Request for Qualifications

RFQ No. ROA202408100

for

On Call Civil Engineering, Environmental, and Right of Way Professional Services for Federally Funded Projects

DBE Participation Goal: 22%

Pre-SOQ Meeting (Mandatory)

Monday, December 2, 2024, at 1:00 PM

Meeting will be held virtually

https://bit.ly/acpwa-road

Or call in (audio only)

+1 415-915-3950 United States, San Francisco

(888) 715-8170 United States (Toll-free)

Phone Conference ID: 264 288 948#

Response Due

Friday, January 17, 2025, by 2:00 pm

Alameda County Public Works Agency

399 Elmhurst Street, Room 113

Hayward, CA 94544

Alameda County Public Works Agency

399 Elmhurst St, Hayward, CA 94544

Issued: November 4, 2024

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I. Need for Professional Services

A. Agency Seeking Services

The Alameda County Public Works Agency (ACPWA) is the division of Alameda County government responsible for implementing public works infrastructure projects, such as sidewalk and bike facilities, roads and bridges. Occasionally, the agency needs to supplement its staff with the additional expertise and resources from specialized consultants. To this end, the ACPWA seeks competitive proposals for professional services by issuing a Request for Qualifications (RFQ) for federally funded projects.

The ACPWA may contract with on-call Consultants for civil engineering, environmental, and right of way professional services for various local projects. The ACPWA expects to contract with three prime consulting firms for a period of three years with an option to extend for an additional (2) two years. Total amount for each contract shall not exceed $3,000,000.

This solicitation is not for specific projects, but for specific services. The services are to be rendered for the duration of the contract term. This RFQ does not commit the ACPWA to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The ACPWA does not guarantee a specific number or dollar amount of projects will be contracted with the selected Consultants.

With this RFQ, the ACPWA seeks a qualified Consultant or team of Consultants who can provide civil engineering, environmental, and right of way services for various public works projects. These projects may include, but are not limited to, the following categories, and may also involve combinations thereof:

i. Complete Street Projects
ii. Intersection Improvements
iii. Roadway Drainage Rehabilitation
iv. Roadway Pavement Rehabilitation
v. Roadway Shoulder Repair
vi. Streetscape Design
vii. Bridge Maintenance and Repair
viii. Bridge Replacement

The response to this solicitation shall be in the form of a Statement of Qualifications (SOQ).

It is the responsibility of a Consultant to be familiar with all of the specifications, terms and conditions of the RFQ—including those contained in addenda. By the submission of an SOQ, the Consultant certifies, that if awarded a contract, it will make no claim against the County based upon ignorance of conditions or misunderstanding of the requirements.

Any questions regarding this RFQ shall be submitted in writing via email to the contact person listed below by the date & time specified as the *Deadline for Questions* on the *Schedule of Events* (Section III-F).

Contact: Anita Franklin, Administrator
E-mail: anita@acpwa.org
Phone: 510-670-5569
Address: Alameda County Public Works Agency
399 Elmhurst Street, Hayward, 94544

The ACPWA reserves the right to amend this RFQ or the criteria for Consultant selection in any manner, to cancel this RFQ, or to reject any one or all proposals at its discretion, thus not awarding a contract to any firm.

The most current supporting information and addenda for this RFQ can be found on the ACPWA business webpage: https://www.acpwa.org/business/current-opp. It shall be the Consultant's responsibility to check this webpage to obtain any addenda that may be issued.

A Consultant or sub-consultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, (unless it is registered at time of bid submission), or engage in the performance of any contract for public work, as defined in this chapter, unless registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. However, for federally-funded projects, it is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 of the Labor Code at the time the contract is awarded.

Federal funds will be used to perform all three (3) stages described in Section I.C., "Services Needed," including constructing the selected improvements to be identified.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available at County of Alameda and available from the California Department of Industrial Relations' Internet web site at http://www.dir.ca.gov. The Federal minimum wage rates for this project are predetermined by the United States Secretary of Labor. Future effective general prevailing wage rates, which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

B. General Project Descriptions

The ACPWA has a Capital Improvement Program whereby various projects are identified and planned for implementation. These projects include Pavement Management Projects; Safety Projects; Bike & Pedestrian Facility Improvement Projects and Multi-Modal Corridor Improvement Projects.

With this RFQ, the ACPWA seeks on-call professional services from consultants or teams of consultants who can provide civil engineering, environmental, and right of way services in order to deliver public works capital improvement projects throughout the unincorporated areas of Alameda County.

C. Services Needed

The ACPWA expects to contract with three qualified firms on an on-call basis. Task Orders will be issued for specific projects. Prior to the assignment of any project, the ACPWA will request the pre-qualified Consultants to provide proposals including budget and schedule for the scope of services for that specific project. Selected firms will be expected to perform tasks in stages as outlined below.

Firms responding to this RFQ are encouraged to demonstrate their understanding and capabilities of performing the various tasks as outlined in each stage as part of their response to this RFQ.

Stage 1: Scope Development with Design Alternatives, Preliminary Design of the Selected Option, and Appropriate Environmental Determination/Documentation
Stage 2: Final Design/Project Plans, Specifications, and Estimate (PS&E) Preparation and Right of Way Acquisition
Stage 3: Design Related Construction Support

It should be noted that selected Consultants may only be asked to perform certain tasks within each stage. Some projects may have certain tasks that have previously been completed, for example, topographic surveys, and will be made available to the selected Consultant for design.

Work by Consultants will commence following a *Notice to Proceed* issued by the ACPWA. Regardless of how the work ultimately proceeds, the SOQ is to include all three stages of work.

1. Stage 1: Detailed Scoping, and Preliminary Design

During this stage, the Consultants will be responsible for detailed project scoping, which includes evaluating and proposing alternative design options, identifying the preferred design alternative, and performing preliminary design work for the selected option. The scope of work may encompass, but not be limited to, project management tasks, conducting boundary and topographic surveys, performing necessary assessments and studies, recommending improvements for PS&E (Plans, Specifications, and Estimates) development, and carrying out public outreach efforts.

a. Project Management

The Consultants will be responsible for comprehensive project management activities including scheduling, reporting, coordination meetings, record keeping, and quality assurance.

SCHEDULING: The Consultants will be responsible for developing and maintaining a critical path master project schedule, detailed by individual tasks and incorporating sub-schedules for key project elements such as surveys, studies, reports, environmental assessments, and right-of-way assessments. The schedule will include milestones, major deliverables, percent completion for each task, and all known logic ties and constraints. Sub-consultant schedules will be integrated to align with the master schedule. The master schedule will be submitted to ACPWA for review and approval, serving as the basis for deadlines and decision-making timelines. The schedule must be regularly updated and submitted with the monthly progress report.

REPORTING: The Consultants are expected to prepare and submit monthly progress reports alongside the monthly invoice. These reports should detail completed work, compare progress against the project budget and schedule, outline upcoming tasks, and identify any emerging issues that may impact scope, schedule, or budget. Reports must follow an ACPWA-approved outline.

MEETINGS: The Consultants will organize and conduct meetings with their team and ACPWA staff as needed to ensure mutual understanding of progress and timely discussion of issues. For formal meetings, the Consultants will prepare and distribute agendas and meeting minutes, with ACPWA staff reviewing and approving the minutes before distribution.

RECORD KEEPING: All Consultants, including sub-consultants, are required to maintain project files in accordance with Caltrans' Uniform File System or an alternative filing system approved by the ACPWA. These files must include all correspondence, documentation, and data related to the Consultant's

services, such as test results, survey files, engineering computations, working drawings, meeting minutes, memos, and transmittals. Project file compilation shall begin upon issuance of the Notice to Proceed and continue through the completion and acceptance of all services and deliverables. Consultants must make all files available upon request and submit all original files to the ACPWA within 30 calendar days of such a request or within 30 calendar days following the completion and ACPWA's acceptance of all required services and deliverables, whichever occurs first.

QUALITY ASSURANCE: The Consultants will be required to develop a Quality Assurance/Quality Control (QA/QC) Procedure Manual, subject to County approval. This manual will be used to conduct QA/QC reviews, ensuring quality control throughout the development of design services. Deliverables will undergo internal checks and quality reviews by project staff before being released outside the team. Sub-consultants must conduct similar reviews before submitting documents to the Consultant for further processing to the County. QA/QC will be a scheduled and budgeted task for each deliverable. In addition to routine checks, milestone and final reviews of plans, estimates, and reports will be conducted to ensure consistent quality and accuracy. All design calculations, criteria, technical studies, reports, and cost estimates will adhere to the procedures outlined in the approved QA/QC Procedure Manual. Project Engineers will review and initial all Consultant-produced originals as a record of the QA/QC measures applied.

MONITORING AND CONTROLLING: The Consultants may be required to monitor and manage project issues and risks in collaboration with ACPWA staff to ensure project readiness for delivery. This includes preparing and maintaining risk registers and issue logs, as well as developing and implementing risk mitigation strategies and issue resolution plans. The ACPWA staff will review and approve risk registers and issue logs prior to distribution.

The project management tasks outlined above, along with any additional tasks proposed by the Consultant and approved by ACPWA, will logically continue into subsequent project stages, provided those stages proceed as anticipated.

b. Assessments, Studies, and Recommendations for Improvement

The Consultant is expected to assess existing project site conditions, perform relevant studies, develop detailed scope/design alternatives, and recommend a preferred alternative for improvement. This includes researching and reviewing existing data, utility information, reports, and plans related to the project site. The Consultant will inform ACPWA if additional information, assessments, or studies are necessary. All critical data used in decision-making must be verified by the Consultant, relying on independent assessments rather than solely on information provided by ACPWA. New assessments and studies must be approved by ACPWA before proceeding.

Design considerations should include safety, environmental preservation, traffic flow, livable and multimodal design, and sustainability, ensuring compliance with all applicable Municipal Regional Permit requirements.

ENVIRONMENTAL ASSESSMENT: The Consultant will conduct an environmental evaluation to identify potential impacts on cultural resources, biological resources, hazardous waste, hydrology/floodplains, scenic/visual resources, clean water, construction noise, air quality, and other relevant factors.

Biological Resources – If Natural Environmental Study, Minimal Impact (NESMI) is insufficient, then a Natural Environment Study (NES) and Biological Assessment (BA) will be required.

Note: Pursuant to California Labor Code, California Prevailing Wage Rates are required for covered classifications, such as soils testing.

c. Boundary and Topographic Surveys

Using the County-specified Datum & Coordinate System, the Consultant's California Licensed Land Surveyor shall prepare and submit "Topographic Plan Drawings" that delineate all existing roadway improvement features and any additional features necessary for final design. The Consultant will research and collect data from County records to map the existing public right-of-way and adjacent private property line boundaries, including easements and other encumbrances. Supplemental Field topographic surveys will be performed to supplement topographic mapping in areas that are deemed necessary by the Consultant. This will entail surveying areas that have incomplete or insufficient data where additional field condition verification is needed to complete relevant design data information.

Mapping shall accurately delineate all existing roadway improvement features, including but not limited to all types of signing, with each sign designated according to the California Manual on Uniform Traffic Control Devices (MUTCD), and all striping, identified by Caltrans striping designation. The mapping should also include monuments, reflectors, markers, delineators, guardrails, and other roadway markings. Additionally, curb, gutter, and sidewalk areas, including ramps and driveways, as well as median strips and the edge of pavement, must be mapped. Fences along property lines, signs, trees (with their diameter noted), shrubs, bushes, guardrails, wood post rails, traffic signals, traffic loops, utility poles, and pavement markings should all be included. Furthermore, the mapping should cover property lines, utility structures, drainage channels, and drainage facilities. Drainage structure information shall include inlet/out pipe and structure flowlines.

Typical Survey limits:

- At non-driveway locations, survey limits shall be 10 feet beyond right-of-way
- At driveway locations, survey limits shall be up to the garage door or 30 feet beyond right of way
- At side streets, 50 feet beyond curb return

The Consultant is responsible for determining the extent of the survey required to support the design. This includes identifying and mapping all necessary roadway improvement features and surrounding areas to ensure sufficient data is collected for accurate and complete design work. The extent of the survey must adequately cover all relevant elements to meet the project's design requirements.

The scaled plan drawings must be wet stamped and signed by a Land Surveyor licensed in the State of California. The drawings shall be created using AutoCAD Civil 3D and the ACPWA drawing standards, templates, and alpha codes for the insertion of all blocks, layer control, planimetric, features and fault lines. All monuments, monument lines, benchmarks and control points used, are to be shown on the map.

Note: California Prevailing Wage Rates apply to covered classifications, such as field surveyors.

d. Public Outreach

The Consultants are expected to participate in project communication and public outreach. This includes conducting public meetings and presenting the project to the appropriate Municipal Advisory Council, the Unincorporated County Bicycle and Pedestrian Advisory Committee, and Community-Based Organizations. These outreach efforts aim to solicit input on the project and its objectives. The

meetings will provide opportunities for the public to offer feedback throughout the scoping and design stages and will be facilitated to maximize attendee participation. In addition to residents, outreach will extend to businesses, affected agencies, utilities, and other stakeholder groups. The Consultants will be responsible for preparing all presentation materials, including PowerPoint slides, exhibits, renderings, handouts, and meeting minutes. They may also be asked to develop and distribute meeting notices or mailouts.

e. Environmental Clearance

The Consultants are expected to take a lead role in securing environmental clearance for the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). Upon selection of the preferred alternative for the next Stage (2), the Consultant will initiate the environmental approval process, preparing all necessary environmental studies, reports, and reviews for NEPA and/or CEQA compliance.

f. Preliminary Right of Way Engineering

The Consultant will identify all right of way needs for the proposed alternatives and prepare preliminary right of way maps and cost estimates.

g. Control of Quality

The Consultants are expected to follow the approved QA/QC procedure throughout the project delivery stages.

2. Stage 2: Final Design/PS&E and Acquisition of Environmental Permits and Right-of-Way

During Stage 2, the Consultant's services may include project management, public outreach, environmental documentation and permit acquisition, right-of-way engineering and acquisition, field-verified utility mapping, final design, preparation of PS&E, and construction bid process support.

a. Project Management

The Consultant will continue project management tasks initiated in Stage 1.

b. Public Outreach

The Consultant will continue public outreach efforts as described in Stage 1.

c. Environmental Permits

The Consultant will secure all regulatory permits required for project implementation.

d. Right of Way Engineering

If included in the Consultant's scope, the Consultant will perform analysis and develop technical reports on right-of-way (ROW) engineering. Tasks may include defining future ROW requirements, conducting boundary surveys, developing legal boundary descriptions, and assisting with ROW acquisition. This work may involve appraisals and the preparation of ROW documents such as permits to enter and construct (PTEC), encroachment permits, temporary and permanent easements, ROW plats, maps, descriptions, notices to owners, and ROW certifications. The Consultant will research and collect data from County records to establish the existing ROW and inform their analysis.

e. Utility Coordination and Field Verify Utility Mapping

The Consultants are expected to collaborate with public utilities (e.g., EBMUD, PG&E, Comcast, AT&T) and the County to coordinate any necessary adjustments, relocations, or repairs of existing public utility facilities related to the project. The Consultants will be responsible for obtaining utility base maps from the various utility companies and any available pothole information, which will then be used to field-verify the horizontal and vertical locations of utilities that may be impacted by planned improvements. The Consultants must also obtain any missing or outdated utility information from the utility companies. Additionally, they are required to conduct field verification of utilities, such as manhole inverts and catch basin inverts, and acquire additional utility record drawings or utility data from relevant agencies if needed. The depth of critical utilities must be field-verified if record drawings are unavailable or if there are perceived conflicts with planned improvements. The Consultants shall identify the need for pothole work, and upon approval from the County, perform the necessary investigative pothole work. They will also be responsible for obtaining all required permits, paying associated fees, and securing traffic control approvals for potholing if additional work is deemed necessary.

Note: Pursuant to California Labor Code, California Prevailing Wage Rates are required to be paid for covered classifications, such as pothole work.

f. Geotechnical Analysis

For applicable projects, the Consultant will perform geotechnical analysis, including subsurface exploration, soil testing, and seismic evaluation, to inform the design of foundations, retaining walls, and bridges. The analysis will assess soil and rock conditions, groundwater levels, slope stability, and load-bearing capacities, providing recommendations on foundation types, wall support systems, and earthwork requirements. For retaining walls and bridge structures, the Consultant will conduct specialized evaluations to ensure stability and seismic resilience. The Consultant will prepare a comprehensive geotechnical report with design parameters and construction recommendations, as well as support during review and permitting stages.

g. Structural Design

For applicable projects, the Consultant will conduct structural design services for foundations, retaining walls, bridges, and other project-specific structures. This includes performing load analysis, seismic and wind assessments, and material specifications to ensure safety, stability, and compliance with relevant codes and standards. Structural designs will address all relevant load conditions, including live, dead, environmental, and seismic loads, with an emphasis on durability and constructability. This scope includes coordinating with geotechnical findings and integrating the design into the overall project plans. The Consultant will prepare comprehensive design plans, calculations, and construction specifications, providing ongoing support for plan reviews and necessary adjustments throughout the permitting and construction phases.

h. C3/Hydrologic and Hydraulic Calculations

For applicable projects, the Consultant will perform C3, hydrologic, and hydraulic calculations to evaluate stormwater management requirements and ensure compliance with regulatory standards. This includes analyzing pre- and post-development runoff, detention needs, flow conveyance, and water quality treatment measures. The Consultant will assess on-site stormwater controls, such as bioretention areas, swales, and permeable surfaces, to mitigate runoff and meet C3 requirements. Findings will be documented in a report with recommendations for drainage infrastructure, green

infrastructure, and necessary mitigation measures. The Consultant will integrate these recommendations for effective stormwater management and environmental compliance.

i. Landscape Design

For applicable projects, the Consultant will provide landscape design services, focusing on enhancing aesthetic appeal, ecological sustainability, and functionality. This includes the selection and arrangement of plant materials, hardscape elements, and irrigation systems, as well as the incorporation of green infrastructure practices in coordination with c3/hydraulic and hydraulic calculation results. The design will prioritize native and drought-resistant species to promote biodiversity and reduce maintenance needs. The Consultant will prepare detailed landscape plans, planting schedules, and specifications, providing support during the construction phase to ensure adherence to design intent and successful implementation of landscape features.

j. Street Lighting Design and Lighting Load Evaluation

For applicable projects, the Consultant will design street lighting, assessing the corridor's illumination needs, selecting appropriate light sources and fixtures, determining luminaire spacing, and evaluating the electrical load of the design.

k. Traffic Signal Design

For applicable projects, the Consultant will develop traffic signal designs tailored to site-specific conditions, ensuring safe and efficient operation. Signal timing considerations will be integrated to accommodate changes in traffic conditions.

l. Final Design

The Consultant is responsible for ensuring the design complies with current regulations and applicable standards, including but not limited to:

- Alameda County Design Guidelines (SD)
- Alameda County Engineering Design Guidelines
- Alameda County Stormwater Quality Control Requirements
- Alameda County Bicycle and Pedestrian Master Plan
- Caltrans Highway Design Manual
- Caltrans Standard Plans and Specifications
- California MUTCD
- AASHTO “Green Book” – A Policy on Geometric Design of Highways and Street
- AASHTO – Roadside Design Guide
- Americans with Disabilities Act Accessibility Guidelines
- California Access Compliance Reference Manual
- Bay-Friendly Landscaping Guidelines: Sustainable Practices for the Landscape Professional
- Alameda County C3 Stormwater Technical Guidance Manual

For any design elements that do not meet current regulations or applicable standards, the Consultant shall be responsible for preparing all required design exception documentation as applicable to the project.

m. Preparation of PS&E – Plans

Contract plans shall be prepared using AutoCAD Civil 3D in accordance with the County’s CADD User’s Manual – Section 13, Agency and Consultant CADD Procedures. The AutoCAD files must be submitted

with the final contract bid documents. Final plans must be signed by the Consultant's licensed professional in responsible charge.

Unless otherwise specified by the task order, project plan sheets will be submitted at three levels of completion (typically 35%, 70%, and 100%) in accordance with an approved schedule that aligns with the project's design completion timeline. Review submittals shall be made electronically, in 22"x34" PDF format. Design progress shall continue during the review period. The County may request a page-turn review meeting to shorten the review period.

n. Preparation of PS&E – Specifications

Project specification sections shall conform to the ACPWA's specification format and complement the contents of the special conditions used by the ACPWA in the contract documents. Specifications will use the latest Caltrans Standard Specifications unless otherwise directed by ACPWA. The technical project specifications shall be prepared in MS Word format, with MS Word files submitted at each round of review. For the final specification submittal, Consultants will provide signature sheets for the special provisions they are responsible for.

o. Preparation of PS&E – Estimate

Quantity and construction cost estimates shall be prepared and submitted at each review stage (typically 35%, 70%, and 100%). Detailed cost estimates must be prepared using the ACPWA format in an MS Excel spreadsheet, including all bid items as described in the specifications. The estimates shall use the same nomenclature and units of pay as specified and reflect current bid prices based on similar projects and the engineer's judgment. Basis used for estimating shall be provided with the final cost estimate.

p. Design Submittal Requirements:

The following serves as general guidelines on design submittal requirements and the Consultant is expected to exercise sound professional judgment to produce deliverables according to the agreed project schedule.

<u>Preliminary Design (or 35% Design):</u>

Provides a comprehensive overview of the project's scope, including preliminary site layouts, major design elements, and initial engineering calculations.

1. Define and confirm the major design elements of the project, along with the project's scope, schedule, and budget that the design team can commit to delivering.
2. Prepare deliverables for this stage, which may include conceptual drawings, preliminary geotechnical analysis, initial hydrological assessments, and major infrastructure layouts (e.g., road alignments, drainage systems, utility networks).
3. Coordination with utilities, right-of-way, encroachment, relocation, and other related activities should be in progress.

<u>Intermediate Design (or 70% Design):</u>

This submission includes detailed development of the design, with refined engineering calculations and detailed plans and elevations. It typically includes advanced drawings such as plan and profile views, detailed drainage designs, utility plans, construction phasing plans, and revised cost estimates.

1. Respond to and resolve 35% comments and complete the project design.
2. Finalize the project schedule and cost estimate for bidding.
3. Finalize the technical specifications and list of special conditions related to construction.

Final Design (or 100% Design):

1. Respond to and resolve 70% comments and finalize project design
2. All drawings and deliverables are expected to be ready to be issued for bid and construction
3. Complete technical specifications and cost estimate
4. Complete coordination for utilities, right of way, encroachment, relocation, etc.

q. Control of Quality

The Consultants are expected to follow the approved QA/QC procedure throughout the project delivery stages.

r. Construction Bid Support

The Consultants will assist ACPWA in preparing the necessary information to effectively solicit competitive construction bids and support recommendations to the Board of Supervisors for project awards. The Consultants are expected to respond to contractor requests for information (RFIs) and prepare bid addenda as needed. Any clarifications or resolutions of discrepancies, errors, or omissions in the PS&E must be provided at no additional cost to the County. Responses to RFIs must be submitted in writing within two business days of receipt.

3. Stage 3: Design Related Construction Support

During this stage, the Consultants are expected to provide engineering support throughout the construction phase, including, but not limited to, field visits, project meetings as needed, and the administration of submittals and responses to RFIs.

a. Project Management

During the construction phase, the Consultants are expected to attend the pre-construction conference for their design projects and participate in meetings and coordinate with ACPWA as requested to promptly address any design-related issues. The Consultants are also expected to perform project management tasks outlined in Stage 1, as directed by ACPWA, and to conduct field visits as needed.

b. Submittal and RFI Administration

The Consultants will review and provide guidance to the County on the approval of contractor submittals. They will also be responsible for responding to contractor RFIs. Any clarifications or resolutions of discrepancies, errors, or omissions in the PS&E must be provided at no additional cost to the County. Responses to submittals and RFIs must be made within two business days of receipt, unless it is an emergency, which may require an immediate response. Project delay costs resulting from untimely responses to submittals or RFIs will be borne by the Consultants.

D. Schedule of Services

At the end of this RFQ process, ACPWA will select at least three on-call Consultants for contract award.

Task Orders will be issued for specific projects. Before assigning any projects, ACPWA will request the pre-qualified on-call Consultants to provide proposals, including budget and schedule, for the scope of services for each project. Upon agreement on the selected proposal's budget and schedule, the Consultant can begin work following the issuance of a Notice to Proceed by the Agency.

II. SOQ Requirements

A. Minimum Qualifications

To qualify for consideration, a proposer must possess adequate resources to perform all of the work needed to complete all stages of the project described in Section I-C. This includes possessing the required licensing, experience, software, and financial system.

LICENSING: All civil engineering work must be performed under the responsible charge of a California-registered professional civil engineer in accordance with the California Professional Engineers Act. All land surveying work must be performed under the responsible charge of a California-registered professional land surveyor or qualified civil engineer in accordance with the California Professional Land Surveyors' Act.

EXPERIENCE: Consultants and sub-consultants must possess substantial experience in public works project design and PS&E preparation, including experience working with the latest Caltrans Specifications and Standard Plans. Consultants and sub-consultants must have extensive experience with project reports, environmental documents, and all analyses, studies, and reports through the Caltrans approval process and right-of-way acquisition.

SOFTWARE: The software utilized by any potential Consultant and its team must produce deliverables that are fully compatible, readable and usable by the ACPWA software, requiring no modification or translation of the Consultant's deliverables. Software standards currently used by the ACPWA are as follows:

- Operating System: Windows 10 Enterprise or later
- Word Processing, Spreadsheets, Presentations, etc.: Microsoft Office 365
- CADD: AutoCAD Civil 3D 2021
- GIS: ArcMap
- Traffic Signal Software: Synchro Studio (version 8)

Alternative software can be proposed, but its acceptability will be at the sole discretion of ACPWA. A qualified Consultant is expected to minimally possess and maintain a professional level of proficiency with respect to all software products. Expert proficiency is desired for CADD programs.

FINANCIAL SYSTEM: Consultant must have an adequate financial management and accounting system pursuant to the Code of Federal Regulations (CFR): 48 CFR 16.301-3, 2 CFR 200, and 48 CFR 31.

B. Pre-SOQ Meeting

The virtual pre-SOQ meeting is mandatory. The meeting will be held at the date, time and link specified in the 'Schedule of Events' (Section III-G). Only one pre-SOQ meeting is scheduled. This meeting will be held primarily to provide an overview of the RFQ and to provide an opportunity for large and small firms to

network and potentially develop subcontracting relationships. The sign-up sheet and presentation will be posted following the meeting.

C. Submittal Requirements

Interested parties responding to this RFQ are expected to submit one SOQ. The SOQ should be straightforward, clear, concise, and directly address the information requested.

In order for responses to be considered complete, the proposer must provide responses to all information requested.

1. Format

The submitted SOQ must be no smaller than 12-point font in an 8½ x11 format (a reasonable number of 11x17 sheets may be included for presenting large tables, charts, and schedule diagrams). SOQ should be limited to 20 pages (all page sizes greater than 8½ x11 will be counted as two pages).

Statements of Qualifications, in whole or in part, are not to be marked confidential or proprietary. The Agency may refuse to consider any SOQ or part thereof so marked. SOQs submitted in response to this RFQ may be subject to public disclosure. The Agency will not be liable in any way for disclosure of any such records. Please refer to the County's website for more information regarding Proprietary and Confidential Information policies.

The website may be viewed at:

https://gsa.acgov.org/do-business-with-us/contracting-opportunities/policies-procedures/proprietary-confidential-information/

2. Content

To achieve the maximum degree of comparability, the proposal should be organized and divided into the following sections:

a) Transmittal Letter
b) Title Page
c) Table of Contents
d) Narrative
e) Understanding of the Work to Be Done
f) Relevant Work Experience
g) Staffing Quality
h) Innovative Capability
i) Procedural Familiarity
j) Financial Responsibility
k) Technical Skills
l) Contract Negotiation Authorization
m) Attachments

Do not modify required forms.

Proposals in PDF form should have a bookmark link for the start of each section. Printed proposals must include physical dividers with labeled tabs between each section.

The following is a description of each section:

a. Transmittal letter: Responses shall include a description of Proposer's capabilities and approach in providing its services to the ACPWA, and provide a brief synopsis of the highlights of the SOQ and overall benefits of the proposal to the ACPWA. This synopsis should not exceed two (2) pages in length. The letter must also identify the authorized signatories for the proposer and include their signature(s).

Unsigned submittals or submittals signed by an individual not authorized to bind the prospective Consultant will be considered nonresponsive and rejected.

b. Title page: The title of the SOQ. This should include the RFQ subject, the name of your firm, place of business, telephone number, contact person name, e-mail address, and the date. Indicate Disadvantaged Business Enterprise (DBE) firm(s) and other firms serving as sub-consultants. Provide the Department of Industrial Relations (DIR) registration number.

c. Table of Contents: An SOQ must include a table of contents listing the individual sections of the proposal and their corresponding page numbers. Tabs should separate each of the individual sections.

d. Narrative: A one-page narrative highlighting the reasons why your firm should be selected to provide the requested services.

The following sections should contain your best effort to identify how your firm, together with any supporting sub-consultant, satisfactorily meets the Agency's requirements and possesses superior qualifications.

IMPORTANT: The first page of each section should be a summary of the information contained on the pages that follow within that section. It should be a synopsis of the most important points that the Proposer wants an evaluator to consider when comparing the information of that section with similar information of competing SOQs.

e. Understanding of the work to be done

In this section the proposer should effectively demonstrate a thorough understanding of the delivery of various types of public works projects:

- Outline how your firm and any subcontracted consulting firms are suitably qualified and especially well-prepared for delivering public works projects similar to those described previously. Provide expanded details of experience, staffing, and other relevant information in the following sections as appropriate.

- Describe your firm's approach to developing the scope of work, including delivery approaches and methodologies, anticipated tasks, assumptions, challenges, concerns, and deliverables.
- Detail your approaches and methodologies to project delivery covering all phases from project inception to construction, for projects similar to those listed on page 1 of the RFQ.
- Provide a typical schedule and scope for a federally funded project from inception to construction, consistent with the requirements previously outlined under "Project Management – Scheduling". Include only major tasks and their expected durations. In addition to the usual project tasks, assume that the project involves federal funding for Preliminary Engineering (PE) and Construction (CON) phases, utility relocations, right-of-way acquisitions, and a freeway ramp closure. Also assume that fire hydrant relocations, gas main relocation, tree removal, and a total land disturbance of more than one acre are required.

f. Relevant Work Experience

In this section, proposers should effectively demonstrate applicable experience by describing similar work previously performed to the clients' satisfaction. Pertinent members of the proposers' team are expected to have been involved in public works projects, similar to those listed in Section I-C, "Services Needed," on page 1, within the last five years.

Provide a list of three (3) client references who can discuss your involvement and contributions to projects similar to those described in Section I-B. For each reference, provide the company's name and address, a contact person's name, phone number, email, and services provided, including dates of service. Ensure that the contact information for all provided references is current and valid.

The Agency may contact some or all of the references provided to determine your performance record.

g. Staffing Quality: Bid responses shall include a complete list of all key personnel associated with the RFQ. This list must include all key personnel who will provide services to the ACPWA staff and all key personnel who will provide support services. For each professional/technical staff on the list, the following information shall be included:

1. Their name, job title, years of experience, years with the firm, and the city of the office in which the individual will work should also be included;
2. The role that person will play in connection with the RFQ;
3. Their address, telephone, and email address;
4. Their education background;
5. Their relevant experience, certifications, and/or merits.

This information can be provided in the form of one or more lists or organizational charts. An organizational chart showing the reporting relationships and individual staff resumes are required in this section.

The Consultant is responsible for performing the work required under the contract in a manner acceptable to the ACPWA. The Consultant's organization, along with all associated Consultants and sub-consultants must be identified at the time of the SOQ submittal. If the Consultant wishes to use a sub-consultant not specified in the SOQ, advance written approval must be obtained from the ACPWA. Sub-contracts must contain all provisions required by the prime contract.

h. Innovative Techniques: In this section describe your capability of developing innovative or advanced techniques. These techniques may be associated with the manner in which project conditions are assessed, surveyed, studied and modeled; how stakeholder participation efforts are conducted; how design elements and alternatives are best derived, presented and vetted, or the manner by which features of design or their implementation push the envelope of creativity while at the same time remaining practical, economical, and safe. Capability is best demonstrated by past practice; however, proposing innovative and advanced ideas not previously implemented may also be evaluated favorably.

i. Procedural Familiarity: Describe your familiarity with local, state and federal procedures applicable to public works projects. One aspect of particular importance is that you demonstrate an informed understanding of the requirements of using federal funds for this project, as well as 49 CFR, Part 26 and the Caltrans DBE Program.

j. Financial Responsibility: Describe your firm's financial responsibility. At a minimum, you must certify, by including the following statement in your proposal: "Our financial management system meets the standards for financial reporting, accounting records, internal controls, and budget control as set forth in the 48 CFR 16.301-3, 2 CFR 200, and 48 CFR 31, to the extent applicable to the Consultant." SOQs that do not include this statement will receive zero points for this evaluation criteria. Provide brief explanation on how your markup(s) are both financially responsible and competitive. You should explain how you manage expenses and minimize costs.

k. Technical Skills: In this section the proposers should effectively demonstrate the technical skills to perform the required tasks to deliver public works projects.

l. Contract Negotiation Authorization: Include the name(s), e-mail address(es), and phone number(s) of the individual(s) authorized to negotiate this contract and to contractually bind your firm, and who may be contacted during the evaluation period. A copy of the Agency's Standard Agreement form and insurance requirement are enclosed for advance review. Identify any agreement and insurance waivers requested. The Agency has the right to request changes to the project team before execution of the contract. The Agency has the right to reject any and all proposals for any reason.

m. Attachments: Attachments at the end of the Proposal must include a completed 'RFQ and Addendum Acknowledgement' form (Attachment A), as well as a completed 'Iran Contracting Act Compliance Certification' form (Attachment B), and Debarment and Suspension Certification (Attachment D, Appendix D). If the Proposer requests any exceptions or amendments to the RFQ or any associated documents, an 'Exceptions and Amendments' form (Attachment C) must also be completed and attached at the end of the SOQ. Please note that the Agency is under no obligation to accept any exceptions and such exceptions may be a basis for disqualifying a proposal.

Attention is directed to Attachment E, which includes::

1. Notice to Proposers DBE Information (Caltrans Local Assistance Procedures Manual (LAPM) Exhibit 10-I)
2. Consultant Proposal DBE Commitment (Caltrans LAPM Exhibit 10-O1)
3. Consultant Contract DBE Commitment (Caltrans LAPM Exhibit 10-O2) (to be submitted as part of the CONTRACT)
4. DBE Good Faith Efforts (Caltrans LAPM Exhibit 15-H) (To be submitted with supporting documentation)

SOQs that do not include the required completed forms will be disqualified from further consideration.

Please ensure the following are submitted by the SOQ deadline:

- **SOQ without cost proposal**: One (1) electronic copy in PDF format, containing all requested information. Ensure the email subject line reads: "Response to RFQ No. ROA202408100 for On Call CE, Env, and ROW".

- **Cost Proposal**: Submit one (1) electronic copy in XLS/XLSX format, separate from the SOQ, including all requested details. Name the file: "Cost Proposal for RFQ No. ROA202408100" and submit it along with the SOQ.

The SOQ must be transmitted electronically to the ACPWA at the following email address: RoadDesign@acpwa.org, with a copy to anita@acpwa.org.

All responses must be submitted in writing, clearly identified by content, and received by the ACPWA by the specified due date. SOQs received after the stated deadline will not be considered.

Only one SOQ will be accepted from any one person, corporation, or partnership. For purposes of this requirement, "partnership" shall mean, and is limited to, a legal partnership formed under one or more of the provisions of the California or other state's Corporations Code or an equivalent statute.

The County reserves the right to reject any SOQ, but all qualifying SOQs shall remain open to acceptance and are irrevocable for a period of one hundred eighty (180) days.

All costs associated with the preparation and submission of the written SOQ shall be fully borne by the proposer. All submitted materials become the property of the County and will not be returned.

Every SOQ received will become part of public record and will not be treated as proprietary. Each SOQ will be open to public inspection following the award of the contract.

D. Oral Presentation/Interview

Following an evaluation of the written SOQs, at least three of the highest scoring proposers will be invited to participate in an oral presentation/interview process. Participants must submit at the time of the interview, a sealed cost proposal containing the fee rate schedule for all staff/team members. The cost proposal shall include Certification of Indirect Cost and Financial Management System (formerly Caltrans LAPM Exhibit 10-K, see Attachment F) completed by Prime Proposer and all sub-consultants. Additional details will be provided to those who are invited to participate. Generally, the oral presentation/interviews can be expected to occur approximately 4-5 weeks after the deadline to submit a written proposal, as reflected in the *Schedule of Events* (Section III-G). At the interview, the selection team will expect the Consultant team to present its team members and their qualifications. The project manager and key staff persons who will be working on the project on a daily basis must be present for the interview/presentation. The presentation will be followed by a question and answer period by the selection team.

All costs associated with the preparation for, the travel to, and attendance of an oral presentation/ interview shall be fully borne by the proposers.

III. Process of Selection

A. Selection Committee

All written proposals that pass the initial Evaluation Criteria which are determined on a pass/fail basis (Completeness of Response, Financial Stability, and Debarment and Suspension) will be evaluated by the Agency's Selection Committee (ASC). The ASC may be composed of the ACPWA staff and other parties that may have expertise or experience in civil engineering, environmental, and right-of-way services. The ASC will score each SOQ and make a Consultant recommendation in accordance with the evaluation criteria set forth in this RFQ. The evaluation of the proposal shall be within the sole judgment and discretion of the ASC.

All contact during the evaluation phase shall be through the Agency designated representative only. You must not contact or lobby evaluators during the evaluation process. Any attempt to contact and/or influence members of the ASC may result in disqualification.

The ASC will evaluate each SOQ that meets the qualification requirements set forth in this RFQ. Bear in mind that any SOQ that is unrealistic in terms of technical or other commitments will be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the ACPWA's requirements as set forth in this RFQ.

B. Evaluation Criteria

The Agency intends to select the most qualified responsible proposers whose response conforms to the RFQ.

Each of the Evaluation Criteria below will be used in ranking and determining the quality of proposers' SOQs. SOQs will be evaluated according to each Evaluation Criterion and scored on the zero to five-point scale outlined below. The scores for all Evaluation Criteria will then be added, according to their assigned weight (below), to arrive at a weighted score for each SOQ. A statement of qualifications with a high weighted total will be deemed of higher quality than one with a lesser-weighted total.

The evaluation process is a two-stage approach. The first stage is initial evaluation of the written proposal based on the criteria for the written proposal, reference checks, and preliminary scoring. The proposers receiving the highest score on the written proposal and with at least 70 points will be invited to an oral presentation and interview. All other bidders will be deemed eliminated from the process. All proposers will be notified of the short list participants; however, the preliminary scores at that time will not be communicated to proposers.

The zero to five-point scale range is defined as follows:

0	**Not Acceptable**	Non-responsive, fails to meet RFQ specifications. The approach has no probability of success. For mandatory requirement this score will result in disqualification of submittal.
1	**Poor**	Below average, falls short of expectations; is substandard to the average or expected norm, has a low probability of success in achieving objectives per RFQ.
2	**Fair**	Has a reasonable probability of success, however, some objectives may not be met.
3	**Average**	Acceptable, achieves all objectives in a reasonable fashion per RFQ specification. This will be the baseline score for each item with adjustments based on interpretation of the SOQ by members of the ASC.
4	**Above Average/Good**	Very good probability of success, better than the average or expected as the norm. Achieves all objectives per RFQ requirements and expectations.
5	**Excellent/Exceptional**	Exceeds expectations, very innovative, clearly superior to that which is average or expected as the norm. Excellent probability of success in achieving all objectives and meeting RFQ specification.

The Evaluation Criteria and their respective weights are as follows:

Written Evaluation Criteria	Weight
A. Completeness of Response Responses to this RFQ must be complete. Responses that do not include the content required by this RFQ and any subsequent addenda and do not address each of the items listed below will be considered incomplete, be rated a "Fail" in the Evaluation Criteria, and will receive no further consideration. Responses that are rated a Fail and are not considered may be picked up at the delivery location within 14 calendar days of contract award and/or the completion of the competitive process.	Pass / Fail
B. Debarment and Suspension You, your principal and named subcontractors are not identified on the list of Federally debarred, suspended or other excluded parties found at www.sam.gov**.**	Pass / Fail

Written Evaluation Criteria	Weight
C. Understanding of Work to be Done • You demonstrated a thorough understanding of the purpose and scope of the procurement and the Agency's typical projects. • You identified pertinent issues and potential problems related to the Agency's typical project • You demonstrate an understanding of the deliverables required for the typical project.	20
D. Relevant Work Experience • The individuals assigned to the project have experience on similar projects (roles and tasks on said projects should at least be similar) • The personnel designated in the SOQ have been involved with at least two similar projects in the last 5 years.	20
E. Staffing Quality • The personnel designated to work on the projects have extensive applicable education, experience and the certification required.	10
F. Innovative Capability • You demonstrated your capability of developing innovative or advanced techniques.	10
G. Procedural Familiarity • You demonstrated your familiarity with local, state and federal procedures applicable to the project. • You demonstrated an informed understanding of the requirements of the DBE Program.	15
H. Financial Responsibility • Your SOQ includes the required statement certifying your financial management system meets the standards set forth in the RFQ. • You demonstrated how your markups are financially responsible and competitive. • You demonstrated your ability to manage expenses and keep costs at a minimum.	5
I. Technical Skills: You effectively demonstrate technical ability to perform the required tasks consistent with the proposed scope of work.	15
J. References: References will be asked about their experience working with you on work similar to that described in this RFQ. Former	5

Written Evaluation Criteria	Weight
clients will be asked about your role in the project, the methods, techniques or solutions the Consultant offered, and if the project was completed on time and within budget.	
Subtotal:	**100**

Oral Evaluation Criteria	Weight
K. Presentation by Team	25
L. Q&A Response to Panel Questions	25
Subtotal:	**50**
TOTAL:	**150**

	LOCAL *OR* SLEB PREFERENCES	
1.	**Local Preference Points**: Equaling five percent (5%) of your total score will be added. This will be your final score for purposes of evaluation; *OR*	5% added to Total
2.	**County Certified Small and Local, or Emerging and Local Preference Points**: Equaling ten percent (10%) of your total score will be added. This will be your final score for purposes of evaluation.	10% added to Total

C. Contract Evaluation and Assessment

During the initial sixty (60) day period of any contract, which may be awarded to Consultant, the ASC and/or other persons designated by the ACPWA will meet with the Consultant to evaluate service performance and to identify any issues or potential problems.

The ACPWA reserves the right to determine, at its sole discretion, whether:

1. Consultant has complied with all terms of this RFQ; and
2. Any problems or potential problems with the proposed services were evidenced which make it unlikely (even with possible modifications) that such services have met the ACPWA requirements.

If, as a result of such determination, the ACPWA concludes that it is not satisfied with Consultant, Consultant's performance under any awarded contract and/or Consultant's services as contracted for therein, the Consultant will be notified of contract termination effective forty-five (45) days following notice. The ACPWA will have the right to invite the next highest ranked bidder to enter into a contract. The ACPWA also reserves the right to re-bid this project if it is determined to be in its best interest to do so.

D. Notice of Recommendation to Award

At the conclusion of the RFQ response evaluation process, the Agency will notify all proposers by e-mail or US Postal Service mail, of the contract award recommendation, if any. The announcement will be titled "*Notice of Recommendation to Award*." It will provide the name of the proposer being recommended for contract award and the names of all other parties that submitted proposals.

At the conclusion of the RFQ response evaluation process, debriefings for unsuccessful proposers may be scheduled and provided upon written request and will be restricted to discussion of the unsuccessful offeror's proposal. The debriefing may include review of the successful offeror's proposal, but it will not include any discussion of successful proposer's contract negotiations.

The submitted proposals shall be made available upon request no later than five calendar days before approval of the award and contract is scheduled to be considered for award by the Board of Supervisors.

E. Protest/Appeals Process

The Agency utilizes fair and competitive contracting procedures.

The following is provided in the event that proposers wish to protest the process or the recommendation to award a contract once the Notice of Recommendation to Award has been issued. Protests submitted prior to issuance of the Notice of Recommendation to Award will not be accepted by the County.

A. Any protest by any proposer regarding any other proposal must be submitted in writing to the Director of ACPWA, Alameda County Public Works Agency, 399 Elmhurst St, Hayward, CA 94544, before 5:00 p.m. of the fifth business day following the date of issuance of the Notice of Recommendation to Award, not the date received by the protester. A protest received after 5:00 p.m. is considered received as of the next business day.
   a. The protest must contain a complete statement of the reasons and facts for the protest.
   b. The protest must refer to the specific portions of all documents that form the basis for the protest.
   c. The protest must include the name, address, email address, fax number and telephone number of the person representing the protesting party.
   d. The ACPWA will transmit a copy of the protest to all proposers as soon as possible after receipt of the protest.

B. Upon receipt of a written protest, the Director of ACPWA or designee will review and evaluate the protest and issue a written decision. The Director of ACPWA, may, at his discretion, investigate the protest, obtain additional information, provide an opportunity to settle the protest by mutual agreement, and/or schedule a meeting(s) with the protesting proposer and others (as appropriate) to discuss the protest. The decision on the protest will be issued at least ten (10) business days prior to the Board hearing.

   The decision will be communicated by e-mail or fax, and certified mail, and will inform the proposer whether or not the recommendation to the Board of Supervisors in the Notice of Recommendation

to Award is going to change. A copy of the decision will be furnished to all proposers affected by the decision. As used in this paragraph, a proposer is affected by the decision on a proposal protest if a decision on the protest could have resulted in the proposer not being the apparent successful proposer on the RFQ.

C. The decision of the Director of ACPWA on the protest may be appealed to the Auditor-Controller's Office of Contract Compliance (OCC) located at 1221 Oak St., Room 249, Oakland, CA 94612, Fax: (510) 272-6502. The proposer whose proposal is the subject of the protest, all proposers affected by the Director of ACPWA decision on the protest, and the protestor have the right to appeal if not satisfied with the Director of ACPWA decision. All appeals to the Auditor-Controller's OCC shall be in writing and submitted within five (5) business days following the issuance of the decision by the Director of ACPWA, not the date received by the appellant. An appeal received after 5:00 p.m. is considered received as of the next business day. An appeal received after the fifth business day following the date of issuance of the decision by the Director of ACPWA shall not be considered under any circumstances by the Auditor-Controller OCC.
   a. The appeal shall specify the decision being appealed and all the facts and circumstances relied upon in support of the appeal.
   b. In reviewing protest appeals, the OCC will not re-judge the proposal(s). The appeal to the OCC shall be limited to review of the procurement process to determine if the contracting department materially erred in following the RFQ or, where appropriate, County contracting policies or other laws and regulations.
   c. The appeal to the OCC also shall be limited to the grounds raised in the original protest and the decision by the Director of ACPWA. As such, an appellant is prohibited from stating new grounds for a protest in its appeal. The Auditor-Controller (OCC) shall only review the materials and conclusions reached by the Director of ACPWA, and will determine whether to uphold or overturn the protest decision.
   d. The Auditor’s Office may overturn the results of a proposal process for ethical violations by the ACPWA staff, selection committee members, subject matter experts, or any other County staff managing or participating in the competitive process, regardless of timing or the contents of a proposal protest.
   e. The decision of the Auditor-Controller’s OCC is the final step of the appeal process. A copy of the decision of the Auditor-Controller’s OCC will be furnished to the appellant, the proposer whose proposal is the subject of the protest, and all proposers affected by the decision.

D. The County will complete the protest/appeal procedures set forth in this paragraph before a recommendation to award a contract is considered by the Board of Supervisors.

E. The procedures and time limits set forth in this paragraph are mandatory and are each proposer's sole and exclusive remedy in the event of a proposal protest. A proposer’s failure to timely complete both the proposal protest and appeal procedures shall be deemed a failure to exhaust administrative remedies. Failure to exhaust administrative remedies, or failure to comply otherwise with these procedures, shall constitute a waiver of any right to further pursue the proposal protest, including filing a government code claim or legal proceedings.

F. Award

SOQs will be evaluated by a committee and will be ranked in accordance with the RFQ Sections III.A and III.B. The committee will recommend award to the bidder(s) who, in its opinion, has submitted the SOQ that best serves the overall interests of the ACPWA and attains the highest overall point score.

The ACPWA reserves the right to reject any or all responses that materially differ from any terms contained in this RFQ or from any Exhibits attached hereto, to waive informalities and minor irregularities in responses received, and to provide an opportunity for bidders to correct minor and immaterial errors contained in their submissions. The decision as to what constitutes a minor irregularity shall be made solely at the discretion of the ACPWA.

The ACPWA reserves the right to award to a single or multiple Consultants.

The ACPWA has the right to decline to award this contract or any part thereof for any reason.

Board approval to award a contract is required.

A contract must be negotiated, finalized, and signed by the recommended awardee prior to Board approval.

Final Standard Agreement terms and conditions will be negotiated with the selected Consultant(s).

The RFQ specifications, terms, conditions and Exhibits, RFQ Addenda and Bidder's SOQ, may be incorporated into and made a part of any contract that may be awarded as a result of this RFQ.

G. Schedule of Events

EVENT	DATE • TIME • LOCATION
Issuance of Request for Qualifications	Thursday, November 14, 2024
Pre-SOQ Meeting (Mandatory)	Monday, December 2, 2024, at 1:00 PM **Link to Virtual Meeting:** https://bit.ly/acpwa-road **Or call in (audio only)** +1 415-915-3950 United States, San Francisco (888) 715-8170 United States (Toll-free) Phone Conference ID: 264 288 948#
Deadline for Questions	Friday, January 3, 2025, by 5:00 pm
Issuance of Final RFQ Addendum if necessary	Friday, January 10, 2025
Statement of Qualifications Due * * * IMPORTANT * * * Follow all submission requirements stipulated in Section II-C-2	**Friday, January 17, 2025 by 2:00 pm** The SOQs must be transmitted electronically to the ACPWA at the following address: RoadDesign@acpwa.org.
SOQ Evaluation Period	January 20, 2025 through January 31, 2025*
Issuance of Invitations to Interview Short List of Respondents	Friday, January 31, 2025*
Oral Presentations/Interviews	February 10 through February 14, 2025*
Identify Preferred Proposal(s) and Negotiate Agreement(s) with Proposer(s)	February 17 through March 7, 2025*
Notice of Recommendation to Award	March 2025*
Protest Deadline	5 business days following the issuance of the Notice of Recommendation to Award
Contract Consideration and Anticipated Award by Board of Supervisors	April 2025*
Contract Start Date	April 2025*

Tentative Dates

Submittals received after the time and date specified above will be considered nonresponsive and will be returned to the Consultant.

Any statement of qualifications received prior to the time and date specified above may be withdrawn or modified by written request of the Consultant. To be considered, however, the modified SOQ must be received by the due date and time.

The prospective Consultant is advised that should this RFQ result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the Board of Supervisors.

IV. Terms and Conditions for Agreement

Prior to acting upon this opportunity, you should review all applicable County, State, and Federal policies, terms and conditions normally included as contractual requirements for projects of this type. The actual contract terms and conditions may differ from those presented here based on contract negotiations or changes in policy or law that might occur prior to executing a final agreement.

Exceptions and Amendments
If you wish to request exceptions or amendments to this RFQ or associated documents, you must complete the Exceptions and Amendments Form (Attachment C) and submit it with the SOQ. The County is under no obligation to accept any exceptions and such exceptions may be a basis for SOQ disqualification.

A. General: Standard Professional Services Agreement

The ACPWA's Standard Professional Services Agreement is provided here as Attachment D. You should familiarize yourself with its provisions (particularly the insurance requirements):

1. Definitions
2. Term of Agreement
3. Services Consultant Agrees to Perform
4. Compensation (*see the Agreement's Appendix B for invoicing requirements*)
5. Maximum Costs
6. Qualified Personnel
7. Representations
8. Indemnification and General Liability
9. Liability of County
10. Independent Contractor; Payment of Taxes, and Other Expenses
11. Insurance (*see the Agreement's Appendix C for specific coverage requirements*)
12. Suspension of Services
13. Termination of Agreement for Cause
14. Termination of Agreement for Convenience
15. Conflicts of Interest/Other Agreements
16. Proprietary or Confidential Information of County; Publicity
17. Notice to the Parties
18. Ownership of Results/Work for Hire
19. Audit and Inspection Records
20. Subcontracting/Assignment/County Employees
21. Non-Discrimination, Equal Employment Opportunity, and Business Practices
22. Drug-Free Workplace Policy
23. Compliance with Americans with Disabilities Act
24. Debarment and Suspension (*see the Agreement's Appendix D for the required certification form*)
25. First Source Program
26. Disputes
27. Agreement Made in California; Venue

28. Compliance with Laws
29. Construction
30. Miscellaneous
31. Entire Agreement; Modification of Agreement
32. Labor Code Requirements

In addition, you should review the agreement's Appendices for supplementary requirements, including the County's contract compliance reporting requirements (*Agreement Appendix E*).

Additional County policy requirements can be found at the webpages below:

1. *Alameda County's General Policy Requirements*
   https://gsa.acgov.org/do-business-with-us/contracting-opportunities/policies-procedures/general-requirements/

2. *Alameda County's General Environmental Requirements*

   https://gsa.acgov.org/do-business-with-us/contracting-opportunities/policies-procedures/general-environmental-requirements/

B. Project Specific

Specific terms and conditions presented in this section will supplement or supersede those of the standard agreement.

1. Contract Term and Renewal

The contract that may be awarded as a result of this RFQ is expected to span a period of (3) three years. By mutual agreement this period may be extended for an additional (2) two years at agreed prices with all other terms and conditions remaining the same.

2. Pricing

A sealed cost proposal with fee schedule will be requested of those who are invited to participate in the oral interviews/presentations.

Provide cost proposal with fee schedule to the interviewer in a sealed envelope on the day of interview. Provide hourly rates for all your office and sub-consultant job classifications for the proposed staff members who will be on the team.

Final scope of work and contract price will be determined during negotiations.

All pricing as quoted will remain firm for the initial term of the contract that may be awarded as a result of this RFQ. Any price increases or decreases for subsequent contract terms may be negotiated between the Consultant and the County only after the completion of the initial term.

The total price shall be divided and costs advised for each task listed in Section I.C, "Services Needed."

Price quotes shall include any and all payment incentives available to the County.

Federal and State minimum wage laws apply. The Agency has no requirements for living wages. As described below, the Consultant must comply with requirements for prevailing wages.

3. Federal Requirements

Because Federal funding for this project is being sought through the California Department of Transportation, additional fiscal and Federal provisions apply. Those laws, statutes, ordinances, rules, regulations, and procedural requirements which are imposed upon the County as a recipient of federal funds shall also be imposed on the Proposer. Known mandatory provisions shall be appended to the Standard Agreement and are provided here verbatim as Appendix G to Attachment D. These provisions include the following articles:

Article IV	Performance Period
Article V	Allowable Costs and Payments
Article VI	Termination
Article VII	Cost Principles and Administrative Requirements
Article VIII	Retention of Records/Audit
Article IX	Audit Review Procedures
Article X	Subcontracting
Article XI	Equipment Purchase and Other Capital Expenditures
Article XII	State Prevailing Wage Rates
Article XIII	Conflict of Interest
Article XIV	Rebates, Kickbacks or other Unlawful Consideration
Article XV	Prohibition of Expending Local Agency State or Federal Funds for Lobbying
Article XVI	Non-Discrimination Clause and Statement of Compliance
Article XVII	Debarment and Suspension Certification
Article XVIII	Disadvantaged Business Enterprises (DBE) Participation
Article XIX	Insurance
Article XX	Funding Requirements
Article XXI	Changes in Terms
Article XXII	Contingent Fee
Article XXIII	Disputes
Article XXIV	Inspection of Work
Article XXV	Safety
Article XXVI	Ownership of Data
Article XXVII	Claims Filed by Local Agency's Construction Contractor
Article XXVIII	Confidentiality of Data
Article XXIX	National Labor Relations Board Certification
Article XXX	Evaluation of Consultant
Article XXXI	Prompt Payment
Article XXXII	Title VI Assurances
Article XXXIII	Notification
Article XXXIV	Contract
Article XXXV	Signatures

4. Labor Code Requirements

Department of Industrial Relations Registration: A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work, as defined in this chapter, unless registered and qualified to perform public work pursuant to Labor Code Section 1725.5.

Prevailing Wages: Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

* * * END OF REQUEST FOR QUALIFICATIONS * * *

ATTACHMENTS

A – RFQ and Addendum Acknowledgement

B – Iran Contracting Act Compliance Certificate Form

C – Exceptions and Amendments Form

D – Standard Services Agreement (For Information Only)

Appendix A: Services to be Provided by Consultant
Appendix B: Payments to Consultant
Appendix C: Insurance
Appendix D: Debarment & Suspension Certificate
Appendix E: Contract Compliance Reporting Requirements
Appendix F: Vendor First Source Agreement Form
Appendix G: Mandatory Fiscal and Federal Provisions

E – Disadvantaged Business Enterprise (DBE)

- Notice to Proposers DBE Information (Caltrans LAPM Exhibit 10-I)
- Consultant Proposal DBE Commitment (Caltrans LAPM Exhibit 10-O1)
- Consultant Contract DBE Commitment (Caltrans LAPM Exhibit 10-O2) *For Information Only; to be submitted as part of the CONTRACT*
- DBE Good Faith Efforts (Caltrans LAPM Exhibit 15-H) *To be submitted with supporting documentation*

F – Certification of Indirect Costs & Financial Management System

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ATTACHMENT A – RFQ and Addendum Acknowledgement

The County of Alameda is soliciting proposals from qualified firms to furnish its requirements per the specifications, terms and conditions contained in the above referenced RFQ. This Proposal Acknowledgement must be completed, signed by a responsible officer or employee, dated and submitted with the proposal response. Obligations assumed by such signature must be fulfilled.

1. **Preparation of proposals**: (a) All proposal responses must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed in ink by person signing proposal. No alterations or changes or any kind shall be permitted to Exhibits attached herein unless indicated otherwise in writing. Responses that do not comply shall be subject to rejection in total.
2. **Award:** (a) Unless otherwise specified by the proposer or the RFQ gives notice of an all-or-none award, the County may accept any item or group of items of any proposal. (b) Proposals are subject to acceptance at any time within thirty (30) days of opening, unless otherwise specified in the RFQ/SOQ. The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of California.
3. **Patent indemnity:** Firms who do business with the County shall hold the County of Alameda, its officers, agents and employees, harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright or other proprietary right, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract or purchase order.
4. **California Government Code Section 4552:** In submitting a proposal to a public purchasing body, the proposer offers and agrees that if the proposal is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the proposer for sale to the purchasing body pursuant to the proposal. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the proposer.
5. **Addendum Acknowledgement:** The Proposer has verified that the following is a complete list of addenda issued prior to the submittal deadline. Receipt of the following addenda is hereby acknowledged and all changes have been incorporated in the Proposal. Failure to acknowledge will cause the Proposal to be considered non-responsive.

   Addendum No. ____, dated _____ Addendum No. ____, dated _____

   Addendum No. ____, dated _____ Addendum No. ____, dated _____

   The undersigned acknowledges receipt of above referenced RFQ and/or Addenda and offers and agrees to furnish the articles and/or services specified on behalf of the firm indicated below, in accordance with the specifications, terms and conditions of this RFQ Acknowledgement.

Firm:
Address:
State/Zip
What advertising source(s) made you aware of this RFQ?

Signature: _____ Date:_____

Print Name: _____ Phone: _____

Title: _____

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ATTACHMENT B – Iran Contracting Act Compliance Certificate

(for contracts of $1,000,000 or more)

COUNTY OF ALAMEDA

The Iran Contracting Act (ICA) of 2010

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars ($1,000,000) or more (PCC § 2203(a)). A person who "engages in investment activities in Iran" is defined in either of two ways:

1. The person provides goods or services of twenty million dollars ($20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars ($20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of bidding or proposing for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to bid or submit a proposal or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception:

_____
_____
_____.

FIRM NAME:_____

PRINCIPAL: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

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ATTACHMENT C – Exceptions and Amendments

Proposer's Name: _____

In the table below, list any requests for exceptions and amendments to the RFQ and associated documents, and then submit this sheet with the proposal.

The County is under no obligation to accept any exceptions and such exceptions may be a basis for proposal disqualification.

Reference to:			**Description**
Page No.	Section	Item No.	
p. 18	**D**	**1.d.**	***Consultant takes exception to…***

EXAMPLE

*Print additional pages as necessary

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ATTACHMENT D – (Draft) Standard Professional Services Agreement

Professional Services Agreement

with

(CONSULTANT NAME)

for the

_____SERVICES

FOR

Contract No. _____

For Information Only

County of Alameda

AGREEMENT BETWEEN

COUNTY OF ALAMEDA AND (CONSULTANT)

This Agreement is made this (Day) of _____, 2024, in the City of Oakland, State of California, by and between (CONSULTANT NAME), (CONSULTANT ADDRESS), hereinafter referred to as "Consultant" and the County of Alameda, a political subdivision of the State of California, hereinafter referred to as "County."

AGREEMENT

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Agreement	This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices "A", "B", "C", "D", "E", "F", and "G" attached hereto.
CONSULTANT	(Consultant)
COUNTY	Alameda
LOCAL AGENCY	County of Alameda
Project	The COUNTY's project – (Project Title) - as further described in Appendix "A", Scope of Services.
Services	All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.
Subconsultants	Consultant's Consultants, Subconsultants, contractors and subcontractors, of any tier.

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2. Term of Agreement

All work comprising the Services shall be deemed performed under this Agreement. The contract period will be from (Day, Month, Year) through (Day, Month, Year). *See Appendix G, Article IV – Performance Period.*

3. Services Consultant Agrees to Perform

3.1 Consultant shall perform all Services described in Appendix "A", "Services to be Provided by Consultant", attached hereto and incorporated by reference as though fully set forth herein.

3.2 Consultant shall complete all Services required by this Agreement within the times specified in the Milestone Schedule in Appendix "A". Consultant agrees that the Milestone Schedule includes reasonable allowances for completion of the Services, including all time required for County's review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Project and the Services. Consultant shall achieve its scheduled Milestones (as shown on the Milestone Schedule) unless an excusable event causes delay (excusable delay), and unless Consultant gives written notice of the excusable event and requests a time extension within ten days of the occurrence of the excusable event. (Excusable events shall be limited to acts of neglect by County or County's agents or Consultants when acting at County's direction, breaches of this Agreement by County, Acts of God such as fire, flood, earthquake, or epidemic, or delay by a construction contractor during the construction phase of the Project, or any other circumstances beyond Consultant's reasonable control). If the period of excusable delay caused by an excusable event concurs with a Consultant-

caused or other non-excusable delay, County may (but shall not be required to) grant a time extension without compensation.

3.3 Consultant may recover extra costs resulting from excusable delay upon showing that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services, (ii) were incurred by Consultant as a direct result of the delay and not otherwise within Consultant's scope of Services, and (iii) are documented to the County's satisfaction. (For example, and not by way of limitation, contract punch list, and final inspection Services, whenever performed, and Services related to correcting deficiencies in Consultant's work, shall not entitle Consultant to extra costs.)

3.4 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Consultant shall apply such additional manpower and resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of critical importance in the performance of this Agreement.

4. Compensation

4.1 County shall pay Consultant compensation according to the Compensation Schedule established in Appendix "B", Payments to Consultant. County shall pay Consultant in monthly payments on or before the last day of each month for Services properly invoiced by the Consultant which have been properly performed as of the last day of the immediately preceding month and is due under Appendix "B".

4.2 County shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project, until County receives all deliverables required under Appendix "A" for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant has partially completed one or more deliverables due during a payment period, and if Consultant demonstrates diligent progress thereon, then County may make a partial progress payment based upon Consultant's percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon County.

4.3 County will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). County will make payment for questioned amounts(s) upon County's receipt of any requested documentation verifying the claimed amount(s) and County's determination that the amount is due under the terms of this Agreement. County shall advise Consultant, in writing, within 15 days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of County including, without limitation, Consultant's transmittal of all deliverables to County required by Appendix "A".

4.4 Invoices furnished by Consultant under this Agreement must be in a form acceptable to County. All amounts paid by County to Consultant shall be subject to audit by County. Payment shall be made by County to Consultant at the address stated hereinabove.

4.5 County may set off against payments due Consultant under this Agreement any sums that County determines that Consultant owes to County because of Consultant's errors, omissions, breaches of this Agreement, delays or other acts which caused County monetary damages. Prior to exercising such right, County must demand and attend mediation pursuant to Section 27.3 of this Agreement, to be attended by County, Consultant, and any applicable insurance carriers; such mediation to occur within 30 days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the County's demand, then the Alameda County Superior Court may upon application by any party make such selection for the parties. If a party other than County refuses to mediate under this Section, then County shall have satisfied its obligations under this Section.

5. Maximum Costs

5.1 County's obligation hereunder shall not at any time exceed the amount approved by the Board of Supervisors for payment to the Consultant pursuant to the terms of this Agreement. *See also Appendix G, Article V, Paragraphs A through P.*

5.2 Except as may be provided by applicable law governing emergency conditions, County has not authorized its employees, officers and agents to request Consultant to perform Services or to provide materials, equipment and supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the County amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.

5.3 County shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant

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beyond the scope of the Services, materials, equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6. Qualified Personnel

6.1 For purposes of this Agreement, except for notices specified under Section 17 below, County shall direct all communications to Consultant through (Consultant's Project Manager's full name and address); and Consultant shall direct all communications to County through County Project Engineer.

6.2 Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with County's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at County's request, shall be supervised by Consultant.

6.3 Consultant agrees that all professional personnel assigned to the Project will be listed in its proposal, Appendix "A", attached hereto and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel are not bound by personal employment contracts to Consultant. Consultant agrees that reassignment of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of County. Any costs associated with reassignment of personnel shall be borne exclusively by Consultant.

6.4 Consultant agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Consultant shall not charge County for the cost of training or "bringing up to speed" replacement personnel. County may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant's cost.

7. Representations

7.1 Consultant represents that it has reviewed Appendix "A", "Services to be Provided by Consultant", and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix "B", Payments to Consultant, and within the times specified in the Milestone Schedule.

7.2 Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Consultant also represents that it has reasonable knowledge of all applicable building codes, laws, regulations and ordinances.

7.3 Consultant represents that it and its Subconsultants have specialized expertise in engineering services similar to those intended for the Project. Consultant agrees that the Services shall be performed in a manner that conforms to the standards of engineering practice observed by a specialist in performing services similar to the Services. Consultant agrees that for a period of one year after the completion of the Services or at the final acceptance of the construction resulting from the Services, whichever is later, it will re-perform or replace any part or all of the Services deemed by County to be defective and/or not meeting the above standard.

7.4 The granting of any progress payment by County, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of County or any other governmental entity, shall in no way waive or limit the obligations in this Section 7 or lessen the liability of Consultant to re-perform or replace unsatisfactory Services to the extent required by Section 7.3 above, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Indemnification and General Liability

8.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), Consultant shall indemnify and hold harmless the County, the Alameda County Flood Control and Water Conservation District, and their officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, losses, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expenses, liabilities of every kind, nature and description (including, without limitation, incidental special and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert Consultants or expert witnesses incurred in

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connection therewith and costs of investigation) to the extent they arise from, or are brought for, or on account of any loss or cost arising out of, pertaining to, relating to or resulting from Consultant's negligence, recklessness, or willful misconduct in connection with the performance of any work performed under this Contract by the Consultants as a design professional; provided that this duty shall not apply to injuries or damages for which the County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence, recklessness or willful misconduct.

8.2 Consultant shall defend (with legal counsel reasonably acceptable to the County), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert Consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by County, or any of the other Indemnitees, of Articles or Services to be supplied in the performance of this Agreement.

8.3 [Intentionally Omitted]

8.4 Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of County and other Indemnitees in the exact form and substance of those contained in this Agreement. Consultant shall require all Subconsultants to comply with all indemnification and insurance requirements of this Agreement, including, without limitation, Exhibit C. Consultant shall verify Subconsultant's compliance.

8.5 County acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. County shall hire an expert Consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with County's expert Consultant as required by Appendix "A", Services To Be Provided By Consultant.

9. Liability of County

9.1 Except as provided in Appendix "A", Services to be Provided by Consultant, and Appendix "C", Insurance, County's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.

9.2 Notwithstanding any other provision of this Agreement, in no event shall County be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

9.3 County shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by County. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless County from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, County employees or third parties, or to property belonging to any of the above.

9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which County may have under this Agreement or any applicable law. All rights and remedies of County, whether under this Agreement or other applicable law, shall be cumulative.

10. Independent Contractor; Payment of Taxes, and Other Expenses

10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of its Subconsultants, its employees and its agents.

10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship

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between County and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be County employees, and shall not be entitled to receive any benefits conferred on County employees, including without limitation workers' compensation, pension, health, insurance or other benefits.

10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, City of Oakland business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.

10.4 Consultant shall be available as much as reasonably possible to County staff during the County's normal working hours or as otherwise requested by County. Terms in this Agreement referring to direction from County shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.

10.5 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

11. Insurance

11.1 Prior to execution of this Contract, Consultant shall furnish to County satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix C "Insurance," which is attached and made a part of this Contract. In the event Consultant fails to maintain any required insurance, County may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this Contract (or Consultant shall promptly reimburse County for such expense).

12. Suspension of Services

12.1 County may, without cause, order Consultant to suspend, delay or interrupt ("suspend") Services pursuant to this Agreement, in whole or in part, for such periods of time as County may determine in its sole discretion. County shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an excusable delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.

12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

13. Termination of Agreement for Cause

13.1 If at any time County believes Consultant may not be adequately performing its obligations under this Agreement, that Consultant may fail to complete the Services as required by this Agreement, or has provided written notice of observed deficiencies in Consultant's performance, County may request from Consultant prompt written assurances of performance and a written plan to correct the observed deficiencies in Consultant's performance. Consultant shall provide such written assurances and written plan within ten calendar days of receipt of written request. Consultant acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.

13.2 Consultant shall be in default of this Agreement and County may, in addition to any other legal or equitable remedies available to County, terminate Consultant's right to proceed under the Agreement, for cause:

13.2.1 Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or

13.2.2 Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of written notice from County to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar

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days, Consultant must provide County within the 10 day period a written plan acceptable to County to cure said breach, and then diligently commence and continue such cure according to the written plan); or

13.2.3 Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) days of the date of the notice from County to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide County within the 10 day period a written plan to cure said violation acceptable to County, and then diligently commence and continue performance of such cure according to the written plan.)

13.3 In the event of termination by County as provided herein for cause:

13.3.1 County shall compensate Consultant for the value of the Services delivered to County upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but County shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties;

13.3.2 Consultant shall deliver to County possession of all tangible aspects of the Services in their then condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with the Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.

13.3.3 Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which County may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate County for all loss, cost, damage, expense, and/or liability suffered by County as a result of such termination and failure to comply with the Agreement.

13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense, or liability may be claimed, requested, or recovered by Consultant.

See also Appendix G, Article VI - Termination.

14. Termination of Agreement for Convenience

14.1 County may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever County shall determine that termination is in the County's best interests. Termination shall be effected by County delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.

14.2 After receipt of a Notice of Termination, and except as otherwise directed by County, Consultant shall:

14.2.1 Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;

14.2.2 Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;

14.2.3 Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;

14.2.4 Assign to County in the manner, at times, and to the extent directed by County, all right, title, and interest of Consultant under orders and subcontracts so terminated. County shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;

14.2.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of County to the extent County may require. County's approval or ratification shall be final for purposes of this clause;

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14.2.6 Transfer title and possession to County, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by County, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to County.

14.2.7 Use its best efforts to assist County in selling, in the manner, at times, to the extent, and at a price or prices that County directs or authorizes, any property of the types referred to in Section 14.2.6, but Consultant shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at a price or prices approved by County. All proceeds from the foregoing shall be applied to reduce payments to be made by County to Consultant under this Agreement, shall otherwise be credited to the price or cost of Services covered by this Agreement or be paid in such other manner as County may direct;

14.2.8 Complete performance of any part of the Services which were not terminated by the Notice of Termination; and

14.2.9 Take such action as may be necessary, or as County may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which County has or may acquire an interest.

14.3 After receiving a Notice of Termination, Consultant shall submit to County a termination claim, in the form and with the certification County prescribes. The claim shall be submitted promptly but in no event later than 3 months from the effective date of the termination, unless one or more extensions in writing are granted by County upon Consultant's written request made within such 3-month period or authorized extension. However, if County determines that facts justify such action, it may receive and act upon any such termination claim at any time after such 3-month period or extension. If Consultant fails to submit the termination claim within the time allowed, County may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. County shall then pay to Consultant the amount so determined.

14.4 Subject to provisions of Section 14.3, Consultant and County may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.

14.5 If Consultant and County fail, under Section 14.4, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of –

14.5.1 Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix "B", "Payments to Consultant". Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.

14.5.2 When, in opinion of County, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.

14.5.3 Reasonable cost to Consultant of handling material returned to vendors, delivered to County or otherwise disposed of as directed by County.

14.6 Except as provided in this Agreement, in no event shall County be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-

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termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under Section 14.5.

14.7 This section shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by County to settle claims from Subconsultants.

14.8 In arriving at amount due Consultant under this Section there shall be deducted:

14.8.1 All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,

14.8.2 Any substantiated claim which County may have against Consultant in connection with this Agreement, and

14.8.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Section, and not otherwise recovered by or credited to County.

14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with County a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. County may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of County and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit County's rights and remedies at law.

See also Appendix G, Article VI - Termination.

15. Conflicts of Interest/Other Agreements

15.1 Consultant represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections.

15.2 Consultant represents that it has completely disclosed to County all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of County, or other officer, agent or employee of County or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by County for cause. Consultant agrees to comply with all conflict of interest codes adopted by the County of Alameda and their reporting requirements.

15.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the County that Consultant has no present, and will have no future, conflict of interest between providing the County the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the County. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the County hereunder.

16. Proprietary or Confidential Information of County; Publicity

16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by County and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to County. Consultant agrees that all information disclosed by County to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the County's interests where such confidential information could be used adversely to the County's interests. Consultant agrees to notify the County immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.

16.2 Any publicity or press releases with respect to the Project or Services shall be under the County's sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies, or representatives of public bodies, without

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County's prior written consent. Consultant shall have the right, however, without County's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.

16.3 The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the County hereunder.

17. Notice to the Parties

17.1 Notices. All notices (including requests, demands, approvals, or other communications) under this Agreement shall be in writing.

17.1.1 Method of Delivery. Notice shall be sufficiently given for all purposes as follows:

(a) When personally delivered to the recipient, notice is effective on delivery.

(b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.

(c) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.

(d) When delivered by overnight delivery service, including Federal Express, Airborne, and United Parcel Service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.

(e) When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.

17.1.2 Refused, Unclaimed or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

17.1.3 Addresses. Addresses for the purpose of giving notice are set forth below. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this paragraph 17.

To County:
County of Alameda
399 Elmhurst Street
Hayward, CA 94544
Attn: Director of Public Works

To Consultant:
(Consultant's Project Manager's Full Name).
(Full Address)

17.1.4 Change of Recipient or Address. Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

18. Ownership of Results/Work for Hire

18.1 Any interest (including, but not limited to, property interests and copyright interests) of Consultant or its Subconsultants, in drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by Consultant or its Subconsultants in

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connection with Services to be performed under this Agreement shall become the property of and will be transmitted to County at the conclusion of this Agreement. Consultant may, however, retain one copy for its files. Notwithstanding the foregoing, in the normal course of the Consultant's activities, Consultant shall have an unrestricted right to reuse its standard construction drawings, details, specifications and other related documents, including the right to retain electronic data or other reproducible copies thereof, and the right to reuse portions or the information contained in them which is incidental to the overall design of the Project. County shall indemnify, hold harmless and defend Consultant against any and all claims, liabilities, losses and costs arising from County's use of Consultant's documents on work for which Consultant is not retained.

18.2 Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Consultant or its Subconsultants in connection with Services performed under this Agreement shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of County. In the event that it is ever determined that any works created by Consultant or its Subconsultants under this Agreement are not Works for Hire under U.S. law, Consultant hereby assigns all copyrights to such works to County. With the prior written approval of the County, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

19. Audit and Inspection Records

19.1 Consultant shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to the Project, for a period of at least five years following final completion and acceptance of the Project. All such records (except for materials subject to the attorney client privilege, if any) shall be available to County, and County's authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of Consultant's personnel costs, Consultant costs, and reimbursable expenses pertaining to both Basic Services and Additional Services shall be kept on a generally recognized accounting basis, and shall be available to County, and County's authorized agents, officers, and employees, upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising County and allowing County to accept and store the records.

19.2 Consultant agrees to maintain full and adequate records in accordance with County requirements to show actual costs incurred by Consultant in its performance of this Agreement, and to make available to County during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to County or relative to Consultant's activities under this Agreement. Consultant will furnish to County, its authorized agents, officers and employees such other evidence or information as County may request with regard to any such expenditure or disbursement charged by Consultant. Consultant will permit County, and County's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement.

19.3 Consultant shall maintain all items described in Sections 19.1 and 19.2 above in an accessible location and condition for a period of not less than five years after final completion and acceptance of the Project or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from County's offices at 399 Elmhurst Street, Hayward, California, Consultant shall, upon County's request and at Consultant's sole cost and expense, make such items available to County, and County's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius, or Consultant shall pay County its reasonable and necessary costs incurred in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon County by this Section.

19.4 The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

See also Appendix G, Article VIII - Retention of Records/Audit and Article IX - Audit Review Procedures.

20. Subcontracting/Assignment/ County Employees

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20.1 Consultant and County agree that Consultant's unique talents, knowledge and experience form a basis for this Agreement and that the services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by County in a written instrument executed and approved by the County in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.

20.2 Consultant shall use the Subconsultants for the scopes of work listed in Appendix A attached hereto, and shall not substitute Subconsultants unless approved by written instrument executed and approved by the County in writing.

20.3 To the extent Consultant is permitted by County in writing to subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder, Consultant shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code Section §3321. Consultant shall remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services or the Project, as if it engaged in the acts and omissions directly.

20.4 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by County or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of County.

See also Appendix G, Article X - Subcontracting.

21. Non-Discrimination, Equal Employment Opportunity and Business Practices

Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, County ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action, and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

22. Drug-Free Workplace Policy

22.1 Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on County premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns shall be deemed a material breach of this Agreement.

22.2 If Consultant or any employee of Consultant is convicted of a criminal drug statute violation occurring at a County facility or work site, the Consultant within five days thereafter shall notify the head of the County department/agency for which the contract services are performed.

23. Compliance with Americans with Disabilities Act

Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.

24. Debarment and Suspension Certification

24.1 By signing this agreement and Appendix E, Debarment and Suspension Certification, Consultant/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35, and Executive Order 12549.

24.2 By signing this agreement, Consultant certifies to the best of its knowledge and belief, that it and its principals: (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency; and (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

See also Appendix G, Article XVII - Debarment and Suspension Certification.

25. First Source Program

For contracts over $100,000, Consultant shall provide COUNTY ten (10) working days to refer to Consultant, potential candidates to be considered by Consultant to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the COUNTY that Consultant has available during the contract term before advertising to the general public.

26. Disputes

26.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Alameda County Director of Public Works or his designee, and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party and a meeting between the County representative, and principal of the Consultant shall then take place within five days of the request.

26.2 Provided that County continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute, and Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. The Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, County may terminate this Agreement for cause as provided herein.

26.3 In the event of claims exceeding $50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

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27. Agreement Made in California; Venue

27.1 This Agreement shall be deemed to have been executed in the City of Oakland, County of Alameda. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The venue for all litigation relative to the formation, interpretation, and performance of this Agreement shall be in the County of Alameda. Consultant waives CCP §394.

27.2 The parties shall execute four originals of this Agreement.

28. Compliance with Laws

28.1 Consultant represents that it will comply with all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

28.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

29. Construction

29.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement. Each signatory to this Agreement for Consultant shall have joint and several responsibility and liability to perform the terms of this Agreement.

29.2 Appendix G, which is incorporated by reference herein, shall be construed to supplement the provisions herein in favor of County, and shall not be deemed to eliminate any duty of Consultant or to eliminate any right of County otherwise provided for herein.

30. Miscellaneous

30.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by County of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.

30.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

30.3 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

31. Entire Agreement; Modifications of Agreement

31.1 The Agreement, and any written modification to the Agreement shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, either written or oral, express or implied, which relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.

31.2 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require it's Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.

31.3 Consultant and its Subconsultants shall, upon request by County, permit inspection of all original unaltered Agreement bid estimates, Subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.

31.4 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.

31.5 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both County and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.

31.6 Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of County. The words "approval," "acceptable," "satisfactory," or words

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of like import, shall mean approved by, or acceptable to, or satisfactory to County, unless otherwise indicated by the context.

32. Labor Code Requirements

32.1 The Consultant shall adhere to all appropriate provisions of the California Labor Code in particular with Division 2, Part 7, Chapter 1, Articles 1-3. Any approvals, by the County, will not relieve the Consultant from the observation and/or adherence to the provisions of the California Labor Code.

32.2 The Consultant and any subcontractor shall be currently registered to perform public work. The Consultant and any subcontractor shall pay not less than the specified general prevailing rates of wages to all workers employed in the execution of the contract. General Prevailing rates of per diem wages shall be those general wage determinations made by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.

32.3 Copies of the prevailing rate of per diem wages are on file with the Contract Compliance Officer, County of Alameda, 951 Turner Court, Room 100, Hayward, CA 94545.

32.4 The Consultant shall post, on the job site, a copy of the prevailing rates of per diem wages as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker needed to execute the contract.

32.5 Premium pay for Saturdays, Sundays, holidays and overtime shall be as determined by the Director of the Department of Industrial Relations, State of California for each craft, classification or type of worker required in the execution of the contract. Holidays for which the general prevailing hourly wage rate for holiday work shall be paid, shall be all holidays recognized in the collective bargaining agreement on file with the Director of the Department of Industrial Relations, State of California, applicable to the particular craft, classification, or type of worker employed on the project.

32.6 Health and welfare, pension, vacation/holiday, apprenticeship or other training programs and any other employer payments required in the execution of the contract shall be as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.

32.7 Hours of work per day or week shall be as determined by the director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract. Eight hours labor constitutes a legal day's work.

32.8 Pursuant to Section l773.8 of the Labor Code, travel and subsistence payments shall be made to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Director of the Department of Industrial Relations, State of California.

32.9 The Consultant, or any subcontractor, shall comply with all provisions of Section l777.5 of the Labor Code pertaining to the employment of apprentices on public works projects. The responsibility for compliance with all the provisions of said Section l777.5 for apprenticeable occupations is vested with the Consultant. In the event the Consultant willfully fails to comply with Section l777.5, said Consultant shall be denied the right to bid on any public works contract for a period of up to one year for the first violation and up to three years for the second or subsequent violation with the period running from the date the determination of non-compliance is made. The interpretation and enforcement of Section l777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.

32.10 The Consultant shall comply with the Labor Code Sections l774 and l775. In accordance with said Section l775, the Consultant shall forfeit, as a penalty, not more than Two-Hundred Dollars ($200.00) for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of Industrial Relations, State of California, for such work or craft in which such worker is employed for any work done under the contract by the Consultant, or by any subcontractor, in violation of the provisions of the Labor Code, and, in particular, Labor Code Sections l770 to l780 inclusive. In addition to said penalty, and pursuant to said Section l775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, shall be paid to each worker by the Consultant. *See also Appendix G, Article XII – State Prevailing Wage Rates.*

32.11 Eight hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty, Twenty-Five Dollars ($25.00) for each worker employed in the execution of the contract by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Sections 1810 to 1814 thereof, inclusive, except that work performed by employees of the Consultant in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one-and-one-half (1-1/2) times the basic rate of pay, as provided in Section 1815 of the Labor Code.

32.12 In accordance with Section l776 of the Labor Code:

31.12.1 The Consultant and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, ethnic code, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by said Consultant or subcontractor in connection with the work.

32.12.2 The payroll records enumerated in Section 33.12.1 shall be certified, and shall be available for inspection at all reasonable hours at the principal office of the Consultant on the following basis:

32.12.2.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

32.12.2.2 A certified copy of all payroll records enumerated in Section 33.12.1 shall be forwarded weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545, and shall be made available for inspection or furnished upon request to a representative of the County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations, State of California.

32.12.2.3 A certified copy of all payroll records enumerated in Section 33.12.1 shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Consultant.

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32.12.3 The Consultant shall file a certified copy of the records enumerated in Section 33.12.1 with the entity that requested such records within ten (10) days after receipt of a written request.

32.12.4 Unless otherwise provided by law, any copy of records made available for inspection as copies and furnished upon request to the public or to any public agency by the County, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the Consultant awarded the contract or performing the contract shall not be marked or obliterated.

32.12.5 The Consultant shall inform the County of the location of the records enumerated under Section 33.12.1 including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and/or address.

32.12.6 In the event of noncompliance with the requirements of said Section l776 of the Labor Code, the Consultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with said Section. Should noncompliance still be evident after such ten-day period, the Consultant shall, as a penalty, forfeit One-Hundred Dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request

of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

32.12.7 The responsibility for compliance with Section l776 of the Labor Code shall be a responsibility of the Consultant.

32.13 A certified copy of all payroll records enumerated in the above Section 33.12 shall be sent weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545.

31.13.1 Certified weekly payrolls shall show the wages and benefits paid to each employee, the employee's job classification, sex and ethnic code. Payrolls will be submitted by the Consultant and each subcontractor via the Consultant.

31.13.2 This provision applies to all classifications, including truckers.

32.14 Requests for information relating to labor compliance records, including certified payroll records enumerated in Section 33.12, shall be made through the Contract Compliance Officer at 951 Turner Court, Room 100, Hayward, CA 94545.

32.15 Failure to file certified copies of the records enumerated in Section 33.12.1 with County representatives may result in conditioning amounts of any progress payment due.

32.16 The Consultant assures that he/she/it will comply with the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contract.

32.16.1 The Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this contract, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

32.16.2 Consultant shall, if requested to so do by the County, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

32.16.3 If requested to do so by the County, Consultant shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

32.16.4 Consultant shall recruit vigorously and encourage minority- and women-owned businesses to bid its subcontracts.

32.16.5 Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

32.16.6 The Consultant shall include the provisions set forth in Sections 33.16.1 through 33.16.5 in each of its subcontracts.

32.16.7 EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS POLICY FORM: The Consultant must post the Equal Employment Opportunity Practices Provisions Policy in a conspicuous place at each construction site. A sample form shall be provided.

32.17 Non-compliance with the provisions of the Equal Employment Opportunity Practices policy is subject to the provisions outlined below.

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32.17.1 If County finds that the Consultant has violated the Equal Employment Opportunity Practices Provisions policy, the Director of Public Works (or designee) shall hold a meeting with the Consultant for the purpose of determining whether the Consultant is out of compliance. If after the meeting the Consultant is found to be still out of compliance, the Consultant will be notified of a public hearing. The public hearing will be held before the Board of Supervisors with a minimum five calendar-day notice to the Consultant. If the Board of Supervisors finds that there has been a violation, the County will notify the Consultant in writing of the sanctions to be imposed.

32.17.2 In addition, the County shall deem a finding by the Fair Employment Practice Commission that there was willful violation of the California Fair Employment Act also to be a violation by the Consultant of the Equal Employment Opportunity Practices Provisions requirements of the contract, and such violation shall be subject to the sanctions provided herein.

32.18 A finding at the public hearing that there has been violation of the Equal Employment Opportunity Practices Provisions requirements of the contract shall be cause for the Board of Supervisors to impose any or all of the following sanctions:

32.18.1 Withhold an additional ten percent (10%) of all further contract progress payments until the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.

32.18.2 Suspend the contract until such time as the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.

32.18.3 Terminate the contract and collect appropriate damages from the Consultant.

32.18.4 Declare that the Consultant is a non-responsible bidder, and is ineligible to make bids on future County contracts for a stated period of time or until the Consultant can demonstrate to the satisfaction of the Board of Supervisors that the violation has been corrected.

* * * END OF STANDARD AGREEMENT * * *

For Information Only

APPENDIX A - SERVICES TO BE PROVIDED BY CONSULTANT

1. This is an appendix attached to, and made a part of the Agreement dated (Day) of _____, 2024 between the County of Alameda ("County") and (CONSULTANT NAME) ("Consultant"), providing for professional services.

   1.1 The County's Proposed Project - – (“Project Title) in Alameda County.

   1.2 Consultant Team

   Consultant's team consists of

   (CONSULTANT NAME), (CONSULTANT ADDRESS),

   (ALL SUBCONSULTANT NAMES), (ALL SUBCONSULTANT ADDRESSES),

   Consultant shall provide Civil Engineering, Environmental, and Right of Way Professional Services for Local Projects, and is the prime Consultant, with the other Consultants serving as Subconsultants.

   1.3 Scope of Project

   Refer to Appendix A Exhibit A-1 attached hereto.

   1.4 Consultant's Milestone Schedule and Deliverables

   The Milestone Schedule shall be in accordance with Appendix A Exhibit A-1 attached hereto. The deliverables shall be as specified in Appendix A Exhibit A-1 attached hereto.

   1.5 Personnel and Subconsultants

   Consultant shall use only the personnel and Subconsultants identified herein.

2. General Requirements

   2.1 General Criteria Governing Consultant's Service

   2.1.1 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards. Certain exceptions are possible, but only when the County grants a written exemption to a specific standard or regulation.

   2.1.2 Consultant shall review existing County data, reports, plans, and other information regarding the site, and perform field investigations as necessary to become familiar with the site. Consultant shall make an independent assessment of the accuracy of the information provided by the County concerning existing conditions (including, but not limited to, existing utilities and structures) and conduct such further investigations of existing conditions as are necessary for Consultant to perform the Services. Consultant shall rely on the results of its own independent investigations and not on information provided by County. Consultant shall review supplied design information and advise County of its adequacy for Consultant's work and advise County of any further design or other services necessary to complete the Project.

   2.1.3 Unless otherwise permitted in writing by County, Consultant shall not specify or recommend unique, innovative, proprietary or sole source equipment, systems or materials. In the event Consultant requests to specify or recommend a proprietary or sole source design or equipment, Consultant shall provide

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County with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can be performed normally and without excessive cost or time. County will consider such evaluation in making its decision.

2.2 General Scope of Consultant's Services

2.2.1 Consultant's services shall include all professional services within the scope of Consultant's professional discipline (including Consultant's team's professional disciplines) necessary to accomplish the tasks defined throughout this Appendix. These services will include, but are not limited to, the services outlined in Consultant's proposed scope of services annexed to this Appendix as its Exhibit A-1. Consultant shall have adequate personnel, facilities, equipment, and supplies to complete Consultant's Services.

2.2.2 Performance of Services will require Consultant to work with, meet with, and attend meetings with County staff, with other governmental agencies, and with such other Consultants as Consultant determines necessary, to the extent necessary for performance of Consultant's duties under this Agreement (including, but not limited to, Consultant's express duties of coordination with other Consultants).

2.2.3 Consultant shall engage all appropriate specialty Subconsultants as are necessary for proper completion of Consultant's Services in accordance with the scope of work specified herein and utilizing the Consultants as specified in Exhibit A-1, at the sole expense of Consultant. Consultant's contracts with its Subconsultants (and their contracts with their Subconsultants) shall incorporate this Agreement by reference to the extent not inconsistent with the Subconsultant's scope of work. Consultant shall secure County's approval for any Subconsultants not listed in Exhibits 1 and this Appendix. Consultant shall require each of its Subconsultants to execute agreements containing standard of care and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold County harmless from any negligent errors or omissions of the Subconsultants.

2.2.4 Consultant shall provide County with written evaluations, when applicable, of the effect of any and all governmental and private regulations, licenses, patents, permits, and any other type of applicable restriction and associated requirements on the Services and its incorporation into the Project, including but not limited to, all requirements imposed by the Regional Water Quality Control Board, California Uniform Building Code and California Regulations (including, but not limited to, Title 24). Consultant may incorporate these written evaluations into its deliverables as expository of the report and design solutions provided.

2.3 Coordination of Services with the Project, County's Consultant Team, and County Staff

2.3.1 Consultant shall fully coordinate its services with the services of all disciplines and Subconsultants involved in completing the Project. For projects requiring the development of construction designs, the objective of this coordination shall be the development of a comprehensive and workable design for the site work portion of the Project and preliminary design for balance of the Project, with consistency in engineering standards, any construction methods anticipated, construction details, materials specifications and approaches, to secure practical, consistent and economic design solutions. Consultant shall immediately advise County in writing if any County staff or Consultant fails in any manner to coordinate its work with Consultant, and the nature of the non-coordination.

2.3.2 Consultant shall provide appropriate training for Consultant's personnel. Consultant shall review and train Consultant's personnel in appropriate procedures for work. Consultant shall require all personnel under Consultant's direction to wear safety equipment such as orange vests and appropriate shoes, ear,

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and eye protection whenever these precautions are required by OSHA safety standards. Consultant shall provide all safety equipment for Consultant's personnel.

2.4 Deliverables and Completion Dates Required Under this Agreement

Required deliverables are discussed in Consultant's proposed scope of work annexed as Exhibit A-1. Each deliverable shall be reviewed with representatives of the County. The County shall make a reasonable determination of the acceptability of the deliverables. Consultant shall promptly correct deficiencies that County reasonably identifies in the deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to County, and the cost thereof is included in the fee. (If Consultant should disagree with County's determination, Consultant shall make the changes requested by County under a reservation of rights to request additional compensation and shall submit separate supporting documentation for the additional charge).

2.5 Monthly Progress Update

With each request for payment, Consultant shall provide County with a written Monthly Progress Update. The Monthly Progress Update shall cover the Consultant's percent complete for each phase of the work as outlined in the "Monthly Billing Breakdown" in accordance with Appendix B, Item 2. If applicable, the Monthly Progress Update shall identify any actions and approvals needed, and any problems in performing the Services (whether by Consultant, County, or any third party) of which Consultant becomes aware.

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END OF APPENDIX A

For Information Only

APPENDIX B - PAYMENTS TO CONSULTANT

This is an appendix attached to, and made a part of the Agreement dated (Day) of _____, 2024, between the County of Alameda ("County") and (CONSULTANT NAME) ("Consultant"), providing for professional services.

1. Amount of Compensation for Services of Consultant

   1.1 The amount of compensation to be paid to Consultant for all services under this Agreement shall not exceed *(Amount written in numerical words)* ($_____) referred to hereafter as the Not To Exceed Amount ("NTE"). Total compensation due Consultant shall be the actual amount invoiced based upon the Consultant's hourly billing, which may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all Subconsultants and their reimbursables, and shall constitute full compensation for the Services.

   1.2 "Reimbursable Expenses" means job related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs, and similar. Normal travel expenses to and from the site are included in the base contract. Out-of-State travel in connection with the project shall be approved in advance by County.

2. Monthly Billing Breakdown

   2.1 County shall make monthly payments to Consultant in accordance with approved Monthly Billing Breakdown, which shall be submitted by Consultant for County's approval prior to the first monthly invoice. The "Monthly Billing Breakdown" shall itemize separate categories for each Consultant, each phase of work, along with the billing period defining the time line and cost for each category.

3. Methods of Payment to Consultant

   3.1 Consultant shall submit monthly invoices in accordance with the approved "Monthly Billing Breakdown" specifying the percentage complete for each billing category and itemized reimbursable expenses supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant's total billings.

   3.2 The Billing Rates used as a basis for payment apply to all of Consultant's and Subconsultants' principals, professional personnel and others engaged directly on the Project, and are set forth in the Scope of Project (Exhibit A-1 attached to Appendix A). The Billing Rates shall remain constant through the first year of the Agreement, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason. After the first year of the contract, the Consultant may propose future adjustments due to normal salary increases, provided that such adjustments shall not exceed three percent (3%) in any given year and will be subject to negotiation and approval by the County.

END OF APPENDIX B

For Information Only

APPENDIX C - INSURANCE

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

	TYPE OF INSURANCE COVERAGES	MINIMUM LIMITS
A	**Commercial General Liability** Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability; Abuse, Molestation, Sexual Actions, and Assault and Battery	$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	**Commercial or Business Automobile Liability** All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	**Workers' Compensation (WC) and Employers Liability (EL)** Required for all contractors with employees	WC: Statutory Limits EL: $1,000,000 per accident for bodily injury or disease
D	**Professional Liability/Errors & Omissions** Includes endorsements of contractual liability and defense and indemnification of the County	$1,000,000 per occurrence $2,000,000 project aggregate

E **Endorsements and Conditions**:

1. **ADDITIONAL INSURED:** All insurance required above with the exception of Professional Liability, Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, the Alameda County Flood Control and Water Conservation District, their Board of Supervisors, the individual members thereof, and all officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.
2. **DURATION OF COVERAGE:** All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.
3. **REDUCTION OR LIMIT OF OBLIGATION:** All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.
4. **INSURER FINANCIAL RATING:** Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
5. **SUBCONTRACTORS:** Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.
6. **JOINT VENTURES:** If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:
   - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.
   - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".
7. **CANCELLATION OF INSURANCE:** All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation.
8. **CERTIFICATE OF INSURANCE:** Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision.

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Certificate C-2C with EO Page 1 of 1 Rev. 3/24/15)

END OF APPENDIX C

APPENDIX D – DEBARMENT & SUSPENSION CERTIFICATE

COUNTY OF ALAMEDA

DEBARMENT AND SUSPENSION CERTIFICATION
For Procurements Over $25,000

The Consultant, under penalty of perjury, certifies that, except as noted below, Consultant, its Principals, and any named and unnamed Subconsultants/subcontractors:

- 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 three 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 three years.

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

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Exceptions will not necessary result in denial of award, but will be considered in determining bidder responsibility. 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. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

CONSULTANT: _____

PRINCIPAL: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

END OF APPENDIX D

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For Information Only

APPENDIX E – CONTRACT COMPLIANCE REPORTING REQUIREMENTS

COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS

CONTRACT COMPLIANCE REPORTING REQUIREMENTS

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within five business days in the System, immediately enter payments made to subcontractors, and ensure that subcontractors confirm they received payments within five business days in the System. Subcontractors shall confirm their payments received from the prime contractor within five business days in the System.

County of Alameda Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. For the training schedule, please call Elation Systems at (925) 924-0340. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the County of Alameda Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout County of Alameda.

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END OF APPENDIX E

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APPENDIX F - ALAMEDA COUNTY VENDOR FIRST SOURCE AGREEMENT INFORMATION

ALCOLINK Vendor Number (if known): _____ SLEB Vendor Number: _____

Full Legal Name: _____ DBA: _____

Type of Entity: ☐ Individual ☐ Sole Proprietor ☐ Partnership
☐ Corporation ☐ Tax-Exempted ☐ Government or Trust

Check the boxes that apply:

☐ Goods Only ☐ Goods & Services ☐ Rents/Leases ☐ Legal Services

☐ Rents/Leases paid to you as the agent ☐ Medical Services ☐ Non-Medical Services –

Describe _____ ☐ Other _____

Federal Tax ID Number (required): _____

P.O. Box/Street Address: _____

_____

_____

Vendor Contact's Name: _____

Vendor Contact's Telephone: _____ Fax: _____

Vendor Contact's E-mail address: _____

Please check all that apply:

LOC	☐	Local Vendor (Holds business license within Alameda County)
SML	☐	Small Business (as defined by Small Business Administration)
I	☐	American Indian or Alaskan Native (>50%)
A	☐	Asian (>50%)
B	☐	Black or African American (>50%)
F	☐	Filipino (>50%)
H	☐	Hispanic or Latino (>50%)
N	☐	Native Hawaiian or other Pacific Islander (>50%)
W	☐	White (>50%)

Number of Entry Level Positions available through the life of the contract: _____

Number of other positions available through the life of the contact: _____

This information to be completed by County:

Contract #_____

Contract Amount: _____

Contract Term: _____

Vendor agrees to provide Alameda County (through East Bay Works and Social Services Agency), ten (10) working days to refer to Vendor, potential candidates to be considered by Vendor to fill any new or vacant positions that are

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necessary to fulfill their contractual obligations to the County, that Vendor has available during the life of the contract before advertising to the general public. Vendor will also provide the County with specific job requirements for new or vacant positions. Vendor agrees to use its best efforts to fill its employment vacancies with candidates referred by County, but final decision of whether or not to offer employment, and the terms and conditions thereof, to the candidate(s) rest solely within the discretion of the Vendor.

Alameda County (through East Bay Works and Social Services Agency) agrees to only refer pre-screened qualified applicants, based on vendor specifications, to vendor for interviews for prospective employment by Vendor (see Incentives for Vendor Participation under Vendor/First Source Program located on the Small Local Emerging Business (SLEB) Website, http://www.acgov.org/auditor/sleb/.

If compliance with the First Source Program will interfere with Vendor's pre-existing labor agreements, recruiting practices, or will otherwise obstruct Vendor's ability to carry out the terms of the contract, Vendor will provide to the County a written justification of non-compliance in the space provided below.

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_____
(Company Name)

_____ _____
(Vendor Signature) (Date)

_____ _____
(East Bay Works / One-Stop Representative Signature) (Date)

Justification of Non-Compliance:

_____

_____

_____

END OF APPENDIX F

APPENDIX G – MANDATORY FISCAL AND FEDERAL PROVISIONS

Source: Caltrans Local Assistance Procedures Manual – Exhibit 10-R Dated: May, 2023

ARTICLE IV PERFORMANCE PERIOD (Verbatim)

A. This AGREEMENT shall go into effect on (DATE), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on (DATE), unless extended by AGREEMENT amendment.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

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

ARTICLE V ALLOWABLE COSTS AND PAYMENTS (Verbatim)

A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate.

B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.

C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.

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

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

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

F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

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

H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

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

J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.

K. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be emailed to LOCAL AGENCY'S Contract Administrator at the following address:

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

L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.

M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.

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

O. Task Orders may not be used to amend the language (or the terms) of this AGREEMENT nor to exceed the scope of work under this AGREEMENT.

P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed $ 3,000,000. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.

ARTICLE VI TERMINATION (Verbatim)

A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

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B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to the ACPWA, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.

C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANTuntil such time as the exact amount of damages, if any, due City from CONSULTANT is determined.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS (Verbatim)

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

B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for FederalAwards.

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

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

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ARTICLE VIII RETENTION OF RECORDS/AUDIT (Verbatim)

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

ARTICLE IX AUDIT REVIEW PROCEDURES (Verbatim)

A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT

that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.

B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.

D. CONSULTANT and Subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR (e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines) is received and approved by IOAI.

   Accepted rates will be as follows:

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

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

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

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

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

4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING (Verbatim)

A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.

B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.

C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.

D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.

E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.

F. Prompt Progress Payment

CONSULTANT or Subconsultant shall pay to any Subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the Subconsultants, to the extent of each Subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of

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the amount due on a progress payment from CONSULTANT or Subconsultant to a Subconsultant, CONSULTANT or Subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the Subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

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

G. Prompt Payment of Withheld Funds to Subconsultants

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

No retainage will be held by the LOCAL AGENCY from progress payments due to CONSULTANT. CONSULTANTS and Subconsultants are prohibited from holding retainage from Subconsultants. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY'S prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or Subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or Subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient Subconsultant performance and/or noncompliance by a Subconsultant. This clause applies to both DBE and non-DBE Subconsultants.

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

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ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES (Verbatim)

A. Prior authorization in writing by LOCAL AGENCY'S Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars ($5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars ($5,000), with prior authorization by LOCAL AGENCY'S Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.

C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:

1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars ($5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
2. Regulation 2 CFR 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars ($5,000) is credited to the project.

ARTICLE XII STATE PREVAILING WAGE RATES (Verbatim)

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

B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (https://dot.ca.gov/programs/construction/labor-compliance). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at http://www.dir.ca.gov**.**

D. Payroll Records

1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
    a. The information contained in the payroll record is true and correct.
    b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the

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CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:

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

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

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

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

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

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

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

E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.

F. Penalty

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

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

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars ($25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty

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(40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

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

ARTICLE XIII CONFLICT OF INTEREST (Verbatim)

A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.

B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, orpotential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.

C. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under thisAGREEMENT.

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

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION (Verbatim)

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

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ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING (Verbatim)

A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:

1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than one hundred thousand dollars ($100,000) for each such failure.

C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars ($100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE (Verbatim)

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

B. During the performance of this AGREEMENT, CONSULTANT and its Subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and Subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

C. CONSULTANT and Subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under(2CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.

D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours,

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but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.

E. CONSULTANT and its Subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.

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

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

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

For Information Only

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION (Verbatim)

A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:

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

B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

C. Exceptions to the Federal Government excluded parties (https://sam.gov/content/home) maintained by the U.S. General Services Administration are to be determined by FHWA.

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

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

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

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

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

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

B. The goal for DBE participation for this AGREEMENT is_____%. Participation by DBE CONSULTANT or Subconsultants shall be in accordance with information contained in Exhibit 10- O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the AGREEMENT. If a DBE Subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE Subconsultant, if the goal is not otherwisemet.

C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance
Under 49 CFR
26.13(b):

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

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

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying CONSULTANT from future proposing as non-responsible

E. Termination and Replacement of DBE Subconsultants

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

Termination of DBE Subconsultants

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

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

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

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

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2. If the DBE does not respond within five (5) business days, CONSULTANT may move forward with the request as if the DBE had agreed to CONSULTANT's written notice.
3. Submit CONSULTANT's DBE termination request by written letter to the LOCAL AGENCY and include:
    - One or more above listed justifiable reasons along with supporting documentation.
    - CONSULTANT's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of CONSULTANT's written notice
    - The DBE's response to CONSULTANT's written notice, if received. If a written response was not provided, provide a statement to that effect.

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE termination request within five (5) business days.

Replacement of DBE Subconsultants

After receiving the LOCAL AGENCY'S written authorization of DBE termination request, CONSULTANT must obtain the LOCAL AGENCY'S written agreement for DBE replacement. CONSULTANT must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

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

1. Submit a request to replace a DBE with other forces or material sources in writing to the LOCAL AGENCY which must include:
    a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
    b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
        - Description of scope of work and cost proposal
        - Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
        - Revised Exhibit 10-O2: Consultant Contract DBE Commitment
2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT's GFEs to use DBE replacement firms within seven (7) days of LOCAL AGENCY'S authorization to terminate the DBE. CONSULTANT may request the LOCAL AGENCY'S approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
    - Search results of certified DBEs available to perform the original DBE workidentified and or other work CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment
    - Solicitations of DBEs for performance of work identified
    - Correspondence with interested DBEs that may have included contract detailsand requirements
    - Negotiation efforts with DBEs that reflect why an agreement was not reached
    - If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive

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- Copies of each DBE's and non-DBE's price quotes for work identified, as the LOCAL AGENCY may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
- Additional documentation that supports CONSULTANT's GFE

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE replacement request within five (5) business days.

F. Commitment and Utilization

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

The LOCAL AGENCY shall request CONSULTANT to:

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

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

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

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

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

G. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

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

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

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

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

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

CONSULTANT must notify the LOCAL AGENCY immediately if they believe the DBE may not be performing a CUF.

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

For Information Only

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

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

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

If CONSULTANT and/or the LOCAL AGENCY determine that a listed DBE is not performing a CUF in performance of their DBE committed work, CONSULTANT must immediately suspend performance of

the noncompliant portion of the work. LOCAL AGENCY may deny payment for the noncompliant portion of the work. LOCAL AGENCY will ask the CONSULTANT to submit a corrective action plan (CAP) to the LOCAL AGENCY within five (5) days of the noncompliant CUF determination. The CAP must identify how the CONSULTANT will correct the noncompliance findings for the remaining portion of the DBE's work. LOCAL AGENCY has five (5) days to review the CAP in conjunction with the CONSULTANT's review. The CONSULTANT must implement the CAP within five (5) days of the LOCAL AGENCY 's approval. The LOCAL AGENCY will then authorize the prior noncompliant portion of work for the DBE's committed work.

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

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

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

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

K. If a DBE Subconsultant is decertified during the life of the AGREEMENT, the decertified Subconsultant shall notify CONSULTANT in writing with the date of decertification. If a Subconsultant becomes a certified DBE during the life of the AGREEMENT, the Subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY'S Contract Administrator within thirty (30) calendar days.

L. For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract. If the CONSULTANT does notmake any payments to Subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

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

ARTICLE XIX INSURANCE (Verbatim)

A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars ($1,000,000) per occurrence.

For Information Only

B. The Certificate of Insurance will provide:

1. That the insurer will not cancel the insured's coverage without thirty (30) calendar days prior written notice to LOCAL AGENCY.
2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.

C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

ARTICLE XX FUNDING REQUIREMENTS (Verbatim)

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

B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

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

D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

For Information Only

ARTICLE XXI CHANGE IN TERMS (Verbatim)

A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY'S Contract Administrator.

C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY'S Contract Administrator.

ARTICLE XXII CONTINGENT FEE (Verbatim)

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission,

percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII DISPUTES (Verbatim)

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY'S Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.

B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

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

ARTICLE XXIV INSPECTION OF WORK (Verbatim)

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

ARTICLE XXV SAFETY (Verbatim)

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

B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

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

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

ARTICLE XXVI OWNERSHIP OF DATA (Verbatim)

For Information Only

A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.

B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.

C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.

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

E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

For Information Only

ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR (Verbatim)

A. If claims are filed by LOCAL AGENCY'S construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defendingagainst construction contractor claims will be made available on reasonable notice from LOCAL AGENCY.

Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.

C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY'S construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA (Verbatim)

A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY'S operations, which are designated confidential by LOCAL AGENCY and madeavailable to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY

relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

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

D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.

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

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

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION (Verbatim)

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

ARTICLE XXX EVALUATION OF CONSULTANT (Verbatim)

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

ARTICLE XXXI PROMPT PAYMENT (Verbatim)

A. PROMPT PAYMENT FROM LOCAL AGENCY TO CONSULTANT

The LOCAL AGENCY shall make all project progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY shall pay interest to the CONSULTANT, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied and pro-rated as necessary. Upon receipt of the payment request, the LOCAL AGENCY shall act in accordance with both of the following:

(1) The LOCAL AGENCY shall review each payment request as soon as feasible after receipt to verify it is a proper payment request.

(2) The LOCAL AGENCY must return any payment request deemed improper by the LOCAL AGENCY to the CONSULTANT as soon as feasible, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall include documentation setting forth in writing the reasons why it is an improper payment request.

For Information Only

B. PROMPT PAYMENT CERTIFICATION

For projects awarded on or after September 1, 2023: the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract by the 15th of the month following the month of any payment(s). If the CONSULTANT does not make any payments to Subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

The LOCAL AGENCY must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. The LOCAL AGENCY must email a copy of Exhibit 9-P to DBE.Forms@dot.ca.gov before the end of the month after receiving the Exhibit 9-P from the CONSULTANT.

ARTICLE XXXII TITLE VI ASSURANCES (Verbatim)

APPENDICES A -E of the TITLE VI ASSURANCES

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

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

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

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

For Information Only

APPENDIX A

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

a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.

e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
ii. cancellation, termination or suspension of the Agreement, in whole or in part.

f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

For Information Only

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

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

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

For Information Only

APPENDIX C

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

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

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

    1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.*

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

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THEACTIVITY, FACILITY OR PROGRAM

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

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

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

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

For Information Only

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42
- U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).

ARTICLE XXXIII NOTIFICATION (Verbatim)

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

CONSULTANT: (CONSULTANT)
(NAME) ,Project Manager
(ADDRESS)

LOCAL AGENCY: LOCAL AGENCY
(NAME) , Contract Administrator
(ADDRESS)

For Information Only

ARTICLE XXXIV CONTRACT (Verbatim)

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXV SIGNATURES

(Name of LOCAL AGENCY) (Name of CONSULTANT)

(Signature)_____ (Signature)_____

(Name of Signer) (Name of Signer)

Date:_____ Date:_____

END OF APPENDIX G

ATTACHMENT E – DISADVANTAGED BUSINESS ENTERPRISE (DBE) FORMS

1. Notice to Proposers DBE Information (Caltrans LAPM Exhibit 10-I):
2. Consultant Proposal DBE Commitment (Caltrans LAPM Exhibit 10-O1)
3. Consultant Contract DBE Information (Caltrans LAPM Exhibit 10-O2)
4. DBE Good Faith Efforts (Caltrans LAPM Exhibit 15-H)

The latest forms above can be found on the Caltrans LAPM Forms website below:

https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

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NOTICE TO PROPOSERS DBE INFORMATION

Caltrans LAPM Exhibit 10-I

The Agency has established a DBE goal for this Contract of 22%

1. TERMS AS USED IN THIS DOCUMENT

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

2. AUTHORITY AND RESPONSIBILITY

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

B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-O1 *Consultant Proposal DBE Commitment* must be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. Whether the goal is met or not met, the proposer must document adequate all good faith efforts. All DBE participation will be counted towards meeting the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included in best qualified Consultant's executed Consultant contract. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

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

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

B. A certified DBE may participate as a prime Consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:

1. The proposer is a DBE and will meet the goal by performing work with its own forces.
2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.

D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.

G. A prime Consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

5. RESOURCES

A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.

B. Access the CUCP database from the Department of Transportation, Office of Civil Rights at: https://caltrans.dbesystem.com/.

1. Click on the link in the left menu titled *Disadvantaged Business Enterprise*;
2. Click on Search for a DBE Firm link;
3. Click on *Access to the DBE Query Form* located on the first line in the center of the page.

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

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

A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

CONSULTANT PROPOSAL DBE COMMITMENT

Caltrans LAPM Exhibit 10-O1

1. Local Agency: _____ 2. Contract DBE Goal: _____

3. Project Description: _____

4. Project Location: _____

5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %

Local Agency to Complete this Section			
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____ 20. Consultant's Ranking after Evaluation: _____		**11. TOTAL CLAIMED DBE PARTICIPATION**	**%**
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
21. Local Agency Representative's Signature	22. Date	12. Preparer's Signature	13. Date
23. Local Agency Representative's Name	24. Phone	14. Preparer's Name	15. Phone
25. Local Agency Representative's Title		16. Preparer's Title	

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

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

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

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

LOCAL AGENCY SECTION

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

CONSULTANT CONTRACT DBE COMMITMENT

Caltrans LAPM Exhibit 10-O2

1. Local Agency: _____ 2. Contract DBE Goal: _____

3. Project Description: _____

4. Project Location: _____

5. Consultant's Name: _____ 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: _____

8. Total Dollar Amount for **ALL** Subconsultants: _____ 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount

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

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

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

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT

CONSULTANT SECTION

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

LOCAL AGENCY SECTION

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

DBE GOOD FAITH EFFORTS

Caltrans LAPM Exhibit 15-H

Cost Proposal Due Date _____ PE/CE

Federal-aid Project No(s). _____ Bid Opening Date _____ CON

The County of Alameda established a Disadvantaged Business Enterprise (DBE) goal of 20% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

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

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

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

Publications	Dates of Advertisement

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

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

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

Items of Work	Proposer or Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount ($)	Percentage Of Contract
		0.00%		
				0.00%
				0.00%
				0.00%

D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

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

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

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

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

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

Name of Agency/Organization	Method/Date of Contact	Results

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

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY

ATTACHMENT F – CERTIFICATION OF INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM

The latest form can be found on the Caltrans Independent Office of Audits and Investigations website below:

https://ig.dot.ca.gov/resources/instructions-fdr-icr