

CITY OF PLACERVILLE
Engineering Department



REQUEST FOR PROPOSALS
FOR ENGINEERING DESIGN AND ENVIRONMENTAL CONSULTING SERVICES

for

Placerville Drive Pedestrian Connectivity Project
(CIP #42337)

A Federally-Funded Project
Federal Project No. 5015(037)

Release Date: October 4, 2022
Proposals due by: November 1, 2022 at 3:00 pm

A complete copy of the RFP and attachments can be found at:
www.cityofplacerville.org/rfp-rfq-projects-out-to-bid

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SECTION 1: PROJECT INFORMATION & PROPOSAL REQUIREMENTS

INTRODUCTION

The City of Placerville (City) is seeking engineering support in environmental clearance, engineering design, and construction of new curb, gutter and sidewalk on Placerville Drive from the Fairgrounds Interchange at US Highway 50 to Armory Drive (please see Attachment A - Project Vicinity Map). This project is considered to be an interim project that will address the immediate need for pedestrian connectivity and safety improvements until the construction of the future Phase 3 of the Western Placerville Interchanges (WPI) Project. WPI Phase 3 will fully reconstruct the Fairgrounds Interchange, including ramp realignment work, and significant roadway widening on this segment Placerville Drive. Please see Attachment B for the Project Phasing exhibit showing the future WPI project improvements.

In the near-term, this project will construct sidewalk on one side of the street by narrowing vehicular lanes and building the sidewalk inward as much as possible from the existing edge of roadway to stay within the existing roadway prism. This project aims to minimize right-of-way and private property impacts. The proposed sidewalk will be located on the west side of Placerville Drive from the interchange to the crosswalk at the County Fairgrounds main gate. The existing crosswalk will be upgraded with a Rapid Rectangular Flashing Beacon System (RRFB) and in-pavement flashers to provide additional safety features at this heavily-used uncontrolled crossing. From the crosswalk to Armory Drive, the proposed sidewalk will be located on the east side of Placerville Drive. Because this project is considered interim until the full reconstruction of Placerville Drive in WPI Phase 3, no significant pavement rehabilitation/reconstruction or significant underground utility work is expected to be included in this project.

The project design and construction is federally funded with Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds and includes local matching funds.

City staff has determined it is necessary to hire a consultant team with outstanding qualifications, experience and knowledge of design and delivery of projects with these component types, including extensive knowledge of local and State design standards, and the Caltrans Local Assistance Procedures Manual (LAPM). The team must have experience in California Environmental Quality Act (CEQA) / National Environmental Policy Act (NEPA) environmental review, documentation and permitting procedures. Right-of-Way Engineering, including the potential need for right-of-way acquisition and temporary construction easements, will be included in the scope of work. This Request for Proposals (RFP) seeks engineering firms that have the necessary expertise to assist the City in driving and completing this project.

All elements of the project must comply with federal funding requirements and is subject to the provisions set forth in the most recent version of the Caltrans LAPM.

The tentative project schedule is as follows:

1. RFP Release – October 4, 2022
2. Proposals due – November 1, 2022
3. Interviews – November 15, 2022
4. Award Contract for Engineering Services – December 13, 2022
5. Project Kick-off – December 19, 2022
6. Completion of Bid Documents – June 2024

7. Request for Authorization to Proceed with Construction – June 2024

8. End Contract – December 31, 2025

SCOPE OF SERVICES

The City of Placerville is seeking proposals from qualified engineering firms to provide professional engineering and design services. The services shall begin with preliminary engineering and environmental documentation; continue through the development of final contract documents including Plans, Specifications and Estimate (PS&E); and conclude with construction engineering support.

The City expects the consultant to develop their own detailed scope of work and identify deliverables based on knowledge of City and Caltrans/LAPM procedures and understanding of the project. The scope of work, at a minimum, should include the tasks described in Attachment C. Proposers are expected to gain thorough knowledge of the project and exercise professional judgment in development of the scope of work that will deliver the project to construction.

PROPOSAL REQUIREMENTS

Please submit four (4) hard copies and one (1) electronic copy (PDF preferred) of the proposal. The proposal shall be limited to 20 double-sided pages in 8.5-inch by 11-inch format. Charts, exhibits, and schedules may be included in 11-inch by 17-inch format and folded to fit in an 8.5-inch by 11-inch page, and will count as one (1) page. The page limit does not include the outside cover, section dividers, cover letters, resumes, subconsultant commitment memorandum, or scope of work (these items can be included in appendices). Each response to this RFP shall include the information described in this section in the specified order (tabs and page numbers are required). Failure to meet the minimum requirements of the RFP shall be cause for rejection of the package. The City reserves the right to reject any or all proposals. The proposal must include the following items:

1. Cover Letter, including:
 - The title of this RFP
 - Contact person's name, address, email address, and telephone number
 - Signature of an officer empowered by the Consultant to sign such material and thereby commit the Consultant to the obligations contained in the RFP response. Signing and submission of a response shall indicate the intention of the proposer to adhere to the provisions described in this RFP and a commitment to enter a binding contract.
2. Capabilities of the Firm / Team:
 - Describe what makes your firm uniquely qualified to do this work.
 - Describe your firm's experience in local, federally-funded sidewalk improvement projects. Preference will be given to consultants with experience in sidewalk "infill" projects utilizing creative engineering solutions to minimize cost and private property impacts.
 - Summarize related experience with local agency projects using local, Caltrans, and applicable Federal standards of similar size and magnitude, including consultant staff that worked on the project. Preference is given

to project references that demonstrate an understanding of the type of work relevant in this RFP.

3. Qualifications and Availability of Proposed Staff:

- Identify specific staff members assigned to the project and a description of their workload and availability. Provide a table showing the percentage of time key staff members are available during the course of the project.
- Provide a brief summary of the qualifications and relevant experience for key team members, including length of service with the firm. Resumes should be included (in an appendix) and should not be more than two (2) pages for key team members and one page or less for support staff.
- Provide an organizational chart for all staff members and subconsultants identified.
- Include qualifications and experience of any subconsultant(s) to be used. Identify the services which would be completed by your firm's staff and those provided by subconsultant(s).

4. Project Understanding and Approach:

- Describe your firm's approach for successful implementation of the project and what you believe are the key constraints, project milestones, and approvals.
- Provide your understanding of the project based on existing information available in the RFP, site visits, available documents, and applicable regulations or requirements.
- Provide a detailed scope of work and proposed schedule to accomplish all of the required tasks within the desired timeline and list of deliverables (include submittal review and approval for the City and other stakeholders).

5. A statement acknowledging that the Consultant has reviewed the language contained within the City's Agreement for Engineering Services (Attachment D) and that the consultant will enter into that agreement, or explain any objections or concerns.

6. A Cost Proposal as detailed below.

7. Any additional forms, as described in the following sections.

COST PROPOSAL REQUIREMENTS

In a separate, sealed envelope, Proposers must provide a Scope of Services outline, a total cost proposal for all services to be delivered, and a breakdown of costs delineated by tasks as described in the Scope of Services outline. A schedule of hourly rates for all proposed staff and the amount of time each person will be devoted to this project must be included. Define any reimbursable expenses requested to be paid by the City. The cost proposal must be in a lump sum format in accordance with current requirements of Chapter 10 of the Caltrans LAPM. Proposer must indicate whether or not your firm's overhead rate has been audited by Caltrans Independent Office of Audits and Investigations or other equivalent method.

For consultant services on public works projects involving local, State, and/or Federal funds, the City requires that fee schedules must be consistent with applicable prevailing wage requirements.

FEDERAL AID REQUIREMENTS

Since the project is federally funded with CMAQ funds, the project is therefore subject to all the provisions of the Caltrans LAPM.

The Disadvantaged Business Enterprise (DBE) participation requirement for this contract is 23%. The consultant must meet the DBE goal by using DBE firms, or provide documentation indicating a good faith effort was made to meet the contract goal. A completed Consultant Proposal DBE Commitment (Exhibit 10-O1) must be included in the proposal (see Attachment E) and a Consultant Contract DBE Commitment (Exhibit 10-O2) must later be provided by the selected consultant upon execution of the Agreement (please also see Attachment E).

If the consultant cannot meet the DBE goal, good faith efforts must be documented by the consultant and approved by the local agency (see Exhibit 15-H DBE Information-Good Faith Efforts of the LAPM). Attachment F contains a summary of all the information regarding the DBE requirement (LAPM Exhibit 10-I).

NON-LOBBYING CERTIFICATION

The prospective participant certifies by signing and submitting a proposal to the best of his or her knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative 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 federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

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

The prospective participant also agrees by submitting his/her proposal that he/she shall require that the language of this certification be included in all lower-tier subcontracts which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Exhibit 10-Q Disclosure of Lobbying Activities form, Attachment G of this RFP, shall be completed and submitted with the proposal.

MODIFICATION OR WITHDRAWAL OF PROPOSAL

Any proposal received prior to the date and time specified for submittal may be withdrawn or modified by written request of the prospective consultant.

EVALUATION AND CONTRACT AWARD

Selection of a consultant will not necessarily result in a project guarantee with the City of Placerville. Selection of consultant is a Staff recommendation and entering into a contract is only by action of the City Council and is not in force until fully executed by authorized personnel. The City has established the following criteria for the selection process:

- The selection process shall be fair, open, and competitive.
- Selection shall be based upon demonstrated competence, professional qualifications, experience, and capabilities to perform the required services at a fair and reasonable price. Ranking of the Proposals shall follow the scoring criteria described below.
- After the Proposals are reviewed, a short list will be prepared by the selection panel.
- The short-listed firms will be interviewed. At the completion of the interviews, the firms will be rated and ranked and negotiations will commence with the top-ranked firm. If negotiations are unsuccessful, then the City will begin negotiations with the second-ranked firm. The City reserves the right to reject any and all Proposals and to negotiate with any responsible, responsive firm. The City is under no obligation to issue contracts for the services described in this RFP.

The evaluation criteria and rating schedule shown below will be used to rank proposals and determine the most highly qualified firm(s):

Evaluation Criteria	Maximum Points Possible
1. Overall Approach to Project	30
2. Firm / Team's Experience with Similar Work	20
3. Qualifications and Availability of Proposed Staff	20
4. Project Understanding	25
5. Understanding of Political Environment	5
Total Possible Points:	100

Reference checks will be performed at the sole discretion of the selection committee for the top teams selected for interviews.

INQUIRIES AND SUBMITTALS

All inquiries to this RFP should be submitted to:

City of Placerville
Melissa McConnell, P.E., City Project Manager
mmcconnell@cityofplacerville.org
(530) 642-5250

Proposals shall be submitted in sealed envelopes or containers bearing the name and business address of the firm and labeled as follows in the lower left hand corner of the envelope:

**City of Placerville
Placerville Drive Pedestrian Connectivity Project
Proposal for Consulting Services**

The City of Placerville will accept written Proposals at the following address:

City of Placerville
Engineering Department
3101 Center Street
Placerville, CA 95667
Attn: Melissa McConnell, P.E.
City Project Manager

Proposals may be hand delivered or mailed via U.S. Post Office or overnight service. The City of Placerville will NOT accept proposals submitted via e-mail.

All proposals shall be received no later than **3:00 pm, November 1, 2022**. Late proposals will not be accepted.

SECTION 2: LEGAL NOTICES & CONTRACT PROVISIONS

I. THE CITY OF PLACERVILLE PROPOSAL AND CONSULTANT POLICIES

A. RFP AS THE BASIS FOR PROPOSALS

This RFP, including any addenda, will represent the most definitive statement the City of Placerville will make concerning information upon which Proposals are to be based. Any information, verbal or written, which is not contained in this RFP and addenda thereto, will not be considered by the City of Placerville in evaluating the Proposals.

B. AGENCY RIGHT TO WAIVE MINOR IRREGULARITIES

The City of Placerville reserves the right to waive minor irregularities in the proposal process or to modify the selection process and timeline as it deems necessary.

C. ROLE OF CONSULTANT

The division of work among the selected Consultant and any proposed sub-consultant is left to the selected Consultant to identify in assembling a project team. The selected Consultant will be responsible for management, design integration, scheduling, control, review and approval of all subcontract work and services for the total project. The selected Consultant will be responsible for the quality and timeliness of all sub-consultant work and must coordinate all sub-consultant activities. The selected Consultant must keep the City of Placerville apprised of any problems incurred and provide regular progress and budget reports. At the City of Placerville's direction, or as detailed in this RFP, the selected Consultant may be required to coordinate directly with other City of Placerville consultants and contractors.

The selected Consultant will be responsible for assuring that all subcontract work is in conformance with the project's policies, standards, and criteria. Use of any sub-consultants not identified in the Proposal will be subject to prior approval by the City of Placerville.

D. LIMITATION AND AWARD

The City of Placerville reserves the right to award multiple Agreements. This RFP does not commit the City of Placerville to award an Agreement. The City of Placerville reserves the right to reject all Proposals. If the City of Placerville rejects all Proposals, the project may be abandoned, re-advertised, or performed in any manner authorized under City ordinance and applicable law.

The contents of the successful Consultant's Proposal will be incorporated into the resulting Agreement. The City of Placerville's Sample Agreement is included in Attachment D of this RFP. The City of Placerville reserves the right to rescind the award of the Agreement if the selected Consultant is unable or unwilling to enter into an agreement substantially identical to the sample within twenty (20) days from the date it is sent to the selected Consultant for execution.

After proposal evaluations, ranking, and negotiations with the highest-ranked firm, staff will recommend award of the Agreement to the City Council. Proposals will be

made available, upon request, for copying or inspection when a recommendation is made for award of the resulting Agreement.

E. DEBARRED PROPOSERS

Proposers, including any of its officers or holders of a controlling interest, are obligated to inform the City of Placerville whether or not it is or has been on any debarred proposers list maintained by the State of California or any federal agency. Should a Proposer be included on such a list during the performance of this project, it must inform the City of Placerville. Failure to do so may result in rejection of the proposal.

F. DISCLOSURE OF PROPOSAL INFORMATION

Once submitted, Proposals become a matter of public record. Where a Proposer submits technical or business information that is claimed to be confidential, Proposer must so indicate by delineating each section of the Proposal with the heading "Confidential". The City of Placerville will give consideration to the claim of confidentiality. However, Proposers should understand that the City of Placerville has reservations as to whether any such information is exempt from disclosure under the California Public Records Act (Government Code Section 6250, et seq). The City of Placerville will notify a Proposer if it receives a request for release of information identified as confidential by Proposer. By submitting its Proposal, Proposer agrees that the City of Placerville will not be held liable for complying with the Public Records Act.

G. USE OF RFP IDEAS

The City of Placerville reserves the right to use any or all of Proposer's ideas as set forth in its Proposal. Selection or rejection of the Proposal does not affect this right.

H. FACILITIES AND RESOURCES

Proposer must furnish all equipment, facilities, labor, supervision, and any and all other required materials and services, except as otherwise specified in Consultant's Proposal. No City of Placerville resources in terms of personnel, facilities, or equipment will be provided unless agreed upon in writing.

II. CITY OF PLACERVILLE PROPOSAL PROTEST PROCEDURE

A. SCOPE OF PROTEST PROCEDURE

This Article specifies procedures for interested parties to protest the following City of Placerville staff actions:

- 1) A written recommendation to the City Council to disqualify a bidder, subcontractor, or proposer; and/or,
- 2) A written recommendation to the City Council to award a Contract to a particular bidder or proposer.

B. EFFECT OF PROTEST ON CONTRACT AWARD OR BID OPENING

When a protest has been properly filed prior to Agreement award, the City Council will not award the Agreement prior to issuance of a final decision on the protest. When a protest has been properly filed before the opening of bids, bids will not be opened prior to the City Council's decision on the protest.

C. RELEASE OF PROTEST INFORMATION

Materials submitted as a part of the protest resolution process will be available to the public except to the extent that:

- 1) The withholding of information is permitted or required by law or regulation; and
- 2) The information is designated proprietary by the person submitting the information to the City of Placerville. If the person submitting material to the City of Placerville indicates that the material contains proprietary material that should be withheld, a statement advising of this fact must be affixed to the front page of the material submitted, and the alleged proprietary information must be specifically identified in the body of the materials wherever it appears.

D. MAINTENANCE OF PROTEST RECORDS

The City Manager or his/her designee will maintain a written record of each step taken in every bid or proposal protest. The record will list dates of each event and photocopies of all correspondence sent and/or received by the City of Placerville pertaining to the protest. These records will be retained for at least three (3) years from the date each protest is resolved.

E. WHO MAY FILE A PROTEST

Protests may be filed only by interested parties. Interested parties are defined as actual or prospective bidders or proposers for a City of Placerville contract and subcontractors or suppliers at any tier whose direct economic interest would be affected by an award or failure to amend a Contract, a provision of the specifications, or a bid or proposal submitted to the City of Placerville by a prime Consultant, or by the interpretation of the provisions of such documents. Submission of a bid or sub-bid protest will be deemed a waiver of any protest to any provision of the specifications which is not the subject of the protest, and entitle the bidder/proposer or sub-bidder/sub-consultant only to protest any subsequent recommendations/decisions of the City of Placerville staff, the City Manager, or the City Council to disqualify the bidder/proposer, reject its bid/proposal, or award the Contract.

F. TIME FOR FILING A PROTEST

Protest to any particular provision of the specification must be received by the City of Placerville no later than five (5) working days prior to the date established in the RFP as the deadline for the submittal of bids, proposals or qualifications. Protests of staff's recommendation to the City Council pertaining to the award of a Contract or the list of qualified proposers responding to an RFP must be received by the City of Placerville no later than five (5) working days from the date of the letter providing notice of the staff recommendation.

G. FORM FOR FILING A PROTEST

Protests must be addressed to the Placerville City Manager, 3101 Center Street, Placerville, CA 95667. Protests must be in writing and contain a statement of the ground(s) for protest. At least ten (10) copies of the protest must be submitted by the protestor in the time and manner specified in this Article. The City Manager or his/her designee will provide notice, by telephone or by letter, to all bidders or proposers known to the City of Placerville for the Contract that is the subject of the protest. Such notice will state that a protest has been filed with the City of Placerville and identify the name of the protestor. The notice will be given not more than five (5) working days after receipt of a properly filed protest. The notice will state that interested parties will receive further information relative to the protest only if they submit a written request to the City Manager.

H. THE CITY OF PLACERVILLE'S PRELIMINARY RESPONSE TO A PROTEST

All City of Placerville responses to a protest will be issued in writing. The City Manager will designate a City staff person who, not more than ten (10) working days after receipt of a properly filed protest, will prepare and mail the following information to the protestor and all interested parties requesting such information:

- 1) A preliminary staff response to the protest including a brief explanation of the rationale supporting the response; and
- 2) The proposed time, date and place of the meeting at which the protestor and The City of Placerville staff will attempt to resolve the protest, if such a meeting is appropriate in the judgment of the City Manager.

Within five (5) working days after the meeting, or if no meeting is scheduled, within five (5) calendar days after the date the City of Placerville's response was mailed, the protestor must give the City Manager written notice that the protest is withdrawn or, alternatively, that the protestor requests further consideration of the protest.

If the protestor fails to deliver such notice to the office of the City Manager by the applicable deadline, the protest will be deemed withdrawn.

I. FURTHER INVESTIGATION OF PROTEST

If a protest is not withdrawn the City Manager or his/her designee will further investigate the protest. The City Manager may contract for third-party consulting services to investigate a protest, when necessary. The City Manager may negotiate with the protestor and other interested parties to share the cost of such consulting services. As part of the investigation, the City Manager or his/her designee will establish reasonable times when the City of Placerville, the protestor, and other interested parties will exchange all documents and arguments relevant to the protest.

Upon written request of the protestor, the City Manager may forward the protest and the City of Placerville's staff response to the City Council for decision without further investigation of the protest by the City Manager. If the City Manager elects to proceed without further investigation of the protest, the prior City of Placerville staff response

will be the recommendation of the City Manager and the City Manager will proceed as set out as follows in section J. City Manager's Recommendation or Decision.

J. CITY MANAGER'S RECOMMENDATION OR DECISION

Following investigation, the City Manager will distribute to the protestor, and all interested parties requesting such information, either a written decision, if the City Manager is awarding authority, or a written recommendation that the City Manager will submit to the City Council to resolve the protest, if the City Council is the awarding authority. The City Manager's written decision is final. Within five (5) working days after the date of the letter transmitting the City Manager's recommendation on the protest, the protestor must notify the City Manager in writing whether that the protest is withdrawn or that the protestor requests the protest continue to the City Council for decision. If the protestor fails to submit such a notice, the protest will be deemed to be withdrawn and all proceedings will cease.

K. SUBMITTAL OF PROTEST TO THE CITY COUNCIL

If the protest is continued to the City Council for resolution, the protestor, and all interested parties requesting such information, will be notified of the date, time and place of the City Council's hearing at which the protest will be considered; and the date that the protestor and other interested parties must submit written comments with respect to the recommendation. The date established by the City Manager for submittal of comments by the protestor and other persons will allow a reasonable period for rebuttal and may vary according to the complexity of the particular protest.

A copy of the agenda package sent to City Council members prior to a protest hearing will be sent to the protestor and sent or made available to any interested person at least five (5) working days before the hearing and will include the City Council's recommendation and all written comments received from the protestor and other persons within the submittal period. If the City Manager has revised his/her recommendation since its distribution, a written description of the new intended decision and the reason(s) for revision will be sent to the protestor and sent or otherwise made available to any interested person.

L. CITY COUNCIL'S DECISION

At the City Council meeting scheduled for the protest hearing, the City Council, in its discretion, may conduct the hearing and/or continue the hearing to a subsequent City Council meeting, or hire an impartial hearing officer to conduct a hearing and prepare a written recommended decision including findings of fact.

At the hearing, the Mayor may announce procedural rules, including those that are reasonably necessary to preclude repetitious or irrelevant testimony. The City of Placerville staff, the protestor, and any interested person may present evidence relating to the protest. If either party arranges for the use of a court reporter to transcribe the hearing, the other party must share the cost of transcribing the hearing if it requests a copy of the transcript.

If an impartial hearing officer conducts the hearing, the City will provide written notice to the protestor, and all interested parties requesting such information, of the

date, time and place of the City Council meeting at which the hearing officer's recommendation will be considered for adoption, and the date that the protestor must provide written comments for submittal to the City Council. A copy of the documents pertaining to the protest that is provided to the City Council with its meeting agenda will be sent to the protestor at least five (5) days before the meeting.

In rendering its decision on the protest, the City Council, in its discretion, may adopt the decision recommended by the City Manager, adopt the written recommendation and findings of fact prepared by a hearing officer, or adopt a separate decision. The protestor and all interested parties will be notified in writing of the final decision of the City Council within thirty (30) calendar days from the date of the City Council meeting.

M. WAIVER OF DAMAGES

By submitting a bid/proposal or sub-bid/sub-proposal, each bidder/proposer and sub-bidder/sub-proposer agrees that in the event that it submits any protest to the terms of the specifications or to any subsequent decision of the City of Placerville staff, City Manager or City Council. The City of Placerville retains the discretion to reject all bids/proposals or to make no decision whatsoever. If the City of Placerville City Manager or City Council rejects all bids/proposals for any reason, or overrules any protest and awards the Contract, the protesting entity waives all claims, rights and causes of action for loss of anticipated profits from the Contract or any subcontract, regardless of whether the City of Placerville's decision is subsequently invalidated by a court of law. The City of Placerville will be deemed to have relied to its detriment on such waiver in deciding either to reject all bids/proposals or to award the Contract. Any attempted reservation of rights waived herein will be grounds to reject a bid as nonresponsive.

ATTACHMENT A



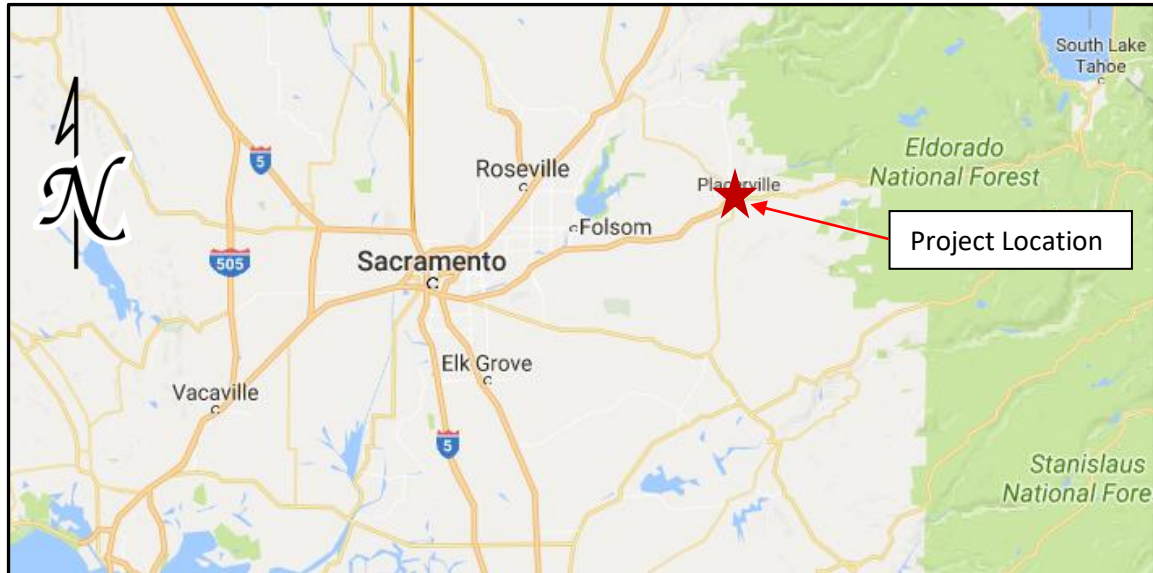
City of Placerville

Engineering Department

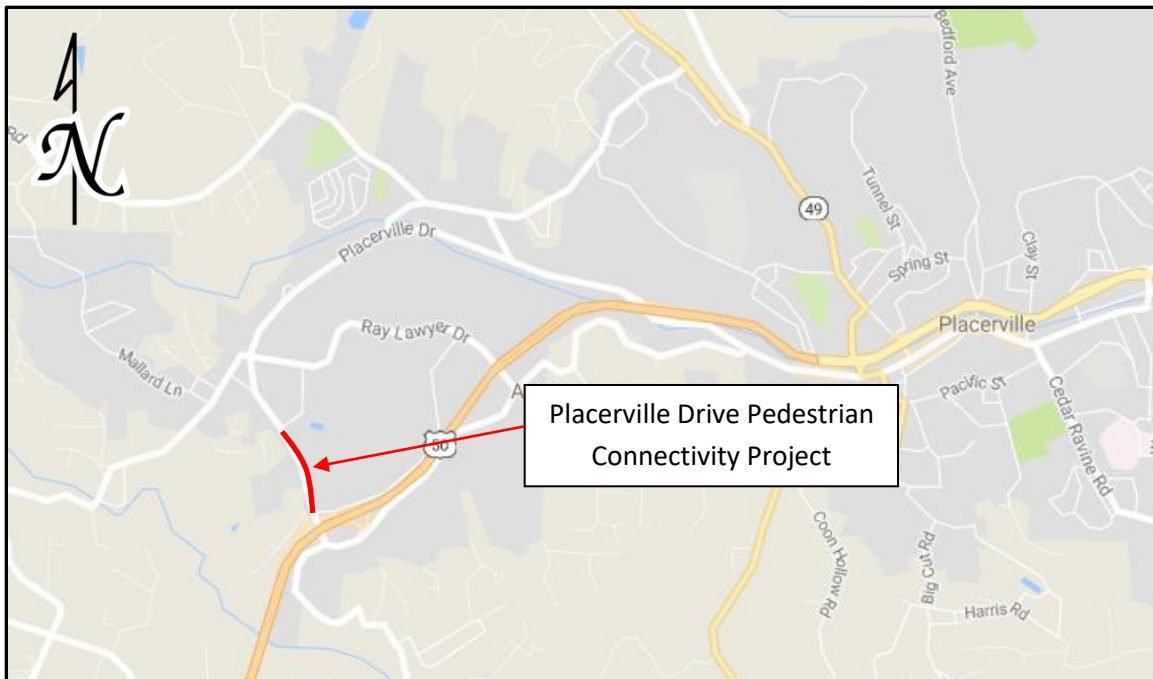
3101 Center Street, Placerville, CA 95667

(530) 642-5250

Placerville Drive Pedestrian Connectivity



Vicinity Map – No Scale



Project Location Map – No Scale

- LEGEND**
- PHASE 1A - CONSTRUCTION COMPLETE
 - PHASE 1B - CONSTRUCTION COMPLETE
 - PHASE 2.1 - CONSTRUCTION COMPLETE
 - PHASE 2.2 - CONSTRUCTION COMPLETE
 - PHASE 2.3 - NEXT PHASE TO BE FUNDED
 - PHASE 3 - FINAL PHASE



ATTACHMENT C

SCOPE OF WORK

Task 1 – Project Management

The Consultant will provide professional and technical services during the preliminary engineering, environmental documentation, and final design of the project. The following is a list of typical duties of the Consultant:

- Develop a project team and prepare detailed project scope of work, activities, schedule, and work plan. Provide clear definition of the work to be completed with corresponding task budget. Define key issues and goals and coordinate responsibilities of the project team members and subconsultants.
- Hold regular project team coordination and status meetings, including the project kick-off meeting. Prepare meeting agendas and meeting notes, and maintain a list of action items. Meetings should be held a minimum of once a month.
- Prepare monthly progress reports identifying deliverables submitted, challenges encountered, outstanding issues, milestone progress, etc.
- Provide and maintain a project schedule. Schedule updates should be provided to the City on a monthly basis and should include planned versus actual dates.
- Identify key stakeholders for the project. Organize and attend public meetings and meetings with property owners and stakeholders, as needed.
- Comply with the Local Assistance Procedures Manual (LAPM) and assist the City with all forms and documents required by the LAPM.
- Identify and prepare any documents and reports required by Caltrans.

Deliverables:

- Scope of work
- Project schedule
- Monthly progress reports
- Meeting notes
- LAPM documents/forms, as required
- Caltrans documents/forms, as required

Task 2 – Surveying and Base Mapping

The Consultant shall conduct a field review at the site prior to starting work. The site location topographic survey information shall be obtained by the Consultant in State Plane II Coordinate System, NAD 83, Feet, and made available to the City in electronic form (Civil 3D and PDF). The topographic survey shall identify all existing topographic features, including but not limited to: utilities, drainage facilities, signing and striping, fences, trees, curb and gutter, edges of pavement, driveways, hinge points, grade breaks, flow lines, ditches, slopes, structures, banks, spot elevations, grades, and ground points to accurately create an existing ground surface with

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contours. The Consultant will be responsible for developing the resulting base mapping and boundary survey which shall include, but not be limited to: existing geometry of roads, existing signing and striping, existing right-of-way, adjoining property lines, existing drainage facilities, existing underground and overhead utilities, existing electrical service points, existing driveways, and other relevant design information.

The Consultant shall be responsible to verify the survey data and control points. Consultant shall be responsible for all survey data necessary for the design and construction documentation. The Consultant shall provide all traffic control and obtain any encroachment permits, permits to enter, or other secured access and construction permits that are required to complete this task. All base mapping will be provided to the City in Civil 3D format (with a PDF copy) and the file will contain the Civil 3D existing ground surface with contours.

Deliverables:

- Base maps, including existing ground surface, in Civil 3D format and PDF
- Survey control information, including horizontal and vertical control and any adjustment calculations
- Copies of relevant survey notes

Task 3 – Environmental Analysis

Prior to the start of preliminary engineering, the Consultant shall complete a Field Review form and Preliminary Environmental Study (PES) form and submit both to Caltrans. No other preliminary engineering work shall commence until receipt of Caltrans concurrence on the submitted documents and required technical studies.

The Consultant shall prepare the environmental documents for full compliance with both NEPA and CEQA. Given the extent of the proposed improvements, the City is anticipating Categorical Exemption/Categorical Exclusion level of environmental documentation.

Typical environmental tasks may include, but are not limited to:

- Compile and review existing documents, data, and information;
- Coordinate any public outreach;
- Prepare Preliminary Environmental Study form;
- Prepare technical studies, as needed;
- Coordinate with and obtain necessary permits from other regulatory agencies, as needed (including Army Corps of Engineers, California Department of Fish and Wildlife, Regional Water Quality Control Board, etc.);
- Prepare final documents; and
- Provide electronic copies of the above documents.

Deliverables:

- Electronic copy of each report/study needed for NEPA and CEQA (draft and final)

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- Copy of each permit required
- Hard copy of all final reports/studies

Task 4 – Utility Coordination

The Consultant shall facilitate all utility coordination for the project. This project is federally-funded and all utility coordination will be subject to the requirements of Chapter 14 of the Caltrans LAPM. All utility coordination letters shall be on City letterhead, and all letters and maps shall be submitted to the City for review prior to sending to the utility companies.

Task 4.1 – Utility Verification

In the preliminary engineering stage of the project, the Consultant will contact utility companies for initial utility verification and plotted on a Utility Plan sheet following typical Caltrans standards and procedures.

Deliverables:

- Copy of utility verification letters and responses
- Existing Utilities Plan sheet

Task 4.2 – Utility Conflict Resolution and Relocation

During Final Design, the Consultant will identify utility conflicts, coordinate utility conflict resolution, and determine utility liability. The Consultant shall perform potholing to positively identify the location of existing utilities that are potentially in conflict with the proposed project. The potholing results shall be used to prepare utility conflict resolution and utility relocation plan. After the utility conflict resolution and relocation plan has been approved and liability is determined, the Consultant shall prepare the Notice to Owner letters and Utility Agreements, as needed.

Deliverables:

- Copy of liability letters, conflict resolution maps, and responses
- Potholing Map for City review prior to potholing, and potholing results
- Proposed Utility Relocation plan
- Copy of Notice to Owner letters, draft, and final Utility Agreements

Task 5 – Right-of-Way Engineering

The Consultant shall perform all right-of-way engineering services for document preparation, property appraisal, and property acquisition for the project consistent with all State and Federal requirements, including Chapter 13 of the Caltrans LAPM and the Caltrans Right of Way Manual as it applies.

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Task 5.1 – Preliminary Mapping

During preliminary engineering, the Consultant will collect right-of-way and title reports for adjacent properties affected by the project. The City will provide any information regarding Street Frontage Improvement Agreements with property owners in the project corridor that may be applicable to the project (please refer to City Code Section 8-9 for more information). The Consultant will create a boundary survey and prepare base mapping showing all right-of-way and easements for the entire project. The survey and mapping created during preliminary engineering shall provide enough information to assess right of way impacts on a project exhibit.

Deliverables:

- Electronic copy (Civil 3D) boundary survey base mapping
- Electronic copy of Title Reports
- Preliminary Right of Way Impact Exhibit

Task 5.2 – Appraisal and Acquisition Services

During final design, the Consultant will conduct all property appraisal and acquisition tasks. The Consultant shall submit to the City for review and City Council approval of the draft purchase and sale agreements along with appraisals prior to presentation to the property owner. The Consultant will facilitate the negotiations process with property owners.

During final design, the Consultant shall assist the City in obtaining Caltrans Right-of-Way Certification.

Deliverables:

- Electronic copy of property appraisals
- Copies of Plats and Legal Descriptions
- Copies purchase and sale agreements
- Copies of all Right-of-Way Certification forms and documents

Task 6 – Preliminary Engineering

The preliminary design plans shall be created using AutoCAD/Civil 3D. The proposed roadway improvements, preliminary right-of-way, and existing utilities will be shown on the preliminary design plans, as well. The Consultant shall also prepare a 30% design construction cost estimate for the project.

Deliverables:

- 30% Plans (11”x17”) and Estimate (PDF)

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Task 7 – Final Design

It is assumed that the final design will include civil plans and electrical plans (as-needed) for the potential RRFB and in-pavement flashing light system. Electrical plans may be included in the scope of work as an Optional Task to be authorized by the City as-needed during final design. At this time, street lighting is not proposed to be included in the project. Landscaping plans shall also be included in the scope of work as an Optional Task to be authorized by the City as-needed during final design. Landscaping is not anticipated to be included in the scope of work since the project aims to build sidewalk inward from the existing curb lines with minimal impact to private property. However there may be some landscaping impacts along the frontage of the El Dorado County Historical Museum parcel where the roadway width narrows.

Task 7.1 – 65% and 95% PS&E

The Consultant shall prepare 65% and 95% Plans, Specifications, and Estimate (PS&E). The design plans shall be created using AutoCAD/Civil 3D, and the plans should follow all applicable City of Placerville and Caltrans design standards.

The plans shall be clear and concise, generally following Caltrans plans preparation format, and should include:

- Typical cross sections
- Layout sheets and profiles
- Construction details
- Temporary water pollution control
- Erosion control
- Drainage design and drainage details
- Utilities
- Stage construction and traffic handling
- Pavement delineation and signs
- Electrical (as-needed)
- Landscaping (as-needed)

During each submittal review, the City will prepare written comments on the documents, and the Consultant shall respond in writing to each comment. Following 65% design, one design review meeting shall be held to discuss City comments and finalize decisions before moving into 95% design.

Deliverables at each milestone:

- Two sets of 11”x17” bond copies, and one PDF copy of the complete (full size) plans for City review and comments.
- Two hard copies and one PDF copy of the Engineer’s Estimate for Construction
- Word document copy of the Specifications
- Response to City comments (as applicable)
- Civil 3D files, as requested by the City

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Task 7.2 – Final PS&E

The Consultant shall prepare draft (100%) and final PS&E. The final bid documents shall include any environmental mitigation measures required of the project. The draft (100%) plans shall be submitted to the City for one final review. After receipt of final approval, an original set of stamped and signed plans, copies of the bid documents, and an engineer's estimate shall be submitted to the City for its use in soliciting construction bids.

Deliverables:

- Electronic copy of the draft PS&E
- Signed and stamped final plans: one set of 22"x34", one set of 11"x17" bond copies, and one PDF full-size copy
- One hard copy and one Excel copy of the Engineer's Estimate
- One signed and stamped copy of the Specifications, and one electronic (Word document) copy.
- Quantity calculations (as requested)
- Construction cross sections at 25-foot intervals with all significant construction offsets and elevations appropriately labeled (as requested)
- Civil 3D files (as requested)
- Copies of agency approvals and permits not already provided to the City.

Task 8 – Bid Assistance

The Consultant shall provide clarification and information about the PS&E package during the construction advertising and bidding process. The Consultant shall assist the City in the preparation of any addenda to the PS&E during the advertisement period.

The Consultant shall attend the project pre-bid meeting and take notes. The Consultant shall review and comment on pre-bid meeting notes to determine any necessary addenda. The Consultant shall prepare any plan revisions as determined necessary by addenda.

Deliverables:

- Attend pre-bid meeting and take notes
- Provide clarification and revisions of documents during advertising and preparation of any addenda as required

Task 9 – Construction Support

The Consultant will provide Construction Support Engineering and Record Drawing services, as requested by the City. This task should include typical construction engineering support design services during an estimated 3-month construction period. The Consultant shall be responsible for resolving any design discrepancies and errors identified during construction at no additional cost to the City and shall be resolved in a timely manner to ensure construction delays are avoided or minimized.

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The deliverables included in this task include the preparation and response to Requests for Information (RFIs), and the work will conclude with preparation of as-built documents.

Deliverables:

- Response to RFIs
- As-builts / Record Drawings

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AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT made and entered by and between the City of Placerville, a political subdivision of the State of California (hereinafter referred to as "City") and _____, a company duly qualified to conduct business in the State of California, whose principal place of business is _____, (hereinafter referred to as "CONSULTANT");

WITNESSETH

WHEREAS, City has determined that it is necessary to obtain a consultant to provide consulting engineering services for the Placerville Drive Pedestrian Connectivity Project (CIP #42337).

WHEREAS, CONSULTANT has represented to City that it is specially trained, experienced, expert, and competent to perform the special services required hereunder and City has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws.

NOW, THEREFORE, City and CONSULTANT mutually agree as follows:

ARTICLE I – SCOPE OF SERVICES

CONSULTANT agrees to provide engineering design services to City as those services and deliverables are described in CONSULTANT’S Scope of Work Exhibit “A”, incorporated herein and made by reference a part hereof.

ARTICLE II – TERM/PERFORMANCE PERIOD

This AGREEMENT shall go into effect on **DATE**, contingent upon approval by City Council. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by City and notification to proceed has been issued by City’s Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.

The contract shall end on **DATE**, unless extended by an amendment if mutually agreed by both parties hereto, in writing not less than thirty (30) days prior to the expiration of this Agreement.

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

ARTICLE III – COSTS AND PAYMENTS

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article I Scope of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the

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total lump sum compensation will be negotiated between CONSULTANT and City. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by City.

- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article I Scope of Services, City shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article IV Termination.
- C. CONSULTANT will be reimbursed within thirty (30) days upon receipt by City's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. 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 and project title. Final invoice must contain the final cost and all credits due City that include any equipment purchased under the provisions of Article IX Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work unless a later date is approved by the City. Invoices shall be mailed to City Contract Administrator at the following address:
 - City of Placerville
 - Engineering Department
 - Attn: Melissa McConnell
 - 3101 Center Street
 - Placerville, California 95667
- D. The total amount payable by City shall not exceed \$TOTAL
- E. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by City's Contract Administrator. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.
- F. City is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the City as to the designation of tasks to be performed and the results to be accomplished.

ARTICLE IV – DEFAULT, TERMINATION AND CANCELLATION

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

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- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, City 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.
- E. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice.
 - 1. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.
 - 2. Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.
- F. Bankruptcy: This Agreement, at the option of the City, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONSULTANT.
- G. Ceasing Performance: City may terminate this Agreement in the event CONSULTANT ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- H. Termination or Cancellation without Cause: City may terminate this Agreement in whole or in part thirty (30) calendar days upon written notice by City for any reason. If such prior termination is effected, City will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to CONSULTANT, and for such other services, which City may agree to in writing as necessary for contract resolution. In no event, however, shall City be obligated to pay more than the total amount of the AGREEMENT. Upon receipt of a Notice of Termination, CONSULTANT shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, City reserves the right to take over and complete the work by AGREEMENT or by any other means.

ARTICLE V – COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 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 Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to CITY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.
- E. All subcontracts in excess of \$25,000 shall contain the above provisions.

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ARTICLE VI – RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Government Code 8546.7; CONSULTANT, subconsultants, and City shall maintain and make available for inspection 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. The state, State Auditor, City, 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 CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA that are pertinent to the Agreement for audit, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

ARTICLE VII – AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by agreement, shall be reviewed by City's Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by City'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 City will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant contracts, including cost proposals and Indirect Cost Rates (ICR), are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by City contract manager 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 contract by this reference if directed by City at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract 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 City 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 contract terms and cause for termination of the contract 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

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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, City will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines } is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
4. CONSULTANT may submit to CITY 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 CITY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO CITY 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 CITY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE VIII – SUBCONTRACTING

CONSULTANT is engaged by City for its unique qualifications and skills as well as those of its personnel.

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between City and any subconsultant(s), and no subagreement shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to City for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from City's obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this AGREEMENT shall be subcontracted without written authorization by City's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

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- C. Any subcontract 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 CONSULTANT by City.
- E. Any substitution of subconsultant(s) must be approved in writing by City's Contract Administrator prior to the start of work by the substitute subconsultant(s).
- F. Prompt Progress Payment

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

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 City may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the City, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The City 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 City from progress payments due to CONSULTANT. Any retaining kept by CONSULTANT or by a subconsultant must be paid in full to the earning subconsultant within 15 days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall be subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and 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 noncompliant by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

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

ARTICLE IX – EQUIPMENT PURCHASE

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

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- B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by City'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 as a result of this contract 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 \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit City 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 City procedures; and credit City 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 City and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by City.
 - 2. Regulation 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.
- D. All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE X – STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at City construction sites, at City facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve City 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 Internet site 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

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record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- i. The information contained in the payroll record is true and correct.
 - ii. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by City representative's 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:
 - i. 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.
 - ii. 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 City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - iii. The public shall not be given access to certified payroll record by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the City's 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 City 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 City 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 City, 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 City 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 City Contract Administrator.

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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 City a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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, City 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.

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6. If City determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if City 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 City.

G. Hours of Labor

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

H. Employment of Apprentices

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

ARTICLE XI – CONFLICT OF INTEREST

No official or employee of City who exercises any functions or responsibilities in review or approval of services to be provided by CONSULTANT under this AGREEMENT shall participate in or attempt to influence any decision relating to this AGREEMENT which affects personal interest or interest of any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any such official or employee of City have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof.

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

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- C. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any AGREEMENT to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XII – REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

ARTICLE XIII – PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

- A. 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 CONSULTANT to any person for influencing or attempting to influence an officer or employee of any 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 of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative 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 federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with 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 Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XIV – CHANGES TO AGREEMENT

- A. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

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- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by City's Contract Administrator.
- C. There shall be no change in the CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is part of this contract without prior written approval by the City's Contract Administrator.

ARTICLE XV – CONSULTANT TO CITY

It is understood that the services provided under this Agreement shall be prepared in and with cooperation from City and its staff. It is further agreed that in all matters pertaining to this Agreement, CONSULTANT shall act as CONSULTANT only to the City and shall not act as CONSULTANT to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with CONSULTANT's responsibilities to the City during term hereof.

ARTICLE XVI – INDEPENDENT CONSULTANT

CONSULTANT in the performance of this AGREEMENT shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto.

CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.

CONSULTANT exclusively assumes responsibility for acts of its employees, associates and subconsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

CONSULTANT shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. City shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CONSULTANT or its employees.

ARTICLE XVII – NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to City shall be in duplicate and addressed as follows:

City of Placerville
Engineering Department
3101 Center Street
Placerville, California 95667
ATTN: Melissa McConnell, City Project Manager

Or to such other location as the City directs.

Notices to CONSULTANT shall be addressed as follows:

CONSULTANT
ATTN:

Or to such other location as the CONSULTANT directs.

ARTICLE XVIII – INDEMNITY

CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless City, its officers, officials, agents, employees and volunteers from and against any and all

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claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of City, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.

Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT

ARTICLE XIX – INSURANCE

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish City 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
- B. The Certificate of Insurance will provide:
 - 1. That the insurer will not cancel the insured's coverage without 30 days prior written notice to City.
 - 2. That City, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
 - 3. That City will not be responsible for any premiums or assessments on the policy.
- C. CONSULTANT agrees that the liability insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, CONSULTANT agrees to provide at least thirty (30) 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 contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of City. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, City may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

ARTICLE XX – CALIFORNIA RESIDENCY

All independent consultants providing services to the City must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The CONSULTANT will be required to submit a Form 590 prior to execution of an AGREEMENT or City shall withhold seven (7%) percent of each payment made to the CONSULTANT during term of the AGREEMENT. This requirement applies to any AGREEMENT exceeding \$1,500.00.

ARTICLE XXI – TAXPAYER IDENTIFICATION NUMBER

All independent Consultants or Corporations providing services to the City must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XXII – CITY BUSINESS LICENSE

To conduct business within the City of Placerville CONSULTANT must be in possession of a valid City Business License.

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ARTICLE XXIII – ADMINISTRATOR

The City Officer or employee with responsibility for administering this AGREEMENT is the City Engineer, or successor.

ARTICLE XXIV – AUTHORIZED SIGNATURES

The parties to this AGREEMENT represent that the undersigned individuals executing this AGREEMENT on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXV – PARTIAL INVALIDITY

If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXVI – DISPUTES

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

- A. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by the City Manager of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

ARTICLE XXVII – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

- A. CONSULTANT, subrecipient (CITY), 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 CITY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found here.

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. 49CFR26.55 defines "manufacturer" and "regular dealer."

This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who

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enter into a federally-funded agreement will assist the City in a good faith effort to achieve California's statewide overall DBE goal.

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

D. Contract Assurance

Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this Agreement or such other remedy as City deems appropriate, which may include but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages and/or;
- d. Disqualifying the CONSULTANT from future proposing as non-responsive.

E. Termination and Substitution of DBE Subconsultants

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

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

- a. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
- b. The City stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the City's bond requirements.
- c. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
- d. 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).

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- e. Listed DBE's work is unsatisfactory and not in compliance with the contract.
- f. Listed DBE is ineligible to work on the project because of suspension or debarment.
- g. Listed DBE becomes bankrupt or insolvent.
- h. Listed DBE voluntarily withdraws with written notice from the Contract
- i. Listed DBE is ineligible to receive credit for the type of work required.
- j. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
- k. The City determines other documented good cause.

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

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

- a. One or more of the reasons listed in the preceding paragraph.
- b. Notices from CONSULTANT to the DBE regarding the request.
- c. Notices from the DBEs to CONSULTANT regarding the request.

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

F. Commitment and Utilization

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

The City shall request CONSULTANT to:

1. Notify the City'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:
 - a. Name and business address of each 1st-tier subconsultant
 - b. Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
 - c. 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 City. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the City 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 City within 90 days of contract acceptance. The City will withhold \$10,000 until the form is submitted. The City will release the withhold upon submission of the completed form.

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

- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to City's Contract Administrator within thirty (30) calendar days.
- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the Agency.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XXVIII – STATEMENT OF COMPLIANCE

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 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,

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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 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract 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 CITY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or CITY 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 Part 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 CITY 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.

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ARTICLE XXIX – DEBARMENT AND SUSPENSION CERTIFICATION

- A. CONSULTANT’s signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
 - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - 3. Does not have a proposed debarment pending; and
 - 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to City. 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 the Federal Highway Administration.

ARTICLE XXX – FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this contract 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 contract were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to the City 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 the City’s 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. City has the option to terminate the AGREEMENT pursuant to Article IV, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXXI – INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit the City, 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 XXXII – OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT’s privileged information, as defined by law, or CONSULTANT’s

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

ARTICLE XXXIII – CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by City'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 City'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 City considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from City. 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 City'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 XXXIV – CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to City's operations, which are designated confidential by City and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by City relating to the contract, 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 contract or City's actions on the same, except to City's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

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- 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 contract without prior review of the contents thereof by City, and receipt of City's written permission.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than City, 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.
- F. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

ARTICLE XXXV – CONTINGENT FEE

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

ARTICLE XXXVI – SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by City Safety Officer and other City 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 Section 591 of the Vehicle Code, City 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 California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

ARTICLE XXXVII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

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ARTICLE XXXVIII EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by City. 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 XXXIX PROMPT PAYMENT FROM THE CITY TO CONSULTANT

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

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

ARTICLE XXXX TITLE VI ASSURANCES

APPENDIX A

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

1. **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.
2. **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.
3. **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.
4. **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.

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5. 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.
6. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

APPENDIX B - CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

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

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in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

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

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

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

1. 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:
 - a) 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.
2. 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.*
3. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.*

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

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

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

1. 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.

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2. 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.*
3. 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.

(*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 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:

4. 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.
5. 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).
6. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex.
7. 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.
8. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age).
9. 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).
10. 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).
11. 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.
12. 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).
13. 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.
14. 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

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take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).

- 15. 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).

IN WITNESS WHEREOF, the two parties to this AGREEMENT, who are the before named CONSULTANT and the before named City, 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.

- - C I T Y O F P L A C E R V I L L E - -

- - C O N S U L T A N T - -

Date: _____

Date: _____

M. Cleve Morris, City Manager

Authorized Representative

Print Name

Attachments:

Exhibit A: Consultant Scope of Services

Exhibit B: Consultant Cost Proposal

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

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

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

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

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

INSTRUCTIONS – CONSULTANT PROPOSAL DBE 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.

EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT

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

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

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

LOCAL AGENCY SECTION

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

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

(Federally funded projects only)

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

1. TERMS AS USED IN THIS DOCUMENT

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

2. AUTHORITY AND RESPONSIBILITY

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

3. SUBMISSION OF DBE INFORMATION

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

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

4. DBE PARTICIPATION GENERAL INFORMATION

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

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

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

5. RESOURCES

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

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

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

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

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

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

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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