

AGREEMENT FOR

SAFE STREETS FOR ALL ACTION PLAN SERVICES

This Agreement for Professional Services (“the Agreement”) is made and entered into this _____ day of _____ 2024 (“Effective Date”), by and between the County of Fresno, a political subdivision of the State of California, (“the County”); and _____, a (Type of business), whose address is _____ hereinafter referred to as the “Consultant”.

Recitals

A. The County’s Department of Public Works and Planning (“Department”) desires to retain the Consultant to retain the CONSULTANT to update and expand the existing Local Road Safety Plan to include all required Safe Streets for All (SS4A) action plan components (“Project”), thus enabling the County to apply for SS4A implementation grant funding.

B. The Consultant represents that it is able to provide these professional services subject to the terms and conditions of this Agreement.

C. The Department has selected Consultant in accordance with the Ordinance Code Fresno County, Chapter 4.10 on the selection of architects, engineers, and other professionals to provide these services.

The parties therefore agree as follows:

Article 1

Consultant’s Services

1.1 **Scope of Services.** The Consultant shall perform planning services required for the Project, as provided in Exhibit A to this Agreement, entitled “Scope of Services,” attached and incorporated by this reference.

1.2 **Representation.** The Consultant represents that it is qualified, ready, willing, and able to perform all of the services provided in this Agreement.

1.3 **Compliance with Laws.** The Consultant shall, at its own cost, comply with all applicable federal, state, and local laws and regulations in the performance of its obligations

1 under this Agreement, including but not limited to workers compensation, labor, and
2 confidentiality laws and regulations.

3 1.4 The Consultant's Project team staff shall be as listed in Exhibit B, attached and
4 incorporated by this reference. Any substitutions of personnel shall be approved by the Contract
5 Administrator, approval of which shall not be unreasonably withheld. The Consultant shall notify
6 the Contract Administrator of the names and classifications of employees assigned to each
7 specific Project and shall not reassign such employees to other projects of the Consultant
8 without notification to and prior approval by the Contract Administrator.

9 1.5 The Consultant may retain, as subconsultants, specialists as the Consultant requires
10 to assist in completing the work in accordance with Article 13 "Subconsultants" and Article 18
11 "Disadvantaged Business Enterprises". The subconsultants shall be listed in Exhibit B, attached
12 and incorporated by this reference.

13 1.6 The Consultant's services shall be performed as expeditiously as is consistent with
14 professional skill and the orderly progress of the work, based on schedules for each specific
15 Project mutually agreed upon in advance by the Contract Administrator and the Consultant, and
16 consistent with schedules established under Article 3, "Compensation, Invoices, and Payments."

17 1.7 The Consultant shall be fully informed regarding the requirements of 49 CFR, Part 26
18 and the California Department of Transportation's (Caltrans) Disadvantage Business Enterprise
19 program developed pursuant to the regulations incorporated herein.
20

21 **Article 2**

22 **County's Responsibilities**

23 2.1 The County designates the following individual as the Contract Administrator for this
24 Agreement on behalf of the County, who shall remain so unless the Consultant is otherwise
25 notified in writing by the County's Director of Public Works and Planning or his/her designee(s)
26 ("Director"):

27 Erin Haagenson, Program Manager

28 2220 Tulare Street, 6th Floor, Fresno, CA 93721

1 559-388-7292

2 ehaagenson@fresnocountyca.gov

3 2.2 The County shall provide an individual Project Administrator to serve as a
4 representative of the County to oversee and collaborate grant implementation, and to interface
5 with funding agencies to ensure compliance.

6 2.3 The County shall issue Notice to Proceed for tasks based on the Cost Proposal in
7 Exhibit B.

8 2.4 The County shall examine documents submitted and render timely decisions
9 pertaining to those documents.

10 2.5 The County shall examine documents submitted to the County by the Consultant and
11 timely render decisions pertaining to those documents.

12 2.6 The County shall give reasonably prompt consideration to all matters submitted for
13 approval by the Consultant in an effort to assist the Consultant in avoiding any substantial
14 delays in the Consultant's program of work. An approval, authorization or request issued to the
15 Consultant by the County will be binding upon the County under the terms of this Agreement
16 only if it is made in writing and signed on behalf of the County by Contract Administrator.

17 **Article 3**

18 **Compensation, Invoices, and Payments**

19 3.1 The County agrees to pay, and the Consultant agrees to receive, compensation for
20 the performance of its services under this Agreement as described in this Article 3.

21 3.2 **Maximum Compensation.** The maximum compensation to be paid under this
22 Agreement is xxxxxxxxx). The Contractor acknowledges that the County is a local government
23 entity and does so with notice that the County's powers are limited by the California Constitution
24 and by State law, and with notice that Contractor may receive compensation under this
25 Agreement only for services performed according to the terms of this Agreement and while this
26 Agreement is in effect, and subject to the maximum amount payable under this section. The
27
28

1 Contractor further acknowledges that County employees have no authority to pay the Contractor
2 except as expressly provided in this Agreement.

3 3.3 Consultant Fee. The approved Consultant's Cost Proposal is attached as Exhibit B
4 and incorporated by this reference as though fully set forth herein. If there is any conflict
5 between the provisions set forth in the text of this Agreement and the approved Cost Proposal
6 (Exhibit B), this Agreement shall take precedence.

7 3.4 **Invoices.** The Consultant shall submit invoices electronically to
8 PWPBusinessOffice@fresnocountyca.gov . The Consultant shall submit each invoice within 60
9 days after the month in which the Consultant performs services and in any case within 60 days
10 after the end of the term or termination of this Agreement. Invoices shall clearly identify the
11 Phase and Task of the work, the Notice to Proceed number and the date(s) on which the work
12 was performed and shall be submitted with the documentation identified in Article 3, Section 3.8
13 "Invoice Documentation."

14 3.5 **Payment.** The County shall remit any payment to the Consultant's address specified
15 in the invoice. Upon receipt of a proper invoice, the Contract Administrator will take a maximum
16 of ten (10) working days to review, approve, and submit it to the County Auditor-
17 Controller/Treasurer-Tax Collector. Unsatisfactory or inaccurate invoices will be returned to the
18 Consultant for correction and resubmittal. Payment will be issued to the Consultant within forty-
19 five (45) calendar days of the date the Auditor-Controller/Treasurer-Tax Collector receives the
20 approved invoice.

21 3.6 An unresolved dispute over a possible error or omission may cause payment of the
22 Consultant fees in the disputed amount to be withheld by the County.

23 3.7 **Invoice Documentation.** Concurrently with the invoices, the Consultant shall certify
24 (through copies of issued checks, receipts, or other County pre-approved documentation) that
25 complete payment, has been made to all subconsultants as provided herein for all previous
26 invoices paid by the County. However, the parties do not intend that the foregoing create in any
27 subconsultants or subconsultant a third-party beneficiary status or any third-party beneficiary
28 rights and do hereby expressly disclaim any such status or rights.

1 3.8 **Incidental Expenses.** The Consultant is solely responsible for all its costs and
2 expenses that are not specified as payable by the County under this Agreement.

3 3.9 **Retention From Earned Compensation.** No retainage will be withheld by the
4 County from the Consultant's payment(s).

5 **Article 4**

6 **Term of Agreement**

7 4.1 **Term.** This Agreement is effective on execution and terminates after a period of
8 three years, except as provided in section 4.2, "Extension," or Article 6, "Termination and
9 Suspension," below.

10 4.2 **Extension.** The term of this Agreement may be extended for no more than two, one-
11 year period only upon written approval of both parties at least 30 days before the first day of the
12 one-year extension period. The Director of Public Works and Planning or his or her designee is
13 authorized to sign the written approval on behalf of the County based on the Consultant's
14 satisfactory performance. The extension of this Agreement by the County is not a waiver or
15 compromise of any default or breach of this Agreement by the Consultant existing at the time of
16 the extension whether or not known to the County.

17 **Article 5**

18 **Notices**

19 5.1 **Contact Information.** The persons and their addresses having authority to give and
20 receive notices provided for or permitted under this Agreement include the following:

21 **For the County:**

22 Department of Public Works and Planning
23 Erin Haagenson, Program Manager
24 2220 Tulare Street, 6th Floor, Fresno, CA 93721
25 559-388-7292
26 ehaagenson@fresnocountyca.gov

27 **For the Consultant:**

28 [Contact]
[Firm]
[Address]
[City, State Zip]
[Email]

1 5.2 **Change of Contact Information.** Either party may change the information in section
2 5.1 by giving notice as provided in section 5.3.

3 5.3 **Method of Delivery.** Each notice between the County and the Consultant provided
4 for or permitted under this Agreement must be in writing, state that it is a notice provided under
5 this Agreement, and be delivered either by personal service, by first-class United States mail, by
6 an overnight commercial courier service, or by Portable Document Format (PDF) document
7 attached to an email.

8 (A) A notice delivered by personal service is effective upon service to the recipient.

9 (B) A notice delivered by first-class United States mail is effective three County
10 business days after deposit in the United States mail, postage prepaid, addressed to the
11 recipient.

12 (C) A notice delivered by an overnight commercial courier service is effective one
13 County business day after deposit with the overnight commercial courier service,
14 delivery fees prepaid, with delivery instructions given for next day delivery, addressed to
15 the recipient.

16 (D) A notice delivered by PDF document attached to an email is effective when
17 transmission to the recipient is completed (but, if such transmission is completed outside
18 of County business hours, then such delivery is deemed to be effective at the next
19 beginning of a County business day), provided that the sender maintains a machine
20 record of the completed transmission.

21 5.4 **Claims Presentation.** For all claims arising from or related to this Agreement,
22 nothing in this Agreement establishes, waives, or modifies any claims presentation
23 requirements or procedures provided by law, including the Government Claims Act (Division 3.6
24 of Title 1 of the Government Code, beginning with section 810).

25 **Article 6**

26 **Termination and Suspension**

27 6.1 **Termination for Non-Allocation of Funds.** The terms of this Agreement are
28 contingent on the approval of funds by the appropriating government agency. If sufficient funds

1 are not allocated, then the County, upon at least 30 days' advance written notice to the
2 Consultant, may:

- 3 (A) Modify the services provided by the Consultant under this Agreement; or
- 4 (B) Terminate this Agreement.

5 **6.2 Termination for Breach.**

6 (A) Upon determining that a breach (as defined in paragraph (C) below) has
7 occurred, the County may give written notice of the breach to the Consultant . The
8 written notice may suspend performance under this Agreement and must provide at
9 least 30 days for the Consultant to cure the breach.

10 (B) If the Consultant fails to cure the breach to the County's satisfaction within the
11 time stated in the written notice, the County may terminate this Agreement immediately.

12 (C) For purposes of this section, a breach occurs when, in the determination of the
13 County, the Consultant has:

- 14 (1) Obtained or used funds illegally or improperly;
- 15 (2) Failed to comply with any part of this Agreement;
- 16 (3) Submitted a substantially incorrect or incomplete report to the County; or
- 17 (4) Improperly performed any of its obligations under this Agreement.

18 **6.3 Termination without Cause.** In circumstances other than those set forth above, the
19 County may terminate this Agreement by giving at least 30 days advance written notice to the
20 Consultant .

21 **6.4 No Penalty or Further Obligation.** Any termination of this Agreement by the County
22 under this Article 6 is without penalty to or further obligation of the County.

23 **6.5 County's Rights upon Termination.** Upon termination for breach under this Article
24 6, the County may demand repayment by the Consultant of any monies disbursed to the
25 Consultant under this Agreement that, in the County's sole judgment, were not expended in
26 compliance with this Agreement. The Consultant shall promptly refund all such monies upon
27 demand. This section survives the termination of this Agreement.

1 **Article 7**

2 **Independent Consultant**

3 7.1 **Status.** In performing under this Agreement, the Consultant, including its officers,
4 agents, employees, and volunteers, is at all times acting and performing as an independent
5 consultant, in an independent capacity, and not as an officer, agent, servant, employee, joint
6 venturer, partner, or associate of the County.

7 7.2 **Verifying Performance.** When the Consultant is providing consultant services
8 hereunder, the County has no right to control, supervise, or direct the manner or method of the
9 Consultant's shall perform its work and function. However, the County shall retain the right to
10 administer this Agreement so as to verify that the Consultant is performing its obligations in
11 accordance with the terms and conditions thereof.

12 7.3 **Benefits.** Because of its status as an independent Consultant, the Consultant has no
13 right to employment rights or benefits available to County employees. The Consultant is solely
14 responsible for providing to its own employees all employee benefits required by law. The
15 Consultant shall save the County harmless from all matters relating to the payment of
16 Consultant's employees, including compliance with Social Security withholding and all related
17 regulations.

18 7.4 **Services to Others.** The parties acknowledge that, during the term of this
19 Agreement, the Consultant may provide services to others unrelated to the County.

20 **Article 8**

21 **Indemnity and Defense**

22 8.1 **Indemnity.** The Consultant shall indemnify and hold harmless and defend the
23 County (including its officers, agents, employees, and volunteers) against all claims, demands,
24 injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and
25 liabilities of any kind to the County, the Consultant , or any third party that arise from or relate to
26 the performance or failure to perform by the Consultant (or any of its officers, agents,
27 subconsultant, or employees) under this Agreement. The County may conduct or participate in
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1 its own defense without affecting the Consultant's obligation to indemnify and hold harmless or
2 defend the County.

3 8.2 **Survival.** This Article 8 survives the termination or expiration of this Agreement.

4 **Article 9**

5 **Insurance**

6 9.1 Without limiting the COUNTY'S right to obtain indemnification from the
7 CONSULTANT or any third parties, the CONSULTANT, at its sole expense, shall maintain in full
8 force and effect, the following insurance policies prior to commencement of any work for the
9 COUNTY and, thereafter, throughout the entire term of this Agreement (with the exception of
10 Professional Liability Insurance, which the CONSULTANT shall maintain in full force and effect
11 for the additional period of time required).

12 9.2 Commercial General Liability: Commercial General Liability Insurance with limits
13 of not less than One Million Dollars (\$1,000,000.00) per occurrence and an annual aggregate of
14 not less than Two Million Dollars (\$2,000,000.00). This policy shall be issued on a per
15 occurrence basis. The COUNTY may require specific coverages including completed
16 operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
17 liability or any other liability insurance deemed necessary because of the nature of this
18 Agreement.

19 9.3 Automobile Liability Insurance: Comprehensive Automobile Liability Insurance with
20 limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and for
21 property damages. Coverage should include auto used in connection with this Agreement.

22 9.4 Professional Liability Insurance: If the CONSULTANT employs licensed professional
23 staff in providing services, Professional Liability Insurance with limits of One Million Dollars
24 (\$1,000,000.00) per claim, Three Million Dollars (\$3,000,000.00) annual aggregate.

25 9.5 The Professional Liability Insurance shall be kept in full force and effect for a period
26 of five (5) years from the date of substantial completion of the CONSULTANT'S work as
27 determined by the COUNTY.

1 9.6 Worker's Compensation: A policy of Worker's Compensation insurance as may be
2 required by the California Labor Code.

3 9.7 Additional Requirements Relating to Insurance: The CONSULTANT shall obtain
4 endorsements to the Commercial General Liability insurance naming the County of Fresno, its
5 officers, agents, and employees, individually and collectively, as additional insured, but only
6 insofar as the operations under this Agreement are concerned. Such coverage for additional
7 insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
8 by the COUNTY, its officers, agents, and employees shall be excess only and not contributing
9 with insurance provided under the CONSULTANT's policies required herein. This insurance
10 shall not be cancelled or changed without a minimum of thirty (30) days advance written notice
11 given to the COUNTY.

12 9.8 The CONSULTANT hereby waives its right to recover from the COUNTY, its officers,
13 agents, and employees any amounts paid by the policy of worker's compensation insurance
14 required by this Agreement. The CONSULTANT is solely responsible to obtain any
15 endorsement to such policy that may be necessary to accomplish such waiver of subrogation,
16 but the CONSULTANT's waiver of subrogation under this paragraph is effective whether or not
17 the CONSULTANT obtains such an endorsement.

18 9.9 Prior to commencing any such work under this Agreement, the CONSULTANT shall
19 provide certificates of insurance and endorsements as stated above for all of the foregoing
20 policies, as required herein, to the County of Fresno, Erin Haagenson, Principal Staff Analyst,
21 2220 Tulare St., Sixth Floor, Fresno, CA 93721, stating that such insurance coverages have
22 been obtained and are in full force; that the County of Fresno, its officers, agents and
23 employees will not be responsible for any premiums on the policies; that for such worker's
24 compensation insurance the CONSULTANT has waived its right to recover from the COUNTY,
25 its officers, agents, and employees any amounts paid under the insurance policy and that
26 waiver does not invalidate the insurance policy; that such Commercial General Liability
27 insurance names the County of Fresno, its officers, agents and employees, individually and
28 collectively, as additional insured, but only insofar as the operations under this Agreement are

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

6 9.10 All policies shall be issued by admitted insurers licensed to do business in the State
7 of California, and such insurance shall be purchased from companies possessing a current A.M.
8 Best, Inc. rating of A FSC VII or better.

9 9.11 The CONSULTANT agrees that the bodily injury liability insurance herein provided
10 for, shall be in effect at all times during the term of this Agreement. In the event said insurance
11 coverage expires at any time or times during the term of this Agreement, CONSULTANT agrees
12 to provide at least thirty (30) calendar days prior notice to said expiration date; and a new
13 Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than
14 either the remainder of the term of the Agreement, or for a period of not less than one (1) year.
15 New Certificates of Insurance are subject to the approval of COUNTY.

16 9.12 In the event the CONSULTANT fails to keep in effect at all times the insurance
17 coverages as required by this Article 10, the COUNTY may, in addition to any other remedies it
18 may have, suspend or terminate this Agreement upon occurrence of such failure, or may
19 purchase such insurance coverage and charge the cost of the coverage to the CONSULTANT.
20 The COUNTY may offset such charges against any amounts owed by the COUNTY to the
21 CONSULTANT under this Agreement..

22 **Article 10**

23 **Cost Principles and Administrative Requirements**

24 10.1 The Consultant agrees that 48 CFR 31, Contract Cost Principles and Procedures,
25 shall be used to determine the allowability of individual terms of cost.

26 10.2 The Consultant also agrees to comply with Federal procedures in accordance with 2
27 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for
28 Federal Awards.

1 10.3 Any costs for which payment has been made to the Consultant that are determined
2 by subsequent audit to be unallowable under 48 CFR 31 or 2 CFR 200 are subject to repayment
3 by the Consultant to County.

4 10.4 When a Consultant or Subconsultant is a Non-Profit Organization or an Institution of
5 Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative
6 Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

7 **Article 11**

8 **Inspections, Audits, and Public Records**

9 11.1 **Inspection of Documents.** The Consultant shall make available to the County, and
10 the County may examine at any time during business hours and as often as the County deems
11 necessary, all of the Consultant's records and data with respect to the matters covered by this
12 Agreement, excluding attorney-client privileged communications. The Consultant shall, upon
13 request by the County, permit the County to audit and inspect all of such records and data to
14 ensure the Consultant's compliance with the terms of this Agreement.

15 11.2 **Public Records.** The County is not limited in any manner with respect to its public
16 disclosure of this Agreement or any record or data that the Consultant may provide to the
17 County. The County's public disclosure of this Agreement or any record or data that the
18 Consultant may provide to the County may include but is not limited to the following:

19 (A) The County may voluntarily, or upon request by any member of the public or
20 governmental agency, disclose this Agreement to the public or such governmental
21 agency.

22 (B) The County may voluntarily, or upon request by any member of the public or
23 governmental agency, disclose to the public or such governmental agency any record or
24 data that the Consultant may provide to the County, unless such disclosure is prohibited
25 by court order.

26 (C) This Agreement, and any record or data that the Consultant may provide to the
27 County, is subject to public disclosure under the Ralph M. Brown Act (California
28 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

1 (D) This Agreement, and any record or data that the Consultant may provide to the
2 County, is subject to public disclosure as a public record under the California Public
3 Records Act (California Government Code, Title 1, Division 10, beginning with section
4 7920.000) ("CPRA").

5 (E) This Agreement, and any record or data that the Consultant may provide to the
6 County, is subject to public disclosure as information concerning the conduct of the
7 people's business of the State of California under California Constitution, Article 1,
8 section 3, subdivision (b).

9 (F) Any marking of confidentiality or restricted access upon or otherwise made with
10 respect to any record or data that the Consultant may provide to the County shall be
11 disregarded and have no effect on the County's right or duty to disclose to the public or
12 governmental agency any such record or data.

13 **11.3 Public Records Act Requests.** If the County receives a written or oral request
14 under the CPRA to publicly disclose any record that is in the Consultant's possession or control,
15 and which the County has a right, under any provision of this Agreement or applicable law, to
16 possess or control, then the County may demand, in writing, that the Consultant deliver to the
17 County, for purposes of public disclosure, the requested records that may be in the possession
18 or control of the Consultant. Within five business days after the County's demand, the
19 Consultant shall (a) deliver to the County all of the requested records that are in the
20 Consultant's possession or control, together with a written statement that the Consultant, after
21 conducting a diligent search, has produced all requested records that are in the Consultant's
22 possession or control, or (b) provide to the County a written statement that the Consultant, after
23 conducting a diligent search, does not possess or control any of the requested records. The
24 Consultant shall cooperate with the County with respect to any County demand for such
25 records. If the Consultant wishes to assert that any specific record or data is exempt from
26 disclosure under the CPRA or other applicable law, it must deliver the record or data to the
27 County and assert the exemption by citation to specific legal authority within the written
28 statement that it provides to the County under this section. The Consultant's assertion of any

1 exemption from disclosure is not binding on the County, but the County will give at least 10
2 days' advance written notice to the Consultant before disclosing any record subject to the
3 Consultant's assertion of exemption from disclosure. The Consultant shall indemnify the County
4 for any court-ordered award of costs or attorney's fees under the CPRA that results from the
5 Consultant's delay, claim of exemption, failure to produce any such records, or failure to
6 cooperate with the County with respect to any County demand for any such records.

7 **Article 12**

8 **Disclosure of Self-Dealing Transactions**

9 12.1 **Applicability.** This Article 12 applies if the Consultant is operating as a corporation
10 or changes its status to operate as a corporation.

11 12.2 **Duty to Disclose.** If any member of the Consultant's board of directors is party to a
12 self-dealing transaction, he or she shall disclose the transaction by completing and signing a
13 "Self-Dealing Transaction Disclosure Form" (Exhibit C to this Agreement) and submitting it to
14 the County before commencing the transaction or immediately after.

15 12.3 **Definition.** "Self-dealing transaction" means a transaction to which the Consultant is
16 a party and in which one or more of its directors, as an individual, has a material financial
17 interest.

18 **Article 13**

19 **General Terms**

20 13.1 **Modification.** Except as provided in Article 6, "Termination and Suspension," this
21 Agreement may not be modified, and no waiver is effective, except by written agreement signed
22 by both parties. The Consultant acknowledges that County employees have no authority to
23 modify this Agreement except as expressly provided in this Agreement.

24 13.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations
25 under this Agreement without the prior written consent of the other party.

26 13.3 **Governing Law.** The laws of the State of California govern all matters arising from
27 or related to this Agreement.

28

1 13.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
2 County, California. Consultant consents to California jurisdiction for actions arising from or
3 related to this Agreement, and, subject to the Government Claims Act, all such actions must be
4 brought and maintained in Fresno County.

5 13.5 **Construction.** The final form of this Agreement is the result of the parties' combined
6 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
7 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
8 against either party.

9 13.6 **Days.** Unless otherwise specified, "days" means calendar days.

10 13.7 **Headings.** The headings and section titles in this Agreement are for convenience
11 only and are not part of this Agreement.

12 13.8 **Severability.** If anything in this Agreement is found by a court of competent
13 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in
14 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
15 this Agreement with lawful and enforceable terms intended to accomplish the parties' original
16 intent.

17 13.9 **Nondiscrimination.** During the performance of this Agreement, the Consultant shall
18 not unlawfully discriminate against any employee or applicant for employment, or recipient of
19 services, because of race, religious creed, color, national origin, ancestry, physical disability,
20 mental disability, medical condition, genetic information, marital status, sex, gender, gender
21 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
22 all applicable State of California and federal statutes and regulation.

23 13.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
24 of the Consultant under this Agreement on any one or more occasions is not a waiver of
25 performance of any continuing or other obligation of the Consultant and does not prohibit
26 enforcement by the County of any obligation on any other occasion.

27 13.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
28 between the Consultant and the County with respect to the subject matter of this Agreement,

1 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,
2 publications, and understandings of any nature unless those things are expressly included in
3 this Agreement. If there is any inconsistency between the terms of this Agreement without its
4 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
5 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the
6 exhibits.

7 13.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to
8 create any rights or obligations for any person or entity except for the parties.

9 13.13 **Authorized Signature.** 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.

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
14 Consultant to the terms of this Agreement.

15 13.14 **Electronic Signatures.** The parties agree that this Agreement may be executed by
16 electronic signature as provided in this section.

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

22 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed
23 equivalent to a valid original handwritten signature of the person signing this Agreement
24 for all purposes, including but not limited to evidentiary proof in any administrative or
25 judicial proceeding, and (2) has the same force and effect as the valid original
26 handwritten signature of that person.

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

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

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

11 13.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an
12 original, and all of which together constitute this Agreement.

13 **Article 14**

14 **Subconsultants**

15 14.1 The Consultant may retain, as subconsultants, specialists in various disciplines i as
16 the Consultant requires to assist in completing the work. All subconsultants used by the
17 Consultant shall be approved in writing by the Contract Administrator before they are retained
18 by the Consultant, approval of which shall not be unreasonably withheld. Those subconsultants
19 listed in Exhibit B, shall be considered as approved by the Contract Administrator. The
20 maximum amount of compensation to be paid to the Consultant under Article 5 "Compensation,
21 Allowable Costs and Payments" shall not be increased by any addition or substitution of
22 subconsultants.

23 14.2 The Consultant shall be as fully responsible to the County for the negligent acts and
24 omissions of its consultant and/or subconsultants, and of persons either directly or indirectly
25 employed by them, in the same manner as persons directly employed by the Consultant.

26 14.3 Nothing contained in this Agreement shall create any contractual relationship
27 between the County and any of the Consultant's subconsultants, and no subconsultant
28 agreement shall relieve the Consultant of any of its responsibilities and obligations hereunder.

1 The Consultant agrees to be as fully responsible to the County for the acts and omissions of its
2 subconsultants and of persons either directly or indirectly employed by any of them as it is for
3 the acts and omissions of persons directly employed by the Consultant. The Consultant's
4 obligation to pay its subconsultants is a separate and independent obligation that is entirely
5 unrelated to the County's obligation to make payments to the Consultant.

6 14.4 The Consultant shall perform the work contemplated with resources available within
7 its own organization; and no portion of the work pertinent to this contract shall be subcontracted
8 without prior written authorization by the Contract Administrator, excepting only those portions of
9 the work and the responsible subconsultants that are expressly identified in Exhibit B.

10 14.5 Any subcontract in excess of \$25,000 entered into as a result of this Agreement,
11 shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

12 14.6 The Consultant shall pay its subconsultants within fifteen (15) calendar days from
13 receipt of each progress payment made to the Consultant by the County.

14 14.7 Any substitution of subconsultant(s) must be approved in writing by the Contract
15 Administrator in advance of assigning work to a substitute Subconsultant.

16 **Article 15**

17 **Conflict of Interest**

18 15.1 The Consultant shall comply with the provisions of the Fresno County Department of
19 Public Works and Planning Conflict of Interest Code, attached as Exhibit D and incorporated by
20 this reference. Such compliance shall include the filing of annual statements pursuant to the
21 regulations of the State Fair Political Practices Commission including, but not limited to, portions
22 of Form 700.

23 15.2 During the term of this Agreement, the Consultant shall disclose any financial,
24 business, or other relationship with the County that may have an impact upon the outcome of
25 this Agreement, or any ensuing County construction project. The Consultant shall also list
26 current clients who may have a financial interest in the outcome of this contract, or any ensuing
27 County construction project, which will follow.

1 15.3 The Consultant certifies that it has disclosed to the County any actual, apparent, or
2 potential conflicts of interest that may exist relative to the services to be provided pursuant to
3 this Agreement. The Consultant agrees to advise the County of any actual, apparent or potential
4 conflicts of interest that may develop subsequent to the date of execution of this Agreement.
5 The Consultant further agrees to complete any statements of economic interest if required by
6 either County ordinance or State law.

7 15.4 The Consultant hereby certifies that it does not now have, nor shall it acquire any
8 financial or business interest that would conflict with the performance of services under this
9 Agreement. The Consultant hereby certifies that the Consultant or subconsultant and any firm
10 affiliated with the Consultant or subconsultant that bids on any construction contract or on any
11 Agreement to provide construction inspection for any construction project resulting from this
12 Agreement, has established necessary controls to ensure a conflict of interest does not exist.

13 15.5 An affiliated firm is one, which is subject to the control of the same persons, through
14 joint ownership or otherwise.

15 **Article 16**

16 **Errors or Omissions Claims and Disputes**

17 16.1 Definitions:

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

22 (B) "Claim" is a demand or assertion by one of the parties seeking, as a matter of
23 right, adjustment or interpretation of contract terms, payment of money, extension of
24 time, change orders, or other relief with respect to the terms of the contract. The term
25 "Claim" also includes other disputes and matters in question between the County and
26 the Consultant arising out of or relating to this Agreement. Claims must be made by
27 written notice. The provisions of Government Code section 901, et seq., shall apply to
28 every claim made to the County. The responsibility to substantiate claims shall rest with

1 the party making the claim. The term "Claim" also includes any allegation of an error or
2 omission by the Consultant.

3 16.2 If the Director believes the Consultant's work under this Agreement includes
4 negligent errors or omissions, or that the Consultant may otherwise have failed to comply with
5 the provisions of this Agreement, either generally or in connection with its duties as associated
6 with a particular Project; and that the cause(s) for a claim by the construction Consultant may be
7 attributable, in whole or in part, to such conduct on the part of the Consultant. Consultant upon
8 notice by the Director, the payments to the Consultant for such arguably deficient services shall
9 be held in suspense by the County until a final determination has been made, of the proportion
10 that the Consultant's fault bears to the fault of all other parties concerned.

11 (A) Such amounts held in suspense shall not be paid to the Consultant, pending the
12 final determination as to the Consultant's proportional fault. However, the appropriate
13 percentage of such amount held in suspense shall be paid to the Consultant, once a
14 final determination has been made, and the Consultant thereafter submits a proper
15 invoice to the County. Payment shall be issued in accordance with the procedure
16 outlined in Article 3 "Compensation, Invoices, and Payments."

17 **Article 17**

18 **Ownership of Data**

19 17.1 All documents, including preliminary documents, calculations, and survey data,
20 required in performing services under this Agreement shall be submitted to, and shall remain at
21 all times the property of the County regardless of whether they are in the possession of the
22 Consultant or any other person, firm, corporation, or agency.

23 17.2 The Consultant understands and agrees the County shall retain full ownership rights
24 of the work product of the Consultant for the Project, to the fullest extent permitted by law. In
25 this regard, the Consultant acknowledges and agrees the Consultant's services are on behalf of
26 the County and are "works made for hire," as that term is defined in copyright law, by the
27 County; that the work product to be prepared by the Consultant are for the sole and exclusive
28 use of the County, and that the County shall be the sole owner of all patents, copyrights,

1 trademarks, trade secrets and other rights and contractual interests in connection therewith
2 which are developed and compensated solely under this Agreement; that all the rights, title and
3 interest in and to the work product will be transferred to the County by the Consultant to the
4 extent the Consultant has an interest in and authority to convey such rights; and the Consultant
5 will assist the County to obtain and enforce patents, copyrights, trademarks, trade secrets, and
6 other rights and contractual interests relating to said work product, free and clear of any claim
7 by the Consultant or anyone claiming any right through the Consultant. The Consultant further
8 acknowledges and agrees the County's ownership rights in such work product, shall apply
9 regardless of whether such work product, or any copies thereof, are in possession of the
10 Consultant, or any other person, firm, corporation, or entity.

11 17.3 If this Agreement is terminated during or at the completion of any Project phase,
12 electronic and reproducible copies of report(s) or preliminary documents shall be submitted by
13 the Consultant to the County, which may use them to complete the Project at a future time.

14 17.4 The files provided by the Consultant to the County are submitted for an acceptance
15 period lasting until the expiration of this Agreement (i.e., throughout the duration of the contract
16 term, including any extensions). Any defects the County discovers during such acceptance
17 period shall be reported to the Consultant and shall be corrected as part of the Consultant's
18 "Basic Scope of Work."

19 **Article 18**

20 **State Prevailing Wage Rates**

21 18.1 The Consultant shall comply with the State of California's General Prevailing Wage
22 Rate requirements in accordance with California Labor Code, Section 1770, and all Federal,
23 State, and local laws and ordinances applicable to the work.

24 18.2 Any subcontract entered into as a result of this Agreement if for more than \$25,000
25 for public works construction or more than \$15,000 for the alteration, demolition, repair, or
26 maintenance of public works, shall contain all of the provisions of this Article 18.

27 18.3 No Consultant or Subconsultant may be awarded an Agreement containing public
28 work elements unless registered with the Department of Industrial Relations (DIR) pursuant to

1 Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of
2 this Agreement, including any subsequent amendments.

3 **Article 19**

4 **Disadvantaged Business Enterprises (DBE) Participation**

5 19.1 This Agreement is subject to 49 Code of Federal Regulations (hereinafter referred to
6 as "49 CFR"), Part 26 Participation by Disadvantaged Business Enterprises in Department of
7 Transportation Financial Assistance Programs, Disadvantaged Business Enterprise programs
8 established by other federal agencies and/or the County's Disadvantaged Business Enterprise
9 Program (all of which are hereinafter referred to as "DBE Program(s)").

10 19.2 The Consultant is responsible for being fully informed regarding the requirements of
11 49 CFR, Part 26 and the CALTRANS Disadvantaged Business Enterprise program developed
12 pursuant to the regulations, as detailed in Exhibit E attached and incorporated by this reference.

13 19.3 Any subcontract entered into as a result of this Agreement shall contain all of the
14 provisions of this Article 19 "DBE Participation" and Exhibit E "DBE Participation."

15 **Article 20**

16 **Rebates, Kickbacks or Other Unlawful Consideration**

17 20.1 The Consultant warrants that this Agreement was not obtained or secured through
18 rebates, kickbacks or other unlawful consideration, either promised or paid to any County
19 employee. For breach or violation of this warranty, the County shall have the right, in its
20 discretion, to terminate this Agreement without liability; or to pay only for the value of the work
21 actually performed; or to deduct from this Agreement the price or consideration, or otherwise
22 recover, the full amount of such rebate, kickback or other unlawful consideration.

23 **Article 21**

24 **Prohibition of Expending County State or Federal Funds for Lobbying**

25 21.1 The Consultant hereby certifies to the best of his or her knowledge and belief that:
26 *"No state, federal or County appropriated funds have been paid, or will be paid by or on*
27 *behalf of the Consultant to any person for influencing or attempting to influence an officer or*
28 *employee of any state or federal agency; a Member of the State Legislature or United States*

1 Congress; an officer or employee of the Legislature or Congress; or any employee of a
2 Member of the Legislature or Congress, in connection with any of the following:

3 (A) the awarding of any state or federal contract;

4 (B) the making of any state or federal grant;

5 (C) the making of any state or federal loan;

6 (D) the entering into of any cooperative agreement, or

7 (E) the extension, continuation, renewal, amendment, or modification of any state or
8 federal contract, grant, loan, or cooperative agreement.”

9 21.2 If any funds other than federally appropriated funds have been paid, or will be paid to
10 any person for influencing or attempting to influence an officer or employee of any federal
11 agency; a Member of Congress; an officer or employee of Congress, or an employee of a
12 Member of Congress; in connection with this federal contract, grant, loan, or cooperative
13 agreement, then the Consultant shall complete and submit Standard Form-LLL, “Disclosure
14 Form to Report Lobbying” (a copy of which is attached as Exhibit F), in accordance with its
15 instructions.

16 21.3 The certification required by the provisions of this Article 21 is a material
17 representation of fact upon which reliance was placed when this transaction was made or
18 entered into. Submission of this certification is a prerequisite for making or entering into this
19 transaction imposed by Title 31, U.S. Code Section 1352. Any person who fails to file the
20 required certification shall be subject to a civil penalty of not less than \$10,000 and not more
21 than \$100,000 for each such failure.

22 21.4 The Consultant also agrees by signing this document that he or she shall require that
23 the language of this certification be included in all lower-tier subcontracts, which exceed
24 \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

25 **Article 22**

26 **Non-Discrimination Clause and Statement of Compliance**

27 22.1 The Consultant’s signature affixed herein, and dated, shall constitute a certification
28 under penalty of perjury under the laws of the State of California that the Consultant has, unless

1 exempt, complied with, the nondiscrimination program requirements of Government Code
2 §12990 and 2 CCR § 8103.

3 22.2 During the performance of this Agreement, the Consultant and its subconsultants
4 shall not deny this Agreement's benefits to any person on the basis of race, religious creed,
5 color, national origin, ancestry, physical disability, mental disability, medical condition, genetic
6 information, marital status, sex, gender, gender identity, gender expression, age, sexual
7 orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow
8 harassment against any employee or applicant for employment because of race, religious
9 creed, color, national origin, ancestry, physical disability, mental disability, medical condition,
10 genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual
11 orientation, or military and veteran status. The Consultant and subconsultants shall ensure that
12 the evaluation and treatment of their employees and applicants for employment are free from
13 such discrimination and harassment.

14 22.3 The Consultant and subconsultants shall comply with the provisions of the Fair
15 Employment and Housing Act (Gov. Code §12990 et seq.) and the applicable regulations
16 promulgated thereunder (2 CCR §11000 et seq.), the provisions of Government Code §§11135
17 et seq., and the regulations or standards adopted by the County to implement such provisions.
18 The applicable regulations of the Fair Employment and Housing Commission implementing
19 Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the
20 California Code of Regulations, are incorporated into this Agreement by reference and made a
21 part hereof as if set forth in full.

22 22.4 Consultant shall permit access by representatives of the Department of Fair
23 Employment and Housing and the County upon reasonable notice at any time during the normal
24 business hours, but in no case less than twenty-four (24) hours' notice, to such of its books,
25 records, accounts, and all other sources of information and its facilities as said Department or
26 the County shall require in order to ascertain compliance with the requirements of this Article 22.
27
28

1 22.5 The Consultant and subconsultants shall give written notice of their obligations under
2 this Article 22 to labor organizations with which they have a collective bargaining or other
3 agreement.

4 22.6 The Consultant and subconsultants shall include the nondiscrimination and
5 compliance provisions of this Article 23 in all subcontracts to perform work under this
6 Agreement.

7 22.7 The Consultant, with regard to the work performed under this Agreement, shall act in
8 accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI
9 provides that the recipients of federal assistance will implement and maintain a policy of
10 nondiscrimination in which no person in the United States shall, on the basis of race, color,
11 national origin, religion, sex, age, disability, be excluded from participation in, denied the
12 benefits of or subject to discrimination under any program or activity by the recipients of federal
13 assistance or their assignees and successors in interest.

14 22.8 The Consultant shall comply with regulations relative to non-discrimination in
15 federally assisted programs of the U.S. Department of Transportation (49 CFR Part 21 –
16 Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the Consultant shall not
17 participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including
18 employment practices and the selection and retention of Subconsultants.

19 22.9 The Consultant, subrecipient or subconsultant will never exclude any person from
20 participation in, deny any person the benefits of, or otherwise discriminate against anyone in
21 connection with the award and performance of any contract covered by 49 CFR 26 on the basis
22 of race, color, sex, or national origin. In administering the County components of the DBE
23 Program Plan, the Consultant, subrecipient or subconsultant will not, directly, or through
24 contractual or other arrangements, use criteria or methods of administration that have the effect
25 of defeating or substantially impairing accomplishment of the objectives of the DBE Program
26 Plan with respect to individuals of a particular race, color, sex, or national origin.

1 **Article 23**

2 **Debarment and Suspension Certification**

3 23.1 The Consultant's signature affixed herein, shall constitute a certification under
4 penalty of perjury under the laws of the State of California, that the Consultant has complied
5 with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate,
6 which certifies that the Consultant or any person associated therewith in the capacity of owner,
7 partner, director, officer, or manager:

8 (A) Is not currently under suspension, debarment, voluntary exclusion, or
9 determination of ineligibility by any federal agency;

10 (B) Has not been suspended, debarred, voluntarily excluded, or determined ineligible by
11 any federal agency within the past three (3) years;

12 (C) Does not have a proposed debarment pending; and

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

16 23.2 Any exceptions to this certification must be disclosed to the County on Exhibit G
17 "Debarment and Suspension Certification." Exceptions will not necessarily result in denial of
18 recommendation for award but will be considered in determining Consultant responsibility.
19 Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

20 23.3 Exceptions to the Federal Government Excluded Parties Listing System maintained
21 by the General Services Administration are to be determined by the Federal Highway
22 Administration.

23 **Article 24**

24 **Executive Order N-6-22**

25 24.1 Under Executive Order N-6-22 as a consultant, subconsultant, or grantee,
26 compliance with the economic sanctions imposed in response to Russia's actions in Ukraine is
27 required, including with respect to, but not limited to, the federal executive orders identified in
28 the EO and the sanctions identified on the U.S. Department of the Treasury website

1 ([https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-
3 nationalsandblocked-persons-list-sdn-human-readable-lists](https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-
2 nationalsandblocked-persons-list-sdn-human-readable-lists)). Failure to comply may result in the
4 termination of contracts or grants, as applicable.

5 **Article 25**

6 **Contingent Fees**

7 25.1 The Consultant warrants, by execution of this Agreement that no person or selling
8 agency has been employed, or retained, to solicit or secure this Agreement upon an agreement
9 or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona
10 fide employees, or bona fide established commercial or selling agencies maintained by the
11 Consultant for the purpose of securing business. For breach or violation of this warranty, the
12 County has the right to: annul this Agreement without liability, and to pay only for the value of
13 the work actually performed; or in its discretion to deduct from the Agreement the price or
14 consideration, or otherwise recover, the full amount of such commission, percentage,
15 brokerage, or contingent fee.

16 **Article 26**

17 **Inspection Of Work**

18 26.1 The Consultant and any subconsultant shall permit the County, the state, and the
19 FHWA to review and inspect the Project activities and files at all reasonable times during the
20 performance period of this Agreement including review and inspection on a daily basis.

21 **Article 27**

22 **Safety**

23 27.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding
24 necessary safety equipment or procedures. Consultant shall comply with safety instructions
25 issued by the County Safety Officer and other County representatives. Consultant personnel
26 shall wear hard hats and safety vests at all times while working on any Project-related
27 construction site.

28 27.2 Pursuant to the authority contained in Vehicle Code §591, the County has
determined that such areas are within the limits of the Project and are open to public traffic.

1 Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15
2 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe
3 operation of its vehicles and the protection of the traveling public from injury and damage from
4 such vehicles.

5 27.3 Any subcontract entered into as a result of this Agreement shall contain all of the
6 provisions of this Article 27.

7 **Article 28**

8 **Confidentiality Of Data**

9 28.1 All financial, statistical, personal, technical, or other data and information relative
10 to the County's operations, which are designated confidential by the County and made available
11 to the Consultant in order to carry out this Agreement, shall be protected by the Consultant from
12 unauthorized use and disclosure.

13 28.2 Permission to disclose information on one occasion, or public hearing held by the
14 County relating to the contract, shall not authorize the Consultant to further disclose such
15 information, or disseminate the same on any other occasion.

16 28.3 The Consultant shall not comment publicly to the press or any other media regarding
17 this Agreement or the County's actions on the same, except to the County's staff, the
18 Consultant's own personnel involved in the performance of this Agreement, at public hearings or
19 in response to questions from a Legislative committee.

20 28.4 The Consultant shall not issue any news release or public relations item of any
21 nature, whatsoever, regarding work performed or to be performed under this Agreement without
22 prior review of the contents thereof by the County, and receipt of the County's written
23 permission.

24 28.5 If the Consultant or any of its officers, employees, or subconsultants does voluntarily
25 provide information in violation of this Agreement, the County has the right to reimbursement
26 and indemnity from the Consultant for any damages caused by the Consultant's releasing the
27 information, including, but not limited to, the County's attorney's fees and disbursements,
28 including without limitation experts' fees and disbursements.

1 **Article 29**

2 **Evaluation Of The Consultant**

3 29.1 The Consultant's performance will be evaluated by the County. A copy of the
4 evaluation (Exhibit H) will be sent to the Consultant for comments. The evaluation, together with
5 the comments, shall be retained as part of the Agreement record.

6 **Article 30**

7 **Funding Requirements**

8 30.1 It is mutually understood between the parties that this Agreement may have been
9 written before ascertaining the availability of funds or appropriation of funds, for the mutual
10 benefit of both parties, in order to avoid program and fiscal delays that would occur if the
11 Agreement were executed after that determination was made.

12 30.2 This Agreement is valid and enforceable only if sufficient funds are made available to
13 the County for the purpose of this Agreement. In addition, this Agreement is subject to any
14 additional restrictions, limitations, conditions, or any statute enacted by the Congress, State
15 Legislature, or the County governing board that may affect the provisions, terms, or funding of
16 this Agreement in any manner.

17 30.3 It is mutually agreed that if sufficient funds are not appropriated, this Agreement may
18 be amended to reflect any reduction in funds.

19 30.4 In the event the Contractor reduces the scope of Consultant's work under the
20 Agreement for a specific Project (or discontinues a specific Project), whether due to a deficiency
21 in the appropriation of anticipated funding or otherwise, the Consultant will be compensated on
22 a pro rata basis for actual work completed and accepted by the Contract Administrator in
23 accordance with the terms of the Agreement.

24 30.5 The County has the option to terminate the Agreement pursuant to Article 6
25 Termination and Suspension, or by mutual agreement to amend the Agreement to reflect any
26 reduction of funds.

1 **Article 31**

2 **Title VI Assurances**

3 31.1 The provisions of Title VI are hereby attached, unmodified as part of this Agreement
4 (Exhibit I). Exhibit I, "Title VI Assurances" Appendices A and E, and if applicable Appendices B,
5 C, and D, must be inserted, unmodified, in all subcontracts to perform work under the
6 Agreement.

7 (A) The clauses of Appendix B of this Assurance shall be included as a covenant
8 running with the land, in any deed from the United States effecting or recording a
9 transfer of real property, structures, use, or improvements thereon or interest therein to
10 the County.

11 (B) The clauses set forth in Appendix C and Appendix D of this Assurance shall be
12 included as a covenant running with the land, in any future deeds, leases, licenses,
13 permits, or similar instruments entered into by the County with other parties:

14 (1) for the subsequent transfer of real property acquired or improved under the
15 applicable activity, project, or program; and

16 (2) for the construction or use of, or access to, space on, over, or under real property
17 acquired or improved under the applicable activity, project, or program.

18 *[SIGNATURE PAGE FOLLOWS]*

1 The parties are signing this Agreement on the date stated in the introductory clause.

2 Firm Name]

COUNTY OF FRESNO

3
4
5 _____
Authorized signer, Title

Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno

6 Firm Address
7 Fresno, Ca 93711]

Attest:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

8
9
10 By: _____
Deputy

11
12 For accounting use only:

13 Org No.: 45104513

14 Fund No.: 0010

15 Subclass No.: 11000

16 Account No.: 7295
17
18
19
20
21
22
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28

Exhibit A

Scope of Services

Outlined below is the scope of services that will guide the development of the Action Plan. Consultants submitting proposals are encouraged to suggest additional project tasks that take a creative approach to safety solutions as a demonstration of their expertise and competence with quality consulting work and procedures.

The scope of work is to create an Action Plan that meets or exceeds the requirements of plans eligible to receive federal SS4A implementation funding. The requirements are stated in Appendix I (extrapolated from the FY 2022 SS4A NOFO, Section 2.i.). The final Action Plan must, at minimum, include the following components:

Leadership Commitment and Goal Setting: At the culmination of the development of the Action Plan, the consultant and County staff will make presentation to the Fresno County Board of Supervisors with a recommendation of one, or both, of the following: (1) the target date for achieving zero roadway fatalities and series injuries, OR (2) an ambitious percentage reduction of roadway fatalities and serious injuries by a specific date with an eventual goal of eliminating roadway fatalities and series injuries. (The County will determine the goal for the Action Plan, option 1 and/or 2.) If necessary, the Consultant will coordinate and present Action Plan to additional stakeholders at the State, FCOG, and City level to receive support for the commitment to reaching the goal.

Planning Structure: The County, with assistance from the Consultant, will establish a Safe Streets for All Study Review Committee (SRC). The SRC may include representatives from the County of Fresno, Cities within Fresno County, representatives from unincorporated areas, Community Service Districts, Community Based Organizations, Caltrans, Public Health, schools, community members, and/or the FCOG. Additional stakeholders may include representatives from the "4E's" of highway safety (engineering, law enforcement, education, and emergency response). Membership of the SRC shall also be representative of each of the Board Districts of Fresno County. The SRC will review the Consultant work products and provide guidance and input. The Consultant will be required to attend meetings, provide an agenda, meeting materials and meeting notes for SRC meetings. The County, with assistance from the Consultant, will make key decisions and report as appropriate to the SRC. SRC meetings will be held bi-monthly and will be virtual and/or in-person.

Safety Analysis: The Consultant will conduct a road safety analysis based on the existing conditions and historical trends to provide a collision baseline level within the County. Geospatially locate collisions in a geographic information system (GIS) to map and organize the collision data. Collision analysis will include, but is not limited to, collision severity; collision type; primary collision factor; collision location; collision time; collision and fatality demographics (age, sex, race and ethnicity) roadway user involvement; and other applicable high frequency collision trends identified such as near local schools; school aged children; seniors; nighttime collisions; alcohol or drug impaired collisions, etc. Consultant shall analyze traffic accident rates and develop a HIN by identifying the highest concentrations of traffic collisions resulting in fatalities and serious injuries. HIN analysis will include, but is not limited to, top 20 high-risk intersections and roadway segments; for 1) vehicles 2) pedestrians and 3) bicyclists; (total of 60) high frequency collision

types and primary collision factors; built environment features; and identification of other relevant systemic factors that may contribute towards fatal and serious injury collisions. The analysis should also review demographic and socioeconomic data to assess disparities in severe and fatal crashes in disadvantaged communities as defined by the US DOT.

Developing a High Injury Network (HIN) will allow for the understanding and identification of collision frequencies, collision density and collision rates. The HIN by itself will not assess whether a location or street is dangerous, but rather identify where there is a greater opportunity for serious injury or death at a certain location.

Demonstration Projects: With the preliminary HIN analysis, the Consultant shall recommend several low-cost, high-impact demonstration projects as a part of their analysis and provide preliminary scoping and estimates for each and shall be prepared to assist the County in implementation and follow up data analysis for at least one of them. Assistance shall include gathering and preparation of technical data, specifications, plans, and estimates requisite to implement the selected project or projects, bidding assistance (if necessary), and construction/post-construction impact analyses.

Cost Benefit Analysis: The consultant will perform an economic analysis that demonstrates the value of investments in road safety based on hidden costs to areas such as: law enforcement, emergency medical response and legal proceedings. Cost-benefit analysis will be used to evaluate investment decisions by translating safety and risk concepts into monetary values. Consultant shall analyze specific safety concerns and potential strategies to address safety enhancements. Examples include:

SAFETY CONCERNS

- Speeding
- Lighting/Visibility
- Fixed Objects Analysis
- Bike and pedestrian serious injuries and deaths
- Distracted Driving
- Sideshows (Automobile exhibition)

POTENTIAL STRATEGIES TO ADDRESS SAFETY ENHANCEMENTS

- Roadway/intersection concept design (roundabouts, rumble strips, signage, lighting, pavement markings, signals, traffic calming devices, geometric improvements)
- Safety Assessments for School Routes
- Potential Funding Sources
- Education and Outreach

Engagement and Collaboration: The consultant will develop a robust engagement plan with the public and relevant stakeholders, including the private sector and community groups, that allows for both community representation and feedback. Information received from the engagement and collaboration will be analyzed and incorporated into the Action Plan. A strong emphasis should be

placed on equity in outreach activities especially to underserved communities. This engagement plan should include, but is not limited to the following:

- Identification of and engagement strategies for underserved communities, pedestrians, bicyclists, and groups disproportionately impacted by traffic risks and are not typically engaged by safety planning.
- Online and in-person communication strategy for sharing plan information and engagement events with residents and stakeholders.
- Identification of and engagement activities for the public and private sector, community groups (community-based organizations) and relevant stakeholders.
- A minimum of 10 engaging public workshops, 5 of which will occur at times and locations such that underserved communities are provided equal opportunity for input to obtain feedback on plan recommendations.
- The consultant will provide translation services in Spanish and other necessary languages (as determined by the County) at meetings, workshops and for presentation materials.
- The consultant shall follow guidelines from The U.S. Department of Transportation's guidebook, Promising Practices for Meaningful Public Involvement in Transportation Decision-Making.

Website: The Consultant shall create a public-facing website that meets all the American with Disabilities Act (ADA) compliance criteria, to share progress and solicit feedback on safety concerns, projects, and strategies. The website will document progress during this work and provide timely updates and information. This content will include but is not limited to, information about upcoming engagement opportunities and summaries of data and surveys. The website will feature County of Fresno branding. Within the website, the Consultant will develop a dashboard that will present crash data, the high-injury network, crash and contributing factor profiles, safety profiles, identified problems, and solutions, including an assessment of the impact on vulnerable and equity populations. The data dashboard will be created in consultation with County staff. The website will also include road safety information and tips to alleviate injury through implementation of safe driving practices.

The Consultant will be responsible for posting updates on the website until the Action Plan is finalized, at which time the Consultant will train County staff on updating the system. The website and dashboard must be easily editable by the County. The consultant will turn over website and dashboard content, hosting, and administration to the County at the conclusion of their work.

Equity: The Action Plan will utilize inclusive and representative processes to pursue a comprehensive approach to improving equitable approaches to road safety analysis and related improvements. Underserved communities are to be identified through available data and supplemental analyses. The analysis will include population characteristics and initial equity impact assessments for HIN locations and the proposed projects and strategies. This task builds on the completed road safety analysis and will allow socio-demographic data to be overlaid with technical transportation system data and will help inform and identify intersections and road segments of need. The Consultant will include efforts to remove barriers to and provide equal

access to opportunities and benefits proposed and increase investment in underserved communities.

An underserved community as defined by the Office of Management and Budget's Interim Guidance for the Justice40 Initiative (Attachment C) and the Historically Disadvantaged Community designation, which includes U.S. Census tracts identified in this [table and mapping tool](#).

Policy and Process Changes: The Consultant shall provide an assessment of current policies, plans, guidelines, and/or standards (e.g., manuals) to identify opportunities to improve how processes prioritize transportation safety. The USDOT National Roadway Safety Strategy Safe System Approach acknowledges that both human mistakes and human vulnerability must be incorporated into the discussion of roadway safety, the Action Plan will recognize that to attain the goal of reducing fatalities, safety countermeasures will have to focus on more than just infrastructure recommendations but encompass programs and policy decisions that impact both human behavior, emergency response, and administrative actions.

The assessment must include a discussion of equity impacts to underserved communities for the recommended policies, processes, and projects recommended in the Action Plan. The Action Plan will discuss implementation steps the recommended policies or processes through the adoption of revised or new policies, guidelines, and/or standards, as appropriate. The consultant should provide trainings, materials, and/or workshops for revised or new policies/standards that arise from the Action Plan. The Consultant and County staff will work with the public and elected officials to implement and adopt the recommended policy, guidelines, or standards.

Strategy and Project Selection: The Consultant will identify a comprehensive set of projects and strategies, shaped by data, the best available evidence, and equity considerations, as well as stakeholder and public input, that will address the safety problems described in the Safety Plan. These strategies, countermeasures, and projects focus on a Safe System Approach, effective interventions, and consider multidisciplinary activities. Once identified, the list of projects and strategies will be prioritized by time ranges for when the strategies and countermeasures can be deployed (e.g., short-, mid-, and long-term timeframes). The list should include specific projects and strategies, or descriptions of programs of projects and strategies, and explains the prioritization criteria used. The list should contain interventions focused on infrastructure, behavioral, and/or operational safety. The list will be ordered, within each timeframe by order of magnitude determined by the estimated project cost and significant challenges to implementation. Additionally, funding sources other than SS4A implementation funds should be evaluated for projects. For information accessibility, the list of projects and strategies will be mapped for public review.

Progress and Transparency Methods: The Consultant shall establish a method to measure progress over time after the Action Plan is developed or updated, including outcome data. Means to ensure ongoing transparency shall be established with residents and other relevant stakeholders. This shall include annual public and accessible reporting on progress toward reducing roadway fatalities and serious injuries, and public posting of the Action Plan online.

County Provided Services

The County will provide the services and materials listed below in support of the Consultant's professional services. The County does not give warranty, expressed or implied, regarding the accuracy of studies and reports. The Consultant will be responsible for the evaluation of all information supplied by the County.

- Provide a County representative to oversee and collaborate grant implementation, and to interface with funding agencies to ensure compliance.
- Examine documents submitted to County by Consultant and timely render decisions pertaining thereto.
- Attend and participate in meetings with the Consultant and other agencies as necessary.
- Provide any documents retained by the County that would assist in completion of the SS4A Action Plan, including but not limited to: accident reports, as-built drawings, traffic studies.
- Provide Demonstration Project procurement oversight and labor compliance, as required.

Exhibit C

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:	

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

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

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.

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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 Sam Mann	DEPARTMENT Public Works and Planning
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I hereby approve the foregoing reported information for our department:

<u>stwhite 12/13/2021 4:01:37 PM</u> Department Head Signature / Date	[Sign] Double click!
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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.

PUBLIC WORKS AND PLANNING

<u>Classification</u>	<u>Category</u>
Accountant I / II	2
Architect	1
Assistant Director of Public Works & Planning- Planning and Resource Management Official.	1
Building Inspector I / II	1
Building Plans Engineer	1
Chief Building Inspector	1
Chief of Field Surveys	1
Consultant	*
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
Principal Accountant	1
Principal Planner	1
Principal Staff Analyst	1
Public Works and Planning Business Manager	1
Public Works and Planning Information Technology Manager	1
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.

DISADVANTAGED BUSINESS ENTERPRISES (DBE) Participation

1. Appraiser, subrecipient (Local Agency), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the Local Agency shows a contract goal for DBEs. Appraiser shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.
2. Appraiser shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate Good Faith Efforts (GFE) to meet this goal. It is Appraiser's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the contract. Additionally, the Appraiser is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.
3. All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies Appraiser purchases from DBEs counts towards the goal in the following manner:
 - 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
 - 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
 - Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."
4. This Agreement is subject to 49 CFR 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Appraisers who enter into a federally-funded agreement will assist the Local Agency in a good faith effort to achieve California's statewide overall DBE goal.
5. The goal for DBE participation for this Agreement is 20%. Participation by DBE Appraiser or subconsultants shall be in accordance with information contained in Exhibit 10- O2: Appraiser Contract DBE Commitment attached hereto and incorporated as part of the Agreement. If a DBE subconsultant is unable to perform, Appraiser must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
6. The Appraiser can meet the DBE participation goal by either documenting commitments to DBEs to meet the Agreement goal, or by documenting adequate good faith efforts to meet the Agreement goal. An adequate good faith effort means that the Appraiser must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If Appraiser has not met the DBE goal, complete and submit Exhibit 15-H: Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
7. **Contract Assurance.** Under 49 CFR 26.13(b):
 - a. The Appraiser, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Appraiser shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

- b. Failure by the Appraiser to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
 - b.1. Withholding monthly progress payments;
 - b.2. Assessing sanctions;
 - b.3. Liquidated damages; and/or
 - b.4. Disqualifying Appraiser from future proposing as non-responsible

8. Termination and Replacement of DBE Subconsultants

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

b. Termination of DBE Subconsultants

After execution of the AGREEMENT, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the LOCAL AGENCY:

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

- c.1. Send a written notice to the DBE of the Appraiser's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the Local Agency. The written notice to the DBE must request they provide any response within five (5) business days to both the Appraiser and the Local Agency by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
- c.2. If the DBE does not respond within five (5) business days, Appraiser may move forward with the request as if the DBE had agreed to Appraiser's written notice.
- c.3. Submit Appraiser's DBE termination request by written letter to the Local Agency and include:
 - One or more above listed justifiable reasons along with supporting documentation.
 - Appraiser's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of Appraiser's written notice
 - The DBE's response to Appraiser's written notice, if received. If a written response was not provided, provide a statement to that effect.

The Local Agency shall respond in writing to Appraiser's DBE termination request within five (5) business days.

9. Replacement of DBE Subconsultants

After receiving the Local Agency's written authorization of DBE termination request, Appraiser must obtain the Local Agency's written agreement for DBE replacement. Appraiser 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:

- a. Submit a request to replace a DBE with other forces or material sources in writing to the Local Agency which must include:
 - a.1. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
 - a.2. 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: Appraiser Contract DBE Commitment
- b. If Appraiser has not identified a DBE replacement firm, submits documentation of Appraiser's GFEs to use DBE replacement firms within seven (7) days of Local Agency's authorization to terminate the DBE. Appraiser may request the Local Agency'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 Appraiser 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 Local Agency may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
- Additional documentation that supports Appraiser's GFE

The Local Agency shall respond in writing to Appraiser's DBE replacement request within five (5) business days.

10. Commitment and Utilization

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

The Local Agency shall request Appraiser to:

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

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

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

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

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

11. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will

only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

Appraiser must perform CUF evaluation for each DBE working on a federal-aid contract, with or without a DBE goal. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

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

Within 10 days of a DBE initially performing work or supplying materials on the Contract,

Appraiser shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

Appraiser must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation.

Appraiser must submit to the Local Agency these quarterly evaluations and validations by the 5th of the month for the previous three months of work. Appraiser must notify the Local Agency immediately if they believe the DBE may not be performing a CUF.

The Local Agency will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional Local Agency evaluations. The Local Agency must evaluate DBEs and their CUF performance throughout the duration of a Contract. The Local Agency will provide written notice to the Appraiser and the DBE at least two (2) business days prior to any evaluation. The Appraiser and the DBE must participate in the evaluation. Upon completing the evaluation, the Local Agency must share the evaluation results with the Appraiser and the DBE. An evaluation could include items that must be remedied upon receipt. If the Local Agency determines the DBE is not performing a CUF, the Appraiser must suspend performance of the noncompliant work.

Appraiser and DBEs must submit any additional CUF related records and documents within five (5) business days of Local Agency's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records

- Inventory rosters

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

If Appraiser and/or the Local Agency determine that a listed DBE is not performing a CUF in performance of their DBE committed work, Appraiser must immediately suspend performance of the noncompliant portion of the work. Local Agency may deny payment for the noncompliant portion of the work. Local Agency will ask the Appraiser to submit a corrective action plan (CAP) to the LOCAL AGENCY within five (5) days of the noncompliant CUF determination. The CAP must identify how the Appraiser will correct the noncompliance findings for the remaining portion of the DBE's work. Local Agency has five (5) days to review the CAP in conjunction with the Appraiser's review. The Appraiser must implement the CAP within five (5) days of the LOCAL AGENCY's approval. The Local Agency will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a commercially useful function on the Contract, Appraiser may have good cause to request termination of the DBE.

- DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- Appraiser shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE Appraiser's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify Appraiser in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify Appraiser in writing with the date of certification. Any changes should be reported to Local Agency's Contract Administrator within thirty (30) calendar days.
- For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/Appraiser must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the Appraiser must now submit Exhibit 9-P to the Local Agency administering the contract. If the Appraiser does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.
- Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

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 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

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

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

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

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENTCONSULTANT SECTION

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

LOCAL AGENCY SECTION

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

EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Consultant's Name: _____ 6. Prime Certified DBE: 7. Total Contract Award Amount: _____
 8. Total Dollar Amount for **ALL** Subconsultants: _____ 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Local Agency to Complete this Section			\$
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____			%
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			14. TOTAL CLAIMED DBE PARTICIPATION
IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.			
_____ 23. Local Agency Representative's Signature		_____ 24. Date	_____ 15. Preparer's Signature
_____ 25. Local Agency Representative's Name		_____ 26. Phone	_____ 16. Date
_____ 27. Local Agency Representative's Title			_____ 17. Preparer's Name
			_____ 18. Phone
			_____ 19. Preparer's Title

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENTCONSULTANT SECTION

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

LOCAL AGENCY SECTION

- 20. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 22. Contract Execution Date** - Enter the date the contract was executed.
- 23. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 24. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 25. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 26. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 27. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

**DEBARMENT AND SUSPENSION CERTIFICATION TITLE 49, CODE
OF FEDERAL REGULATIONS, PART 29**

The appraiser, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, and manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes:

Providing false information may result in criminal prosecution or administrative sanctions.

Signature: _____ Date: _____

Exhibit 10-S Consultant Performance Evaluation

1. PROJECT DATA		2. CONSULTANT DATA					
1a.	Project (include title, location, and Activity/CIP No.)	2a.	Consultant Name and Address				
1b.	Brief Description of Project (design, study, etc.)	2b.	Consultant's Manager				
1c.	Budget Cost for Project: \$ _____	2c.	Phone: _____				
3. AGENCY DEPARTMENT/SECTION RESPONSIBLE							
3a.	Department (include section and division)		3b. Agency Project Manager (name & phone)				
4. CONTRACT DATA (Engineering Services)							
4a.	Contract No.: _____		Termination date: _____		Base Fee: \$ _____		
	Agreement date: _____		Date terminated: _____		Contingency: \$ _____		
4b.	Amendment \$ _____ / # _____		\$ _____ / # _____				
	(Total Value)	(Initiated by Agency)	(Total Value)	(Initiated by Agency)			
4c.	Change Order \$ _____ / # _____		\$ _____ / # _____				
	(Total Value)	(Initiated by Agency)	(Total Value)	(Initiated by Agency)			
4d.	Total Fee per Agreement (4a. + 4b. + 4c.) \$ _____			Total Fee Paid \$ _____			
	(Do not include Contingency Listed in 4a.)						
4e. Type of Services (Design, study, etc.)	4f. Historical Record of Key Submittal Dates (enter date or n/a if not applicable)						
		Preliminary	30%	70%	90%	100%	Final
	Per Agreement						
	Delivery Date						
	Acceptance Date						
4g. Notice To Proceed _____ (date)	4j. Reasons for Change Orders: (Indicate total for each reason)						
		Errors/Omissions \$ _____	%	% of Base Fee			
		Unforeseen Conditions \$ _____	%	% of Base Fee			
4h. Number of Days _____ (number)		Changed Scope \$ _____	%	% of Base Fee			
		Changed Quantities \$ _____	%	% of Base Fee			
4i. Actual Number of Days _____ (number)		Program Task Options \$ _____	%	% of Base Fee			
5. OVERALL RATING (Complete Section II on reverse, include comments as appropriate.)							
		Outstanding	Above Average	Average	Below Average	Poor	N/A
5a.	Plans/Specifications accuracy						
5b.	Consistency with budget						
5c.	Responsiveness to Agency Staff						
5d.	Overall Rating						
6. AUTHORIZING SIGNATURES							
6a.	Agency Design Team Leader	_____			Date: _____		
6b.	Agency Project Manager	_____			Date: _____		
6c.	Agency Public Works Manager	_____			Date: _____		
6d.	Consultant Representative	_____			Date: _____		

See Reverse Side

Consultant Performance Evaluation

PLANS/SPECIFICATIONS	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A	Responsiveness To Staff	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
ACCURACY													
Plans Specifications clear and concise							Timely Responses						
Plans/Specs Coordination							Attitude toward Client and review bodies						
Plans/Specs properly formatted							Follows directions and Chain of responsibility						
Code Requirements covered							Work product delivered on time						
Adhered to Agency Standard Drawings/Specs							Timeliness in notifying Agency of major problems						
Drawings reflect existing conditions							Resolution of field Problems						
As-Built Drawings							Consistency with budget						
Quality Design							Reasonable Agreement negotiation						
Change Orders due to design deficiencies are minimized							Adherence to fee schedule						
							Adherence to project Budget						

Section III **EXPLANATIONS AND SUPPLEMENTAL INFORMATION**

(Attach additional documentation as needed)

Item _____ : _____

Item _____ : _____

Item _____ : _____

Item _____ : _____

Item _____ : _____

Item _____ : _____

*Indicates supporting documentation attached.

Exhibit I

TITLE VI ASSURANCES APPENDIX A

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

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT'S noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - i. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B
CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

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

APPENDIX C
CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE
ACTIVITY, FACILITY, OR PROGRAM

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

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.*

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

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

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

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest ,and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in

this Assurance.

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

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).