

Attachment D

On-Call Agreement for Architectural and Engineering Consultant and Other Related Services

Article 5 Section C and Articles 24 through 39 and Appendices F, J, K, L and M only apply to CONSULTANTS who are eligible for Federal funding, as indicated in Appendix B Scope.

Article 2 Section O and Article 6 Section A (alternate) only applies to CONSULTANTS who are eligible for Staff Augmentation Services.

Contents

1.	Obligations of the Consultant	4
2.	Obligations of the County	7
3.	Term of Agreement	8
4.	Termination	9
	A. Non-Allocation of Funds / Funding Requirements	9
	B. Breach of Contract	9
	C. Without Cause	10
5.	Compensation, Allowable Costs and Payments	10
	A. Maximum Cumulative Amount Available	10
	B. Consultant Fee	11
	C. Indirect Cost Rate	13
	D. Retention	13
	E. Payments	14
	F. Notice to Proceed / Task Orders / Project Cost Proposal	15
6.	Independent Contractor	16
7.	Modification / Change In Terms	17
8.	Non-Assignment	18
9.	Hold Harmless	18
10.	Liability Insurance	19
	A. Commercial General Liability	19
	B. Automobile Liability	19
	C. Professional Liability Insurance:	19
	D. Worker's Compensation	20
	E. Additional Requirements Relating to Insurance	20
11.	Audits / Retention of Record	21
12.	Notices	22
13.	Governing Law	23
14.	Disclosure of Self-Dealing Transactions	23
15.	Electronic Signature	23
16.	Subconsultants	24
	I. Prompt Progress Payment	25
	J. Prompt Payment of Withheld Funds to Subconsultants	26
17.	Conflict of Interest	27
18.	Errors or Omissions Claims and Disputes	29

19.	Ownership of Data	31
20.	Consultant's Legal Authority	33
21.	Binding Upon Successors.....	33
22.	Severability	33
23.	State Prevailing Wage Rates	33
	C. Payroll Records	34
	E. Penalty	36
	F. Hours of Labor	38
	G. Employment of Apprentices	38
24.	Disadvantaged Business Enterprises (DBE) Participation.....	39
	F. Contract Assurance	41
	G. Termination and Replacement of DBE Subconsultants	41
	H. Termination of DBE Subconsultants	41
	I. Replacement of DBE Subconsultants	43
	H. Commitment and Utilization.....	44
25.	Cost Principles	49
26.	Audit Review Procedures	49
27.	Equipment Purchase	52
28.	Rebates, Kickbacks or Other Unlawful Consideration.....	53
29.	Prohibition of Expending County, State, or Federal Funds for Lobbying	53
30.	Non-Discrimination Clause and Statement of Compliance	54
31.	Debarment and Suspension Certification	56
32.	Funding Requirements	57
33.	Contingent Fees	57
34.	Inspection of Work.....	58
35.	Safety	58
36.	Claims Filed by the County's Construction Contractor.....	58
37.	Confidentiality of Data	59
38.	National Labor Relations Board Certification	60
39.	Evaluation of the Consultant.....	60
40.	Entire Agreement	60
41.	Signatures.....	62

Appendices

Appendix A – Listing of all consultants, including CONSULTANT'S "Project Manager"
Appendix B – Scope
Appendix C – Project Team
Appendix D – Deliverables
Appendix E – Cost Proposal
Appendix F – Indirect Cost Rate (ICR) Form(s)
Appendix G – Self Dealing Transaction Disclosure Form
Appendix H – Subconsultants
Appendix I – Conflict of Interest Code
Appendix J – DBE Information
Appendix K – DBE Forms
Appendix L – Disclosure Form to Report Lobbying
Appendix M – Debarment and Suspension Certification

1 **CONSULTANT AGREEMENT**

2 THIS AGREEMENT for Architectural and Engineering Consultant Services,
3 hereinafter referred to as "Agreement," is made and entered into this _____ day of
4 _____, by and between the County of Fresno, a Political Subdivision of the
5 State of California, hereinafter referred to as "County"; and _____, a _____ (Type
6 of business), whose address is _____ hereinafter referred to as "Consultant".

7 **Recitals**

8 WHEREAS, the County desires to retain the Consultant as one of a number of
9 consultant firms to provide, pursuant to separate agreements, on-call architectural and
10 engineering consulting services, encompassing landscape architecture, electrical,
11 mechanical, transportation planning, water & natural resources, and such other
12 architectural and engineering disciplines for which each such consultant is qualified, as
13 necessary to assist the County in performing projects (hereinafter referred to as
14 "Project(s)") proposed by the County; and

15 WHEREAS, the Consultant has been selected in accordance with the County's
16 Ordinance Code Chapter 4.10 on the selection of architects, engineers, and other
17 professionals, and in accordance with Chapter 10 of the California Department of
18 Transportation's (CALTRANS) Local Assistance Procedures Manual (LAPM), to provide
19 certain professional services necessary for the Projects, as specified herein; and

20 WHEREAS, the individual listed below

21 Erin Haagenson, Program Manager

22 2220 Tulare Street, 6th Floor, Fresno, CA 93721

23 559-388-7292

24 ehaagenson@fresnocountyca.gov

25 is designated as the Contract Administrator for this Agreement on behalf of the County, and
26 shall remain so unless the Consultant is otherwise notified in writing by the County's
27 Director of Public Works and Planning or his/her designee(s) (hereinafter referred to as the
28 "Director"); and

1 WHEREAS, the individual listed in Appendix A, as the firm's "Consultant Project
2 Manager" is designated as the Consultant's Project Manager for this Agreement, and shall
3 remain so unless the Consultant requests and the Director approves, in writing, a change of
4 the Consultant's Project Manager, which approval will not be unreasonably withheld; and

5 NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions
6 herein contained, the parties hereto agree as follows:

7 1. **Obligations of the Consultant**

8 A. The County hereby contracts with the Consultant as an independent
9 contractor to provide the professional services enumerated in "Consultant's Scope of
10 Services" attached as Appendix B.

11 B. The Consultant's services shall be performed as expeditiously as is
12 consistent with professional skill and the orderly progress of the work, based on schedules
13 for each specific Project mutually agreed upon in advance by the Contract Administrator,
14 and the Consultant.

15 C. The Consultant's Project team staff shall be as listed in Appendix C, attached
16 hereto and incorporated herein. Any substitutions of personnel must be approved in
17 advance by the Contract Administrator, which approval shall not be unreasonably withheld.
18 The Consultant shall notify the Contract Administrator of the names and classifications of
19 employees assigned to each specific Project, and shall not reassign such employees to
20 other projects of the Consultant without notification to and prior approval by the Contract
21 Administrator.

22 D. The Consultant may retain, as subconsultants, specialists as the Consultant
23 requires to assist in completing the work in accordance with Article 16 "Subconsultants"
24 (and, if applicable to this Agreement, Article 24 "Disadvantaged Business Enterprises").

25 E. Services provided by Consultant on Projects relating to the construction or
26 improvement of roads and bridges shall be done in accordance with American Association
27 of State Highway and Transportation Officials (AASHTO) requirements for applicable
28 structures.

1 F. All projects funded wholly or in part by CALTRANS must conform to all
2 requirements imposed by CALTRANS and the Federal Highway Administration (FHWA), as
3 specified in Chapter 10 of the CALTRANS LAPM.

4 G. The services that may be furnished by the Consultant under this Agreement
5 are for all or a portion of the services the Consultant is allowed to provide within the
6 applicable professional discipline limits, as defined in California State License Law, for
7 various Projects on an as needed basis.

8 H. The Consultant agrees to provide the professional services that are
9 necessary for each Project when expressly authorized in writing by the CONTRACT
10 ADMINISTRATOR. Such work by the CONSULTANT shall not begin until the
11 CONSULTANT has received a written Notice to Proceed (NTP) or Task Order from the
12 CONTRACT ADMINISTRATOR authorizing the necessary service, agreed upon fee, and
13 scope of work.

14 I. The Consultant shall submit proposals in response to requests issued by the
15 Contract Administrator on a project-by-project basis. The Consultant's proposal at a
16 minimum shall include, but not be limited to, staff qualifications, proposed method and
17 schedule for completing the task(s), completed federal forms and a sealed cost proposal.
18 The Consultant agrees that each professional or other individual performing work on any
19 such Project(s) shall be adequately trained to perform the work and shall possess the
20 proper license, certification or registration as required by law or by accepted standards of
21 the applicable profession. The Consultant agrees to provide the professional services that
22 are necessary to complete the requested tasks consistent with the scope of its contracted
23 discipline(s), as listed in Appendix B ("Scope"), when expressly authorized in writing by the
24 Contract Administrator.

25 J. Submissions of reports, plans, specifications, and estimates will be submitted
26 in the formats, quantities, and delivery methods delineated in Appendix D "Deliverables"
27 hereto unless other formats, quantities, and/or delivery methods have been mutually
28 agreed upon, in writing, prior to the Consultant's submittal. The Consultant shall verify

1 compatible format and quantity prior to final delivery.

2 K. Assist the County, at the Director's express, written authorization, with any
3 claim resolution process involving the construction contractor and the County as specified
4 hereunder, including serving as a witness in connection with any public hearings or legal
5 proceeding, and also including dispute resolutions required by law or hereunder. The
6 parties recognize that this clause is provided as a means of expediting resolution of claims
7 among the construction contractor, the County, and the Consultant. However, it is
8 understood the construction contractor is not an intended third-party beneficiary of this
9 clause. Compensation for these services shall be computed and invoiced at the same
10 hourly rates listed in Appendix E hereto, including travel costs that are being paid for the
11 Consultant's personnel services under this Agreement. Any assistance provided by the
12 Consultant as described in this Article 1, Section K shall be subject to the provisions of
13 Article 5 hereinafter, and shall also be subject to the following:

14 1. The Director may believe the Consultant's work under this Agreement
15 to have included negligent errors or omissions, or that the Consultant may otherwise have
16 failed to comply with the provisions of this Agreement, either generally or in connection with
17 its duties as associated with a particular Project; and that the cause(s) for a claim by the
18 construction contractor may be attributable, in whole or in part, to such conduct on the part
19 of the Consultant. Upon notice by the Director, the payments to the Consultant for such
20 arguably deficient services shall be held in suspense by the County until a final
21 determination has been made, of the proportion that the Consultant's fault bears to the fault
22 of all other parties concerned.

23 2. Such amounts held in suspense shall not be paid to the Consultant,
24 pending the final determination as to the Consultant's proportional fault. However, the
25 appropriate percentage of such amount held in suspense shall be paid to the Consultant,
26 once a final determination has been made, and the Consultant thereafter submits a proper
27 invoice to the County. Payment shall be issued in accordance with the procedure outlined
28 in Article 5, Section E, Paragraph 2.

1 L. The Consultant's personnel shall typically be assigned to and remain on
2 specific Department projects/deliverables until completion and acceptance of the
3 project/deliverables by the Department. Personnel assigned by the Consultant shall be
4 available at the start of a Task Order and after acceptance of the project/deliverable by the
5 Department.

6 M. After the Contract Administrator's approval of the Consultant's personnel
7 proposal and finalization of a Task Order, the Consultant may not add or substitute
8 personnel without the Contract Administrator's prior written approval.

9 2. **Obligations of the County**

10 The County will:

11 A. Provide eligible consultants the opportunity to compete for Task Orders on a
12 project-by-project basis by providing a miniature Request for Proposal (mini-RFP), except
13 as specified under Section B. The Consultant's eligibility for project types, disciplines, and
14 services is listed in Appendix B.

15 B. The County reserves the right to suspend competition under this Agreement
16 and engage the services of an eligible qualified consultant from the listing attached as
17 Appendix A, in the event that one or more of the following circumstances apply to the
18 needed work:

- 19 1. Service is available only from a single source;
- 20 2. There is an emergency which will not permit the time necessary to
21 conduct competitive negotiations;
- 22 3. After the mini-RFP is issued (as provided in the immediately preceding
23 Section A) competition is determined to be inadequate;
- 24 4. Services of expert witnesses for litigation or special counsel to assist
25 the County are needed.

26 C. Issue Task Orders on a project-by-project basis. Task Orders will at a
27 minimum include scope of work, location, and schedule for the Project.

28 D. Provide the Consultant with a Project Scope and Schedule, and compensate

1 the Consultant as provided in this Agreement.

2 E. Provide an individual Project Administrator to serve as a representative of the
3 County who will coordinate and communicate with the Consultant on all Project technical
4 work, to the extent appropriate, in an effort to facilitate the Consultant's performance of its
5 obligations in accordance with the provisions of this Agreement.

6 F. Provide basic plan sheet layouts as required.

7 G. Examine documents submitted to the County by the Consultant and timely
8 render decisions pertaining thereto.

9 H. Provide aerial photographs as required.

10 I. Provide copies of any available existing as-built plans and right-of-way
11 drawings from the County's files.

12 J. Provide list of property owners with addresses for notification of property
13 owners upon the Consultant's request.

14 K. Provide preliminary engineering survey data on existing structures and
15 topographic mapping in the formats, quantities, and delivery methods delineated in
16 Appendix D to the Consultant, if available.

17 L. Prepare all legal descriptions and drawings required for right-of-way
18 acquisition and/or temporary construction permits.

19 M. Provide limited assistance to Consultant, as may be appropriate under the
20 circumstances, in connection with Consultant's processing of required permits.

21 N. Give reasonably prompt consideration to all matters submitted for approval by
22 the Consultant in an effort to assist the Consultant in avoiding any substantial delays in the
23 Consultant's program of work. An approval, authorization or request to the Consultant given
24 by the County will be binding upon the County under the terms of this Agreement only if it is
25 made in writing and signed on behalf of the County by the Contract Administrator.

26 **3. Term of Agreement**

27 A. The term of this Agreement shall be for a period of three (3 years), commencing
28 upon execution by the County, through and including the third anniversary of the execution

1 date.

2 B. The Consultant shall commence work promptly after receipt of a Notice to
3 Proceed or Task Order issued by the Contract Administrator. The period of performance for
4 Task Orders shall be in accordance with dates specified in the Task Order. No Task Order
5 will be written which would extend the period of performance beyond the expiration date of
6 this Agreement, the maximum term of which shall not exceed three (3) years.

7 4. **Termination**

8 **A. Non-Allocation of Funds / Funding Requirements**

9 The terms and conditions of this Agreement, and the services to be provided
10 hereunder, are contingent on the approval of funds by the appropriating government
11 agency. Should sufficient funds not be allocated, the services provided may be modified, or
12 this Agreement terminated, at any time by giving the Contractor thirty (30) days advance
13 written notice. This Agreement may be terminated without cause at any time by the County
14 upon thirty (30) calendar days' written notice. If the County terminates this Agreement, the
15 Consultant shall be compensated for services satisfactorily completed to the date of
16 termination based upon the compensation rates and subject to the maximum amounts
17 payable agreed to in Article 5, together with such additional services satisfactorily
18 performed after termination which are expressly authorized by the County to conclude the
19 work performed to date of termination.

20 **B. Breach of Contract**

21 The County may immediately suspend or terminate this Agreement in whole or in
22 part, where in the determination of the County there is:

- 23 1. An illegal or improper use of funds;
24 2. A failure to comply with any term of this Agreement;
25 3. A substantially incorrect or incomplete report submitted to the County;
26 4. Improperly performed service.

27 In no event shall any payment by the County constitute a waiver by the County of
28 any breach of this Agreement or any default which may then exist on the part of the

1 Consultant, nor shall any such payment impair or prejudice any remedy available to the
2 County with respect to the breach or default. The Director shall have the right to demand of
3 the Consultant the repayment to the County of any funds disbursed to the Consultant under
4 this Agreement, which, in the sole judgment of the County were not expended in
5 accordance with the terms of this Agreement. The Consultant shall promptly refund any
6 such funds upon demand. This Section survives the termination of this Agreement.

7 C. Without Cause

8 Under circumstances other than those set forth above, this Agreement may be
9 terminated by County upon the giving of thirty (30) days advance written notice of an
10 intention to terminate to Contractor.

11 **5. Compensation, Allowable Costs and Payments**

12 A. Maximum Cumulative Amount Available

13 The County has or will enter into up to 21 separate agreements, including this
14 Agreement, for performance of the Scope of Services identified hereinabove in Article 1,
15 Section A and more thoroughly in Appendix B attached hereto. The other Agreements are
16 to be entered into by the County with the other consultant firms listed, together with the
17 Consultant, on the list of consultant firms attached hereto as Appendix A. The total amount
18 payable by the County for all the Agreements combined shall not exceed a cumulative
19 maximum total value of Six Million Five Hundred Thousand Dollars (\$6,500,000), which
20 "Not to Exceed Sum" hereinafter shall be referenced as the "NTE Sum".

21 It is understood and agreed that there is no guarantee, either expressed or implied,
22 that all or any specific portion of this maximum NTE Sum will be authorized under the On-
23 Call Engineering Consultant Agreements through Task Orders. It is further understood and
24 agreed that there is no guarantee, either expressed or implied, that any Task Order will be
25 assigned to the Consultant or that the Consultant will receive any payment whatsoever,
26 under the terms of this Agreement. Each time a Task Order is awarded under any of the
27 Agreements, the County shall send written notification to the Consultant and each of the
28 other consultants that entered into the Agreements. Each such notice shall identify the

1 cumulative total of funds allocated under all Task Orders issued hereunder as of that date,
2 and the remaining unencumbered amount of the NTE Sum. The Consultant acknowledges
3 and agrees that the County shall not pay any amount under this Agreement that would
4 cause the NTE Sum to be exceeded, and the Consultant shall not enter into a Task Order
5 that exceeds the remaining unencumbered amount of the NTE Sum.

6 B. Consultant Fee

7 1. The approved Consultant's Cost Proposal is attached hereto as
8 Appendix E and is incorporated by this reference as though fully set forth herein. If there is
9 any conflict between the provisions set forth in the text of this Agreement and the approved
10 Cost Proposal (Appendix E), this Agreement shall take precedence.

11 2. The hourly and cost rates listed in Appendix E for services
12 rendered by the Consultant and subconsultants shall remain in effect for the entire duration
13 of this Agreement unless adjusted in accordance with the provisions of Paragraphs 3, 5, or
14 6 of this Article 5, Section B.

15 3. The hourly rates paid for services performed by the Consultant and
16 by subconsultants of the Consultant and the rates for expenses incidental to the
17 Consultant's and its subconsultant's performance of services may be adjusted no more
18 than once annually for inflation, in accordance with the following provisions: the Consultant
19 may request new labor rates and new rates for expenses incidental to the Consultant's and
20 subconsultant's performance of services subject to written approval of the Contract
21 Administrator in accordance with the provisions of this Article 5, Section B. The Consultant
22 shall initiate the rate adjustment process by submitting to the Contract Administrator a
23 proposed adjusted fee schedule. The proposed adjusted fee schedule shall include
24 proposed hourly rates for all categories of the Consultant's and any subconsultant's wage
25 classifications and proposed rates for incidental expenses listed in Appendix E. The
26 proposed adjusted fee schedule shall not take effect unless approved in writing by the
27 Contract Administrator. The Consultant hereby acknowledges its understanding that
28 approval by the Contract Administrator of any upward adjustment in the hourly and cost

1 rates shall not provide a basis for any increase in the NTE Sum as set forth in Article 5,
2 Section A.

3 4. Expenses incidental to the Consultant's and any subconsultant's
4 performance of services under Article 5 of this Agreement shall be charged at the rates
5 listed in Appendix E, subject to any adjustments that may be approved in accordance with
6 Paragraphs 3, 5, or 6 of this Article 5, Section B. Unless incorporated in an adjusted fee
7 schedule approved by the Contract Administrator in accordance with Paragraphs 3, 5, or 6
8 of this Article 5, Section B, all other expenses incidental to the Consultant's and any
9 subconsultant's performance of the services under Article 1 of this Agreement that are not
10 specifically listed in Appendix E shall be borne by the Consultant.

11 5. In the event that, in accordance with Article 1, Section D, the
12 Contract Administrator approves the Consultant to retain additional subconsultants not
13 listed in Appendix H, hourly rates paid for services performed by such additional
14 subconsultants of the Consultant and the rates for expenses incidental to those additional
15 subconsultants' performance of services may be adjusted no more than once annually for
16 inflation, in accordance with Article 5, Section B, Paragraph 3. The first annual adjustment
17 of hourly and incidental expense rates for such additional subconsultants shall not be
18 submitted for approval prior to one year after the Contract Administrator's approval of the
19 retention of such additional subconsultant(s) by the Consultant.

20 6. Notwithstanding any other provisions in this Agreement, the
21 Contract Administrator may, at any time, authorize in writing the revision of the Consultant's
22 or subconsultant's list of rates for incidental expenses to include additional categories of
23 such expenses if, in the opinion of the Contract Administrator, such revision is necessary to
24 facilitate the Consultant's performance of the Project(s).

25 7. Reimbursement for transportation and subsistence costs shall not
26 exceed the rates as specified in the approved Cost Proposal (Appendix E). The Consultant
27 will be responsible for transportation and subsistence costs in excess of State rates.

28 8. The consideration to be paid to Consultant as provided herein, shall

1 be in compensation for all of Consultant's expenses incurred in the performance hereof,
2 including travel and per diem, unless otherwise expressly so provided.

3 C. Indirect Cost Rate

4 1. In accordance with Article 16, the Indirect Cost Rate (ICR) listed in the
5 Consultant's Cost Proposal (Appendix E) shall match the ICR listed for the Consultant's
6 ICR Forms and all subconsultant's ICR Forms, attached hereto as Appendix F and
7 incorporated by reference.

8 The ICR Forms attached as Appendix F for Consultant or subconsultant with an
9 approved ICR are:

10 a. Consultant Annual Certification of Indirect Costs and Financial
11 Management System (Exhibit 10-K);

12 b. The ICR Schedule with FAR References for Disallowed Costs;

13 c. The Cognizant Approval Letter for the ICR FYE Proposed.

14 The ICR Forms attached as Appendix F for Consultant or subconsultant without an
15 approved ICR is an approved California Safe Harbor Indirect Cost Rate Program
16 Consultant Certification of Eligibility of Contract Costs and Financial Management,
17 otherwise known as a Safe Harbor Rate (SHR) Request Form.

18 2. All parties agree to fix the ICR for the term of the contract.

19 D. Retention

20 In addition to any amounts withheld under Article 1, the Consultant agrees that the
21 County, at the discretion of the Contract Administrator, may withhold a five percent (5%)
22 retention from the earned compensation of the Consultant. If the Contract Administrator
23 determines that retention will not be withheld for a Project, the Contract Administrator will
24 so state in writing prior to commencement of the Project by the Consultant. The Contract
25 Administrator will identify in writing prior to commencement of the Project the Project-
26 specific prerequisites (such as successful completion of a Project phase, as an example)
27 for the release of retentions.
28

1 E. Payments

2 1. Progress payments will be made by the County upon receipt of the
3 Consultant's monthly invoices and approval by the Contract Administrator thereof based on
4 the Contract Administrator's evaluation of the completion of the respective components of
5 the assigned Project. Invoices shall clearly identify the Project by Name(s), the Phase and
6 Task(s) comprising the work that is the subject of the invoice, the Notice to Proceed or
7 Task Order number, and the date(s) on which the work was performed. Invoices shall be
8 submitted together with the documentation identified below in Paragraph 5 of this Article 5,
9 Section E. Invoices shall be forwarded electronically to:

10 PWPBusinessOffice@fresnocountyca.gov

11 2. Upon receipt of a proper invoice, the Contract Administrator will take
12 a maximum of ten (10) working days to review, approve, and submit it to the County
13 Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or inaccurate invoices will be
14 returned to the Consultant for correction and resubmittal. Payment, less retention, if
15 applicable, will be issued to the Consultant within forty-five (45) calendar days of the date
16 the Auditor-Controller/Treasurer-Tax Collector receives the approved invoice.
17

18 3. The County is entitled to withhold a five percent (5%) retention from
19 the Consultant's earned compensation in accordance with the provisions of Article 5,
20 Section D of this Agreement.

21 4. An unresolved dispute over a possible error or omission may cause
22 payment of the Consultant fees in the disputed amount to be withheld by the County.

23 5. Concurrently with the invoices, the Consultant shall certify (through
24 copies of issued checks, receipts, or other County pre-approved documentation) that
25 complete payment, less a five percent (5%) retention if applicable, has been made to all
26 subconsultants as provided herein for all previous invoices paid by the County. However,
27 the parties do not intend that the foregoing creates, as to any subconsultants or
28

1 subcontractors, any purported third-party beneficiary status or any third-party beneficiary
2 rights whatsoever, and the parties do hereby expressly disclaim any such status or rights.

3 6. Final invoices, and separate invoices for retentions, shall be
4 submitted to the Contract Administrator no later than thirty (30) days after the phase is
5 completed. Payment for retentions, if any, shall not be made until all services for the phase
6 are completed.

7 7. In the event the Director reduces the scope of the Consultant's work
8 under this Agreement for a specific Project (or discontinues a specific Project), whether due
9 to a deficiency in the appropriation of anticipated funding or otherwise, the Consultant will
10 be compensated on a pro rata basis for actual work completed and accepted by the
11 Director in accordance with the terms of this Agreement.

12 8. Credits due Consultant that include any equipment purchased under
13 the provisions of Article 27 Equipment Purchase, must be reimbursed by Consultant prior to
14 the expiration or termination of this Agreement.

15 F. Notice to Proceed / Task Orders / Project Cost Proposal

16 1. Upon the acceptance of a project proposal submitted by the
17 Consultant in accordance with the provisions of Article 1, Section I, and if an agreement
18 has been reached on the negotiable items and total cost in connection therewith, then a
19 specific Project will be assigned to the Consultant through issuance by the Contract
20 Administrator of one or more Task Orders or Notices to Proceed (NTP). Task Orders may
21 be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both
22 of which must be based on the labor and other rates set forth in the Consultant's approved
23 Cost Proposal (Appendix E to this Agreement).

24 2. A Project Cost Proposal is of no force or effect and no expenditures
25 are authorized on a Project and work shall not commence until an NTP for that Project has
26 been issued by the County.
27
28

1 3. If the Consultant fails to satisfactorily complete a deliverable
2 according to the schedule set forth in a Task Order, no payment will be made until the
3 deliverable has been satisfactorily completed.

4 4. When milestone or phase cost estimates are included in the Project
5 Cost Proposal and/or Task Order, the Consultant shall obtain prior written approval for a
6 revised Project Cost Proposal from the Contract Administrator before exceeding such
7 estimate.

8 5. The Consultant shall not commence performance of any work or
9 services hereunder until this Agreement has been formally approved by the County and an
10 NTP on a specific Project has been issued by the County's Contract Administrator. No
11 payment will be made prior to approval or for any work performed by the Consultant prior to
12 the County's formal approval of this Agreement.

13 6. The period of performance for each NTP shall be in accordance with
14 dates specified in the NTP. Consistent with the provisions of Article 3, Section B, no NTP
15 will be issued that would extend the Consultant's period of performance beyond the
16 expiration date of this Agreement.

17 7. NTP's may not be used to amend any provision of this Agreement or
18 to expand the scope of the Consultant's work as authorized under the provisions of this
19 Agreement.
20

21 6. **Independent Contractor**

22 A. In performance of the work, duties and obligations assumed by the Consultant
23 under this Agreement, it is mutually understood and agreed that the Consultant, including any
24 and all of the Consultant's officers, agents, and employees will at all times be acting and
25 performing as an independent contractor, and shall act in an independent capacity and not as
26 an officer, agent, servant, employee, joint venturer, partner, or associate of the County.
27 Furthermore, the County shall have no right to control or supervise or direct the manner or
28 method by which the Consultant shall perform its work and function. However, the County

1 shall retain the right to administer this Agreement so as to verify that the Consultant is
2 performing its obligations in accordance with the terms and conditions thereof.

3 B. The Consultant and the County shall comply with all applicable provisions of law
4 and the rules and regulations, if any, of governmental authorities having jurisdiction over
5 matters the subject thereof.

6 C. Because of its status as an independent contractor, the Consultant shall have
7 absolutely no right to employment rights and benefits available to County employees. The
8 Consultant shall be solely liable and responsible for providing to, or on behalf of, its
9 employees all legally-required employee benefits. In addition, the Consultant shall be solely
10 responsible and save the County harmless from all matters relating to payment of the
11 Consultant's employees, including compliance with Social Security withholding and all other
12 regulations governing such matters. It is acknowledged that during the term of this
13 Agreement, the Consultant may be providing services to others unrelated to the County or to
14 this Agreement.

15 7. **Modification / Change In Terms**

16 A. This Agreement may be amended or modified only by mutual written agreement
17 of both parties. Except to the limited extent allowed under Article 5, Section B, and Article
18 7, Section C, and Article 16, Section A, any such written amendment to this Agreement
19 may be approved on the County's behalf only by its Board of Supervisors.

20 B. The Consultant shall only commence work covered by an amendment after the
21 amendment has been fully executed and a written NTP has been issued by the Contract
22 Administrator.

23 C. There shall be no change in Consultant's Project Manager or members of the
24 project team, as listed in Appendix A and the approved Cost Proposal (Appendix E, which
25 is incorporated as a part of this Agreement as provided in Article 5, Section 1), without prior
26 written approval by the County's Contract Administrator. Any substitutions of personnel
27 must be approved in advance by the Contract Administrator, which approval shall not be
28 unreasonably withheld. The Consultant shall notify the Contract Administrator of the names

1 and classifications of employees assigned to each specific Project and shall not reassign
2 such employees to other projects of the Consultant without notification to and prior approval
3 by the Contract Administrator.

4 8. **Non-Assignment**

5 Neither party shall assign, transfer or sub-contract this Agreement or any of its
6 respective rights or duties under this Agreement hereunder, without the prior written
7 consent of the other party.

8 9. **Hold Harmless**

9 A. The Consultant shall defend, hold harmless and indemnify the County, its
10 officers, agents, and employees, against the payment of any and all costs and expenses
11 (including reasonable attorney fees and court costs), damages, claims, suits, losses, and
12 liability for bodily and personal injury to or death of any person or for loss of any property,
13 economic loss or otherwise resulting from or arising out of any negligent or wrongful acts,
14 errors or omissions of the Consultant, its officers, agents, and employees, in performing or
15 failing to perform any work, services, or functions under this Agreement. Provided,
16 however, and notwithstanding the immediately preceding sentence, with respect to any
17 Project on which the Consultant has provided design professional services as defined by
18 Civil Code Section 2782.8(c), the Consultant has no obligation to pay for any defense
19 related cost prior to a final determination of its liability, based upon the percentage of
20 comparative fault (if any) finally determined to be attributable to the Consultant's
21 negligence, recklessness or willful misconduct. Following any such determination, the
22 Consultant shall be responsible to pay to the County the dollar amount of all such defense
23 costs incurred by the County that is commensurate with the finally determined percentage
24 of the Consultant's liability, based upon the final determination of the Consultant's
25 comparative fault. The provisions of this Article 9, Section A shall survive termination of this
26 Agreement.

27 B. The County and the Consultant hereby declare their mutual intent to
28 cooperate in the defense of any claim, suit, or other action alleging liability, arising from the

negligent performance or failure to perform of any County construction contractor (or its subcontractor(s)) involved in the construction of any Project(s). Such cooperation may include an agreement to prepare and present a cooperative defense after consultation with the Consultant's professional liability insurance carrier.

10. **Liability Insurance**

Without limiting the County's right to obtain indemnification from the Consultant or any third parties, the Consultant, at its sole expense, shall maintain in full force and effect, the following insurance policies prior to commencement of any work for the County and, thereafter, throughout the entire term of this Agreement.

A. Commercial General Liability

Commercial General Liability Insurance with limits of not less than Two Million Dollars **(\$2,000,000.00)** per occurrence and an annual aggregate of not less than Four Million Dollars **(\$4,000,000.00)**. This policy shall be issued on a per occurrence basis. The County may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this Agreement.

B. Automobile Liability

Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars **(\$1,000,000.00)** per accident for bodily injury and for property damages. Coverage should include any auto used in connection with this Agreement.

C. Professional Liability Insurance:

1. If the Consultant employs licensed professional staff in providing services, Professional Liability Insurance with limits of One Million Dollars **(\$1,000,000.00)** per claim, Three Million Dollars **(\$3,000,000.00)** annual aggregate is required.

2. The Professional Liability Insurance shall be kept in full force and effect for a period of five (5) years from the date of substantial completion of the Consultant's work as determined by the County.

1 D. Worker's Compensation

2 A policy of Worker's Compensation insurance as may be required by the California
3 Labor Code.

4 E. Additional Requirements Relating to Insurance

5 The Consultant shall obtain endorsements to the Commercial General Liability
6 insurance naming the County of Fresno, its officers, agents, and employees, individually and
7 collectively, as additional insured, but only insofar as the operations under this Agreement
8 are concerned. Such coverage for additional insured shall apply as primary insurance and
9 any other insurance, or self-insurance, maintained by the County, its officers, agents, and
10 employees shall be excess only and not contributing with insurance provided under the
11 Consultant's policies required herein. This insurance shall not be cancelled or changed
12 without a minimum of thirty (30) days advance written notice given to the County.

13 The CONSULTANT hereby waives its right to recover from the County, its officers,
14 agents, and employees any amounts paid by the policy of worker's compensation insurance
15 required by this Agreement. The Consultant is solely responsible to obtain any endorsement
16 to such policy that may be necessary to accomplish such waiver of subrogation, but the
17 Consultant's waiver of subrogation under this paragraph is effective whether or not the
18 Consultant obtains such an endorsement.

19 Prior to commencing any such work under this Agreement, the Consultant shall
20 provide certificates of insurance and endorsements as stated above for all of the foregoing
21 policies, as required herein, to the County of Fresno, Erin Haagenson, Principal Staff Analyst,
22 2220 Tulare St., Sixth Floor, Fresno, CA 93721, stating that such insurance coverages have
23 been obtained and are in full force; that the County of Fresno, its officers, agents and
24 employees will not be responsible for any premiums on the policies; that for such worker's
25 compensation insurance the Consultant has waived its right to recover from the County, its
26 officers, agents, and employees any amounts paid under the insurance policy and that waiver
27 does not invalidate the insurance policy; that such Commercial General Liability insurance
28 names the County of Fresno, its officers, agents and employees, individually and collectively,

1 as additional insured, but only insofar as the operations under this Agreement are concerned;
2 that such coverage for additional insured shall apply as primary insurance and any other
3 insurance, or self-insurance, maintained by the County, its officers, agents and employees,
4 shall be excess only and not contributing with insurance provided under the Consultant's
5 policies herein; and that this insurance shall not be cancelled or changed without a minimum
6 of thirty (30) days advance, written notice given to the County.

7 All policies shall be issued by admitted insurers licensed to do business in the State
8 of California, and such insurance shall be purchased from companies possessing a current
9 A.M. Best, Inc. rating of A FSC VII or better.

10 The Consultant agrees that the bodily injury liability insurance herein provided for,
11 shall be in effect at all times during the term of this Agreement. In the event said insurance
12 coverage expires at any time or times during the term of this Agreement, Consultant agrees
13 to provide at least thirty (30) calendar days prior notice to said expiration date; and a new
14 Certificate of Insurance evidencing insurance coverage as provided for herein, for not less
15 than either the remainder of the term of the Agreement, or for a period of not less than one
16 (1) year. New Certificates of Insurance are subject to the approval of County.

17 In the event the Consultant fails to keep in effect at all times the insurance
18 coverages as required by this Article 10, the County may, in addition to any other remedies
19 it may have, suspend or terminate this Agreement upon occurrence of such failure, or may
20 purchase such insurance coverage and charge the cost of the coverage to the Consultant.
21 The County may offset such charges against any amounts owed by the County to the
22 Consultant under this Agreement.

23 **11. Audits / Retention of Record**

24 A. The Consultant shall at any time during business hours, and as often as the
25 County may deem necessary, make available to the County for examination all of its
26 records and data with respect to the matters covered by this Agreement. The Consultant
27 shall, upon request by the County, permit the County to audit and inspect all of such
28 records and data, including but not limited to, the costs of administering this Agreement,

1 necessary to ensure the Consultant's compliance with the terms of this Agreement (and
2 compliance with Public Contract Code 10115, et seq. and Title 21, California Code of
3 Regulations, Chapter 21, Section 2500 et seq., when applicable).

4 B. For the purpose of determining compliance with Government Code section
5 8546.7, the Consultant, its subconsultants, and County shall maintain all books,
6 documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate
7 workpapers, and other evidence pertaining to the performance of the Agreement including,
8 but not limited to, the costs of administering the Agreement. All parties, including the
9 Consultant's Independent CPA, shall make such workpapers and materials available at
10 their respective offices at all reasonable times during the Agreement period and for three
11 (3) years from the date of final payment under the Agreement. The County, Caltrans
12 Auditor, FHWA, or any duly authorized representative of the Federal government having
13 jurisdiction under Federal laws or regulations (including without limitation when such
14 jurisdiction is based upon Federal funding of the Project in whole or in part) shall have
15 access to any books, records, and documents of the Consultant, its subconsultants, and
16 the Consultant's Independent CPA, that are pertinent to the Agreement for audits,
17 examinations, workpaper review, excerpts, transactions, and copies thereof shall be
18 furnished if requested without limitation. It shall be the responsibility of the Consultant to
19 ensure that all subcontracts in excess of \$25,000 shall contain this provision.

20 C. This Article 11 survives the termination of this Agreement.

21 12. **Notices**

22 The delivery of all notices hereunder and communications regarding interpretation of
23 the terms of this Agreement and any proposed changes thereto, shall be accomplished by
24 sending an e-mail, addressed to the Contract Administrator and the Consultant's Project
25 Manager as identified on Pages 3 and 4 of this Agreement. For all claims arising out of or
26 related to this Agreement, nothing in this section establishes, waives, or modifies any
27 claims presentation requirements or procedures provided by law, including but not limited
28 to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning

with section 810).

13. **Governing Law**

Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California.

The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

14. **Disclosure of Self-Dealing Transactions**

This provision is only applicable if the Consultant is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this Agreement, the Consultant changes its status to operate as a corporation. Members of the Consultant's Board of Directors shall disclose any self-dealing transactions that they are a party to while the Consultant is providing goods or performing services under this Agreement. A self-dealing transaction shall mean a transaction to which the Consultant is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a Self-Dealing Transaction Disclosure Form, attached hereto as Appendix G and incorporated herein by reference, and submitting it to the County prior to commencing with the self-dealing transaction or immediately thereafter.

15. **Electronic Signature**

The parties agree that this Agreement may be executed by electronic signature as provided in this section.

A. An "electronic signature" means any symbol or process intended by an individual signing this Agreement to represent their signature, including but not limited to: (1) a digital signature; (2) a faxed version of an original handwritten signature; or (3) an electronically scanned and transmitted (for example by PDF document) version of an original handwritten signature.

B. Each electronic signature affixed or attached to this Agreement: (1) is deemed equivalent to a valid original handwritten signature of the person signing this

1 Agreement for all purposes, including but not limited to evidentiary proof in any
2 administrative or judicial proceeding; and (2) has the same force and effect as the valid
3 original handwritten signature of that person.

4 C. The provisions of this section satisfy the requirements of Civil Code section
5 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,
6 Part 2, Title 2.5, beginning with section 1633.1).

7 D. Each party using a digital signature represents that it has undertaken and
8 satisfied the requirements of Government Code section 16.5, subdivision (a), paragraphs
9 (1) through (5), and agrees that each other party may rely upon that representation.

10 E. This Agreement is not conditioned upon the parties conducting the
11 transactions under it by electronic means and either party may sign this Agreement with an
12 original handwritten signature.

13 16. **Subconsultants**

14 A. The Consultant may retain, as subconsultants, specialists in such engineering
15 disciplines (including, but not limited to, structural, mechanical, transportation,
16 environmental, water resources, electrical, surveying and geotechnical) as the Consultant
17 requires to assist in completing the work. The subconsultants listed in Appendix H,
18 attached hereto and incorporated herein, shall be considered as approved by the Contract
19 Administrator. Any other subconsultants proposed for use by the Consultant shall be
20 approved in writing by the Contract Administrator before they are retained by the
21 Consultant, which approval shall not be unreasonably withheld.

22 B. Should the Consultant retain any subconsultants, the maximum amount of
23 compensation to be paid to the Consultant under Article 5 shall not be increased. Any
24 additional compensation to be paid to the Consultant for such subconsultants' work shall be
25 limited to administrative time as defined in the fee proposal. Additional fees other than
26 those defined in the fee proposal shall not be reimbursed.

27 C. Consultant shall be as fully responsible to the County for the negligent acts
28 and omissions of its contractors and subcontractors or subconsultants, and of persons

1 either directly or indirectly employed by them, in the same manner as persons directly
2 employed by Consultant.

3 D. Nothing contained in this Agreement shall create any contractual relationship
4 between the County and any of the Consultant's subconsultants, and no subconsultant
5 agreement shall relieve the Consultant of any of its responsibilities and obligations
6 hereunder. The Consultant agrees to be as fully responsible to the County for the acts and
7 omissions of its subconsultants and of persons either directly or indirectly employed by any
8 of them as it is for the acts and omissions of persons directly employed by the Consultant.
9 The Consultant's obligation to pay its subconsultants is a separate and independent
10 obligation that is entirely unrelated to the County's obligation to make payments to the
11 Consultant.

12 E. The Consultant shall perform the work contemplated with resources available
13 within its own organization; and no portion of the work pertinent to this contract shall be
14 subcontracted without prior written authorization by the Contract Administrator, excepting
15 only those portions of the work and the responsible subconsultants that are expressly
16 identified in Appendix H.

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

20 G. The Consultant shall pay its subconsultants within fifteen (15) calendar days
21 from receipt of each progress payment made to the Consultant by the County.

22 H. Any substitution of subconsultant(s) must be approved in writing by the
23 Contract Administrator in advance of assigning work to a substitute subconsultant.

24 I. Prompt Progress Payment

25 The Consultant or subconsultant shall pay to any subconsultant, not later than fifteen
26 (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the
27 respective amounts allowed Consultant on account of the work performed by the
28 subconsultants, to the extent of each subconsultant's interest therein. In the event that

1 there is a good faith dispute over all or any portion of the amount due on a progress
2 payment from the Consultant or subconsultant to a subconsultant, the Consultant or
3 subconsultant may withhold no more than 150 percent (150%) of the disputed amount. Any
4 violation of this requirement shall constitute a cause for disciplinary action and shall subject
5 the violator to a penalty, payable to the subconsultant, of two percent (2%) of the amount
6 due per month for every month that payment is not made.

7 In any action for the collection of funds wrongfully withheld, the prevailing party shall
8 be entitled to his or her attorney's fees and costs. The sanctions authorized under this
9 requirement shall be separate from, and in addition to, all other remedies, either civil,
10 administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

11 J. Prompt Payment of Withheld Funds to Subconsultants

12 The County may hold retainage from the Consultant as provided in Article 5, Section
13 D.

14 1. If the County has elected to hold retainage for a Project under Article 5,
15 Section D, the County shall hold retainage from the Consultant and shall make prompt and
16 regular incremental acceptances of portions, as determined by the County of the contract
17 work and pay retainage to the Consultant based on these acceptances. The Consultant or
18 subconsultant shall return all monies withheld in retention from all subconsultants within
19 fifteen (15) days after receiving payment for work satisfactorily completed and accepted
20 including incremental acceptances of portions of the contract work by the County. Any
21 delay or postponement of payment may take place only for good cause and with the
22 County's prior written approval, in order to ensure prompt and full payment of any retainage
23 kept by the Consultant or subconsultant to a subconsultant.

24 Any violation of these provisions shall subject the violating Consultant or
25 subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of
26 the California Civil Code. This requirement shall not be construed to limit or impair any
27 contractual, administrative or judicial remedies otherwise available to the Consultant or
28 subconsultant in the event of a dispute involving late payment or nonpayment by the

1 Consultant, or deficient subconsultant performance and/or noncompliance by a
2 subconsultant. This clause applies to both DBE and non-DBE subconsultants.

3 2. If the County has elected not to hold retainage for a Project under Article 5,
4 Section D, no retainage will be held by the County from progress payments due to the
5 Consultant; and in such case, the Consultant and its subconsultants are prohibited from
6 holding retainage from their subconsultants. Any delay or postponement of payment may
7 take place only for good cause and with the County's prior written approval. Any violation of
8 these provisions shall subject the violating Consultant or subconsultant to the penalties,
9 sanctions, and other remedies specified in Section 3321 of the California Civil Code. This
10 requirement shall not be construed to limit or impair any contractual, administrative or
11 judicial remedies otherwise available to the Consultant or subconsultant in the event of a
12 dispute involving late payment or nonpayment by the Consultant, or deficient subconsultant
13 performance and/or noncompliance by a subconsultant. This clause applies to both DBE
14 and non-DBE subconsultants.

15 17. **Conflict of Interest**

16 A. The Consultant shall comply with the provisions of the Fresno County
17 Department of Public Works and Planning Conflict of Interest Code, attached hereto as
18 Appendix I and incorporated herein by this reference. Such compliance shall include the
19 filing of annual statements pursuant to the regulations of the State Fair Political Practices
20 Commission including, but not limited to, portions of Form 700.

21 B. During the term of this Agreement, the Consultant shall disclose any financial,
22 business, or other relationship with the County that may have an impact upon the outcome
23 of this contract, or any ensuing County construction project. The Consultant shall also list
24 current clients who may have a financial interest in the outcome of this contract, or any
25 ensuing County construction project, which will follow.

26 C. The Consultant certifies that it has disclosed to the County any actual, apparent,
27 or potential conflicts of interest that may exist relative to the services to be provided
28 pursuant to this Agreement. The Consultant agrees to advise the County of any actual,

1 apparent or potential conflicts of interest that may develop subsequent to the date of
2 execution of this Agreement. The Consultant further agrees to complete any statements of
3 economic interest if required by either County ordinance or State law.

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

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

13 F. The Consultant and affiliated subconsultants shall not submit bids, or sub-bids,
14 for the contract construction phase of the Project(s) assigned to the Consultant. The
15 Consultant and its subconsultants, and all other service providers, shall not provide any
16 Project-related services for, or receive any Project-related compensation from any
17 construction contractor, subcontractor or service provider awarded a construction contract
18 (hereinafter referred to as "contractor") for all or any portion of the Project(s) for which the
19 Consultant provides services hereunder. The Consultant and its subconsultants, and all
20 other service providers, may provide services for, and receive compensation from a
21 contractor who has been awarded a construction contract for all or any portion of the
22 Project(s), provided that any such services which are rendered, and any compensation
23 which is received therefor, relates to work outside the scope of the Agreement and does
24 not pose a conflict of interest.

25 G. Except for subconsultants or subcontractors whose services are limited to
26 providing surveying or materials testing information, no subcontractor who has provided
27 design services in connection with this contract shall be eligible to bid on any construction
28 contract, or on any contract to provide construction inspection for any construction project

1 resulting from this contract; provided, however, that this shall not be construed as
2 disallowing subcontractors who have provided design services for the Project from
3 performing, pursuant to this Agreement or other agreement with the County, construction
4 inspection services on behalf of the County for the Project.

5 18. **Errors or Omissions Claims and Disputes**

6 A. Definitions:

7 1. A "Consultant" is a duly licensed Architect or Engineer, or other provider of
8 professional services, acting as a business entity (owner, partnership, corporation, joint
9 venture or other business association) in accordance with the terms of an agreement with
10 the County.

11 2. A "Claim" is a demand or assertion by one of the parties seeking, as a
12 matter of right, adjustment or interpretation of contract terms, payment of money, extension
13 of time, change orders, or other relief with respect to the terms of the contract. The term
14 "Claim" also includes other disputes and matters in question between the County and the
15 Consultant arising out of or relating to the contract. Claims must be made by written notice.
16 The provisions of Government Code section 901, et seq., shall apply to every claim made
17 to the County. The responsibility to substantiate claims shall rest with the party making the
18 claim. The term "Claim" also includes any allegation of an error or omission by the
19 Consultant.

20 B. In the spirit of cooperation between the County and the Consultant, the following
21 procedures are established in the event of any claim or dispute alleging a negligent error,
22 act, or omission, of the Consultant.

23 1. Claims, disputes or other matters in question between the parties, arising
24 out of or relating to this Agreement, shall not be subject to arbitration, but shall be subject
25 to the following procedures.

26 2. The County and the Consultant shall meet and confer and attempt to
27 reach agreement on any dispute, including what damages have occurred, the measure of
28 damages and what proportion of damages, if any, shall be paid by either party. The parties

1 agree to consult and consider the use of mediation or other form of dispute resolution prior
2 to resorting to litigation.

3 3. If the County and the Consultant cannot reach agreement under Article 18,
4 Section B, Paragraph 2, the disputed issues may, upon concurrence by all parties, be
5 submitted to a panel of three (3) for a recommended resolution. The Consultant and the
6 County shall each select one (1) member of the panel, and the third member shall be
7 selected by the other two panel members. The discovery rights provided by California Code
8 of Civil Procedure for civil proceedings shall be available and enforceable to resolve the
9 disputed issues. Either party requesting this dispute resolution process shall, when invoking
10 the rights to this panel, give to the other party a notice describing the claims, disputes and
11 other matters in question. Prior to twenty (20) working days before the initial meeting of the
12 panel, both parties shall submit all documents such party intends to rely upon to resolve
13 such dispute. If it is determined by the panel that any party has relied on such
14 documentation but has failed to previously submit such documentation on a timely basis to
15 the other party, the other party shall be entitled to a twenty (20) working day continuance of
16 such initial meeting of the panel. The decision by the panel is not a condition precedent to
17 arbitration, mediation or litigation.

18 4. Upon receipt of the panel's recommended resolution of the disputed
19 issue(s), the County and the Consultant shall again meet and confer and attempt to reach
20 agreement. If the parties still are unable to reach agreement, each party shall have
21 recourse to all appropriate legal and equitable remedies.

22 C. The procedures to be followed in the resolution of claims and disputes may be
23 modified any time by mutual agreement of the parties hereto.

24 D. The Consultant shall continue to perform its obligations under this Agreement
25 pending resolution of any dispute, and the County shall continue to make payments of all
26 undisputed amounts due under this Agreement.

27 E. When a claim by either party has been made alleging the Consultant's negligent
28 error, act, or omission, the County and the Consultant shall meet and confer within twenty-

one (21) working days after the written notice of the claim has been provided.

19. **Ownership of Data**

A. All documents, including preliminary documents, calculations, and survey data, required in performing services under this Agreement shall be submitted to, and shall remain at all times the property of the County regardless of whether they are in the possession of the Consultant or any other person, firm, corporation or agency.

B. The Consultant understands and agrees the County shall retain full ownership rights of the drawings and work product of the Consultant for the Project, to the fullest extent permitted by law. In this regard, the Consultant acknowledges and agrees the Consultant's services are on behalf of the County and are "works made for hire," as that term is defined in copyright law, by the County; that the drawings and work product to be prepared by the Consultant are for the sole and exclusive use of the County, and that the County shall be the sole owner of all patents, copyrights, trademarks, trade secrets and other rights and contractual interests in connection therewith which are developed and compensated solely under this Agreement; that all the rights, title and interest in and to the drawings and work product will be transferred to the County by the Consultant to the extent the Consultant has an interest in and authority to convey such rights; and the Consultant will assist the County to obtain and enforce patents, copyrights, trademarks, trade secrets, and other rights and contractual interests relating to said drawings and work product, free and clear of any claim by the Consultant or anyone claiming any right through the Consultant. The Consultant further acknowledges and agrees the County's ownership rights in such drawings or work product, shall apply regardless of whether such drawings or work product, or any copies thereof, are in possession of the Consultant, or any other person, firm, corporation, or entity. For purposes of this Agreement the terms "drawings and work product" shall mean all reports and study findings commissioned to develop the Project design, drawings and schematic or preliminary design documents, certified reproducibles of the original final construction contract drawings, specifications, the approved estimate, record drawings, as-built plans, and discoveries, developments,

1 designs, improvement, inventions, formulas, processes, techniques, or specific know-how
2 and data generated or conceived or reduced to practice or learning by the Consultant,
3 either alone or jointly with others, that result from the tasks assigned to the Consultant by
4 the County under this Agreement.

5 C. If this Agreement is terminated during or at the completion of any phase under
6 Article 3, electronic and reproducible copies of report(s) or preliminary documents shall be
7 submitted by the Consultant to the County, which may use them to complete the Project(s)
8 at a future time.

9 D. If the Project is terminated at the completion of a construction document phase of
10 the Project, electronic and certified reproducibles on 4 mil thick double matte film of the
11 original final construction contract drawings, specifications, and approved engineer's
12 estimate shall be submitted by the Consultant to the County.

13 E. Documents, including drawings and specifications, prepared by the Consultant
14 pursuant to this Agreement are intended to be suitable for reuse by the County or others on
15 extensions of the services provided for the Project. Any use of completed documents for
16 projects other than Project(s) and/or any use of uncompleted documents will be at the
17 County's sole risk and without liability or legal exposure to the Consultant.

18 The electronic files provided by the Consultant to the County are submitted for an
19 acceptance period lasting until the expiration of this Agreement (i.e., throughout the
20 duration of the contract term, including any extensions). Any defects the County discovers
21 during such acceptance period will be reported to the Consultant and will be corrected as
22 part of the Consultant's "Basic Scope of Work."

23 F. The Consultant shall not be liable for claims, liabilities or losses arising out of, or
24 connected with (1) the modification or misuse by the County or anyone authorized by the
25 County, of such CAD data, or (2) decline of accuracy or readability of CAD data due to
26 inappropriate storage conditions or duration; or (3) any use by the County, or anyone
27 authorized by the County, of such CAD data or other Project documentation for additions to
28 the Project for the completion of the Project by others, or for other projects; except to the

1 extent that said use may be expressly authorized, in writing, by the Consultant.

2 G. The County, in the discretion of its Board of Supervisors, may permit the
3 copyrighting of reports or other products. If copyrights are permitted, the Consultant hereby
4 agrees and this Agreement shall be deemed to provide that the Federal Highway
5 Administration shall have the royalty-free nonexclusive and irrevocable right to reproduce,
6 publish, or otherwise use, and to authorize others to use, the work for government
7 purposes.

8 20. **Consultant's Legal Authority**

9 The Consultant represents and warrants to the County that:

10 A. The Consultant is duly authorized and empowered to sign and perform its
11 obligations under this Agreement; and

12 B. The individual signing this Agreement on behalf of the Consultant is duly
13 authorized to do so and his or her signature on this Agreement legally binds the Consultant
14 to the terms of this Agreement.

15 21. **Binding Upon Successors**

16 This Agreement shall be binding upon and inure to the benefit of the parties and
17 their respective successors in interest, assigns, legal representatives, and heirs.

18 22. **Severability**

19 If any part of this Agreement is determined by a court of competent jurisdiction to be
20 unlawful or otherwise unenforceable, then this Agreement shall be construed as not
21 containing such provision, and all other provisions which are otherwise lawful shall remain
22 in full force and effect, and to this end the provisions of this Agreement are hereby declared
23 to be severable.

24 23. **State Prevailing Wage Rates**

25 A. No Consultant or subconsultant may be awarded an Agreement containing public
26 work elements unless registered with the Department of Industrial Relations (DIR) pursuant
27 to Labor Code section 1725.5. Registration with DIR must be maintained throughout the
28

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 from the Department of Industrial Relations website <http://www.dir.ca.gov>. These wage rates are made a specific part of this Agreement by reference pursuant to Labor Code section 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 County construction sites, at County facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve County 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. Payroll Records

1. Each Consultant and subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code section 1776 and as defined in California Code of Regulations, Title 8, Section 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 sections 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 County

1 representatives at all reasonable hours at the principal office of the Consultant. The
2 Consultant shall provide copies of certified payrolls or permit inspection of its records as
3 follows:

4 a. A certified copy of an employee's payroll record shall be made
5 available for inspection or furnished to the employee or the employee's authorized
6 representative on request.

7 b. A certified copy of all payroll records enumerated in paragraph (1)
8 above, shall be made available for inspection or furnished upon request to a representative
9 of the County, the Division of Labor Standards Enforcement and the Division of
10 Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls
11 submitted to the County, the Division of Labor Standards Enforcement and the Division of
12 Apprenticeship Standards shall not be altered or obliterated by the Consultant.

13 c. The public shall not be given access to certified payroll records by the
14 Consultant. The Consultant is required to forward any requests for certified payrolls to the
15 County Contract Administrator by both email and regular mail on the business day following
16 receipt of the request.

17 3. Each Consultant shall submit a certified copy of the records
18 enumerated in paragraph (1) above, to the entity that requested the records within ten (10)
19 calendar days after receipt of a written request.

20 4. Any copy of records made available for inspection as copies and
21 furnished upon request to the public or any public agency by the County shall be marked or
22 obliterated in such a manner as to prevent disclosure of each individual's name, address,
23 and social security number. The name and address of the Consultant or subconsultant
24 performing the work shall not be marked or obliterated.

25 5. The Consultant shall inform the County of the location of the records
26 enumerated under paragraph (1) above, including the street address, city and county, and
27 shall, within five (5) working days, provide a notice of a change of location and address.

28 6. The Consultant or subconsultant shall have ten (10) calendar days in

1 which to comply subsequent to receipt of written notice requesting the records enumerated
2 in paragraph (1) above. In the event the Consultant or Subconsultant fails to comply within
3 the ten (10) day period, he or she shall, as a penalty to the County, forfeit one hundred
4 dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict
5 compliance is effectuated. Such penalties shall be withheld by the County from payments
6 then due. The Consultant is not subject to a penalty assessment pursuant to this section
7 due to the failure of a subconsultant to comply with this section.

8 D. When prevailing wage rates apply, the Consultant is responsible for verifying
9 compliance with certified payroll requirements. Invoice payment will not be made until the
10 invoice is approved by the County Contract Administrator.

11 E. Penalty

12 1. The Consultant and any of its subconsultants shall comply with Labor
13 Code sections 1774 and 1775. Pursuant to Labor Code section 1775, the Consultant and
14 any subconsultant shall forfeit to the County a penalty of not more than two hundred dollars
15 (\$200) for each calendar day, or portion thereof, for each worker paid less than the
16 prevailing rates as determined by the Director of DIR for the work or craft in which the
17 worker is employed for any public work done under the Agreement by the Consultant or by
18 its subconsultant in violation of the requirements of the Labor Code and in particular, Labor
19 Code sections 1770 to 1780, inclusive.

20 2. The amount of this forfeiture shall be determined by the Labor
21 Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of
22 the Consultant or subconsultant in failing to pay the correct rate of prevailing wages, or the
23 previous record of the Consultant or subconsultant in meeting their respective prevailing
24 wage obligations, or the willful failure by the Consultant or subconsultant to pay the correct
25 rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct
26 rates of prevailing wages is not excusable if the Consultant or subconsultant had
27 knowledge of the obligations under the Labor Code. The Consultant is responsible for
28 paying the appropriate rate, including any escalations that take place during the term of the

1 Agreement.

2 3. In addition to the penalty and pursuant to Labor Code section 1775, the
3 difference between the prevailing wage rates and the amount paid to each worker for each
4 calendar day or portion thereof for which each worker was paid less than the prevailing
5 wage rate shall be paid to each worker by the Consultant or subconsultant.

6 4. If a worker employed by a subconsultant on a public works project is
7 not paid the general prevailing per diem wages by the subconsultant, the prime Consultant
8 of the project is not liable for the penalties described above unless the prime Consultant
9 had knowledge of that failure of the subconsultant to pay the specified prevailing rate of
10 wages to those workers or unless the prime Consultant fails to comply with all of the
11 following requirements:

12 a. The Agreement executed between the Consultant and the
13 subconsultant for the performance of work on public works projects shall include a copy of
14 the requirements in Labor Code sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

15 b. The Consultant shall monitor the payment of the specified general
16 prevailing rate of per diem wages by the subconsultant to the employees by periodic review
17 of the certified payroll records of the subconsultant.

18 c. Upon becoming aware of the subconsultant's failure to pay the
19 specified prevailing rate of wages to the subconsultant's workers, the Consultant shall
20 diligently take corrective action to halt or rectify the failure, including but not limited to,
21 retaining sufficient funds due the subconsultant for work performed on the public works
22 project.

23 d. Prior to making final payment to the subconsultant for work performed
24 on the public works project, the Consultant shall obtain an affidavit signed under penalty of
25 perjury from the subconsultant that the subconsultant had paid the specified general
26 prevailing rate of per diem wages to the subconsultant's employees on the public works
27 project and any amounts due pursuant to Labor Code section 1813.

28 5. Pursuant to Labor Code section 1775, the County shall notify the

1 Consultant on a public works project within fifteen (15) calendar days of receipt of a
2 complaint that a subconsultant has failed to pay workers the general prevailing rate of per
3 diem wages.

4 6. If the County determines that employees of a subconsultant were not
5 paid the general prevailing rate of per diem wages and if the County did not retain sufficient
6 money under the Agreement to pay those employees the balance of wages owed under the
7 general prevailing rate of per diem wages, the Consultant shall withhold an amount of
8 moneys due the subconsultant sufficient to pay those employees the general prevailing rate
9 of per diem wages if requested by the County.

10 F. Hours of Labor

11 Eight (8) hours of labor constitutes a legal day's work. The Consultant shall forfeit, as
12 a penalty to the County, twenty-five dollars (\$25) for each worker employed in the
13 execution of the Agreement by the Consultant or any of its subconsultants for each
14 calendar day during which such worker is required or permitted to work more than eight (8)
15 hours in any one calendar day and forty (40) hours in any one calendar week in violation of
16 the provisions of the Labor Code, and in particular sections 1810 to 1815 thereof, inclusive,
17 except that work performed by employees in excess of eight (8) hours per day, and forty
18 (40) hours during any one week, shall be permitted upon compensation for all hours
19 worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less
20 than one and one half (1.5) times the basic rate of pay, as provided in section 1815.

21 G. Employment of Apprentices

22 1. Where either the prime Agreement or the subconsultant agreement
23 exceeds thirty thousand dollars (\$30,000), the Consultant and any subconsultants under
24 him or her shall comply with all applicable requirements of Labor Code sections 1777.5,
25 1777.6 and 1777.7 in the employment of apprentices.

26 2. Consultant and all subconsultants are required to comply with all Labor
27 Code requirements regarding the employment of apprentices, including mandatory ratios of
28 journey level to apprentice workers. Prior to commencement of work, the 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 section 1777.7.

24. **Disadvantaged Business Enterprises (DBE) Participation**

A. This Agreement is subject to 49 Code of Federal Regulations (hereinafter referred to as "49 CFR"), Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, Disadvantaged Business Enterprise programs established by other federal agencies and/or the County's Disadvantaged Business Enterprise Program (all of which are hereinafter referred to as "DBE Program(s)"),

B. The Consultant is responsible for being fully informed regarding the requirements of 49 CFR, Part 26 and the CALTRANS Disadvantaged Business Enterprise program developed pursuant to the regulations, as detailed in Appendix J, attached hereto and incorporated herein.

C. The Consultant, subrecipient (the County), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR Part 26). To ensure equal participation of DBEs as provided in 49 CFR Section 26.5, the County specifies a contract goal for DBEs. The Consultant shall make work available to DBEs and allocate portions of the work consistent with available DBE subconsultants and suppliers.

The Consultant shall meet the DBE goal shown elsewhere in these special provisions or demonstrate its having made adequate good faith efforts to meet this goal. It is the Consultant's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://californiaucp.dbesystem.com>.

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

4 • 100 percent (100%) counts if the materials or supplies are obtained from a
5 DBE manufacturer.

6 • 60 percent (60%) counts if the materials or supplies are purchased from a
7 DBE regular dealer.

8 • Only fees, commissions, and charges for assistance in the procurement
9 and delivery of materials or supplies count if obtained from a DBE that is neither a
10 manufacturer nor regular dealer. 49 CFR Section 26.55 defines "manufacturer" and
11 "regular dealer."

12 This Agreement is subject to 49 CFR Part 26 entitled "Participation by
13 Disadvantaged Business Enterprises in Department of Transportation Financial Assistance
14 Programs". Any Consultant who enters into a federally funded agreement will assist the
15 County in a good faith effort to achieve California's statewide overall DBE goal.

16 D. The goal for DBE participation for this Agreement is thirteen percent (13.0%).
17 Participation by a DBE Consultant or subconsultants shall be in accordance with
18 information contained in Exhibit 10-02: Consultant Contract DBE Commitment attached
19 hereto and incorporated as part of the Agreement as Appendix K. If a DBE subconsultant is
20 unable to perform, the Consultant must make a good faith effort to replace them with
21 another DBE subconsultant, if the goal is not otherwise met.

22 E. The Consultant can meet the DBE participation goal by either documenting
23 commitments to DBEs to meet the Agreement goal, or by documenting adequate good faith
24 efforts to meet the Agreement goal. An adequate good faith effort means that the
25 Consultant must show that it took all necessary and reasonable steps to achieve a DBE
26 goal that, by their scope, intensity, and appropriateness to the objective, could reasonably
27 be expected to meet the DBE goal. If the Consultant has not met the DBE goal, the
28 Consultant must then complete and submit Exhibit 15-H: DBE Information – Good Faith

1 Efforts to document its efforts to meet the goal. Refer to 49 CFR Part 26 for guidance
2 regarding evaluation of good faith efforts to meet the DBE goal.

3 F. Contract Assurance

4 Under 49 CFR Section 26.13(b):

5 The Consultant, subrecipient or subconsultant shall not discriminate on the basis of
6 race, color, national origin, or sex in the performance of this contract. The Consultant shall
7 carry out applicable requirements of 49 CFR Part 26 in the award and administration of
8 federal-aid contracts.

9 Failure by the Consultant to carry out these requirements is a material breach of this
10 contract, which may result in the termination of this contract or such other remedy as the
11 recipient deems appropriate, which may include, but is not limited to:

12 (1) Withholding monthly progress payments;

13 (2) Assessing sanctions;

14 (3) Liquidated damages; and/or

15 (4) Disqualifying Consultant from future proposing as non-responsible.

16 G. Termination and Replacement of DBE Subconsultants

17 The Consultant shall utilize the specific DBEs listed to perform the work and supply
18 the materials for which each is listed unless the Consultant or DBE subconsultant obtains
19 the County's written consent. The Consultant shall not terminate or replace a listed DBE for
20 convenience and perform the work with their own forces or obtain materials from other
21 sources without authorization from the County. Unless the County's consent is provided,
22 the Consultant shall not be entitled to any payment for work or material unless it is
23 performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE
24 Commitment form.

25 H. Termination of DBE Subconsultants

26 After execution of the Agreement, termination of a DBE may be allowed for the following,
27 but not limited to, justifiable reasons with prior written authorization from the County:

28 The County authorizes a request to use other forces or sources of materials if the

1 Consultant shows any of the following justifications:

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

21 Consultant must use the following procedures to request the termination of a DBE or
22 portion of a DBE's work:

- 23 1. Send a written notice to the DBE of the Consultant's intent to use other
24 forces or material sources and include one or more justifiable reasons listed above.
25 Simultaneously send a copy of this written notice to the County. The written notice to the
26 DBE must request they provide any response within five (5) business days to both the
27 Consultant and the County by either acknowledging their agreement or documenting their
28 reasoning as to why the use of other forces or sources of materials should not occur.

2. If the DBE does not respond within five (5) business days, Consultant may move forward with the request as if the DBE had agreed to Consultant's written notice.

3. Submit Consultant's DBE termination request by written letter to the County and include:

- One or more above listed justifiable reasons along with supporting documentation.
- Consultant's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of Consultant's written notice
- The DBE's response to Consultant's written notice, if received. If a written response was not provided, provide a statement to that effect.

The County shall respond in writing to Consultant's DBE termination request within five (5) business days.

I. Replacement of DBE Subconsultants

After receiving the County's written authorization of DBE termination request, Consultant must obtain the County's written agreement for DBE replacement.

Consultant must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the County which must include:

a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.

b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:

- Description of scope of work and cost proposal.
- Proposed subcontract agreement and written confirmation of agreement to perform on the Contract

- Revised Exhibit 10-O2: Consultant Contract DBE Commitment

2. If Consultant has not identified a DBE replacement firm, submits documentation of Consultant's GFEs to use DBE replacement firms within seven (7) days of County authorization to terminate the DBE. Consultant may request the County 's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:

- Search results of certified DBEs available to perform the original DBE work identified and or other work Consultant had intended to self-perform, to the extent needed to meet DBE commitment

- Solicitations of DBEs for performance of work identified

- Correspondence with interested DBEs that may have included contract details and requirements

- Negotiation efforts with DBEs that reflect why an agreement was not reached • If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive

- Copies of each DBE's and non-DBE's price quotes for work identified, as the County may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher

- Additional documentation that supports Consultant's GFE The County shall respond in writing to Consultant's DBE replacement request within five (5) business days.

H. Commitment and Utilization

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

The County shall request the Consultant to:

1. Notify the County's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work

- 1 3. Maintain records including:
- 2 • Name and business address of each 1st-tier subconsultant
- 3 • Name and business address of each DBE subconsultant, DBE vendor,
- 4 and DBE trucking company, regardless of tier
- 5 • Date of payment and total amount paid to each business (see Exhibit 9-F
- 6 Monthly Disadvantaged Business Enterprise Payment)

7 If the Consultant is a DBE Consultant, it shall include the date(s) of work performed

8 by its own forces and the corresponding value of all such work. If a DBE is decertified

9 before completing its work, the DBE must notify Consultant in writing of the decertification

10 date. If a business becomes a certified DBE before completing its work, the business must

11 notify the Consultant in writing of the certification date. The Consultant shall submit the

12 notifications to the County. On work completion, the Consultant shall complete a

13 Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form

14 and submit the form to the County within thirty (30) days of contract acceptance.

15 Upon work completion, the Consultant shall complete Exhibit 17-F Final Report –

16 Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and

17 submit it to the County within ninety (90) days of contract acceptance. The County will

18 withhold \$10,000 until the form is submitted. The County will release the withhold upon

19 submission of the completed form. In the County's reports of DBE participation to Caltrans,

20 the County must display both commitments and attainments.

21 I. Commercially Useful Function

22 DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when

23 performing work or supplying materials listed on the DBE Commitment form. The DBE

24 value of work will only count toward the DBE commitment if the DBE performs a CUF. A

25 DBE performs a CUF when it is responsible for execution of the work of the Agreement and

26 is carrying out its responsibilities by actually performing, managing, and supervising the

27 work involved. To perform a CUF, the DBE must also be responsible, with respect to

28 materials and supplies used on the Agreement, for negotiating price, determining quality

1 and quantity, ordering the material and installing (where applicable), and paying for the
2 material itself. Consultant must perform CUF evaluation for each DBE working on a federal-
3 aid contract, with or without a DBE goal. Perform a CUF evaluation at the beginning of the
4 DBE's work and continue to monitor the performance of CUF for the duration of the project.

5 Consultant must provide written notification to the County at least 15 days in
6 advance of each DBE's initial performance of work or supplying materials for the Contract.
7 The notification must include the DBE's name, work the DBE will perform on the contract,
8 and the location, date, and time of where their work will take place.

9 Within 10 days of a DBE initially performing work or supplying materials on the
10 Contract, Consultant shall submit to the County the initial evaluation and validation of DBE
11 performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise
12 Commercially Useful Function Evaluation. Include the following information with the
13 submittal:

- 14 • Subcontract agreement with the DBE
- 15 • Purchase orders
- 16 • Bills of lading
- 17 • Invoices
- 18 • Proof of payment

19 Consultant must monitor all DBE's performance of CUF by conducting quarterly
20 evaluations and validations throughout their duration of work on the Contract using the
21 LAPM 9-J: DBE Commercially Useful Function Evaluation. Consultant must submit to the
22 County these quarterly evaluations and validations by the 5th of the month for the previous
23 three months of work.

24 Consultant must notify the County immediately if they believe the DBE may not be
25 performing a CUF.

26 The County will verify DBEs performance of CUF by reviewing the initial and
27 quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation,
28 submitted supporting information, field observations, and through any additional County

1 evaluations. The County must evaluate DBEs and their CUF performance throughout the
2 duration of a Contract. The County will provide written notice to the Consultant and the
3 DBE at least two (2) business days prior to any evaluation. The Consultant and the DBE
4 must participate in the evaluation. Upon completing the evaluation, the County must share
5 the evaluation results with the Consultant and the DBE. An evaluation could include items
6 that must be remedied upon receipt. If the County determines the DBE is not performing a
7 CUF, the Consultant must suspend performance of the noncompliant work.

8 Consultant and DBEs must submit any additional CUF related records and
9 documents within five (5) business days of County's request such as:

- 10 • Proof of ownership or lease and rental agreements for equipment
- 11 • Tax records
- 12 • Employee rosters
- 13 • Certified payroll records
- 14 • Inventory rosters

15 Failure to submit required DBE Commercially Useful Function Evaluation forms or
16 requested records and documents can result in withholding of payment for the value of
17 work completed by the DBE.

18 If Consultant and/or the County determine that a listed DBE is not performing a CUF
19 in performance of their DBE committed work, Consultant must immediately suspend
20 performance of the noncompliant portion of the work. County may deny payment for the
21 noncompliant portion of the work. County will ask the Consultant to submit a corrective
22 action plan (CAP) to the County within five (5) days of the noncompliant CUF
23 determination. The CAP must identify how the Consultant will correct the noncompliance
24 findings for the remaining portion of the DBE's work. County has five (5) days to review the
25 CAP in conjunction with the Consultant's review. The Consultant must implement the CAP
26 within five (5) days of the County's approval. The County will then authorize the prior
27 noncompliant portion of work for the DBE's committed work.

28 If corrective actions cannot be accomplished to ensure the DBE performs a

1 commercially useful function on the Contract, Consultant may have good cause to request
2 termination of the DBE.

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

8 K. If a DBE does not perform or exercise responsibility for at least thirty percent
9 (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a
10 greater portion of the work of the Agreement than would be expected on the basis of
11 normal industry practice for the type of work involved, it will be presumed that it is not
12 performing a CUF.

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

19 M. If a DBE subconsultant is decertified during the life of the Agreement, the
20 decertified subconsultant shall notify Consultant in writing with the date of decertification. If
21 a subconsultant becomes a certified DBE during the life of the Agreement, the
22 subconsultant shall notify the Consultant in writing with the date of certification. Any
23 changes should be reported to County's Contract Administrator within thirty (30) calendar
24 days.

25 N. After submitting an invoice for reimbursement that includes a payment to a DBE,
26 by the 15th of the month following the month of any payment(s), the Consultant must now
27 submit Exhibit 9-P to the County administering the contract. If the Consultant does not
28 make any payments to subconsultants, supplier(s), and/or manufacturers they must report

1 “no payments were made to subs this month” and write this visibly and legibly on Exhibit 9-
2 P.

3 O. Any subcontract entered into as a result of this Agreement shall contain all of the
4 provisions of this Article 24.

5 25. **Cost Principles**

6 A. The Consultant agrees that the 48 CFR Part 31 Contract Cost Principles and
7 Procedures shall be used to determine the allowability of cost.

8 B. The Consultant also agrees to comply with federal procedures in accordance
9 with Title 49 CFR, Part 18 Uniform Administrative Requirements, Cost Principles, and Audit
10 Requirements for Federal Awards.

11 C. Any costs for which payment has been made to the Consultant that are
12 determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part
13 200 are subject to repayment by the Consultant to the County.

14 D. When a Consultant or subconsultant is a Non-Profit Organization or an Institution
15 of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative
16 Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

17 26. **Audit Review Procedures**

18 A. Any dispute concerning a question of fact arising under an interim or post audit of
19 this Agreement that is not disposed of by agreement between the parties, shall be reviewed
20 by the County’s Auditor/Controller/Treasurer/Tax-Collector.

21 B. Not later than thirty (30) days after issuance of the final audit report, the
22 Consultant may request a review by the County’s Auditor/Controller/Treasurer/Tax-
23 Collector of unresolved audit issues. The request for review will be submitted in writing.

24 C. Neither the pendency of a dispute nor its consideration by the County will excuse
25 the Consultant from full and timely performance, in accordance with the terms of this
26 Agreement.

27 D. The Consultant and subconsultants’ contracts, including cost proposals and
28 indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a

1 Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA)
2 ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal
3 and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48
4 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit
5 Workpaper Review it is the Consultant's responsibility to ensure federal, state, or local
6 government officials are allowed full access to the CPA's workpapers, including making
7 such copies as the auditor deems necessary. This Agreement, the Consultant's Cost
8 Proposal (Appendix E), and ICR shall be adjusted by the Consultant and approved by the
9 Contract Administrator to conform to the audit or review recommendations. The Consultant
10 agrees that individual terms of costs identified in the audit report shall be incorporated into
11 the contract by this reference if directed by the County at its sole discretion. Refusal by the
12 Consultant to incorporate audit or review recommendations, or to ensure that the Federal,
13 State, or local governments have access to CPA workpapers, will be considered a breach
14 of contract terms and cause for termination of this Agreement and disallowance of prior
15 reimbursed costs.

16 E. The Consultant's Cost Proposal (Appendix E) may be subject to a CPA ICR Audit
17 Work Paper Review and/or audit by the Independent Office of Audits and Investigations
18 (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR
19 documentation. The Cost Proposal shall be adjusted by the Consultant and approved by
20 the County's Contract Administrator to conform to the Work Paper Review
21 recommendations included in the management letter or audit recommendations included in
22 the audit report. Refusal by the Consultant to incorporate the Work Paper Review
23 recommendations included in the management letter or audit recommendations included in
24 the audit report will be considered a breach of the Agreement terms and cause for
25 termination of the Agreement and disallowance of prior reimbursed costs.

26 1. During IOAI's review of the ICR audit work papers created by the Consultant's
27 independent CPA, IOAI will work with the CPA and/or the Consultant toward a resolution of
28 issues that arise during the review. Each party agrees to use its best efforts to resolve any

1 audit disputes in a timely manner. If IOAI identifies significant issues during the review and
2 is unable to issue a cognizant approval letter, the County will reimburse the Consultant at
3 an accepted ICR until a Federal Acquisition Regulation (FAR) compliant ICR (e.g. 48 CFR
4 Part 31; Generally Accepted Auditing Standards (GAGAS); Cost Accounting Standards
5 (CAS), if applicable; in accordance with procedures and guidelines of the American
6 Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and
7 other applicable procedures and guidelines) is received and approved by IOAI.

8 Accepted rates will be as follows:

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

11 b. If the proposed rate is between one hundred fifty percent (150%) and
12 two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of
13 the proposed rate.

14 c. If the proposed rate is greater than two hundred percent (200%) - the
15 accepted rate will be seventy-five percent (75%) of the proposed rate.

16 2. If IOAI is unable to issue a cognizant letter per Paragraph E.1. above, IOAI
17 may require the Consultant to submit a revised independent CPA-audited ICR and audit
18 report within three (3) months of the effective date of the management letter. IOAI will then
19 have up to six (6) months to review the Consultant's and/or the independent CPA's
20 revisions.

21 3. If the Consultant fails to comply with the provisions of this Section E, or if IOAI
22 is still unable to issue a cognizant approval letter after the revised independent CPA
23 audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR
24 that was established upon initial rejection of the ICR and set forth in Paragraph E.1. above
25 for all rendered services. In this event, this accepted ICR will become the actual and final
26 ICR for reimbursement purposes under this Agreement.

27 4. The Consultant may submit to the County final invoice only when all of the
28 following items have occurred: (1) IOAI accepts or adjusts the original or revised

1 independent CPA audited ICR; (2) all work under this Agreement has been completed to
2 the satisfaction of the COUNTY; and (3) IOAI has issued its final ICR review letter. The
3 **Consultant must submit its final invoice to the County** no later than sixty (60) calendar
4 days after occurrence of the last of these items. The accepted ICR will apply to this
5 Agreement and all other agreements executed between the County and the Consultant,
6 either as a prime or subconsultant, with the same fiscal period ICR.

7 27. **Equipment Purchase**

8 A. Prior authorization, in writing, by the Contract Administrator shall be required
9 before the Consultant enters into any unbudgeted purchase order, or subcontract
10 exceeding five thousand dollars (\$5,000) for supplies, equipment, or Consultant services.
11 The Consultant shall provide an evaluation of the necessity or desirability of incurring such
12 costs.

13 B. Prior authorization by the Contract Administrator shall be required for purchase of
14 any item, service or consulting work in excess of five thousand dollars (\$5,000) that is not
15 covered in the Consultant's Cost Proposal; and the Consultant's request must be
16 accompanied by at least three competitive quotations, unless the absence of proposal is
17 adequately justified, to the satisfaction of the Contract Administrator in his/her discretion, by
18 written explanation provided by the Consultant with its submittal.

19 C. Any authorized purchase of equipment as a result of this Agreement is subject to
20 the following: "The Consultant shall maintain an inventory of all nonexpendable property.
21 Nonexpendable property is defined as having a useful life of at least two years and an
22 acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is
23 sold or traded in, the County shall receive a proper refund or credit at the conclusion of the
24 contract, or if the contract is terminated, the Consultant may either keep the equipment and
25 credit the County in an amount equal to its fair market value, or sell such equipment at the
26 best price obtainable at a public or private sale, in accordance with established County
27 procedures; and credit the County in an amount equal to the sales price. If the Consultant
28 elects to keep the equipment, fair market value shall be determined at the Consultant's

1 expense, on the basis of a competent independent appraisal of such equipment. Appraisals
2 shall be obtained from an appraiser mutually agreeable to the County and the Consultant, if
3 it is determined to sell the equipment, the terms and conditions of such sale must be
4 approved in advance by the County.” Title 2 CFR, Part 200 requires a credit to Federal
5 funds when participating equipment with a fair market value greater than five thousand
6 dollars (\$5,000.00) is credited to the Project.

7 28. **Rebates, Kickbacks or Other Unlawful Consideration**

8 The Consultant warrants that this Agreement was not obtained or secured through
9 rebates, kickbacks or other unlawful consideration, either promised or paid to any County
10 employee. For breach or violation of this warranty, the County shall have the right, in its
11 discretion, to terminate this Agreement without liability; or to pay only for the value of the
12 work actually performed; or to deduct from this Agreement price or otherwise recover the
13 full amount of such rebate, kickback or other unlawful consideration.

14 29. **Prohibition of Expending County, State, or Federal Funds for Lobbying**

15 A. The Consultant certifies (Appendix L) to the best of his or her knowledge and
16 belief that:

17 1. No state, federal or County appropriated funds have been paid, or will be paid
18 by or on behalf of the Consultant to any person for influencing or attempting to influence an
19 officer or employee of any state or federal agency; a Member of the State Legislature or
20 United States Congress; an officer or employee of the Legislature or Congress; or any
21 employee of a Member of the Legislature or Congress, in connection with any of the
22 following:

- 23 a. the awarding of any state or federal contract;
24 b. the making of any state or federal grant;
25 c. the making of any state or federal loan;
26 d. the entering into of any cooperative agreement, or
27 e. the extension, continuation, renewal, amendment, or modification of
28 any state or federal contract, grant, loan, or cooperative agreement.

1 2. If any funds other than federally appropriated funds have been paid, or will be
2 paid to any person for influencing or attempting to influence an officer or employee of any
3 federal agency; a Member of Congress; an officer or employee of Congress, or an
4 employee of a Member of Congress; in connection with this federal contract, grant, loan, or
5 cooperative agreement, then the Consultant shall complete and submit Standard Form-
6 LLL, "Disclosure Form to Report Lobbying" (Appendix L), in accordance with its
7 instructions.

8 B. The certification required by the provisions of this Article is a material
9 representation of fact upon which reliance was placed when this transaction was made or
10 entered into. Submission of this certification is a prerequisite for making or entering into this
11 transaction imposed by Title 31, U.S. Code Section 1352. Any person who fails to file the
12 required certification shall be subject to a civil penalty of not less than \$10,000 and not
13 more than \$100,000 for each such failure.

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

17 30. **Non-Discrimination Clause and Statement of Compliance**

18 A. The Consultant's signature affixed herein, and dated, shall constitute a
19 certification under penalty of perjury under the laws of the State of California that the
20 Consultant has, unless exempt, complied with, the nondiscrimination program requirements
21 of Government Code section 12990 and 2 CCR section 8103.

22 B. During the performance of this Agreement, the Consultant and its subconsultants
23 shall not deny this Agreement's benefits to any person on the basis of race, religious creed,
24 color, national origin, ancestry, physical disability, mental disability, medical condition,
25 genetic information, marital status, sex, gender, gender identity, gender expression, age,
26 sexual orientation, or military and veteran status, nor shall they unlawfully discriminate,
27 harass, or allow harassment against any employee or applicant for employment because of
28 race, religious creed, color, national origin, ancestry, physical disability, mental disability,

1 medical condition, genetic information, marital status, sex, gender, gender identity, gender
2 expression, age, sexual orientation, or military and veteran status. The Consultant and
3 subconsultants shall ensure that the evaluation and treatment of their employees and
4 applicants for employment are free from such discrimination and harassment.

5 C. The Consultant and subconsultants shall comply with the provisions of the Fair
6 Employment and Housing Act (Gov. Code § 12990 et seq.) and the applicable regulations
7 promulgated thereunder (2 CCR § 11000 et seq.), the provisions of Government Code
8 sections 11135 et seq., and the regulations or standards adopted by the County to
9 implement such provisions. The applicable regulations of the Fair Employment and
10 Housing Commission implementing Government Code Section 12990 (a-f), set forth in
11 Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated
12 into this Agreement by reference and made a part hereof as if set forth in full.

13 D. Consultant shall permit access by representatives of the Department of Fair
14 Employment and Housing and the County upon reasonable notice at any time during
15 normal business hours, but in no case less than twenty-four (24) hours' notice, to such of
16 its books, records, accounts, and all other sources of information and its facilities as said
17 Department or the County shall require in order to ascertain compliance with the
18 requirements of this Article 30.

19 E. The Consultant and subconsultants shall give written notice of their obligations
20 under this Article 30 to labor organizations with which they have a collective bargaining or
21 other agreement.

22 F. The Consultant and subconsultants shall include the nondiscrimination and
23 compliance provisions of this Article 30 in all subcontracts to perform work under this
24 Agreement.

25 G. The Consultant, with regard to the work performed under this Agreement, shall
26 act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.).
27 Title VI provides that the recipients of federal assistance will implement and maintain a
28 policy of nondiscrimination in which no person in the United States shall, on the basis of

1 race, color, national origin, religion, sex, age, disability, be excluded from participation in,
2 denied the benefits of or subject to discrimination under any program or activity by the
3 recipients of federal assistance or their assignees and successors in interest.

4 H. The Consultant shall comply with regulations relative to non-discrimination in
5 federally assisted programs of the U.S. Department of Transportation (49 CFR Part 21 -
6 Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the Consultant shall not
7 participate either directly or indirectly in the discrimination prohibited by 49 CFR § 21.5,
8 including employment practices and the selection and retention of subconsultants.

9 I. The Consultant, subrecipient or subconsultant will never exclude any person from
10 participation in, deny any person the benefits of, or otherwise discriminate against anyone
11 in connection with the award and performance of any contract covered by 49 CFR 26 on
12 the basis of race, color, sex, or national origin. In administering the County components of
13 the DBE Program Plan, the Consultant, subrecipient or subconsultant will not, directly, or
14 through contractual or other arrangements, use criteria or methods of administration that
15 have the effect of defeating or substantially impairing accomplishment of the objectives of
16 the DBE Program Plan with respect to individuals of a particular race, color, sex, or national
17 origin.

18 31. **Debarment and Suspension Certification**

19 A. The Consultant's signature affixed herein, shall constitute a certification under
20 penalty of perjury under the laws of the State of California, that the Consultant has
21 complied with Title 49, Code of Federal Regulations, Appendix A to Part 29, Debarment
22 and Suspension Certificate, which certifies that the Consultant or any person associated
23 therewith in the capacity of owner, partner, director, officer, or manager:

- 24 1. Is not currently under suspension, debarment, voluntary exclusion, or
25 determination of ineligibility by any federal agency;
26 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible
27 by any federal agency within the past three (3) years;
28 3. Does not have a proposed debarment pending; and

1 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a
2 court of competent jurisdiction in any matter involving fraud or official misconduct
3 within the past three (3) years.

4 B. Any exceptions to this certification must be disclosed to the County on Appendix

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

8 C. Exceptions to the Federal Government Excluded Parties Listing System
9 maintained by the General Services Administration are to be determined by the Federal
10 Highway Administration.

11 32. **Funding Requirements**

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

16 B. This Agreement is subject to any additional restrictions, limitations, conditions, or
17 any legislation enacted by the Congress, State Legislature or the County's Board of
18 Supervisors that may affect the provisions, terms, or funding of this Agreement in any
19 manner.

20 C. It is mutually agreed that if sufficient funds are not appropriated, this Agreement
21 may be amended to reflect any reduction in funds.

22 D. The County has the option to void this Agreement under the 30-day cancellation
23 clause, or to amend this Agreement by mutually acceptable modification of its provisions to
24 reflect any reduction of funds.

25 33. **Contingent Fees**

26 The Consultant warrants, by execution of this Agreement that no person or selling
27 agency has been employed, or retained, to solicit or secure this Agreement upon an
28 agreement or understanding, for a commission, percentage, brokerage, or contingent fee,

1 excepting bona fide employees, or bona fide established commercial or selling agencies
2 maintained by the Consultant for the purpose of securing business. For breach or violation
3 of this warranty, the County has the right to: annul this Agreement without liability, and to
4 pay only for the value of the work actually performed; or in its discretion to deduct from the
5 Agreement price or consideration, or otherwise recover, the full amount of such
6 commission, percentage, brokerage, or contingent fee.

7 34. **Inspection of Work**

8 The Consultant and any subcontractor shall permit the County, the state, and the
9 FHWA to review and inspect the Project activities and files at all reasonable times during
10 the performance period of this Agreement including review and inspection on a daily basis.

11 35. **Safety**

12 A. The Consultant shall comply with OSHA regulations applicable to Consultant
13 regarding necessary safety equipment or procedures. The Consultant shall comply with
14 safety instructions issued by the County Safety Officer and other County representatives.
15 The Consultant's personnel shall wear hard hats and safety vests at all times while working
16 on the construction project site.

17 B. Pursuant to the authority contained in Vehicle Code section 591, the County has
18 determined that such areas are within the limits of the project and are open to public traffic.
19 The Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13,
20 14, and 15 of the Vehicle Code. The Consultant shall take all reasonably necessary
21 precautions for safe operation of its vehicles and the protection of the traveling public from
22 injury and damage from such vehicles.

23 C. The Consultant must have a Division of Occupational Safety and Health (CAL-
24 OSHA) permit(s), as outlined in Labor Code section 6500 and 6705, prior to the initiation of
25 any practices, work, method, operation, or process related to the construction or excavation
26 of trenches which are five (5) feet or deeper.

27 36. **Claims Filed by the County's Construction Contractor**

28 A. If claims are filed by the County's construction contractor relating to work

1 performed by the Consultant's personnel, and additional information or assistance from the
2 Consultant's personnel is required in order to evaluate or defend against such claims, then
3 the Consultant hereby agrees in such event to make its personnel available for consultation
4 with the County's construction contract administration and legal staff and for testimony, if
5 necessary, at depositions and at trial or arbitration proceedings.

6 B. The Consultant's personnel that the County considers essential to assist in
7 defending against construction contractor claims will be made available on reasonable
8 notice from the County. Consultation or testimony will be reimbursed at the same rates,
9 including travel costs that are being paid for the Consultant's personnel services under this
10 Agreement.

11 C. Services of the Consultant's personnel in connection with the County's
12 construction contractor claims will be performed pursuant to a written contract amendment,
13 if necessary, extending the termination date of this Agreement in order to resolve the
14 construction claims.

15 37. **Confidentiality of Data**

16 A. All financial, statistical, personal, technical, or other data and information relative
17 to the County's operations, which are designated confidential by the County and made
18 available to the Consultant in order to carry out this Agreement, shall be protected by the
19 Consultant from unauthorized use and disclosure.

20 B. Permission to disclose information on one occasion, or public hearing held by the
21 County relating to the contract, shall not authorize the Consultant to further disclose such
22 information, or disseminate the same on any other occasion.

23 C. The Consultant shall not comment publicly to the press or any other media
24 regarding this Agreement or the County's actions on the same, except to the County's staff,
25 the Consultant's own personnel involved in the performance of this Agreement, at public
26 hearings or in response to questions from a legislative committee.

27 D. The Consultant shall not issue any news release or public relations item of any
28 nature, whatsoever, regarding work performed or to be performed under this Agreement

1 without prior review of the contents thereof by the County, and receipt of the County's
2 written permission.

3 E. All information related to the construction estimate is confidential and shall not be
4 disclosed by the Consultant to any entity other than the County, Caltrans, and/or FHWA. All
5 of the materials prepared or assembled by the Consultant pursuant to performance of this
6 Agreement are confidential and the Consultant agrees that they shall not be made available
7 to any individual or organization without the prior written approval of the County or except
8 by court order. If the Consultant or any of its officers, employees, or subcontractors does
9 voluntarily provide information in violation of this Agreement, the County has the right to
10 reimbursement and indemnity from the Consultant for any damages caused by the
11 Consultant's releasing the information, including, but not limited to, the County's attorney's
12 fees and disbursements, including without limitation experts' fees and disbursements.

13 38. **National Labor Relations Board Certification**

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

20 39. **Evaluation of the Consultant**

21 The Consultant's performance will be evaluated by the County. A copy of the
22 evaluation will be sent to the Consultant for comments. The evaluation together with the
23 comments shall be retained as part of the contract record.

24 40. **Entire Agreement**

25 This Agreement constitutes the entire agreement between the Consultant and the
26 County with respect to the subject matter hereof and supersedes all previous negotiations,
27 proposals, commitments, writings, advertisements, publications, and understandings of any
28 nature whatsoever unless expressly included in this Agreement. In the event of any

1 inconsistency in interpreting the documents which constitute this Agreement, the
2 inconsistency shall be resolved by giving precedence in the following order of priority: (1)
3 the text of this Agreement (2) the County's Request for Qualification "On-Call A&E and
4 Related Services"; and (3) the Consultant's Statement of Qualification made in response to
5 County's Request for Qualification. In consideration of promises, covenants and conditions
6 contained in this Agreement, the Consultant and the County, and each of them, do hereby
7 agree to diligently perform in accordance with the terms and conditions of this Agreement,
8 as evidenced by the signatures below.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

41. **Signatures**

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above.

CONTRACTOR

COUNTY OF FRESNO

(Authorized Signature)

Steven White, Director
Department of Public Works and
Planning

Print Name & Title

Mailing Address

APPROVED AS TO LEGAL FORM
Daniel C. Cederborg, County Counsel

By: _____

APPROVED AS TO ACCOUNTING
FORM
Oscar J. Garcia, CPA,
Auditor-Controller/Treasurer-
Tax Collector

By: _____

FOR ACCOUNTING USE ONLY:

Fund: 0001 / 0010 / 0400 / 0700 / 0701 / 0710 / 0720 / 0801

Subclass: 10000 / 11000 / 15000 / 15001 / 16900

Org: 4360 / 4365 / 4511 / 4512 / 4513 / 4514 / 7205 / 7910 / 8852 / 8853 / 8861 / 8863 / 8865 / 8867 / 9015 / 9020 / 9026 / 9028 / 9140

Account: 7295

Appendix A – List of All Consultants and Project Managers

Bedrock Engineering, Inc.

PO Box 25783

Fresno, CA 93729-5783

Project Manager: Michael Hartley

sales@bedrockeng.com

(559) 645-4849

Dixon & Associates, Inc

620 Dewitt Avenue, Ste 101

Clovis, CA 93612-1860

Project Manager: Aaron Spray

aaron@dixonsurveying.com

(559) 297-4200

Black Water Consulting Engineers

155 E Shaw Avenue, Suite 206

Fresno, CA 93710

Project Manager: Nick Zaninovich

nick@blackwater-eng.com

(559) 375-1522

DLR Group

1050 20th Street, #250

Sacramento, CA 95811

Project Manager: Kevin Quan

kquan@dlrgroup.com

(702) 271-2983

Blair, Church & Flynn Consulting Engineers

451 Clovis Ave Suite 200

Clovis, CA 93612-1194

Project Manager: David Mowry, PE

dmowry@bcf-engr.com

(559) 326-1400

EKI Environment & Water, Inc.

2001 Junipero Serra Blvd Ste 300

Daly City, CA 94014-3887

Project Manager: Susan Xie, PE

sxie@ekiconsult.com

(650) 292-9135

Construction Scheduling Experts

80 Powers Drive

El Dorado Hills, CA 95762-4493

Project Manager: Dave Somanchi

dsomanchi@schedulingexperts.com

(916) 396-1588

Luhdorff and Scalmanini Consulting Engineers

500 1st Street

Woodland, CA 95695-4026

Project Manager: William Halligan

whalligan@lsce.com

(530) 661-0109

Melton Design Group, Inc.

820 Broadway St

Chico, CA 95928-5529

Project Manager: Greg Melton

greg@meltondg.com

(530) 518-7593

Net Positive Consulting Engineers

5 E River Park Pl E Suite 303

Fresno, CA 93720-1560

Project Manager: Jonathan Schlundt, PE

jschlundt@npceng.com

(559) 365-0974

PBK Architects

895 W. Ashlan Avenue, Suite 101

Clovis, CA 93612

Project Manager: Garen Lencioni

garen.lencioni@leafengineers.com

559) 223-9600

Pezzoni Engineering, Inc.

1150 9th Street, Ste 1415

Modesto, CA 95354-0823

Project Manager: Kevin Pezzoni

KPezzoni@pezengr.com

(209) 554-4602

Precision Civil Engineering

1234 O Street

Fresno, CA 93721-1830

Project Manager: Craig Roberts, MS, PE

gcroberts@precisioneng.net

(559) 449-4500

Provost & Pritchard Consulting Group

455 W Fir Avenue

Clovis, CA 93611-0242

Project Managers: Analisa Gonzales - Surveying,
Josh Bridegroom - Transportation Planning,
Gretchen Heisdorf – SWPPP

agonzales@ppeng.com (surveying)

jbridegroom@ppeng.com (Transportation Planning)

gheisdorf@ppeng.com (SWPPP)

(559) 449-2700

Sierra West Consulting Group, Inc

9700 Business Park Drive Ste. 102

Sacramento, CA 95827-1712

Project Manager: John Moreno

jmoreno@sierrawestgroup.com

(916) 925-4000

TDG Engineering, Inc. (Toole Design Group, LLC)

360 22nd Street, Suite 501

Oakland, CA 94612

Project Manager: Alison Mills

amills@tooledesign.com

(510) 298-0740 x168

TJKM Transportation Consultants

4305 Hacienda Drive, Suite 550

Pleasanton, CA 94588

Project Manager: Ruta Jariwala

jariwala@tjkm.com

(408) 421-0768

VRPA Technologies

4630 W Jennifer Avenue, Suite 105

Fresno, CA 93722-6415

Project Manager: Erik Ruehr, P.E., T.E.

comeruehr@vrpatechnologies.com

(858) 361-7151

Westwood Professional Services

1165 Scenic Drive, Suite A

Modesto, CA 95350-6155

Project Manager: Kristen Scheidt

kristen.scheidt@westwoodps.com

(209) 571-1765

Willdan Engineering

2014 Tulare Street, Suite 515

Fresno, CA 93721-2011

Project Manager: Tyrone Peter

tpeter@willdan.com

(714) 393-1963

Woodard & Curran, inc.

2175 N. California Boulevard, Suite 315

Walnut Creek, CA 94596

Project Manager: Jim Strandberg, PG, CHG, CEG

jstrandberg@woodardcurran.com

(925) 627-4122

Revised

Consultant's Scope of Services – Appendix B

Consultant Eligible Services Form

Consultant Firm: _____

CONSULTANT is approved for these services:

Discipline	On-Call	Federally Funded Projects
Architectural Drafting and Design		
Assessment Engineering		
Certified Access Specialist (CASP) Certification		
Cost Estimating Validation		
Construction Scheduling Analysis		
Electrical Engineering		
Landscaping Architecture		
Plumbing and Mechanical Engineering		
Qualified SWPPP Developer and/or Practitioner		
Surveying		
Traffic Engineering		
Transportation Planning		
Utility Locating		
Water Resource Operators		
Water and Natural Resources Engineering		

Contract Administrator Signature: _____

CONSULTANT is responsible for all services listed within this scope document for the discipline(s), funding sources and category of service (on-call and/or on-call staff augmentation) which they have been indicated above as well as services listed across discipline.

Delete sections below not eligible/approved above

Table of Contents

Consultant’s Scope of Services – Appendix B	1
Consultant Eligible Services Form	1
Delete sections below not eligible/approved above.....	2
Table of Contents	2
Descriptions of Work by Discipline	3
Architectural Design and Drafting	3
Assessment Engineering	3
Certified Access Specialist (CASP) Certification.....	4
Construction Scheduling Analysis.....	4
Cost Estimating Validation	4
Electrical Engineering	4
Landscape Architecture	5
Plumbing and Mechanical Engineering.....	5
Qualified SWPPP Developer and/or Practitioner	5
Surveying.....	6
Traffic Engineering.....	7
Transportation Planning.....	7
Utility Locating	7
Water and Natural Resources Engineering	7
On-Call Services	12
Technical Reports.....	12
Preparation of Various Reports and Studies.....	12
Preliminary Engineering.....	13
Prepare Design Plans, Technical Specifications and Construction Estimate.....	13
Construction Observation	15
Project Design	17
Engineering Support.....	18

Descriptions of Work by Discipline

Architectural Design and Drafting

1. Architectural design and drafting, including without limitation the design of County capital projects as well as homes, duplexes, fourplexes and multifamily developments.
2. Drawings and Specifications for Schematic Design, Design Development, and/or Construction Document.
3. 3D renderings upon request for board presentations.
4. Review and respond to architectural RFIs and Submittals during bidding and construction.

Assessment Engineering

1. In general, consists of, providing assessment engineering and preparing rate studies for special district services including potable water, wastewater, street lighting, road maintenance, storm drainage, landscape, and other services as may be provided to the various districts in Fresno County. Assessment engineering will be in accordance with Proposition 218 requirements and all other laws and regulations relating to the preparation of assessment engineer reports and rate studies.
2. The types of services shall include but are not limited to the following:
 - a. Coordinate with Department staff to obtain all necessary information needed to provide the services requested, such as assessor's files, copies of secured rolls, boundary maps, and budget information.
 - b. Prepare assessment engineer's and special reports which will include the listing of improvements being maintained or constructed, benefit spread methodology, and a listing of parcels being assessed and their corresponding assessment amount. These reports must meet all legal requirements and will provide continued justification for the levies, budgets for levy expenditures by expenditure type, and specific levies for each parcel.
 - c. Sign and stamp all necessary engineer's reports.
 - d. Prepare cost estimate as needed for work assigned from the Department to Assessment Engineer.
 - e. Provide for meetings with the Department for budgets, findings, recommendations, and development review meetings.
 - f. Assist the Department throughout the Proposition 218 process.

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

- g. Assist the Department, when requested, in addressing property owners or residents with questions concerning charges, fees, assessment, or special taxes, and other related issues.
- h. In addition to any meetings with the Department, the assessment engineer is expected to attend public meetings and hearings to respond to any questions that may be asked concerning the proposed assessment, special tax, or fee.

Certified Access Specialist (CASP) Certification

Site and building accessibility assessment reports to include barrier descriptions, photos, code references, severity, and potential cost impact to remove barrier.

Construction Scheduling Analysis

- 1. Assist in development of schedules.
- 2. Review of County generated schedules
- 3. Provide forensic evaluation of project schedules.

Cost Estimating Validation

- 1. Validate construction cost estimates for apartment complexes
- 2. Validate construction Cost estimating at Schematic, Design Development, and/or Construction Documents
- 3. Recommendations for value engineering

Electrical Engineering

- 1. Electrical Design, Construction Documents, technical specs, and Title 24 calculations. Electrical engineering consultant also will be expected to review and respond to electrical related RFIs and submittals during Bidding and Construction.
- 2. Preliminary evaluation of electrical system and recommendations of existing facilities.
- 3. Provide design of control systems for various water and wastewater treatment facilities.
- 4. Provide telemetry and facility communication studies.
- 5. Provide design of telemetry and facility communication systems using various forms of transmission.

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

6. Provide design and integration of Supervisory Control and Data Acquisition systems and facility operating software.
7. Provide assistance in interface setup for operating staff interaction and control.
8. Provide design of electrical supply for various water and wastewater treatment facilities.
9. Provide design of water and wastewater treatment facility electrical systems.
10. Prepare PG&E Rule 15/16 Applications.
11. Provide assistance in preparation of Rule 16 applications.

Landscape Architecture

1. Landscape design, drawings, and specifications, which shall include without limitation: Landscape plans, irrigation systems/plans, planting schedules, and Model Water Efficiency Landscape Ordinance (MWELO). Landscape consultant also is expected to review and respond to related RFIs and Submittals during Bidding and Construction.
2. Prepare revegetation and restoration plans to satisfy USACOE, CDFW and/or State Board requirements.

Plumbing and Mechanical Engineering

4. Provide Plumbing and Mechanical engineering design, drawings, specifications, and Title 24 calculations. Plumbing and Mechanical consultant will be expected to review and respond to related RFIs and Submittals during Bidding and Construction.
2. Preliminary evaluation and recommendations with regard to Plumbing and Mechanical Systems in existing facilities.

Qualified SWPPP Developer and/or Practitioner

1. The County is seeking the services of a Consultant to provide SWPPP Consulting services for various facilities projects. The County's objective is to employ a consultant who will offer complete Storm Water management services, including preparing Notices of Intent (NOIs), Storm water Pollution Prevention Plans and storm water consulting.
2. Consultants may be called upon to provide Services that may include, but are not limited to the following:
 - a. SWPPP services on multiple sites for the next three years.

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

- b. Periodical site visits as requested by the County, for example, two visits a month for 36 months (total of 72 days).
- c. As needed, provide assistance and advise the County in matters associated with the State Water Resource Control Board (visits, violations, and correspondence).
- d. Update and monitor the SMARTS website.
- e. Consultant will be responsible for review and certification of all SWPPPs and information uploaded to SMARTs.
- f. Review and comment on SWPPPs submitted by County contractors.
- g. Develop and/or update SWPPPs for County projects.
- h. Consultant shall have QSD certification.

Surveying

- 1. Provide land records research for boundary determination of existing and proposed County properties and rights-of-way;
- 2. Recover existing monuments including public land survey monuments (section corners, etc.), property corners, rights-of-way monuments and benchmarks;
- 3. Provide retracement surveys;
- 4. Re-establish lost or obliterated corners;
- 5. Set-out and establish coordinates for horizontal and vertical project control points;
- 6. Provide planimetric and topographic site surveys for design purposes including digital terrain modeling for contour interpolation, profile, cross-section and earthwork volume calculations;
- 7. Complete borrow site surveys for earthwork calculations;
- 8. Interpret design plans to extract staking information;
- 9. Provide field staking – limits, frequency and offsets of stakes to be determined for each project;
- 10. Provide records filings including, but not limited to, Corner Records and Record-of-Survey; and
- 11. Identify and plot location of water, sewer and gas mains, central steam and other utilities including, but not limited to, buried tanks and septic fields.

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

Traffic Engineering

1. Provide design for signage and striping
2. Provide design for roundabouts
3. Traffic calming
4. Provide traffic signal/pedestrian signal design

Transportation Planning

1. Provide transportation planning for the following programs:
 - a. Safe routes to school
 - b. Traffic calming
 - c. Active transportation planning
 - d. Sustainable transportation planning
 - a. Climate adaption planning

Utility Locating

1. Excavation to positively identify underground utilities (potholing)
2. Collection of invert levels at manholes (sewers) and catch basins (storm drains) identified by the Department
3. Collection of top nut information at valve cans identified by the Department
4. Restoration of disturbed areas to pre-existing conditions or as required by the Department

Water and Natural Resources Engineering

1. Groundwater Resources Planning and Analysis
 - a. Sustainable Groundwater Management Act compliance and Groundwater Sustainability Plan development
 - b. Conjunctive use program planning, development, and implementation
 - c. Aquifer Storage and Recovery (ASR), in-lieu recharge, surface recharge, and water banking program planning, development, and implementation

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

- d. Groundwater substitution and water transfer program development
- e. Water master plans, water supply assessments, integrated water resources management, salt and nutrient management
- f. Local to regional hydrogeologic conceptual models, groundwater/surface water model development, and sustainable yield analysis
- g. Surface water and groundwater interaction (e.g., exchange between surface water features and underlying groundwater)
- h. Water budget analyses
- i. Groundwater recharge area mapping
- j. Aquifer test design, implementation, and analysis
- k. Groundwater monitoring plan development, data collection and management, and reporting
- l. Groundwater flow and transport modeling
- m. Land subsidence data collection and interpretation
- n. CEQA and NEPA impact analysis, mitigation development, and technical support

2. Wells and Pump Stations Design and Construction Management

- a. Full-service planning, permitting, specification preparation, engineering design, and construction services associated with new wells and pump stations
- b. Hydrogeologic investigations and site characterization
- c. Monitoring well design and construction oversight
- d. Development of compliance strategies and permit acquisition, including CEQA compliance and water supply permitting at the local, state and federal level
- e. Groundwater well siting and design
- f. Well drilling and testing program design, implementation, and oversight

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

- g. Well repair and modification program development
 - h. System-head operating analysis and efficient bowl selection
 - i. Well pump components design and inspection (lineshaft and submersible)
 - j. Pump station facility design
 - k. Well field analysis and optimization for simultaneous well operation
 - l. Pumping plant and well efficiency testing and analysis
 - m. Aquifer storage and recovery (ASR) wells and pump stations
 - n. Stormwater collection and infiltration systems
3. Treatment, Storage and Distribution Services Planning, Design, and Construction Management
- a. Full-service planning, permitting, engineering design, and construction services
 - b. Groundwater treatment technologies and design for drinking water including removal of arsenic, hexavalent chromium, total dissolved solids/salinity, nitrate, organic constituents, iron, and manganese.
 - c. Surface water treatment feasibility and design for municipal drinking water
 - d. Point-of-Use (POU) and Point-of-Entry (POE) permitting and design for small drinking water systems
 - e. Disinfection systems including liquid/gas chlorination, chloramination, UV treatment and onsite generation
 - f. Chemical treatment systems including fluoridation, caustic and acid systems
 - g. Water storage tanks and reservoirs
 - h. Booster pump stations
 - i. Water main pipeline, distribution systems and pressure reducing stations

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

- j. Distribution system hydraulic modeling and analysis
- k. Water Master Plans, water system master planning and Capital Improvement Plan development
- l. Urban Water Management Plans
- m. Permitting assistance for municipal public water systems, drinking water treatment plants and facility designs
- n. Pilot testing and feasibility studies

4. Environmental Services

- a. Salt and nutrient (including nitrate) management and planning
- b. Hydrogeologic vulnerability analysis and assessment (agricultural lands, etc.)
- c. Groundwater flow and transport modeling
- d. Groundwater monitoring plan development, data collection and management, and reporting
- e. CEQA and NEPA impact analysis, mitigation development, and technical support
- f. Regulatory compliance monitoring and reporting
- g. Groundwater, surface water, and soil sampling

5. Proposition 218 Services/Grant writing, implementation, and monitoring

- a. Prepare studies in compliance with Proposition 218
- b. Identify and secure funding resources
- c. Assist in implementing projects
- d. Grant reporting

6. Modeling Services

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

- a. Conceptual, analytical, empirical, and numerical models
- b. Comprehensive groundwater basin resources evaluations
- c. Water budget analysis
- d. Well field optimization and basin development
- e. Aquifer management and conjunctive use evaluations
- f. Surface water and groundwater interaction (e.g., exchange between surface water features and underlying groundwater)
- g. Land subsidence
- h. Solute transport and groundwater quality (e.g., migration time, speciation)
- i. Non-point source contamination (e.g., salinity, nitrate)
- j. Vadose zone processes

7. Data Management Systems

- a. Development of a data management system

On-Call Services

Technical Reports

Applies to all disciplines

Description of Work

Prepare a detailed preliminary engineering report for the project in Department format. The report shall contain all necessary information in sufficient detail to propose the project design.

Requirements of Specified Services

1. Ascertain the requirements for Technical Reports through meetings with the PROJECT ADMINISTRATOR and a review of existing information on the PROJECT(S).
2. The CONSULTANT shall prepare and submit technical reports to the PROJECT ADMINISTRATOR for each assigned PROJECT. Technical reports shall be prepared in accordance with the appropriate format required by local, state and federal laws, regulations and guidelines.
3. When requested by the PROJECT ADMINISTRATOR, the CONSULTANT shall attend meetings with the COUNTY, federal, state and/or local representatives to discuss and review the technical report. The CONSULTANT shall prepare brief minutes of meetings attended and promptly submit the minutes to the PROJECT ADMINISTRATOR within seven (7) days.
4. The CONSULTANT shall submit each technical report to the PROJECT ADMINISTRATOR for transmittal to other appropriate agencies for their review and approval. The CONSULTANT shall revise and resubmit each technical report as necessary until approved by all appropriate agencies.
5. The CONSULTANT shall prepare and submit technical studies and estimates in the formats, quantities, and delivery methods delineated in Appendix C. The CONSULTANT shall verify compatible format and quantity prior to final delivery.

Preparation of Various Reports and Studies

Applies to all disciplines.

Description of Work

1. Analyze project budget;

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

2. Review existing engineering reports from the Department as available;
3. Prepare a detailed project cost estimate, which shall identify the components and requirements of the project; and
4. Prepare a detailed report or study in Department format.

Preliminary Engineering

Applies to the following disciplines:

Electrical Engineering	Landscape Architecture
Plumbing and Mechanical Engineering	Traffic Engineering
Water and Natural Resources Engineering	Architectural Design and Drafting

Description of Work

1. Prepare a detailed preliminary engineering report for the project in Department format. The report shall contain all necessary information in sufficient detail to propose the project design; and
2. Prepare site plans and grading plans identifying basis of bearing, location of benchmark used and source of elevation (vertical) datum.

Prepare Design Plans, Technical Specifications and Construction Estimate

Applies to the following disciplines:

Electrical Engineering	Landscape Architecture
Plumbing and Mechanical Engineering	Traffic Engineering
Water and Natural Resources Engineering	Architectural Design and Drafting

General Description of Work

1. Complete fully the project designs to include comprehensive construction plans, earthwork volumes, required permits, technical specifications, cross-sections and final opinion of probable construction cost (Engineer's Estimate) for construction.
2. Apply urban design principals that meet the needs of the individual communities.
3. Submit the recommended construction period for bidding purposes to the County for approval and identify materials and equipment requiring long delivery times that will control the length of the construction Agreement.

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

4. Prepare addenda as necessary for bid documents.

Requirements of Specified Services When Requested

The CONSULTANT shall:

1. Ascertain the requirements for the assigned PROJECT(S) through meetings with the PROJECT ADMINISTRATOR and a review of an existing schematic layout of the PROJECT(S).
2. Ascertain any requirements, unforeseen criteria, or issues for the PROJECT(S) that may be unknown to the PROJECT ADMINISTRATOR and communicate these requirements, criteria, or issues to the PROJECT ADMINISTRATOR.
3. Design the PROJECT(S) to conform to requirements of the reviewing agencies having jurisdiction over the PROJECT(S).
4. Design PROJECT(S) to include mitigation measures as required or specified in the environmental documents.
5. Monitor and keep the PROJECT ADMINISTRATOR informed regarding the impact of design issues on the PROJECT budget. Upon the written request, the CONSULTANT shall incorporate into the design, such reasonable design and operational changes as the PROJECT ADMINISTRATOR deems appropriate as a result of the COUNTY'S review processes and impact on each PROJECT budget or estimate.
6. Assist the COUNTY in determining all permits that may be required for the PROJECT and prepare all necessary permits for the COUNTY'S submittal to outside agencies.
7. Work with the PROJECT ADMINISTRATOR to ensure that the plans, specifications and estimate meet all requirements to be advertised for construction bids.
8. If required by approval agencies or PROJECT ADMINISTRATOR, submit to the COUNTY in the appropriate agency forms, the PROJECT background information and recommended testing and inspection list for materials to be used, identifying type, quantity, frequency, and schedule, for each PROJECT. Submit required numbers of sets of plans, specifications, and other documents required by approval agencies to the PROJECT ADMINISTRATOR.
9. Submit to the PROJECT ADMINISTRATOR plans, specifications and estimates for review in the formats, quantities, and delivery methods delineated in Appendix C. Prior to submission of plans, the CONSULTANT shall request from the PROJECT ADMINISTRATOR examples of acceptable drafting format and reproducible standards. Verification of compatible format will be required prior to final file delivery. The PROJECT ADMINISTRATOR, at his/her discretion, may reject a submittal that is determined insufficient.

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

10. The original drawings and specifications index sheet shall be stamped by a seal with the CONSULTANT'S and subconsultant's license numbers and/or signed in accordance with the California Business and Professions Code.

Construction Observation

Applies to the following disciplines:

Certified Access Specialist (CASP) Certification	Cost Estimating Validation
Electrical Engineering	Landscape Architecture
Plumbing and Mechanical Engineering	Traffic Engineering
Qualified SWPPP Developer and/or Practitioner	Water and Natural Resources Engineering
Professional Project Scheduler	Architectural Design and Drafting

General Description of Work

1. Attend the pre-construction conference scheduled by the Department; and
2. Provide services during construction including, but not limited to:
 - a. Make recommendations to the Department on all claims of the Department or construction contractor and all other matters relating to the execution and progress of work, including interpretation of the Agreement documents.
 - b. Review and make recommendations for samples, schedules, shop drawings and other submissions for general conformance with the design concept of the project and for general compliance with the plans and specifications and information given by the consultant's contract documents.
 - c. Respond timely to requests from the Department and contractor for information needed from consultant in order to clarify construction plans and specification to review the contractor's estimates for all other charges.
 - d. Recommend and prepare necessary change orders and associated engineer's estimate.
 - e. Assist the Department, at the Department's express, written authorization, with any claim resolution process involving the Department's construction contractor and the Department, including serving as a witness in connection with any legal proceedings or dispute resolution processes required by law.

Requirements of Specified Services When Requested

The CONSULTANT shall:

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

1. When requested by the PROJECT ADMINISTRATOR, attend meetings with the COUNTY, and/or any federal, state and/or local representatives. The CONSULTANT shall prepare brief minutes of all meetings attended and promptly submit those minutes to the PROJECT ADMINISTRATOR within seven (7) calendar days.
2. Make recommendations to the COUNTY on all claims of the COUNTY or the construction contractor and all other matters relating to the execution and progress of work, including interpretation of the contract documents for the PROJECT.
3. Within seven (7) calendar days of the COUNTY'S request, review and make recommendations for samples, schedules, shop drawings, and other submissions for general conformance with the design concept of the PROJECT(S) and for general compliance with the plans and specifications and information provided by the contract documents for the PROJECT.
4. Within two (2) working days, respond to requests from the PROJECT ADMINISTRATOR for information needed from the CONSULTANT in order to clarify construction plans and specifications and to review the construction contractor's cost estimates for all change orders.
5. Recommend and assist in the preparation of such change orders as deemed necessary with supporting documentation, calculations and estimate, for review and issuance of change orders by the COUNTY Construction Engineer to obtain appropriate agency acceptance and approval.
6. At intervals appropriate to the stage of construction, or as otherwise deemed necessary by the CONSULTANT, visit the site of the PROJECT(S) as necessary to become familiar generally with the progress and quality of the work and to determine whether the work is proceeding in general accordance with the contract documents. The CONSULTANT shall not be required to make exhaustive or continuous onsite inspections but shall give direction to the Construction Inspector as hereinafter more specifically provided. The CONSULTANT shall not be responsible for the construction contractor's failure to carry out the construction work in accordance with the contract documents. However, the CONSULTANT shall immediately advise the PROJECT ADMINISTRATOR of any known or observed deviation from the contract documents.
7. Not have control over or charge of, and shall not be responsible for construction means, methods, techniques, sequence, or procedure, or for the safety precautions, programs, or equipment in use in connection with the work, since these are solely the construction contractor's responsibility under the contract for construction.
8. 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 shall be sufficiently detailed for PROJECT ADMINISTRATOR to determine if the CONSULTANT is performing to expectations or is on schedule, to provide

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

communication of interim findings, and so sufficiently address any difficulties or special problems encountered so remedies can be developed.

9. Advise the PROJECT ADMINISTRATOR of defects and deficiencies observed in the work of the construction contractor and may recommend that the DIRECTOR reject work as failing to conform to the contract documents.

10. Conduct site visits and field observations to facilitate recommendations by the CONSULTANT regarding:

- a. dates of substantial completion
- b. dates of final completion
- c. the DIRECTOR'S acceptance of the work
- d. the DIRECTOR'S filing of the Notice of Completion and Issuance of Final Certificate for payment
- e. other issues which may require site visits

11. Control of Construction Project Site

The COUNTY agrees that in accordance with generally accepted practices, the COUNTY'S construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction projects; including safety of all persons and property, and that this requirement shall be made to apply continuously during projects and not be limited to normal working hours. The CONSULTANT shall not have control over or charge of, and shall not be responsible for, project means, methods, techniques, sequences or procedures, as these are solely the responsibility of the construction contractor. The CONSULTANT shall not have the authority to stop or reject the work of the construction contractor.

Project Design

Applies to the following disciplines:

Electrical Engineering	Landscape Architecture
Architectural Design and Drafting	

Description of Work

Provide complete designs and produce biddable plan sets and accompanying specifications for various projects using Civil 3D software, AutoCAD, Revit, as

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

requested or approved by the County. All designs should apply urban design principles that meet the needs of the individual communities. The projects include:

1. Road reconstruction projects
2. Congestion mitigation air quality shoulder improvement projects
3. Hot mix asphalt overlay projects
4. Road projects employing in-situ reclamation processes
5. Bituminous seal coats and slurry seals
6. Bridge rehabilitation
7. Bridge replacement
8. Bridge scour mitigation
9. Water system projects
10. Wastewater system projects
11. Landfill Projects
12. Interior Tenant Improvements
13. New buildings

Engineering Support

Applies to all disciplines.

Description of Work

1. Provide technical data for the preparation of various funding paperwork.
2. Provide technical data for the preparation of various permit applications.
3. Provide technical data for the preparation of cooperative agreements.
4. Provide technical data for the preparation of utility agreements.
5. Prepare and stamp legal descriptions for the acquisition of right of way.
6. Conduct meetings with property owners regarding projects
7. Review of existing designs for compliance with development plans

Agreement Appendix B – Consultant's Scope of Services
On-Call Architectural and Engineering Consultant and Related Services

8. Provide presentation materials for the Board of Supervisors to be presented by COUNTY staff.
9. Prepare various tables, maps, charts and diagrams.
10. Provide technical support for request for proposal processes.
11. Serve as a plan checker and independent quantity checker.

Appendix D - Deliverables

Last updated: March 27, 2025

Prior to submissions, the CONSULTANT shall request from the PROJECT ADMINISTRATOR examples of acceptable drafting format and reproducible standards. Verification of compatible format will be required prior to final file delivery.

A. Technical Report Standard Submittal Formats:

1. Standard submittal formats:

a. Electronic copy sent via email:

- i. Microsoft Word (.docx) formatted for printing on 8 ½" by 11" pages
- ii. Microsoft Excel (.xlsx) formatted for printing on 8 ½" by 11" or 11" by 17" pages
- iii. Adobe (.pdf) formatted for printing on 8 ½" by 11" or 11" by 17" pages
- iv. AutoCAD Civil 3D, as .DXF or .DWG files
- v. Other mutually agreed upon format. Hardcopies upon request.

2. Technical studies and estimates:

a. Electronic copy sent via email:

- i. Microsoft Word (.docx)
- ii. Microsoft Excel (.xlsx)
- iii. Signed Final Version in Adobe (.pdf)
- iv. Other mutually agreed upon format. Hardcopies upon request.

3. Drawings:

a. Electronic copy sent via email:

- i. AutoCAD Civil 3D as .DXF or .DWG files
- ii. Hardcopies upon request.

B. Design Plans, Technical Specifications and Construction Estimate:

1. 30%, 60%, and 90% plans, specifications and estimates for review

- a. Progress prints and final originals of the plans, specifications, and estimates.
- b. Standard submittal format
- c. Hardcopies on 22" X 34" pages (up to 10 copies) upon request.

2. Accepted Final original plans, specifications and estimates shall include

- a. Electronic copy sent via email
 - i. Final plans, cross sections and slope stake information, design calculations, quantity calculations, and other design information as applicable to the PROJECT.
 - ii. Final specifications and estimates
 - iii. Plan sheets, cross sections, earthwork calculations and slope stake information shall be in:
 - AutoCAD Civil 3D
 - iv. Specifications shall be in:
 - Microsoft Word (.docx) formatted for printing on 8 ½" by 11" pages
 - v. Final engineer's estimates shall be in:
 - Microsoft Excel (.xlsx)
- b. Hardcopies (Upon request)
 - i. Plan Set: One (1) original reproducible plan set on 22" by 34" sheets of bond paper and 4 mil thick double matte film.
 - ii. Cross Sections: One (1) reproducible copy of cross sections on 22" by 34" sheets of bond paper and 4 mil thick double matte film.
 - iii. Final Specifications and Engineer's Estimates: One (1) stamped and wet signed paper copy on 8 ½" by 11" pages.

C. County-provided preliminary engineering survey data on existing structures and topographic mapping shall be in:

- a. AutoCAD Civil 3D
- b. Or other mutually agreed upon format

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF FRESNO
STATE OF CALIFORNIA**

In the matter of Amendment of Standard Conflict of Interest Code for All County Departments)))))	No.
--	-----------------------	---------------------

Whereas, the Political Reform Act, Government Code section 81000 et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes; and

Whereas, the Fair Political Practices Commission has adopted a regulation, Title 2, California Code of Regulations, section 18730, which contains the terms of a standard conflict of interest code, and which may be amended by the Fair Political Practices Commission after public notices and hearings to conform to amendments to the Political Reform Act; and

Whereas, any local agency may incorporate this standard conflict of interest code, and thereafter need not amend its code to conform to future amendments to the Political Reform Act or its regulations; and

Whereas, the Board of Supervisors may adopt the standard conflict of interest code on behalf of all County departments.

Now therefore be it resolved, that the terms of Title 2, California Code of Regulations, section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, are hereby incorporated by reference and, along with the Exhibits A and B approved previously, today, or in the future, by this Board for each County department, in which officers and employees are designated and disclosure categories are set forth, constitute the conflict of interest codes of each County department.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Conflict of interest forms shall be filed as follows:

1. As required by Government Code section 87500, subdivision (e), the County Administrative Officer, District Attorney, County Counsel, and Auditor-Controller/Treasurer-Tax Collector shall file one original of their statements with the County Clerk, who shall make and retain a copy and forward the original to the Fair Political Practices Commission, which shall be the filing officer.

2. As required by Government Code section 87500, subdivision (j), all other department heads shall file one original of their statements with their departments. The filing officer of each department shall make and retain a copy and forward the original to the Clerk to the Board of Supervisors, who shall be the filing officer.

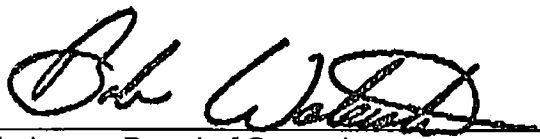
3. All other designated employees shall file one original of their statements with their departments.

Adopted at a regular meeting of the Board of Supervisors, held on the 2nd day of October, 2007, by the following vote, to wit:

Ayes: Supervisors Larson, Perea, Anderson, Case and Waterston

Noes: None

Absent: None


Chairman, Board of Supervisors

Attest:


Clerk



Conflict of Interest Code Local Agency Annual / Biennial Report

[\[Email Me\]](#)
Double click!

In accordance with Government Code Section 87306.5, this department has reviewed its Conflict of Interest Code and has determined that (check one of the following):

1. ☐ Our department's Conflict of Interest Code accurately designates all positions within our department which make or participate in the making of decisions which may foreseeably have a material effect on any financial interest; and the disclosure category assigned to each such position accurately requires the disclosure of all of the specific types of investments, business positions, interests in real property, and sources of income that are reportable under Government Code Section 87302 ("reportable under Government Code Section 87302" means: an investment, business position, interest in real property, or source of income shall be made reportable by the Conflict of Interest Code if the business entity in which the investment or business position is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his or her position); or,
2. ☒ Our department's Conflict of Interest Code is in need of amendment. We have determined that the following amendments are necessary (check applicable items, and refer to Exhibits "A" and "B" for detail if appropriate):
 - A. ☒ Include new positions (including consultants) that must be designated.
 - B. ☐ Include or delete positions because changes in duties.
 - C. ☐ Include positions that manage public investments.
 - D. ☐ Revise disclosure categories.
 - E. ☒ Revise the titles of existing positions.
 - F. ☐ Delete titles of positions that have been abolished.
 - G. ☐ Other (*describe*)

CONTACT PERSON	DEPARTMENT
Sam Mann	PWP

I hereby approve the foregoing reported information for our department:

stwhite 12/28/2023 9:48:57 AM _____ Department Head Signature / Date	[Sign] Double click!
--	--------------------------------------

Note: Government Code Section 87306 requires that when an agency (e.g., your department) has determined that amendments or revisions are necessitated by changed circumstances, the amendments or revisions shall be submitted to the code reviewing body within 90 days after the changed circumstances have become apparent.

EXHIBIT "A"
PUBLIC WORKS AND PLANNING

<u>Classification</u>	<u>Category</u>
Accountant I / II	2
Architect	1
Building Inspector I / II	1
Building Plans Engineer	1
Chief Building Inspector	1
Chief of Field Surveys	1
Consultant	*
<u>Deputy Director of Planning</u>	<u>1</u>
Deputy Director of Public Works	1
Development Services & Capital Projects Manager	1
Director of Public Works and Planning	1
Disposal Site Supervisor	2
Engineer I / II / III	1
Field Survey Supervisor	3
Financial Analyst I / II / III	1
Housing Rehabilitation Specialist I / II	1
Information Technology Analyst I / II / III / IV	2
Landfill Operations Manager	1
Planner I / II / III	1
Planning and Resource Management Official	1
Principal Accountant	1
Principal Planner	1
Principal Staff Analyst Program Manager	1
Public Works and Planning Business Manager	1
<u>Public Works and Planning Finance Division Manager</u>	<u>1</u>
Public Works and Planning Information Technology Manager	1
<u>Departmental Information Technology Manager</u>	<u>1</u>
Public Works Division Engineer	1
Resources Division Manager	1
Right-of-Way Agent II / III	1
Road Maintenance & Operations Division Manager	1
Road Maintenance Supervisor	1
Road Superintendent	1
Senior Accountant	2
Senior Engineer	1
Senior Engineering Technician	2
Senior Information Technology Analyst	2
Senior Planner	1
Senior Staff Analyst	1

<u>Classification</u>	<u>Category</u>
Staff Analyst I / II / III	1
Supervising Accountant	1
Supervising Architect	1
Supervising Building Inspector	1
Supervising Engineer	1
Supervising Water/Wastewater Specialist	1
Traffic Maintenance Supervisor	2
Water & Natural Resources Manager	1

- * Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation: The Director of Public Works and Planning may determine in writing that a particular consultant, although a “designated position”, is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The Director of Public Works and Planning’s determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

EXHIBIT "B"

PUBLIC WORKS AND PLANNING

1. Persons in this category shall disclose all reportable investments, interests in real property, sources of income (including gifts), and business positions. Financial interests (other than gifts) are reportable only if located within or subject to the jurisdiction of Fresno County, or if the business entity is doing business or planning to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the filing of the statement. Real property shall be deemed to be within the jurisdiction of the County if the property or any part of it is located within or not more than two miles outside the boundaries of the County (including its incorporated cities) or within two miles of any land owned or used by the County.
2. Persons in this category shall disclose all reportable investments in, income from (including gifts), and business positions with any business entity which, within the last two years, has contracted or in the future foreseeably may contract with Fresno County through its Public Works and Planning Department, Solid Waste Commissions within the jurisdiction, or to any other joint powers agency which Fresno County is a member to provide services, supplies, materials, machinery, or equipment to the County.
3. Persons in this category shall disclose all interests in real property within the jurisdiction of Fresno County. Real Property shall be deemed to be within the jurisdiction if the property or any part of it is located within or not more than two miles outside the boundaries of Fresno County (including its incorporated cities) or within two miles of any land owned or used by the County.



Macros Must Be Enabled -- Please Re-open and Enable

Conflict of Interest Code of the County of Fresno

[] Email Me]
Double click!


Steven E. White, HEREBY SUBMITS THE FOLLOWING AMENDED CONFLICT OF INTEREST CODE TO THE BOARD OF SUPERVISORS OF THE COUNTY OF FRESNO.

AGENCY: Public Works and Planning

stwhite 12/29/2023 11:46:28 AM
Department Head Signature / Date

[] Sign] Double click!

RECEIVED ON BEHALF OF THE BOARD OF SUPERVISORS OF THE COUNTY OF FRESNO.


Clerk of the Board of Supervisors

[] Sign] Double click!

THE FOLLOWING CONFLICT OF INTEREST CODE, HAVING BEEN SUBMITTED BY THE AGENCY DESIGNATED ABOVE, WAS APPROVED BY ORDER OF THE CODE-REVIEWING BODY ON 2/6/24

OTHER ACTION (IF ANY): N/A


Clerk of the Board of Supervisors

[] Sign] Double click!

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

(Federally funded projects only)

The Agency has established a DBE goal for this Contract of _____

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-O1 *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-O2 *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 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

1. Type of Federal Action: <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	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known _____	
6. Federal Department/Agency: _____	7. Federal Program Name/Description: CFDA Number, if applicable _____	
8. Federal Action Number, if known: _____	9. Award Amount, if known: _____	
10. Name and Address of Lobby Entity (If individual, last name, first name, MI) _____ (attach Continuation Sheet(s) if necessary)	11. Individuals Performing Services (including address if different from No. 10) (last name, first name, MI) _____ (attach Continuation Sheet(s) if necessary)	
12. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	14. Type of Payment (check all that apply) <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 _____	
13. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
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: (attach Continuation Sheet(s) if necessary)		
16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/>		
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.		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
Authorized for Local Reproduction Standard Form - LLL		

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

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 1). 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