

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

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1 **CONSULTANT AGREEMENT**

2 THIS AGREEMENT for Architectural and Engineering Consultant Services,  
3 hereinafter referred to as "AGREEMENT," is made and entered into this \_\_\_\_\_ day of  
4 2024, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of  
5 California, hereinafter referred to as "COUNTY"; and \_\_\_\_\_, a \_\_\_\_\_ (Type of  
6 business), whose address is \_\_\_\_\_ hereinafter referred to as "CONSULTANT".

7 **Recitals**

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

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

20 WHEREAS, the individual listed below

21 Erin Haagenson, Program Manager

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

23 559-388-7292

24 [ehaagenson@fresnocountyca.gov](mailto:ehaagenson@fresnocountyca.gov)

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

1           WHEREAS, the individual listed in Appendix A, as the firm’s “Consultant Project  
2 Manager” is designated as the CONSULTANT’S PROJECT MANAGER for this  
3 Agreement, and shall remain so unless the CONSULTANT requests and the DIRECTOR  
4 approves, in writing, a change of the CONSULTANT’S PROJECT MANAGER, which  
5 approval will not be unreasonably withheld; and

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

8           1.     OBLIGATIONS OF THE CONSULTANT

9           A.     The COUNTY hereby contracts with the CONSULTANT as an independent  
10 contractor to provide the professional services enumerated in “Consultant’s Scope of  
11 Services” attached as Appendix B.

12           B.     The CONSULTANT’S services shall be performed as expeditiously as is  
13 consistent with professional skill and the orderly progress of the work, based on  
14 schedules for each specific PROJECT mutually agreed upon in advance by the  
15 CONTRACT ADMINISTRATOR, and the CONSULTANT.

16           C.     The CONSULTANT’S PROJECT team staff shall be as listed in Appendix  
17 C, attached hereto and incorporated herein. Any substitutions of personnel must be  
18 approved in advance by the CONTRACT ADMINISTRATOR, which approval shall not be  
19 unreasonably withheld. The CONSULTANT shall notify the CONTRACT  
20 ADMINISTRATOR of the names and classifications of employees assigned to each  
21 specific PROJECT, and shall not reassign such employees to other projects of the  
22 CONSULTANT without notification to and prior approval by the CONTRACT  
23 ADMINISTRATOR.

24           D.     The CONSULTANT may retain, as subconsultants, specialists as the  
25 CONSULTANT requires to assist in completing the work in accordance with Article 16  
26 “Subconsultants” (and, if applicable to this Agreement, Article 24 “Disadvantaged  
27 Business Enterprises”).

28           E.     Services provided by CONSULTANT on PROJECTS relating to the

1 construction or improvement of roads and bridges shall be done in accordance with  
2 American Association of State Highway and Transportation Officials (AASHTO)  
3 requirements for applicable structures.

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

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

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

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

1 J. Submissions of reports, plans, specifications, and estimates will be  
2 submitted in the formats, quantities, and delivery methods delineated in Appendix D  
3 "Deliverables" hereto unless other formats, quantities, and/or delivery methods have  
4 been mutually agreed upon, in writing, prior to the CONSULTANT's submittal. The  
5 CONSULTANT shall verify compatible format and quantity prior to final delivery.

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

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

1                   2.     Such amounts held in suspense shall not be paid to the  
2 CONSULTANT, pending the final determination as to the CONSULTANT'S proportional  
3 fault. However, the appropriate percentage of such amount held in suspense shall be  
4 paid to the CONSULTANT, once a final determination has been made, and the  
5 CONSULTANT thereafter submits a proper invoice to the COUNTY. Payment shall be  
6 issued in accordance with the procedure outlined in Article 5, Section E, Paragraph 2.

7                   L.    The CONSULTANT'S personnel shall typically be assigned to and remain  
8 on specific Department projects/deliverables until completion and acceptance of the  
9 project/deliverables by the Department. Personnel assigned by the CONSULTANT shall  
10 be available at the start of a Task Order and after acceptance of the project/deliverable  
11 by the Department.

12                  M.    After the CONTRACT ADMINISTRATOR'S approval of the  
13 CONSULTANT'S personnel proposal and finalization of a Task Order, the  
14 CONSULTANT may not add or substitute personnel without the CONTRACT  
15 ADMINISTRATOR'S prior written approval.

16                  2.     OBLIGATIONS OF THE COUNTY

17                  The COUNTY will:

18                  A.    Provide eligible consultants the opportunity to compete for Task Orders on  
19 a project-by-project basis by providing a miniature Request for Proposal (mini-RFP),  
20 except as specified under Section B. The CONSULTANT'S eligibility for project types,  
21 disciplines, and services is listed in Appendix B.

22                  B.    The COUNTY reserves the right to suspend competition under this  
23 AGREEMENT and engage the services of an eligible qualified consultant from the listing  
24 attached as Appendix A, in the event that one or more of the following circumstances  
25 apply to the needed work:

- 26                   1.     Service is available only from a single source
- 27                   2.     There is an emergency which will not permit the time necessary to  
28                   conduct competitive negotiations

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3. After the mini-RFP is issued (as provided in the immediately preceding Section A) competition is determined to be inadequate

4. Services of expert witnesses for litigation or special counsel to assist the County.

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

D. Provide the CONSULTANT with a PROJECT Scope and Schedule, and compensate the CONSULTANT as provided in this Agreement.

E. Provide an individual PROJECT ADMINISTRATOR to serve as a representative of the COUNTY who will coordinate and communicate with the CONSULTANT on all PROJECT technical work, to the extent appropriate, in an effort to facilitate the CONSULTANT'S performance of its obligations in accordance with the provisions of this Agreement.

F. Provide basic plan sheet layouts as required.

G. Examine documents submitted to the COUNTY by the CONSULTANT and timely render decisions pertaining thereto.

H. Provide aerial photographs as required.

I. Provide copies of any available existing as-built plans and right-of-way drawings from the COUNTY'S files.

J. Provide list of property owners with addresses for notification of property owners upon the CONSULTANT'S request.

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

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

M. Provide limited assistance to CONSULTANT, as may be appropriate under the circumstances, in connection with CONSULTANT'S processing of required permits.



1 N. Give reasonably prompt consideration to all matters submitted for approval  
2 by the CONSULTANT in an effort to assist the CONSULTANT in avoiding any  
3 substantial delays in the CONSULTANT'S program of work. An approval, authorization  
4 or request to the CONSULTANT given by the COUNTY will be binding upon the  
5 COUNTY under the terms of this Agreement only if it is made in writing and signed on  
6 behalf of the COUNTY by CONTRACT ADMINISTRATOR.

7 3. TERM OF AGREEMENT

8 A. The term of this Agreement shall be for a period of three (3) years,  
9 commencing upon execution by the COUNTY, through and including the third  
10 anniversary of the execution date.

11 B. The CONSULTANT shall commence work promptly after receipt of a Notice to  
12 Proceed or Task Order issued by the CONTRACT ADMINISTRATOR. The period of  
13 performance for Task Orders shall be in accordance with dates specified in the Task  
14 Order. No Task Order will be written which would extend the period of performance  
15 beyond the expiration date of this Agreement, the maximum term of which shall not  
16 exceed three (3) years.

17 4. TERMINATION

18 A. Non-Allocation of Funds / Funding Requirements

19 The terms and conditions of this Agreement, and the services to be provided  
20 hereunder, are contingent on the approval of funds by the appropriating government  
21 agency. Should sufficient funds not be allocated, the services provided may be modified,  
22 or this Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days  
23 advance written notice. This Agreement may be terminated without cause at any time by  
24 the COUNTY upon thirty (30) calendar days' written notice. If the COUNTY terminates  
25 this Agreement, the CONSULTANT shall be compensated for services satisfactorily  
26 completed to the date of termination based upon the compensation rates and subject to  
27 the maximum amounts payable agreed to in Article 5, together with such additional  
28 services satisfactorily performed after termination which are expressly authorized by the

1 COUNTY to conclude the work performed to date of termination.

2 B. Breach of Contract

3 The COUNTY may immediately suspend or terminate this Agreement in whole or  
4 in part, where in the determination of the COUNTY there is:

- 5 1. An illegal or improper use of funds;
- 6 2. A failure to comply with any term of this Agreement;
- 7 3. A substantially incorrect or incomplete report submitted to the COUNTY;
- 8 4. Improperly performed service.

9 In no event shall any payment by the COUNTY constitute a waiver by the  
10 COUNTY of any breach of this Agreement or any default which may then exist on the  
11 part of the CONSULTANT, nor shall any such payment impair or prejudice any remedy  
12 available to the COUNTY with respect to the breach or default. The DIRECTOR shall  
13 have the right to demand of the CONSULTANT the repayment to the COUNTY of any  
14 funds disbursed to the CONSULTANT under this Agreement, which, in the sole judgment  
15 of the COUNTY were not expended in accordance with the terms of this Agreement. The  
16 CONSULTANT shall promptly refund any such funds upon demand. This Section  
17 survives the termination of this Agreement.

18 C. Without Cause

19 Under circumstances other than those set forth above, this Agreement may be  
20 terminated by COUNTY upon the giving of thirty (30) days advance written notice of an  
21 intention to terminate to CONTRACTOR.

22 5. COMPENSATION, ALLOWABLE COSTS AND PAYMENTS

23 A. Maximum Cumulative Amount Available

24 The COUNTY has or will enter into up to XX separate agreements, including this  
25 Agreement, for performance of the Scope of Services identified hereinabove in Article 1,  
26 Section A and more thoroughly in Appendix B attached hereto. The other Agreements  
27 are to be entered into by the COUNTY with the other consultant firms listed, together  
28 with the CONSULTANT, on the list of consultant firms attached hereto as Appendix A.

1 The total amount payable by the COUNTY for all the Agreements combined shall not  
2 exceed a cumulative maximum total value of Six Million (\$6,000,000), which "Not to  
3 Exceed Sum" hereinafter shall be referenced as the "NTE Sum".

4 It is understood and agreed that there is no guarantee, either expressed or  
5 implied, that all or any specific portion of this maximum NTE Sum will be authorized  
6 under the On-Call Engineering Consultant Agreements through Task Orders. It is further  
7 understood and agreed that there is no guarantee, either expressed or implied, that any  
8 Task Order will be assigned to the CONSULTANT or that the CONSULTANT will receive  
9 any payment whatsoever, under the terms of this Agreement. Each time a Task Order is  
10 awarded under any of the Agreements, the COUNTY shall send written notification to the  
11 CONSULTANT and each of the other consultants that entered into the Agreements.  
12 Each such notice shall identify the cumulative total of funds allocated under all Task  
13 Orders issued hereunder as of that date, and the remaining unencumbered amount of  
14 the NTE Sum. The CONSULTANT acknowledges and agrees that the COUNTY shall not  
15 pay any amount under this Agreement that would cause the NTE Sum to be exceeded,  
16 and the CONSULTANT shall not enter into a Task Order that exceeds the remaining  
17 unencumbered amount of the NTE Sum.

18 B. Consultant Fee

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

23 2. The hourly and cost rates listed in Appendix E for services  
24 rendered by the CONSULTANT and subconsultants shall remain in effect for the entire  
25 duration of this Agreement unless adjusted in accordance with the provisions of  
26 Paragraphs 3, 5, or 6 of this Article 5, Section B.

27 3. The hourly rates paid for services performed by the  
28 CONSULTANT and by subconsultants of the CONSULTANT and the rates for expenses

1 incidental to the CONSULTANT'S and its subconsultants' performance of services may  
2 be adjusted no more than once annually for inflation, in accordance with the following  
3 provisions: the CONSULTANT may request new labor rates and new rates for expenses  
4 incidental to the CONSULTANT'S and subconsultant's performance of services subject  
5 to written approval of the CONTRACT ADMINISTRATOR in accordance with the  
6 provisions of this Article 5, Section B. The CONSULTANT shall initiate the rate  
7 adjustment process by submitting to the CONTRACT ADMINISTRATOR a proposed  
8 adjusted fee schedule. The proposed adjusted fee schedule shall include proposed  
9 hourly rates for all categories of the CONSULTANT'S and any subconsultants' wage  
10 classifications and proposed rates for incidental expenses listed in Appendix E. The  
11 proposed adjusted fee schedule shall not take effect unless approved in writing by the  
12 CONTRACT ADMINISTRATOR. The CONSULTANT hereby acknowledges its  
13 understanding that approval by the CONTRACT ADMINISTRATOR of any upward  
14 adjustment in the hourly and cost rates shall not provide a basis for any increase in the  
15 NTE Sum as set forth in Article 5, Section A.

16                   4. Expenses incidental to the CONSULTANT'S and any  
17 subconsultant's performance of services under Article 5 of this Agreement shall be  
18 charged at the rates listed in Appendix E, subject to any adjustments that may be  
19 approved in accordance with Paragraphs 3, 5, or 6 of this Article 5, Section B. Unless  
20 incorporated in an adjusted fee schedule approved by the CONTRACT  
21 ADMINISTRATOR in accordance with Paragraphs 3, 5, or 6 of this Article 5, Section B,  
22 all other expenses incidental to the CONSULTANT'S and any subconsultant's  
23 performance of the services under Article 1 of this Agreement that are not specifically  
24 listed in Appendix E shall be borne by the CONSULTANT.

25                   5. In the event that, in accordance with Article 1, Section D, the  
26 CONTRACT ADMINISTRATOR approves the CONSULTANT to retain additional  
27 subconsultants not listed in Appendix H, hourly rates paid for services performed by such  
28 additional subconsultants of the CONSULTANT and the rates for expenses incidental to

1 those additional subconsultants' performance of services may be adjusted no more than  
2 once annually for inflation, in accordance with Article 5, Section B, Paragraph 3. The first  
3 annual adjustment of hourly and incidental expense rates for such additional  
4 subconsultants shall not be submitted for approval prior to one year after the  
5 CONTRACT ADMINISTRATOR'S approval of the retention of such additional  
6 subconsultant(s) by the CONSULTANT.

7           6. Notwithstanding any other provisions in this Agreement, the  
8 CONTRACT ADMINISTRATOR may, at any time, authorize in writing the revision of the  
9 CONSULTANT'S or subconsultant's list of rates for incidental expenses to include  
10 additional categories of such expenses if, in the opinion of the CONTRACT  
11 ADMINISTRATOR, such revision is necessary to facilitate the CONSULTANT'S  
12 performance of the PROJECT(S).

13           7. Reimbursement for transportation and subsistence costs shall  
14 not exceed the rates as specified in the approved Cost Proposal (Appendix E). The  
15 CONSULTANT will be responsible for transportation and subsistence costs in excess of  
16 State rates.

17           8. The consideration to be paid to CONSULTANT as provided  
18 herein, shall be in compensation for all of CONSULTANT's expenses incurred in the  
19 performance hereof, including travel and per diem, unless otherwise expressly so  
20 provided.

21           C. Indirect Cost Rate

22           1. In accordance with Article 16, the Indirect Cost Rate (ICR) listed in  
23 the CONSULTANT's Cost Proposal (Appendix E) shall match the ICR listed for the  
24 CONSULTANT's ICR Forms and all subconsultant's ICR Forms, attached hereto  
25 Appendix E and incorporated by reference.

26           The ICR Forms attached as Appendix F for CONSULTANT or subconsultant with  
27 an approved ICR are:

28           a. Consultant Annual Certification of Indirect Costs and Financial

1 Management System (Exhibit 10-K),

2 b. the ICR Schedule with FAR References for Disallowed Costs

3 c. the Cognizant Approval Letter for the ICR FYE Proposed.

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

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

9 D. Retention

10 In addition to any amounts withheld under Article 1, the CONSULTANT agrees  
11 that the COUNTY, at the discretion of the CONTRACT ADMINISTRATOR, may withhold  
12 a five percent (5%) retention from the earned compensation of the CONSULTANT. If the  
13 CONTRACT ADMINISTRATOR determines that retention will not be withheld for a  
14 PROJECT, the CONTRACT ADMINISTRATOR will so state in writing prior to  
15 commencement of the PROJECT by the CONSULTANT. The CONTRACT  
16 ADMINISTRATOR will identify in writing prior to commencement of the PROJECT the  
17 PROJECT-specific prerequisites (such as successful completion of a PROJECT phase,  
18 as an example) for the release of retentions.

19 E. Payments

20 1. Progress payments will be made by the COUNTY upon receipt of  
21 the CONSULTANT'S monthly invoices and approval by the CONTRACT  
22 ADMINISTRATOR thereof based on the CONTRACT ADMINISTRATOR'S evaluation of  
23 the completion of the respective components of the assigned PROJECT. Invoices shall  
24 clearly identify the PROJECT by Name(s), the Phase and Task(s) comprising the work  
25 that is the subject of the invoice, the Notice to Proceed or Task Order number, and the  
26 date(s) on which the work was performed. Invoices shall be submitted together with the  
27

1 documentation identified below in Paragraph 5 of this Article 5, Section E. Invoices shall  
2 be forwarded electronically to: [PWPBusinessOffice@fresnocountyca.gov](mailto:PWPBusinessOffice@fresnocountyca.gov)

3                   2. Upon receipt of a proper invoice, the CONTRACT  
4 ADMINISTRATOR will take a maximum of ten (10) working days to review, approve, and  
5 submit it to the COUNTY Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or  
6 inaccurate invoices will be returned to the CONSULTANT for correction and resubmittal.  
7 Payment, less retention, if applicable, will be issued to the CONSULTANT within forty-  
8 five (45) calendar days of the date the Auditor-Controller/Treasurer-Tax Collector  
9 receives the approved invoice.

10                   3. The COUNTY is entitled to withhold a five percent (5%) retention  
11 from the CONSULTANT'S earned compensation in accordance with the provisions of  
12 Article 5, Section D of this Agreement.

13                   4. An unresolved dispute over a possible error or omission may  
14 cause payment of the CONSULTANT fees in the disputed amount to be withheld by the  
15 COUNTY.

16                   5. Concurrently with the invoices, the CONSULTANT shall certify  
17 (through copies of issued checks, receipts, or other COUNTY pre-approved  
18 documentation) that complete payment, less a five percent (5%) retention if applicable,  
19 has been made to all subconsultants as provided herein for all previous invoices paid by  
20 the COUNTY. However, the parties do not intend that the foregoing creates, as to any  
21 subconsultants or subcontractors, any purported third-party beneficiary status or any  
22 third-party beneficiary rights whatsoever, and the parties do hereby expressly disclaim  
23 any such status or rights.

24                   6. Final invoices, and separate invoices for retentions, shall be  
25 submitted to CONTRACT ADMINISTRATOR no later than thirty (30) days after the  
26

1 phase is completed. Payment for retentions, if any, shall not be made until all services  
2 for the phase are completed.

3                   7. In the event the DIRECTOR reduces the scope of the  
4 CONSULTANT'S work under this Agreement for a specific PROJECT (or discontinues a  
5 specific PROJECT), whether due to a deficiency in the appropriation of anticipated  
6 funding or otherwise, the CONSULTANT will be compensated on a pro rata basis for  
7 actual work completed and accepted by the DIRECTOR in accordance with the terms of  
8 this Agreement.

9                   8. Credits due CONSULTANT that include any equipment purchased  
10 under the provisions of Article 26 Equipment Purchase, must be reimbursed by  
11 CONSULTANT prior to the expiration or termination of this Agreement.

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

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

22                   2. A Project Cost Proposal is of no force or effect and no  
23 expenditures are authorized on a PROJECT and work shall not commence until a Notice  
24 to Proceed for that PROJECT has been issued by the COUNTY.  
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1                   3. If the CONSULTANT fails to satisfactorily complete a deliverable  
2 according to the schedule set forth in a Task Order, no payment will be made until the  
3 deliverable has been satisfactorily completed.

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

8                   5. The CONSULTANT shall not commence performance of any work  
9 or services hereunder until this Agreement has been formally approved by the COUNTY  
10 and Notice to Proceed on a specific PROJECT has been issued by the COUNTY'S  
11 CONTRACT ADMINISTRATOR. No payment will be made prior to approval or for any  
12 work performed by the CONSULTANT prior to the COUNTY'S formal approval of this  
13 Agreement.

14                   6. The period of performance for each Notice to Proceed shall be in  
15 accordance with dates specified in the Notice to Proceed. Consistent with the provisions  
16 of Article 3, Section B, no Notice to Proceed will be issued that would extend the  
17 CONSULTANT'S period of performance beyond the expiration date of this Agreement.

18                   7. Notices to Proceed may not be used to amend any provision of this  
19 Agreement or to expand the scope of the CONSULTANT'S work as authorized under the  
20 provisions of this Agreement.

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22           6.     INDEPENDENT CONTRACTOR

23           A. In performance of the work, duties and obligations assumed by the  
24 CONSULTANT under this Agreement, it is mutually understood and agreed that the  
25 CONSULTANT, including any and all of the CONSULTANT'S officers, agents, and  
26 employees will at all times be acting and performing as an independent contractor, and  
27 shall act in an independent capacity and not as an officer, agent, servant, employee, joint  
28 venturer, partner, or associate of the COUNTY. Furthermore, the COUNTY shall have no

1 right to control or supervise or direct the manner or method by which the CONSULTANT  
2 shall perform its work and function. However, the COUNTY shall retain the right to  
3 administer this Agreement so as to verify that the CONSULTANT is performing its  
4 obligations in accordance with the terms and conditions thereof.

5 B. The CONSULTANT and the COUNTY shall comply with all applicable provisions  
6 of law and the rules and regulations, if any, of governmental authorities having jurisdiction  
7 over matters the subject thereof.

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

17 7. MODIFICATION / CHANGE IN TERMS

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

23 B. The CONSULTANT shall only commence work covered by an amendment  
24 after the amendment has been fully executed and written notification to proceed has  
25 been issued by the CONTRACT ADMINISTRATOR.

26 C. There shall be no change in CONSULTANT's Project Manager or members of  
27 the project team, as listed in Appendix A and the approved Cost Proposal (Appendix E,  
28 which is incorporated as a part of this Agreement as provided in Article 5, Section 1),

1 without prior written approval by the COUNTY's CONTRACT ADMINISTRATOR. Any  
2 substitutions of personnel must be approved in advance by the CONTRACT  
3 ADMINISTRATOR, which approval shall not be unreasonably withheld. The  
4 CONSULTANT shall notify the CONTRACT ADMINISTRATOR of the names and  
5 classifications of employees assigned to each specific PROJECT and shall not reassign  
6 such employees to other projects of the CONSULTANT without notification to and prior  
7 approval by the CONTRACT ADMINISTRATOR.

8 8. NON-ASSIGNMENT

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

12 9. HOLD HARMLESS

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

1 CONSULTANT'S liability, based upon the final determination of the CONSULTANT'S  
2 comparative fault. The provisions of this Article 9, Section A shall survive termination of  
3 this Agreement.

4 B. The COUNTY and the CONSULTANT hereby declare their mutual intent to  
5 cooperate in the defense of any claim, suit, or other action alleging liability, arising from  
6 the negligent performance or failure to perform of any COUNTY construction contractor  
7 (or its subcontractor(s)) involved in the construction of any PROJECT(S). Such  
8 cooperation may include an agreement to prepare and present a cooperative defense  
9 after consultation with the CONSULTANT'S professional liability insurance carrier.

10 10. LIABILITY INSURANCE

11 Without limiting the COUNTY'S right to obtain indemnification from the  
12 CONSULTANT or any third parties, the CONSULTANT, at its sole expense, shall  
13 maintain in full force and effect, the following insurance policies prior to commencement  
14 of any work for the COUNTY and, thereafter, throughout the entire term of this  
15 Agreement (with the exception of Professional Liability Insurance, which the  
16 CONSULTANT shall maintain in full force and effect for the additional period of time  
17 required by Article 20, Section A, Paragraph 4).

18 A. Commercial General Liability

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

25 B. Automobile Liability

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

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C. Professional Liability Insurance:

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

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

D. Worker's Compensation

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

E. Additional Requirements Relating to Insurance

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

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

Prior to commencing any such work under this Agreement, the CONSULTANT shall

1 provide certificates of insurance and endorsements as stated above for all of the foregoing  
2 policies, as required herein, to the County of Fresno, Erin Haagenson, Principal Staff  
3 Analyst, 2220 Tulare St., Sixth Floor, Fresno, CA 93721, stating that such insurance  
4 coverages have been obtained and are in full force; that the County of Fresno, its officers,  
5 agents and employees will not be responsible for any premiums on the policies; that for  
6 such worker's compensation insurance the CONSULTANT has waived its right to recover  
7 from the COUNTY, its officers, agents, and employees any amounts paid under the  
8 insurance policy and that waiver does not invalidate the insurance policy; that such  
9 Commercial General Liability insurance names the County of Fresno, its officers, agents  
10 and employees, individually and collectively, as additional insured, but only insofar as the  
11 operations under this Agreement are concerned; that such coverage for additional insured  
12 shall apply as primary insurance and any other insurance, or self-insurance, maintained  
13 by the COUNTY, its officers, agents and employees, shall be excess only and not  
14 contributing with insurance provided under the CONSULTANT's policies herein; and that  
15 this insurance shall not be cancelled or changed without a minimum of thirty (30) days  
16 advance, written notice given to the COUNTY.

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

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

28 In the event the CONSULTANT fails to keep in effect at all times the insurance

1 coverages as required by this Article 10, the COUNTY may, in addition to any other  
2 remedies it may have, suspend or terminate this Agreement upon occurrence of such  
3 failure, or may purchase such insurance coverage and charge the cost of the coverage  
4 to the CONSULTANT. The COUNTY may offset such charges against any amounts  
5 owed by the COUNTY to the CONSULTANT under this Agreement.

6 11. AUDITS / RETENTION OF RECORD

7 A. The CONSULTANT shall at any time during business hours, and as often as  
8 the COUNTY may deem necessary, make available to the COUNTY for examination all  
9 of its records and data with respect to the matters covered by this Agreement. The  
10 CONSULTANT shall, upon request by the COUNTY, permit the COUNTY to audit and  
11 inspect all of such records and data, including but not limited to, the costs of  
12 administering this Agreement, necessary to ensure the CONSULTANT'S compliance  
13 with the terms of this Agreement (and compliance with Public Contract Code 10115, et  
14 seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq.,  
15 when applicable).

16 B. For the purpose of determining compliance with Gov. Code § 8546.7, the  
17 CONSULTANT, its subconsultants, and COUNTY shall maintain all books, documents,  
18 papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers,  
19 and other evidence pertaining to the performance of the Agreement including, but not  
20 limited to, the costs of administering the Agreement. All parties, including the  
21 CONSULTANT's Independent CPA, shall make such workpapers and materials available  
22 at their respective offices at all reasonable times during the Agreement period and for  
23 three (3) years from the date of final payment under the Agreement. The COUNTY,  
24 Caltrans Auditor, FHWA, or any duly authorized representative of the Federal  
25 government having jurisdiction under Federal laws or regulations (including without  
26 limitation when such jurisdiction is based upon Federal funding of the PROJECT in  
27 whole or in part) shall have access to any books, records, and documents of the  
28 CONSULTANT, its subconsultants, and the CONSULTANT's Independent CPA, that are

1 pertinent to the Agreement for audits, examinations, workpaper review, excerpts, and  
2 transactions, and copies thereof shall be furnished if requested without limitation. It shall  
3 be the responsibility of the CONSULTANT to ensure that all subcontracts in excess of  
4 \$25,000 shall contain this provision.

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

6 12. NOTICES

7 The delivery of all notices hereunder and communications regarding interpretation  
8 of the terms of this Agreement and any proposed changes thereto, shall be  
9 accomplished by sending an e-mail, addressed to the CONTRACT ADMINISTRATOR  
10 and the CONSULTANT'S PROJECT MANAGER as identified on Pages 3 and 4 of this  
11 Agreement. For all claims arising out of or related to this Agreement, nothing in this  
12 section establishes, waives, or modifies any claims presentation requirements or  
13 procedures provided by law, including but not limited to the Government Claims Act  
14 (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

15 13. GOVERNING LAW

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

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

20 14. DISCLOSURE OF SELF-DEALING TRANSACTIONS

21 This provision is only applicable if the CONSULTANT is operating as a  
22 corporation (a for-profit or non-profit corporation) or if during the term of this Agreement,  
23 the CONSULTANT changes its status to operate as a corporation. Members of the  
24 CONSULTANT'S Board of Directors shall disclose any self-dealing transactions that they  
25 are a party to while the CONSULTANT is providing goods or performing services under  
26 this Agreement. A self-dealing transaction shall mean a transaction to which the  
27 CONSULTANT is a party and in which one or more of its directors has a material  
28 financial interest. Members of the Board of Directors shall disclose any self-dealing



1 transactions that they are a party to by completing and signing a Self-Dealing  
2 Transaction Disclosure Form, attached hereto as Appendix G and incorporated herein by  
3 reference, and submitting it to the COUNTY prior to commencing with the self-dealing  
4 transaction or immediately thereafter.

5 15. ELECTRONIC SIGNATURE

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

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

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

18 C. The provisions of this section satisfy the requirements of Civil Code section  
19 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,  
20 Part 2, Title 2.5, beginning with section 1633.1).

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

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

27 16. SUBCONSULTANTS

28 A. The CONSULTANT may retain, as subconsultants, specialists in such

1 engineering disciplines (including, but not limited to, structural, mechanical,  
2 transportation, environmental, water resources, electrical, surveying and geotechnical)  
3 as the CONSULTANT requires to assist in completing the work. The subconsultants  
4 listed in Appendix H, attached hereto and incorporated herein, shall be considered as  
5 approved by the CONTRACT ADMINISTRATOR. Any other subconsultants proposed for  
6 use by the CONSULTANT shall be approved in writing by the CONTRACT  
7 ADMINISTRATOR before they are retained by the CONSULTANT, which approval shall  
8 not be unreasonably withheld.

9           B. Should the CONSULTANT retain any subconsultants, the maximum amount  
10 of compensation to be paid to the CONSULTANT under Article 5 shall not be increased.  
11 Any additional compensation to be paid to the CONSULTANT for such subconsultants'  
12 work shall be limited to administrative time as defined in the fee proposal. Additional fees  
13 other than those defined in the fee proposal shall not be reimbursed.

14           C. CONSULTANT shall be as fully responsible to the COUNTY for the  
15 negligent acts and omissions of its contractors and subcontractors or subconsultants,  
16 and of persons either directly or indirectly employed by them, in the same manner as  
17 persons directly employed by CONSULTANT.

18           D. Nothing contained in this Agreement shall create any contractual  
19 relationship between the COUNTY and any of the CONSULTANT'S subconsultants, and  
20 no subconsultant agreement shall relieve the CONSULTANT of any of its responsibilities  
21 and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the  
22 COUNTY for the acts and omissions of its subconsultants and of persons either directly  
23 or indirectly employed by any of them as it is for the acts and omissions of persons  
24 directly employed by the CONSULTANT. The CONSULTANT'S obligation to pay its  
25 subconsultants is a separate and independent obligation that is entirely unrelated to the  
26 COUNTY's obligation to make payments to the CONSULTANT.

27           E. The CONSULTANT shall perform the work contemplated with resources  
28 available within its own organization; and no portion of the work pertinent to this contract

1 shall be subcontracted without prior written authorization by the CONTRACT  
2 ADMINISTRATOR, excepting only those portions of the work and the responsible  
3 subconsultants that are expressly identified in Appendix H.

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

7 G. The CONSULTANT shall pay its subconsultants within fifteen (15) calendar  
8 days from receipt of each progress payment made to the CONSULTANT by the  
9 COUNTY.

10 H. Any substitution of subconsultant(s) must be approved in writing by the  
11 CONTRACT ADMINISTRATOR in advance of assigning work to a substitute  
12 Subconsultant.

13 I. Prompt Progress Payment

14 The CONSULTANT or subconsultant shall pay to any subconsultant, not later  
15 than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to  
16 in writing, the respective amounts allowed CONSULTANT on account of the work  
17 performed by the subconsultants, to the extent of each subconsultant's interest therein.  
18 In the event that there is a good faith dispute over all or any portion of the amount due on  
19 a progress payment from the CONSULTANT or subconsultant to a subconsultant, the  
20 CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed  
21 amount. Any violation of this requirement shall constitute a cause for disciplinary action  
22 and shall subject the licensee to a penalty, payable to the subconsultant, of two percent  
23 (2%) of the amount due per month for every month that payment is not made.

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

1           J. Prompt Payment of Withheld Funds to Subconsultants

2           The COUNTY may hold retainage from the CONSULTANT as provided in Article  
3 5, Section D.

4           1.       If the COUNTY has elected to hold retainage for a PROJECT under  
5 Article 5, Section D, the COUNTY shall hold retainage from the CONSULTANT and shall  
6 make prompt and regular incremental acceptances of portions, as determined by the  
7 COUNTY of the contract work and pay retainage to the CONSULTANT based on these  
8 acceptances. The CONSULTANT or subconsultant shall return all monies withheld in  
9 retention from all subconsultants within 15 days after receiving payment for work  
10 satisfactorily completed and accepted including incremental acceptances of portions of  
11 the contract work by the COUNTY. Any delay or postponement of payment may take  
12 place only for good cause and with the COUNTY's prior written approval, in order to  
13 ensure prompt and full payment of any retainage kept by the CONSULTANT or  
14 subconsultant to a subconsultant.

15           Any violation of these provisions shall subject the violating CONSULTANT  
16 or subconsultant to the penalties, sanctions, and other remedies specified in Section  
17 3321 of the California Civil Code. This requirement shall not be construed to limit or  
18 impair any contractual, administrative or judicial remedies otherwise available to the  
19 CONSULTANT or subconsultant in the event of a dispute involving late payment or  
20 nonpayment by the CONSULTANT, or deficient subconsultant performance and/or  
21 noncompliance by a subconsultant. This clause applies to both DBE and non-DBE  
22 subconsultants.

23           2. If the COUNTY has elected not to hold retainage for a PROJECT under  
24 Article 5, Section D, no retainage will be held by the COUNTY from progress payments  
25 due to the CONSULTANT; and in such case, the CONSULTANT and its subconsultants  
26 are prohibited from holding retainage from their subconsultants. Any delay or  
27 postponement of payment may take place only for good cause and with the COUNTY'S  
28 prior written approval. Any violation of these provisions shall subject the violating

1 CONSULTANT or subconsultant to the penalties, sanctions, and other remedies  
2 specified in Section 3321 of the California Civil Code. This requirement shall not be  
3 construed to limit or impair any contractual, administrative or judicial remedies otherwise  
4 available to the CONSULTANT or subconsultant in the event of a dispute involving late  
5 payment or nonpayment by the CONSULTANT, or deficient subconsultant performance  
6 and/or noncompliance by a subconsultant. This clause applies to both DBE and non-  
7 DBE subconsultants.

8 17. CONFLICT OF INTEREST

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

14 B. During the term of this Agreement, the CONSULTANT shall disclose any  
15 financial, business, or other relationship with the COUNTY that may have an impact  
16 upon the outcome of this contract, or any ensuing COUNTY construction project. The  
17 CONSULTANT shall also list current clients who may have a financial interest in the  
18 outcome of this contract, or any ensuing COUNTY construction project, which will follow.

19 C. The CONSULTANT certifies that it has disclosed to the COUNTY any actual,  
20 apparent, or potential conflicts of interest that may exist relative to the services to be  
21 provided pursuant to this AGREEMENT. The CONSULTANT agrees to advise the  
22 COUNTY of any actual, apparent or potential conflicts of interest that may develop  
23 subsequent to the date of execution of this AGREEMENT. The CONSULTANT further  
24 agrees to complete any statements of economic interest if required by either COUNTY  
25 ordinance or State law.

26 D. The CONSULTANT hereby certifies that it does not now have nor shall it  
27 acquire any financial or business interest that would conflict with the performance of  
28 services under this AGREEMENT.

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

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

20 G. Except for subconsultants or subcontractors whose services are limited to  
21 providing surveying or materials testing information, no subcontractor who has provided  
22 design services in connection with this contract shall be eligible to bid on any  
23 construction contract, or on any contract to provide construction inspection for any  
24 construction project resulting from this contract; provided, however, that this shall not be  
25 construed as disallowing subcontractors who have provided design services for the  
26 PROJECT from performing, pursuant to this Agreement or other agreement with the  
27 COUNTY, construction inspection services on behalf of the COUNTY for the PROJECT.

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1           18.    ERRORS OR OMISSIONS CLAIMS AND DISPUTES

2           A. Definitions:

3                   1. A "Consultant" is a duly licensed Architect or Engineer, or other provider  
4 of professional services, acting as a business entity (owner, partnership, corporation,  
5 joint venture or other business association) in accordance with the terms of an  
6 agreement with the COUNTY.

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

16           B. In the spirit of cooperation between the COUNTY and the CONSULTANT, the  
17 following procedures are established in the event of any claim or dispute alleging a  
18 negligent error, act, or omission, of the CONSULTANT.

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

22                   2. The COUNTY and the CONSULTANT shall meet and confer and  
23 attempt to reach agreement on any dispute, including what damages have occurred, the  
24 measure of damages and what proportion of damages, if any, shall be paid by either  
25 party. The parties agree to consult and consider the use of mediation or other form of  
26 dispute resolution prior to resorting to litigation.

27                   3. If the COUNTY and the CONSULTANT cannot reach agreement under  
28 Article 18, Section B, Paragraph 2, the disputed issues may, upon concurrence by all

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

14 4. Upon receipt of the panel's recommended resolution of the disputed  
15 issue(s), the COUNTY and the CONSULTANT shall again meet and confer and attempt  
16 to reach agreement. If the parties still are unable to reach agreement, each party shall  
17 have recourse to all appropriate legal and equitable remedies.

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

20 D. The CONSULTANT shall continue to perform its obligations under this  
21 Agreement pending resolution of any dispute, and the COUNTY shall continue to make  
22 payments of all undisputed amounts due under this Agreement.

23 E. When a claim by either party has been made alleging the CONSULTANT'S  
24 negligent error, act, or omission, the COUNTY and the CONSULTANT shall meet and  
25 confer within twenty-one (21) working days after the written notice of the claim has been  
26 provided.

27 19. OWNERSHIP OF DATA

28 A. All documents, including preliminary documents, calculations, and survey data,



1 required in performing services under this Agreement shall be submitted to, and shall  
2 remain at all times the property of the COUNTY regardless of whether they are in the  
3 possession of the CONSULTANT or any other person, firm, corporation or agency.

4 B. The CONSULTANT understands and agrees the COUNTY shall retain full  
5 ownership rights of the drawings and work product of the CONSULTANT for the  
6 PROJECT, to the fullest extent permitted by law. In this regard, the CONSULTANT  
7 acknowledges and agrees the CONSULTANT'S services are on behalf of the COUNTY  
8 and are "works made for hire," as that term is defined in copyright law, by the COUNTY;  
9 that the drawings and work product to be prepared by the CONSULTANT are for the sole  
10 and exclusive use of the COUNTY, and that the COUNTY shall be the sole owner of all  
11 patents, copyrights, trademarks, trade secrets and other rights and contractual interests  
12 in connection therewith which are developed and compensated solely under this  
13 Agreement; that all the rights, title and interest in and to the drawings and work product  
14 will be transferred to the COUNTY by the CONSULTANT to the extent the  
15 CONSULTANT has an interest in and authority to convey such rights; and the  
16 CONSULTANT will assist the COUNTY to obtain and enforce patents, copyrights,  
17 trademarks, trade secrets, and other rights and contractual interests relating to said  
18 drawings and work product, free and clear of any claim by the CONSULTANT or anyone  
19 claiming any right through the CONSULTANT. The CONSULTANT further acknowledges  
20 and agrees the COUNTY's ownership rights in such drawings or work product, shall  
21 apply regardless of whether such drawings or work product, or any copies thereof, are in  
22 possession of the CONSULTANT, or any other person, firm, corporation, or entity. For  
23 purposes of this Agreement the terms "drawings and work product" shall mean all reports  
24 and study findings commissioned to develop the PROJECT design, drawings and  
25 schematic or preliminary design documents, certified reproducibles of the original final  
26 construction contract drawings, specifications, the approved estimate, record drawings,  
27 as-built plans, and discoveries, developments, designs, improvement, inventions,  
28 formulas, processes, techniques, or specific know-how and data generated or conceived

1 or reduced to practice or learning by the CONSULTANT, either alone or jointly with  
2 others, that result from the tasks assigned to the CONSULTANT by the COUNTY under  
3 this Agreement.

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

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

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

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

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

1 others, or for other projects; except to the extent that said use may be expressly  
2 authorized, in writing, by the CONSULTANT.

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

9 20. CONSULTANT'S LEGAL AUTHORITY

10 The CONTRACTOR represents and warrants to the COUNTY that:

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

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

16 21. BINDING UPON SUCCESSORS

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

19 22. SEVERABILITY

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

25 23. STATE PREVAILING WAGE RATES

26 A. No CONSULTANT or Subconsultant may be awarded an Agreement  
27 containing public work elements unless registered with the Department of Industrial  
28

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

4 B. The CONSULTANT shall comply with all of the applicable provisions of the  
5 California Labor Code requiring the payment of prevailing wages. The General Prevailing  
6 Wage Rate Determinations applicable to work under this Agreement are available from  
7 the Department of Industrial Relations website <http://www.dir.ca.gov>. These wage rates  
8 are made a specific part of this Agreement by reference pursuant to Labor Code §1773.2  
9 and will be applicable to work performed at a construction project site. Prevailing wages  
10 will be applicable to all inspection work performed at COUNTY construction sites, at  
11 COUNTY facilities and at off-site locations that are set up by the construction contractor  
12 or one of its subcontractors solely and specifically to serve COUNTY projects. Prevailing  
13 wage requirements do not apply to inspection work performed at the facilities of vendors  
14 and commercial materials suppliers that provide goods and services to the general  
15 public.

16 C. Payroll Records

17 1. Each CONSULTANT and Subconsultant shall keep accurate  
18 certified payroll records and supporting documents as mandated by Labor Code §1776  
19 and as defined in 8 CCR §16000 showing the name, address, social security number,  
20 work classification, straight time and overtime hours worked each day and week, and the  
21 actual per diem wages paid to each journeyman, apprentice, worker, or other employee  
22 employed by the CONSULTANT or Subconsultant in connection with the public work.  
23 Each payroll record shall contain or be verified by a written declaration that it is made  
24 under penalty of perjury, stating both of the following:

25 a. The information contained in the payroll record is true and correct.

26 b. The employer has complied with the requirements of Labor Code §1771,  
27 §1811, and §1815 for any work performed by his or her employees on the public works  
28 project.

1           2.     The payroll records enumerated under paragraph (1) above shall be  
2 certified as correct by the CONSULTANT under penalty of perjury. The payroll records  
3 and all supporting documents shall be made available for inspection and copying by  
4 COUNTY representatives at all reasonable hours at the principal office of the  
5 CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit  
6 inspection of its records as follows:

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

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

17          c.     The public shall not be given access to certified payroll records by  
18 the CONSULTANT. The CONSULTANT is required to forward any requests for certified  
19 payrolls to the COUNTY Contract Administrator by both email and regular mail on the  
20 business day following receipt of the request.

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

24          4.     Any copy of records made available for inspection as copies and  
25 furnished upon request to the public or any public agency by the COUNTY shall be  
26 marked or obliterated in such a manner as to prevent disclosure of each individual's  
27 name, address, and social security number. The name and address of the  
28 CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.

1           5.     The CONSULTANT shall inform the COUNTY of the location of the  
2 records enumerated under paragraph (1) above, including the street address, city and  
3 county, and shall, within five (5) working days, provide a notice of a change of location  
4 and address.

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

14           D.     When prevailing wage rates apply, the CONSULTANT is responsible for  
15 verifying compliance with certified payroll requirements. Invoice payment will not be  
16 made until the invoice is approved by the COUNTY Contract Administrator.

17           E.     Penalty

18           1.     The CONSULTANT and any of its Subconsultants shall comply with  
19 Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and  
20 any Subconsultant shall forfeit to the COUNTY a penalty of not more than two hundred  
21 dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than  
22 the prevailing rates as determined by the Director of DIR for the work or craft in which  
23 the worker is employed for any public work done under the Agreement by the  
24 CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code  
25 and in particular, Labor Code §§1770 to 1780, inclusive.

26           2.     The amount of this forfeiture shall be determined by the Labor  
27 Commissioner and shall be based on consideration of mistake, inadvertence, or neglect  
28 of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing

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

8           3. In addition to the penalty and pursuant to Labor Code §1775, the  
9 difference between the prevailing wage rates and the amount paid to each worker for  
10 each calendar day or portion thereof for which each worker was paid less than the  
11 prevailing wage rate shall be paid to each worker by the CONSULTANT or  
12 Subconsultant.

13           4. If a worker employed by a Subconsultant on a public works project is  
14 not paid the general prevailing per diem wages by the Subconsultant, the prime  
15 CONSULTANT of the project is not liable for the penalties described above unless the  
16 prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the  
17 specified prevailing rate of wages to those workers or unless the prime CONSULTANT  
18 fails to comply with all of the following requirements:

19           a. The Agreement executed between the CONSULTANT and the  
20 Subconsultant for the performance of work on public works projects shall include a copy  
21 of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.

22           b. The CONSULTANT shall monitor the payment of the specified general  
23 prevailing rate of per diem wages by the Subconsultant to the employees by periodic  
24 review of the certified payroll records of the Subconsultant.

25           c. Upon becoming aware of the Subconsultant's failure to pay the  
26 specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT  
27 shall diligently take corrective action to halt or rectify the failure, including but not limited  
28 to, retaining sufficient funds due the Subconsultant for work performed on the public

1 works project.

2 d. Prior to making final payment to the Subconsultant for work  
3 performed on the public works project, the CONSULTANT shall obtain an affidavit signed  
4 under penalty of perjury from the Subconsultant that the Subconsultant had paid the  
5 specified general prevailing rate of per diem wages to the Subconsultant's employees on  
6 the public works project and any amounts due pursuant to Labor Code §1813.

7 5. Pursuant to Labor Code §1775, the COUNTY shall notify the  
8 CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a  
9 complaint that a Subconsultant has failed to pay workers the general prevailing rate of  
10 per diem wages.

11 6. If the COUNTY determines that employees of a Subconsultant were  
12 not paid the general prevailing rate of per diem wages and if the COUNTY did not retain  
13 sufficient money under the Agreement to pay those employees the balance of wages  
14 owed under the general prevailing rate of per diem wages, the CONSULTANT shall  
15 withhold an amount of moneys due the Subconsultant sufficient to pay those employees  
16 the general prevailing rate of per diem wages if requested by the COUNTY.

17 F. Hours of Labor

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

28



1           G. Employment of Apprentices

2           1.       Where either the prime Agreement or the subconsultant agreement  
3 exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants  
4 under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5,  
5 1777.6 and 1777.7 in the employment of apprentices.

6           2.       CONSULTANT and all subconsultants are required to comply with  
7 all Labor Code requirements regarding the employment of apprentices, including  
8 mandatory ratios of journey level to apprentice workers. Prior to commencement of work,  
9 the CONSULTANT and subconsultants are advised to contact the DIR Division of  
10 Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional  
11 information regarding the employment of apprentices and for the specific journey-to-  
12 apprentice ratios for the Agreement work. The CONSULTANT is responsible for all  
13 subconsultants' compliance with these requirements. Penalties are specified in Labor  
14 Code §1777.7.

15           24.    DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

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

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

26           C. The CONSULTANT, subrecipient (the COUNTY), or subconsultant shall take  
27 necessary and reasonable steps to ensure that DBEs have opportunities to participate in  
28 the contract (49 CFR Part 26). To ensure equal participation of DBEs as provided in 49

1 CFR Section 26.5, the COUNTY specifies a contract goal for DBEs. The CONSULTANT  
2 shall make work available to DBEs and allocate portions of the work consistent with  
3 available DBE subconsultants and suppliers.

4 The CONSULTANT shall meet the DBE goal shown elsewhere in these special  
5 provisions or demonstrate its having made adequate good faith efforts to meet this goal.  
6 It is the CONSULTANT's responsibility to verify that the DBE firm is certified as DBE at  
7 date of proposal opening and document the record by printing out the California Unified  
8 Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the  
9 CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

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

- 14 • 100 percent counts if the materials or supplies are obtained from a DBE  
15 manufacturer.
- 16 • 60 percent counts if the materials or supplies are purchased from a  
17 DBE regular dealer.
- 18 • Only fees, commissions, and charges for assistance in the procurement  
19 and delivery of materials or supplies count if obtained from a DBE that is neither a  
20 manufacturer nor regular dealer. 49 CFR Section 26.55 defines "manufacturer" and  
21 "regular dealer."

22 This Agreement is subject to 49 CFR Part 26 entitled "Participation by  
23 Disadvantaged Business Enterprises in Department of Transportation Financial  
24 Assistance Programs". Any CONSULTANT who enters into a federally funded  
25 agreement will assist the COUNTY in a good faith effort to achieve California's statewide  
26 overall DBE goal.

27 D. The goal for DBE participation for this AGREEMENT is 13.0%. Participation by  
28 a DBE CONSULTANT or subconsultants shall be in accordance with information

1 contained in Exhibit 10-02: Consultant Contract DBE Commitment attached hereto and  
2 incorporated as part of the AGREEMENT as Appendix K. If a DBE subconsultant is  
3 unable to perform, the CONSULTANT must make a good faith effort to replace them with  
4 another DBE subconsultant, if the goal is not otherwise met.

5 E. The CONSULTANT can meet the DBE participation goal by either documenting  
6 commitments to DBEs to meet the Agreement goal, or by documenting adequate good  
7 faith efforts to meet the Agreement goal. An adequate good faith effort means that the  
8 CONSULTANT must show that it took all necessary and reasonable steps to achieve a  
9 DBE goal that, by their scope, intensity, and appropriateness to the objective, could  
10 reasonably be expected to meet the DBE goal. If the CONSULTANT has not met the  
11 DBE goal, the CONSULTANT must then complete and submit Exhibit 15-H: DBE  
12 Information – Good Faith Efforts to document its efforts to meet the goal. Refer to 49  
13 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE  
14 goal.

15 F. Contract Assurance

16 Under 49 CFR Section 26.13(b):

17 The CONSULTANT, subrecipient or subconsultant shall not discriminate on the  
18 basis of race, color, national origin, or sex in the performance of this contract. The  
19 CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award  
20 and administration of federal-aid contracts.

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

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

1           G. Termination and Substitution of DBE Subconsultants

2 The CONSULTANT shall utilize the specific DBEs listed to perform the work and supply  
3 the materials for which each is listed unless the CONSULTANT or DBE subconsultant  
4 obtains the COUNTY's written consent. The CONSULTANT shall not terminate or  
5 substitute a listed DBE for convenience and perform the work with their own forces or  
6 obtain materials from other sources without authorization from the COUNTY. Unless the  
7 COUNTY's consent is provided, the CONSULTANT shall not be entitled to any payment  
8 for work or material unless it is performed or supplied by the listed DBE on the Exhibit  
9 10-02 Consultant Contract DBE Commitment form, included in the Bid.

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

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

1 perform the work on the Contract.

2 11. The COUNTY determines other documented good cause.

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

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

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

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

#### 15 H. Commitment and Utilization

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

18 The COUNTY shall request the CONSULTANT to:

- 19 1. Notify the COUNTY's contract administrator or designated representative  
20 of any changes to its anticipated DBE participation
- 21 2. Provide this notification before starting the affected work
- 22 3. Maintain records including:
  - 23 • Name and business address of each 1st-tier subconsultant
  - 24 • Name and business address of each DBE subconsultant, DBE vendor,  
25 and DBE trucking company, regardless of tier
  - 26 • Date of payment and total amount paid to each business (see Exhibit 9-  
27 F Monthly Disadvantaged Business Enterprise Payment)

28 If the CONSULTANT is a DBE CONSULTANT, it shall include the date(s) of work

1 performed by its own forces and the corresponding value of all such work. If a DBE is  
2 decertified before completing its work, the DBE must notify CONSULTANT in writing of  
3 the decertification date. If a business becomes a certified DBE before completing its  
4 work, the business must notify the CONSULTANT in writing of the certification date. The  
5 CONSULTANT shall submit the notifications to the COUNTY. On work completion, the  
6 CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE)  
7 Certification Status Change, Exhibit 17-O, form and submit the form to the COUNTY  
8 within 30 days of contract acceptance.

9 Upon work completion, the CONSULTANT shall complete Exhibit 17-F Final Report –  
10 Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and  
11 submit it to the COUNTY within 90 days of contract acceptance. The COUNTY will  
12 withhold \$10,000 until the form is submitted. The COUNTY will release the withhold upon  
13 submission of the completed form. In the COUNTY's reports of DBE participation to  
14 Caltrans, the COUNTY must display both commitments and attainments.

15 I. Eligibility

16 A DBE is only eligible to be counted toward the Agreement goal if it performs a  
17 commercially useful function (CUF) on the Agreement. CUF must be evaluated on an  
18 agreement-by-agreement basis. A DBE performs a Commercially Useful Function (CUF)  
19 when it is responsible for execution of the work of the Agreement and is carrying out its  
20 responsibilities by actually performing, managing, and supervising the work involved. To  
21 perform a CUF, the DBE must also be responsible, with respect to materials and  
22 supplies used on the Agreement, for negotiating price, determining quality and quantity,  
23 ordering the material and installing (where applicable), and paying for the material itself.  
24 To determine whether a DBE is performing a CUF, evaluate the amount of work  
25 subcontracted, industry practices, whether the amount the firm is to be paid under the  
26 Agreement is commensurate with the work it is actually performing, and other relevant  
27 factors.

28 J. A DBE does not perform a CUF if its role is limited to that of an extra

1 participant in a transaction, Agreement, or project through which funds are passed in  
2 order to obtain the appearance of DBE participation. In determining whether a DBE is  
3 such an extra participant, examine similar transactions, particularly those in which DBEs  
4 do not participate.

5 K. If a DBE does not perform or exercise responsibility for at least thirty percent  
6 (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts  
7 a greater portion of the work of the Agreement than would be expected on the basis of  
8 normal industry practice for the type of work involved, it will be presumed that it is not  
9 performing a CUF.

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

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

23 N. After submitting an invoice for reimbursement that includes a payment to a  
24 DBE, but no later than the 10th of the following month, the CONSULTANT shall  
25 complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally  
26 of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the Agency.

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

1           25.    COST PRINCIPLES

2           A. The CONSULTANT agrees that the 48 CFR Part 31 Contract Cost Principles  
3 and Procedures shall be used to determine the allowability of cost.

4           B. The CONSULTANT also agrees to comply with federal procedures in  
5 accordance with Title 49 CFR, Part 18 Uniform Administrative Requirements, Cost  
6 Principles, and Audit Requirements for Federal Awards.

7           C. Any costs for which payment has been made to the CONSULTANT that are  
8 determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part  
9 200 are subject to repayment by the CONSULTANT to the COUNTY.

10          D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an  
11 Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform  
12 Administrative Requirements, Cost Principles, and Audit Requirements for Federal  
13 Awards shall apply.

14          26.    AUDIT REVIEW PROCEDURES

15          A. Any dispute concerning a question of fact arising under an interim or post audit  
16 of this Agreement that is not disposed of by agreement between the parties, shall be  
17 reviewed by the COUNTY's Auditor/Controller/Treasurer/Tax-Collector.

18          B. Not later than 30 days after issuance of the final audit report, the  
19 CONSULTANT may request a review by the COUNTY's  
20 Auditor/Controller/Treasurer/Tax-Collector of unresolved audit issues. The request for  
21 review will be submitted in writing.

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

25          D. The CONSULTANT and subconsultants' contracts, including cost proposals  
26 and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to,  
27 a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant  
28 (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost



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

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

26 1. During IOAI's review of the ICR audit work papers created by the  
27 CONSULTANT's independent CPA, IOAI will work with the CPA and/or the  
28 CONSULTANT toward a resolution of issues that arise during the review. Each party

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

9 Accepted rates will be as follows:

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

12 b. If the proposed rate is between one hundred fifty percent (150%)  
13 and two hundred percent (200%) - the accepted rate will be eighty-five percent  
14 (85%) of the proposed rate.

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

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

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

28 4. The CONSULTANT may submit to the COUNTY final invoice only when all

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

8       27.    EQUIPMENT PURCHASE

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

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

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

1 amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair  
2 market value shall be determined at the CONSULTANT'S expense, on the basis of a  
3 competent independent appraisal of such equipment. Appraisals shall be obtained from  
4 an appraiser mutually agreeable to by the COUNTY and the CONSULTANT, if it is  
5 determined to sell the equipment, the terms and conditions of such sale must be  
6 approved in advance by the COUNTY." Title 49 CFR, Part 200 requires a credit to  
7 Federal funds when participating equipment with a fair market value greater than  
8 \$5,000.00 is credited to the PROJECT.

9 28. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

17 29. PROHIBITION OF EXPENDING COUNTY STATE OR FEDERAL FUNDS  
18 FOR LOBBYING

19 A. The CONSULTANT certifies (Appendix L) to the best of his or her knowledge  
20 and belief that:

21 1. No state, federal or COUNTY appropriated funds have been paid, or will be  
22 paid by or on behalf of the CONSULTANT to any person for influencing or attempting to  
23 influence an officer or employee of any state or federal agency; a Member of the State  
24 Legislature or United States Congress; an officer or employee of the Legislature or  
25 Congress; or any employee of a Member of the Legislature or Congress, in connection  
26 with any of the following:

- 27 a. the awarding of any state or federal contract;
- 28 b. the making of any state or federal grant;

1 c. the making of any state or federal loan;  
2 d. the entering into of any cooperative agreement, or  
3 e. the extension, continuation, renewal, amendment, or modification  
4 of any state or federal contract, grant, loan, or cooperative agreement.

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

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

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

22 30. NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

23 A. The CONSULTANT'S signature affixed herein, and dated, shall constitute a  
24 certification under penalty of perjury under the laws of the State of California that the  
25 CONSULTANT has, unless exempt, complied with, the nondiscrimination program  
26 requirements of Government Code §12990 and 2 CCR § 8103.

27 B. During the performance of this Agreement, the CONSULTANT and its  
28 subconsultants shall not deny this Agreement's benefits to any person on the basis of

1 race, religious creed, color, national origin, ancestry, physical disability, mental disability,  
2 medical condition, genetic information, marital status, sex, gender, gender identity,  
3 gender expression, age, sexual orientation, or military and veteran status, nor shall they  
4 unlawfully discriminate, harass, or allow harassment against any employee or applicant  
5 for employment because of race, religious creed, color, national origin, ancestry, physical  
6 disability, mental disability, medical condition, genetic information, marital status, sex,  
7 gender, gender identity, gender expression, age, sexual orientation, or military and  
8 veteran status. The CONSULTANT and subconsultants shall ensure that the evaluation  
9 and treatment of their employees and applicants for employment are free from such  
10 discrimination and harassment.

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

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

26 E. The CONSULTANT and subconsultants shall give written notice of their  
27 obligations under this Article 30 to labor organizations with which they have a collective  
28 bargaining or other agreement.

1 F. The CONSULTANT and subconsultants shall include the nondiscrimination and  
2 compliance provisions of this Article 30 in all subcontracts to perform work under this  
3 Agreement.

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

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

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

27 31. DEBARMENT AND SUSPENSION CERTIFICATION

28 A. The CONSULTANT'S signature affixed herein, shall constitute a certification

1 under penalty of perjury under the laws of the State of California, that the CONSULTANT  
2 has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and  
3 Suspension Certificate, which certifies that the CONSULTANT or any person associated  
4 therewith in the capacity of owner, partner, director, officer, or manager:

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

13 B. Any exceptions to this certification must be disclosed to the COUNTY on  
14 Appendix M. Exceptions will not necessarily result in denial of recommendation for award  
15 but will be considered in determining CONSULTANT responsibility. Disclosures must  
16 indicate to whom exceptions apply, initiating agency, and dates of action.

17 C. Exceptions to the Federal Government Excluded Parties Listing System  
18 maintained by the General Services Administration are to be determined by the Federal  
19 Highway Administration.

20 32. FUNDING REQUIREMENTS

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

25 B. This Agreement is subject to any additional restrictions, limitations, conditions,  
26 or any legislation enacted by the Congress, State Legislature or the COUNTY'S Board of  
27 Supervisors that may affect the provisions, terms, or funding of this Agreement in any  
28 manner.



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

3 D. The COUNTY has the option to void this Agreement under the 30-day  
4 cancellation clause, or to amend this Agreement by mutually acceptable modification of  
5 its provisions to reflect any reduction of funds.

6 33. CONTINGENT FEES

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

16 34. INSPECTION OF WORK

17 The CONSULTANT and any subcontractor shall permit the COUNTY, the state,  
18 and the FHWA to review and inspect the PROJECT activities and files at all reasonable  
19 times during the performance period of this Agreement including review and inspection  
20 on a daily basis.

21 35. SAFETY

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

27 B. Pursuant to the authority contained in Vehicle Code §591, the COUNTY has  
28 determined that such areas are within the limits of the project and are open to public

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

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

9 36. CLAIMS FILED BY THE COUNTY'S CONSTRUCTION CONTRACTOR

10 A. If claims are filed by the COUNTY's construction contractor relating to work  
11 performed by the CONSULTANT'S personnel, and additional information or assistance  
12 from the CONSULTANT'S personnel is required in order to evaluate or defend against  
13 such claims, then the CONSULTANT hereby agrees in such event to make its personnel  
14 available for consultation with the COUNTY's construction contract administration and  
15 legal staff and for testimony, if necessary, at depositions and at trial or arbitration  
16 proceedings.

17 B. The CONSULTANT's personnel that the COUNTY considers essential to  
18 assist in defending against construction contractor claims will be made available on  
19 reasonable notice from the COUNTY. Consultation or testimony will be reimbursed at the  
20 same rates, including travel costs that are being paid for the CONSULTANT's personnel  
21 services under this Agreement.

22 C. Services of the CONSULTANT's personnel in connection with the COUNTY's  
23 construction contractor claims will be performed pursuant to a written contract  
24 amendment, if necessary, extending the termination date of this Agreement in order to  
25 resolve the construction claims.

26 37. CONFIDENTIALITY OF DATA

27 A. All financial, statistical, personal, technical, or other data and information  
28 relative to the COUNTY'S operations, which are designated confidential by the COUNTY

1 and made available to the CONSULTANT in order to carry out this Agreement, shall be  
2 protected by the CONSULTANT from unauthorized use and disclosure.

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

6 C. The CONSULTANT shall not comment publicly to the press or any other  
7 media regarding this Agreement or the COUNTY's actions on the same, except to the  
8 COUNTY's staff, the CONSULTANT'S own personnel involved in the performance of this  
9 Agreement, at public hearings or in response to questions from a Legislative committee.

10 D. The CONSULTANT shall not issue any news release or public relations item  
11 of any nature, whatsoever, regarding work performed or to be performed under this  
12 Agreement without prior review of the contents thereof by the COUNTY, and receipt of  
13 the COUNTY'S written permission.

14 E. All information related to the construction estimate is confidential and shall not  
15 be disclosed by the CONSULTANT to any entity other than the COUNTY, Caltrans,  
16 and/or FHWA. All of the materials prepared or assembled by the CONSULTANT  
17 pursuant to performance of this Contract are confidential and the CONSULTANT agrees  
18 that they shall not be made available to any individual or organization without the prior  
19 written approval of the COUNTY or except by court order. If the CONSULTANT or any of  
20 its officers, employees, or subcontractors does voluntarily provide information in violation  
21 of this Contract, the COUNTY has the right to reimbursement and indemnity from the  
22 CONSULTANT for any damages caused by the CONSULTANT'S releasing the  
23 information, including, but not limited to, the COUNTY's attorney's fees and  
24 disbursements, including without limitation experts' fees and disbursements.

25 38. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

26 In accordance with Public Contract Code Section 10296, the CONSULTANT  
27 hereby states under penalty of perjury that no more than one final unappealable finding  
28 of contempt of court by a federal court has been issued against the CONSULTANT

1 within the immediately preceding two-year period, because of the CONSULTANT'S  
2 failure to comply with an order of a federal court that orders the CONSULTANT to  
3 comply with an order of the National Labor Relations Board.

4 39. EVALUATION OF THE CONSULTANT

5 The CONSULTANT'S performance will be evaluated by the COUNTY. A copy of  
6 the evaluation will be sent to the CONSULTANT for comments. The evaluation together  
7 with the comments shall be retained as part of the contract record.

8 40. ENTIRE AGREEMENT

9 This Agreement constitutes the entire agreement between the CONSULTANT and  
10 COUNTY with respect to the subject matter hereof and supersedes all previous  
11 negotiations, proposals, commitments, writings, advertisements, publications, and  
12 understandings of any nature whatsoever unless expressly included in this Agreement.  
13 In the event of any inconsistency in interpreting the documents which constitute this  
14 Agreement, the inconsistency shall be resolved by giving precedence in the following  
15 order of priority: (1) the text of this Agreement (2) the COUNTY'S Request for  
16 Qualification "On-Call A&E and Related Services"; and (3) the CONSULTANT's  
17 Statement of Qualification made in response to COUNTY'S Request for Qualification. In  
18 consideration of promises, covenants and conditions contained in this Agreement, the  
19 CONSULTANT and the COUNTY, and each of them, do hereby agree to diligently  
20 perform in accordance with the terms and conditions of this Agreement, as evidenced by  
21 the signatures below.

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41. SIGNATURES

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

CONTRACTOR

COUNTY OF FRESNO

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
Steven White, Director  
Department of Public Works and  
Planning

\_\_\_\_\_  
Print Name & Title

Mailing Address

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

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

ACCOUNTING

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

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

FOR ACCOUNTING USE ONLY:

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

Subclass: 10000 / 11000 / 15000 / 15001 / 16900

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

Account: 7295

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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

**EXHIBIT "A"****PUBLIC WORKS AND PLANNING**

<b><u>Classification</u></b>	<b><u>Category</u></b>
Accountant I / II	2
Architect	1
Assistant Director of Public Works & Planning	1
<del>Assistant Real Property Agent</del>	<del>1</del>
<del>Associate Real Property Agent</del>	<del>1</del>
Building Inspector I / II	1
Building Plans Engineer	1
<del>Business Systems Analyst I / II / III</del>	<del>2</del>
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	2
Public Works Division Engineer	1
Resources Division Manager	1
<del>Right-of-Way Agent II / III</del>	<del>1</del>
<del>Road Maintenance &amp; Operations Division Manager</del>	<del>1</del>
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



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

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

**EXHIBIT "B"**

**PUBLIC WORKS AND PLANNING**

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

## **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).

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

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

The consultant, 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: \_\_\_\_\_