.
14. **Preparer's Name** – Enter the name of the person preparing and signing the consultant's DBE commitment form.
15. **Phone** – Enter the area code and phone number of the person signing the consultant's DBE commitment form.
16. **Preparer's Title** – Enter the position/title of the person signing the consultant's DBE commitment form.

### LOCAL AGENCY SECTION

17. **Local Agency Contract Number** – Enter the Local Agency contract number or identifier.
18. **Federal-Aid Project Number** – Enter the Federal-Aid Project Number.
19. **Proposed Contract Execution Date** – Enter the proposed contract execution date.
20. **Consultant's Ranking after Evaluation** – Enter the consultants' ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
21. **Local Agency Representative's Signature** – The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
22. **Date** – Enter the date the DBE commitment form is signed by the Local Agency Representative.
23. **Local Agency Representative's Name** – Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
24. **Phone** – enter the area code and phone number of the person signing the consultant's DBE commitment form.
25. **Local Agency Representative Title** – Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

# EXHIBIT E

## EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<p><b>1. Type of Federal Action:</b></p> <p><input type="checkbox"/> a. contract  <input type="checkbox"/> b. grant  <input type="checkbox"/> c. cooperative agreement  <input type="checkbox"/> d. loan  <input type="checkbox"/> e. loan guarantee  <input type="checkbox"/> f. loan insurance</p>	<p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application  <input type="checkbox"/> b. initial award  <input type="checkbox"/> c. post-award</p>	<p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial  <input type="checkbox"/> b. material change</p> <p style="text-align: right;"><b>For Material Change Only:</b>  year _____ quarter _____  date of last report _____</p>
<p><b>4. Name and Address of Reporting Entity</b></p> <p><input type="checkbox"/> Prime                      <input type="checkbox"/> Subawardee  Tier _____, if known</p> <p style="text-align: center;">Congressional District, if known</p>	<p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b></p> <p style="text-align: center;">Congressional District, if known</p>	
<p><b>6. Federal Department/Agency:</b></p>	<p><b>7. Federal Program Name/Description:</b></p> <p>CFDA Number, if applicable _____</p>	
<p><b>8. Federal Action Number, if known:</b></p>	<p><b>9. Award Amount, if known:</b></p>	
<p><b>10. Name and Address of Lobby Entity</b>  (If individual, last name, first name, MI)</p> <p style="text-align: center;">(attach Continuation Sheet(s) if necessary)</p>	<p><b>11. Individuals Performing Services</b>  (including address if different from No. 10)  (last name, first name, MI)</p>	
<p><b>12. Amount of Payment (check all that apply)</b></p> <p>\$ _____ <input type="checkbox"/> actual    <input type="checkbox"/> planned</p>	<p><b>14. Type of Payment (check all that apply)</b></p> <p><input type="checkbox"/> a. retainer  <input type="checkbox"/> b. one-time fee  <input type="checkbox"/> c. commission  <input type="checkbox"/> d. contingent fee  <input type="checkbox"/> e. deferred  <input type="checkbox"/> f. other, specify _____</p>	
<p><b>13. Form of Payment (check all that apply):</b></p> <p><input type="checkbox"/> a. cash  <input type="checkbox"/> b. in-kind; specify: nature _____  Value _____</p>		
<p><b>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:</b></p> <p style="text-align: center;">(attach Continuation Sheet(s) if necessary)</p>		
<p><b>16. Continuation Sheet(s) attached:</b>      Yes <input type="checkbox"/>      No <input type="checkbox"/></p>		
<p><b>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b></p>		
		<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>
<p><b>Federal Use Only:</b></p>		<p>Authorized for Local Reproduction  Standard Form - LLL</p>

## INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item I). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

# EXHIBIT F



## Inspector General

California Department of Transportation

### Certification of Indirect Costs and Financial Management System

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required)

Consultant's Full Legal Name: \_\_\_\_\_

**Important:** Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

#### Indirect Cost Rate (ICR):

Combined Rate: \_\_\_\_\_ Or

Home Office Rate: \_\_\_\_\_ and Field Office Rate (if applicable): \_\_\_\_\_

Facilities Capital Cost of Money (if applicable): \_\_\_\_\_

**Fiscal Period:\*** \_\_\_\_\_

\* Fiscal period is annual one year applicable accounting period that the ICR was developed (not the contract period). The ICR is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an ICR(s) for the fiscal period as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the ICR(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31).
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31.
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on the Financial Document Review Request form.

#### Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\); 48 CFR Part 31.201-2\(d\); 23 CFR, Chapter 1, Part 172.11\(a\)\(2\)](#); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirements.

**Cost Reimbursements on Contracts:**

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

**All A&E Contract Information:**

- Total participation amount \_\_\_\_\_ on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is \_\_\_\_\_
- Years of consultant’s experience with 48 CFR Part 31 is \_\_\_\_\_
- Identify the type of audits listed below that the consultant has had performed (if applicable):

Cognizant ICR Audit       Local Govt ICR Audit       Caltrans ICR Audit   
 CPA ICR Audit       Federal Govt ICR Audit

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the ICR Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name:\*\* \_\_\_\_\_ Title:\*\* \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Phone:\*\*: \_\_\_\_\_ Email:\*\*: \_\_\_\_\_

\*\*An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: Both prime and subconsultants as parties of a contract must complete their own forms. Caltrans will not process local agency’s invoices until a complete form is accepted and approved by the Independent Office of Audits and Investigations.

# EXHIBIT G

## California Safe Harbor Indirect Cost Rate Program

### Consultant Firm Certification of Eligibility and Certification of Financial Management System

Consultant Firm Name \_\_\_\_\_

Local Agency (if applicable) \_\_\_\_\_

Contract Number / Federal Project Number \_\_\_\_\_

Contract Total \$ \_\_\_\_\_

For Subconsultant Firms – estimated % of work to be performed \_\_\_\_\_ %

Safe Harbor Indirect Cost Rate (SHR): **Home: 120% and/or Field: 90%**

Field SHR will be utilized for contracts where the work deliverables are not completed from the consultant offices (i.e. Construction Inspection, Material Testing, Sources Inspection, others).

#### Consultant Firm Certification of Eligibility

I, the undersigned, certify that I am eligible to use the Safe Harbor indirect cost rate as I:

1. Am not a Prime Consultant Firm on a Caltrans contract > \$3.5M, or Local Government contract > \$1M, regardless of the participation amount.
2. Have not used SHR for more than three (3) years since entering the program on a state or federally funded contract.

AND

1. Do not have relevant contract cost history to use as a base for developing a Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31 compliant ICR.
2. Do not have a previously accepted ICR by a cognizant agency, or with an audited/accepted actual ICR, and do not have an existing contract with a provisional rate.

#### Certification of Financial Management System

I, the undersigned, certify that our financial management system in place for this contract and moving forward meets the standards for the Safe Harbor indirect cost rate requirements and financial reporting, accounting records, internal and budget control as set forth in 2 CFR 200, Subpart D. These standards require consulting firms have an accounting system

## California Safe Harbor Indirect Cost Rate Program

adequate to accumulate, and track allowable, allocable, and reasonable direct labor and other direct costs by contract; segregate indirect costs and remove unallowable costs.

Print Name \_\_\_\_\_

Signature \_\_\_\_\_  
(Electronic Signature Allowed)

Title \_\_\_\_\_

Date Completed \_\_\_\_\_

**Note:** The certification of this Safe Harbor Rate was made by, and are the responsibility of, the Company's management.

### Definition of Terms

Direct Cost is any cost that is identified specifically with a particular cost objective. Direct costs are not limited to items that are incorporated in the end products as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified with other final cost objectives of the contractor are direct costs of those objectives, 48 CFR 31.202.

Indirect or overhead cost is any cost that is not directly identified with a single final cost objective but is identified with two or more final cost objectives or with at least one intermediate cost objective, 48 CFR 31. 203.

### References

Title 48 Code of Federal Regulations (CFR) Part 31 -Federal cost principles.

Title 48 CFR Chapter 99, Subchapter B - Procurement Practices and Cost Accounting Standards.

Title is 2 CFR 200 Subpart D, Standards for Financial and Program Management.

Title 23 United States Code (U.S.C.), Chapter 1, Section 112 - Letting of Contracts.

Title 23 CFR, Chapter 1, Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services.

American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit & Accounting Guide (2016 Edition).

## California Safe Harbor Indirect Cost Rate Program

### **Caltrans Contract**

If participating on a Caltrans Contract, also attach a completed copy of the following Safe Harbor Indirect Cost Rate Questionnaire for Evaluating Consultant Firm's Financial Management System.

SAMPLE

California Safe Harbor Indirect Cost Rate Program

**Questionnaire for Evaluating Consultant Firm's Financial Management System**

Consultant Firm Name \_\_\_\_\_

Firm Headquarters Address \_\_\_\_\_  
\_\_\_\_\_

Accounting Records

- Location where Accounting records are held \_\_\_\_\_
- Name and Title \_\_\_\_\_
- Email and Phone \_\_\_\_\_
- Mailing Address \_\_\_\_\_  
\_\_\_\_\_

To be eligible for Safe Harbor indirect cost rate (SHR), the Consultant Firm's financial management system must be adequate to accumulate and track direct labor and other direct costs by contract, segregate indirect costs, and remove unallowable costs in accordance with 48 CFR 31 for the different business segments.

Instructions

1. Answer all questions and provide an explanation and additional supporting documentation where requested.
2. If additional space is required, please attach a separate sheet and refer to items being answered by number.

Has the Firm developed an indirect cost rate in the past? Yes \_\_\_ No \_\_\_

If "Yes", you are NOT ELIGIBLE to use the SHR.  
DO NOT CONTINUE with this Questionnaire and please complete the AASHTO Appendix B ICQ and provide an ICR Schedule.

Is the Firm a Prime Consultant Firm on a Caltrans contract > \$3.5M Or Local Government contract > \$1M, regardless of the participation Amount? Yes \_\_\_ No \_\_\_

If "Yes", you are NOT ELIGIBLE to use the SHR.  
DO NOT CONTINUE with this Questionnaire and please complete the AASHTO Appendix B ICQ and provide an AUDITED ICR Report.

## California Safe Harbor Indirect Cost Rate Program

1. What form of business entity is the Firm?

Sole Proprietorship \_\_\_ Partnership \_\_\_ C Corporation \_\_\_ S Corporation \_\_\_  
Other \_\_\_\_\_

2. What types of services will the Firm provide for this contract? (Select all that apply.)

Architectural and Engineering Services \_\_\_ Program Management \_\_\_  
Preliminary Engineering \_\_\_ Design Engineering \_\_\_  
Surveying \_\_\_ Feasibility Studies \_\_\_  
Mapping or Architectural Related Services \_\_\_ Other \_\_\_\_\_

3. Does the Firm have prior government contracting experience? Yes \_\_\_ No \_\_\_

4. Does the general ledger contain separate direct and indirect accounts for the following?

Labor Yes \_\_\_ No \_\_\_ Non-Labor Yes \_\_\_ No \_\_\_

5. Does the company have a system in place to identify and remove from the indirect cost pools all unallowable cost? Yes \_\_\_ No \_\_\_

6. Does the firm assign a unique identification/project number in your accounting system for each contract/project?

Yes \_\_\_ No \_\_\_

7. Is indirect and direct labor separated by contract/project/cost objectives on employee timesheets with unique reporting codes?

Yes \_\_\_ No \_\_\_

## California Safe Harbor Indirect Cost Rate Program

8. Do you have written policies on the following cost categories?

Accounting	Yes ___ No ___	Overtime	Yes ___ No ___
Billing	Yes ___ No ___	Direct/Indirect Expenses	Yes ___ No ___
Timesheet Preparation	Yes ___ No ___	Prevailing Wage	Yes ___ No ___
Bonus	Yes ___ No ___		

9. What types of employee status will the Firm provide for this contract?

Non-exempt \_\_\_ Exempt-salaried \_\_\_ Exempt-hourly \_\_\_ Contract Employee \_\_\_  
 Other \_\_\_\_\_

10. Does the Firm pay overtime for exempt employees?

Yes \_\_\_ No \_\_\_

11. Besides labor, does the Firm normally bill/invoice the following as direct contract/project costs? (Select all that apply)

Vehicle _____	Shipping _____
Computer/CADD _____	Lab _____
Printing _____	Travel _____
Specialty Equipment _____ (List below)	Other (List below) _____
_____	_____

12. Are mileage logs maintained for all vehicles? If no, please explain below.

Explanation \_\_\_\_\_

Where is the vehicle stored after work? \_\_\_\_\_

Does employee use vehicle for personal use? Yes \_\_\_\_\_ No \_\_\_\_\_

What is the recovery/billing rate used for Firm or personal vehicle mileage reimbursement?

\$ \_\_\_\_\_ per mile

## California Safe Harbor Indirect Cost Rate Program

I certify that to the best of my knowledge and belief the responses to this questionnaire are accurate.

Print Name \_\_\_\_\_

Signature \_\_\_\_\_  
(Electronic Signature Allowed)

Title \_\_\_\_\_

Date Completed \_\_\_\_\_

**Note:** The certification of this Safe Harbor Rate was made by, and are the responsibility of, the Company's management.

SAMPLE

# EXHIBIT H

## EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

(Federally funded projects only)

The Agency has established a DBE goal for this Contract of 23.0%

### 1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

### 2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

### 3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-01 *Consultant Proposal DBE Commitment* must be included in the Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards **meeting** the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-02 *Consultant Contract DBE Information* must be included **in best qualified consultant's executed consultant contract**. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

### 4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  1. The proposer is a DBE and will meet the goal by performing work with its own forces.
  2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
  3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.

- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

## 5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Civil Rights [website](#)
  - 1. Click on the link titled Disadvantaged Business Enterprise;
  - 2. Click on Search for a DBE Firm link;
  - 3. Click on [Access to the DBE Query Form](#) located on the first line in the center of the page.

Searches can be performed by one or more criteria. Follow instructions on the screen.

## 6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

# EXHIBIT I

## EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Cost Proposal Due Date \_\_\_\_\_ PE/CE  
Federal-aid Project No(s). \_\_\_\_\_ Bid Opening Date \_\_\_\_\_ CON

The \_\_\_\_\_ established a Disadvantaged Business Enterprise (DBE) goal of 23.0% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) calendar days from cost proposal due date or bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer's or bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions, **please attach additional sheets as needed:**

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement
_____	_____
_____	_____
_____	_____

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation in order to meet or exceed the DBE contract goal.

Items of Work	Proposer or Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract
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D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

H. Any additional data to support a demonstration of good faith efforts:

