

# **CITY OF ELK GROVE**



## **Request for Qualifications**

**For**

**On-Call Traffic Engineering and Transportation Engineering  
Professional Services**

**City Clerk's Office  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758**

**Statement of Qualifications (SOQs)  
Due by 2:00 p.m., Monday, January 8<sup>th</sup>, 2024**

**Introduction:**

The City of Elk Grove (City) is accepting statements of qualifications (SOQs) from qualified Consultants (Consultant(s)) for On-Call Traffic Engineering and Transportation Engineering Professional Services in accordance with the included specifications, terms, and conditions shown in this Request for Qualifications (RFQ). Prospective respondents are advised to read this information over carefully prior to submitting a SOQ.

One signed original, five (5) copies, and one USB Flash Drive copy of the SOQ must be submitted to the Office of the City Clerk by 2:00 p.m., January 8<sup>th</sup>, 2024. SOQ shall be submitted in a sealed envelope clearly marked On-Call Traffic Engineering and Transportation Engineering Professional Services and addressed to:

**OFFICE OF THE CITY CLERK  
CITY OF ELK GROVE  
8401 Laguna Palms Way  
Elk Grove, CA 95758**

Questions regarding this RFQ are to be directed by e-mail to: James Ashby T.E., Traffic Engineering Division Manager, [jashby@elkgrovecity.org](mailto:jashby@elkgrovecity.org) with a copy to Andrea Koerner, Administrative Analyst, [akoerner@elkgrovecity.org](mailto:akoerner@elkgrovecity.org). Such contact shall be for clarification purposes only. The City must receive all questions no later than December 18, 2023. Material changes, if any, to the scope of services or SOQ procedures shall only be transmitted by written addendum and posted to the City website. Addendums and answers to submitted questions will be available via the City of Elk Grove website under "Notice" for the RFQ announcement.

SOQs shall not be accepted by fax or electronically.

**Late SOQs:**

SOQs arriving after the specified date and time shall not be considered, nor shall late SOQs be opened. Each Consultant assumes responsibility for timely submission of its SOQ.

**Withdrawal or Modifications of SOQs:**

Any SOQ may be withdrawn or modified by a written request signed by the Consultant and received by the City Clerk prior to the final time and date for the receipt of SOQs. Once the deadline is past, Consultants are obligated to fulfill the terms of their SOQ.

**SOQ Acceptance and Rejection:**

The City reserves the right to accept any SOQ, to reject any and all SOQs, and to call for new SOQs, or dispense with the SOQ process in accordance with the Elk Grove Municipal Code.

**SOQ Evaluation and Award:**

Evaluation shall be made based on the criteria noted in Attachment A: Evaluation. Up to five contracts may be awarded to the responsible Consultant who best meets the City's needs by demonstrating the competence and professional qualifications necessary for the satisfactory performance of the required services, and shall not necessarily be based on the lowest priced SOQ, except as otherwise provided by law, taking into consideration adherence to the included specifications. A contract may be awarded to the next

responsible Consultant if the successful Consultant refuses or fails to execute the contract. All Consultants that were not selected by the City shall be notified in writing. Nothing herein shall obligate the City to award a contract to any responding Consultant. Any contract awarded will be non-exclusive, and the City reserves the right to seek services from other sources, in the City's sole discretion.

**Register with the California Secretary of State:**

Unless Consultant is a sole proprietorship, Consultant must be registered and in good standing with the California Secretary of State within 14 days following notification of the City's intent to award a contract to Consultant and prior to execution of a final contract. Failure to timely register with the Secretary of State may result in the City awarding the contract to another Consultant. Additional information regarding the registration process may be found on the Secretary of State's website at: <https://bizfileonline.sos.ca.gov/>.

**Disclosure of Submitted Materials:**

After selection and execution of the contract(s), (or prior thereto if required by law) all information and materials provided in each submittal received is subject to disclosure through a public records request pursuant to the California Public Records Act, or otherwise as may be required by law. The City, in its sole discretion, may release any submitted materials, regardless of whether such materials are marked by respondents as confidential or otherwise as protected.

**Waiver of Irregularities:**

The City retains the right, in its sole discretion, to waive any irregularities in SOQs that do not comply with the strict requirements of this RFQ, and the City reserves the right to award a contract to a Consultant submitting any such non-compliant SOQ, all in the City's sole discretion.

**Validity of Pricing:**

Consultants are required to provide a fee structure including the hourly rate of the principals to be assigned to the matter, and proposed cost (line item descriptions and pricing), and expense reimbursements levels, and total costs. No cost increases shall be passed onto the City after the SOQ has been submitted. No attempt shall be made to tie any item or items contained in this RFQ with any other business with the City; each SOQ must stand on its own.

**No Guarantee of Usage:**

Any quantities listed in this RFQ are estimated or projected and are provided for tabulation and information purposes only. No guarantee of quantities is given or implied by the City. Consultant must furnish the City's needs as they arise.

**Demonstrations:**

When required, the City may request full demonstrations prior to award. When such demonstrations are requested, the Consultant shall respond promptly and arrange a demonstration at a convenient location. Failure to provide a demonstration as specified by the City may result in rejection of a SOQ.

**Use of Other Governmental Contracts:**

The City reserves the right to reject any part or all of any SOQs received and utilize other available governmental contracts.

**Qualification/Inspection:**

SOQs will only be considered from Consultants normally engaged in providing the types of services specified herein. By responding to this RFQ, the Consultant consents to the City's right to inspect the Consultant's facilities, personnel, and organization at any time, or to take any other action necessary to determine Consultant's ability to perform. The City reserves the right to reject SOQs where evidence or evaluation is determined to indicate inability to perform. The City reserves the right to interview any or all responding Consultants and/or to award a contract without conducting interviews.

**Other Governmental Entities:**

If the Consultant is awarded a contract as a result of this RFQ, the Consultant shall, if the Consultant has sufficient capacity, provide to other governmental agencies, so requesting, the services awarded in accordance with the terms and conditions of the RFQ.

**Federal Requirements:**

Should any portion of these services require the use of Federal funds, all Federal requirements, including DBE requirements from Attachment C, Notice to Proposers DBE Information (LAPM Exhibit 10-I) shall apply and all Consultants must consent to each certification and assurance, which will be incorporated into the contract.

**State Requirements:**

For services that involve the use of State funds, all State requirements shall apply and all Consultants must consent to each certification and assurance, which will be incorporated into the contract.

**Payment Terms:**

Payment shall be made as set forth in the contract attached hereto as Attachment B. In submitting SOQs under these specifications, Consultants should take into account all discounts, both trade and time, allowed in accordance with the payment terms.

**Performance:**

It is the intention of the City to acquire services as specified herein from a Consultant that will give prompt and convenient service.

**Term of Contract:**

The term of the contract will be for a specific period of time, commencing upon execution. The City anticipates the contract to be for a term of three years with two one-year extensions, at the option of the City. The City reserves the right to set the term for a period deemed to be in the best interest of the City, and terminate the contract as set forth therein.

**Amendments:**

If, in the course of the performance of the contract, Consultant or the City proposes changes to the services provided, and informal consultation with the other party indicates that a change in the terms and conditions of the contract may be warranted, Consultant or the City may request a change in the contract. The parties to the contract will meet to

discuss and negotiate the required documents. Upon completion of those negotiations, the negotiated documents will be submitted to the City for approval. Upon approval by the City, an amendment to the contract will be approved by all parties for the change to be implemented. An amendment shall not render ineffective or invalidate any unaffected portions of the Contract. Nothing in this section obligates the City to agree to any change order or other amendment, and the City may withhold such agreement in its sole discretion.

**Service and support:**

Consultants shall explain how all on-going service and support shall be handled by the Consultant and the City of Elk Grove.

**Records:**

The Consultant shall maintain complete and accurate records with respect to labor costs, material expenses, and other such information required by City that relates to the performance of services under the contract. The Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of the services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible and in a form acceptable to the City, which the City may specify and change from time to time. The Consultant shall provide free access to the representatives of City or its designees, at reasonable times, to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings, and activities related to the contract. Such records, together with supporting documents, shall be maintained for City's inspection for a period of at least three (3) years after receipt of final payment.

**GUIDELINES FOR SOQ**

The following guidelines are provided for standardizing the preparation and submission of SOQs. The intent is to assist Consultants in the preparation of their submissions and to assist the City by simplifying the review process providing standards for comparison of submissions.

SOQs submitted in response to this RFQ shall include a complete response to the requirements in this section in the order presented. Statements should be a straightforward delineation of the respondent's capability to satisfy the intent and requirements of this RFQ, and should not contain redundancies and conflicting statements.

SOQs shall be printed double sided, submitted on 8-1/2" x 11" recycled paper, with easy to read font size and style. Pages shall be numbered, tabbed, and bound (spiral / comb / three ring binder). Tabbed dividers should separate and identify the response items described below.

One signed original, five (5) copies, and one USB Flash Drive copy of the SOQ must be submitted to the Office of the City Clerk by 2:00 p.m., January 8<sup>th</sup>, 2024. SOQ shall be submitted in a sealed envelope clearly marked On-Call Traffic Engineering and Transportation Engineering Professional Services and addressed to:

**OFFICE OF THE CITY CLERK  
CITY OF ELK GROVE  
8401 Laguna Palms Way  
Elk Grove, CA 95758**

SOQs shall contain the following information in the order listed:

1. Introductory letter

The introductory letter should be addressed to:

James Ashby, TE  
Traffic Engineering Division Manager  
City of Elk Grove  
8401 Laguna Boulevard  
Elk Grove, CA 95758

The letter shall include the Consultant's name submitting the SOQ, their mailing address, telephone number, and contact name. The letter shall address the Consultant's understanding of the project based on this RFQ and any other information the Consultant has gathered. Include a statement discussing the Consultant's interest and qualifications for this type of work. A principal of the firm authorized to legally bind the firm shall sign the letter.

2. Table of Contents

The Consultant shall insert a comprehensive table of contents denoting sections three through eight of the SOQ as indicated below.

3. Qualifications and Experience

**Qualifications**

A brief company profile and summary of the firm's and its sub consultants' qualifications in relation to the Scope of Work below. The company profile should include: a brief history of the firm, office locations, size of the firm, services offered, areas of expertise that are relevant to the aforementioned scope, staffing licensing, registration, expertise and, availability to work on projects that may be assigned should the firm be selected. The summary of the firm's qualifications should address each of the qualifications described.

**Project Management**

Descriptions of the firm or Project Manager's approach to managing projects and personnel, maintaining quality control, highlighting the project understanding, and providing the overall technical approach to providing services, and delivering high quality products. Three (3) references who can attest to key staff's experience in performing work substantially similar to the services covered by this RFQ must be provided. References should include contact information and the name of the project

or projects completed by the Consultant for that client within the past five (5) years. A quality assurance plan is to be provided. Staff availability table providing current project workload and ability to be available on an as-needed basis. Letters of endorsements may be included as an appendix.

### **Similar Projects**

Descriptions of a minimum of three (3) relevant projects, in which the firm provided traffic engineering and transportation engineering services, done within the past five (5) years by the firm and description of the key staff involved in the projects. The description should include the following:

- Project name;
- Project category, one paragraph description of the type of project, purpose of the project and the firm's scope of work;
- Size of the project in terms of budget and scope;
- Type of Funding involved; Federal, State or Local
- Duration of project (e.g., 6 months) and year of completion;
- Client agency and other participating agencies;
- Who, of the staff proposed for this contract, worked on the project and their role.

### **Similar On-Call Contracts**

Descriptions of a minimum of three (3) relevant on-call contracts, in which the firm provided traffic engineering and transportation engineering services, done within the past five (5) years by the firm and description of the key staff involved in the services. The description should include the following:

- Contracting Agency;
- Contract category, one paragraph description of the type of services, purpose of the services and the firm's scope of work;
- Size of the contract in terms of budget and scope;
- Duration of contract (e.g., 6 months) and year of expiration;
- Client agency and other participating agencies;
- Who, of the staff proposed for this contract and their role.

### **Organizational Chart**

An organizational chart and summary qualifications of all key staff, including key staff of any sub consultants that would be expected to work on the project(s) that may be assigned, their availability, and the location of the office from which they will perform the work under this contract. Key staff members who are proposed to contribute the majority of work hours should be highlighted on the organizational chart. Staff qualifications should include: a one-paragraph description of relevant experience, relevant registrations or licenses held, proposed role, length of work experience and areas of expertise, for each staff member. Resumes may be included as an appendix.

## Office Locations

Include the offices where work for the Project will be conducted by the Consultant and sub consultant(s).

### 4. Conflict of Interest Statement

Any activities or relationships of the Consultant that might create a conflict of interest for the Consultant or the City, and, if such activities or relationships exist, a description of the facts, legal implications, and possible effects sufficient to permit the City to appreciate the significance of the conflict and to grant any conflict waiver, if appropriate and necessary.

### 5. Federal Provisions

The proposing Consultant's services may be federally funded, which shall necessitate compliance with additional requirements. Special attention is directed to Attachment C, Local Assistance Procedures Manual Exhibit (LAPM) 10-I, Notice to Proposers DBE Information. The DBE goal is 3%. Consultants submitting a SOQ must meet the DBE goal or submit documentation of a Good Faith Effort. The Consultant shall include in their proposal an acknowledgement and understanding of these provisions. The following forms and certificates are to be completed, signed, and inserted in this section in the consultants' response to this RFQ.

- Consultant Proposal DBE Commitment (LAPM Exhibit 10-O1) (Attachment D)
- Good Faith Effort (LAPM Exhibit 15-H) (Attachment E) – Required only if DBE goal is not achieved. It is recommended that proposer prepare and submit a GFE irrespective of meeting the DBE goal.
- Disclosure of Lobbying Activities (LAPM 10-Q) (Attachment F)

Upon award and through completion of the project, the successful proposing Consultant will be required to follow applicable federal-aid requirements and shall complete applicable forms with the agreement at the time of award:

- Local Agency Proposer DBE Information (Consultant Contracts) (LAPM Exhibit 10-02) (Attachment G)
- Certification of Indirect Costs and Financial Management System form (Attachment H)

Consultant shall demonstrate familiarity of providing services for federally funded projects and has clear understanding of requirements/needs to facilitate the project through Caltrans Local Assistance and Local Assistance Procedures Manual.

### 6. Fee

A separate 9"x12" sealed envelope containing a cost proposal, hourly rates and other applicable fees. Cost proposals shall conform to Attachment I – Sample Cost Proposal 1. Note: This information does not constitute a bid. Separating the cost proposal ensures an objective review of the SOQs before cost information is considered.

The estimate shall be submitted in a cost plus fixed fee format and should include the following detail:



- Billable rates of each member of the Project team.
- Breakdown of direct costs, profit, indirect rate, and estimated reimbursable expenses. Mark ups on sub consultants are not allowed.

Cost proposal should be valid for a period of one hundred twenty (120) days from its submission and shall be used in the Contract. Include a fee cover letter stating this. This shall be signed by the person authorized to make that agreement on behalf of the firm.

7. Secretary of State

Consultant shall acknowledge their understanding of needing to be registered with the California Secretary of State as noted in the RFQ language above.

8. Changes to the Master Services Contract:

Attached to the RFQ (Attachment B) is a copy of the City's standard Master Services Contract (Contract). The City's standard Contract may be modified, in the City's sole discretion, to address the specific provisions of this RFQ and Consultants should note that any specifications or other requirements specific to this RFQ shall be included in the Contract and Contract's exhibits following an award of the Contract. Please review the Contract carefully and note in your SOQ any exceptions or alterations to the Contract. Alterations or changes to the Contract that are not in the Consultant's response shall not be allowed after the selection of the Consultant. This includes alterations, exceptions, or changes to the insurance and indemnity provisions. By requiring these requests up front, the City can compare all respondents on an equal basis. However, the City reserves the right, in its sole discretion, to accept or reject any and all proposed changes to the City's standard Contract. For reference, the insurance amounts that appear in the attached Contract are summarized below.

TYPE	SINGLE LIMIT / OCCURRENCE	AGGREGATE	ENDORSEMENTS***
General Liability	\$1,000,000	\$1,000,000	Additional Insured Waiver of Subrogation Primary Non-Contributory
Auto Liability	\$1,000,000 (Sched, Hired, & Non-Owned)		Additional Insured Waiver of Subrogation
Work Comp Employer's Liability	Statutory \$1,000,000 each		Waiver of Subrogation
Professional Liability/Errors and Omissions	\$2,000,000	\$2,000,000	Requirement extends 3 years past contract expiration

\*\*\*Must be actual endorsements. Typed statements on Certificates of Liability are unacceptable.

This is a summary only. Please refer to the insurance section and/or exhibit of this contract for specific requirements.

## SCOPE OF WORK

This Request for Qualifications (RFQ) solicits qualified firms to provide an array of Traffic Engineering and Transportation Engineering services to the City.

The Proposer shall address each task and their approach to identify specific deliverables and actions that will be taken to complete each task. However, the City encourages Proposer to propose alternative approaches that introduce innovation, higher quality, and cost savings.

The selected firm(s) shall provide services and have staffing covering some or all of the specialized categories listed below as requested by City staff

- Traffic Control & Safety Evaluation and Implementation
- Traffic Control Plans
- Traffic Calming/Neighborhood Traffic Management
- Traffic Studies for Capital Projects
- Speed Zoning
- Traffic Operations and Safety Analysis
- Traffic Signal Design
- Traffic Signal Interconnect Design
- Traffic Signal Timing and Coordination
- Adaptive Traffic Signal Operations
- Traffic Engineering Concept Trainings (as applicable)
- Pedestrian Planning and Design
- Bicycle Planning and Design
- Complete Streets/Context Sensitive Solutions
- Active Transportation
- Roadway and Streetscape Design
- Parking Analysis
- Transportation Engineering
- Transportation Impact Assessment
- Transportation Impact Fees and Analysis
- Transportation Demand Management
- Fixed Transit Route Analysis
- Traffic Volume Collection

Transportation engineering services provided by the chosen firm(s) may include, but may not be limited to, community outreach, grant writing, field investigation and measurement, data collection, surveys, feasibility evaluation, alternatives analysis, design development, detailed design, cost estimating, and construction engineering. Services may also include presentations at meetings held by City staff, the City Council, neighborhood groups, and other stakeholders, as needed. As part of these services, it will be necessary for the selected firm(s) to document all activities and contacts, as well as, to prepare the following types of documents, as needed:

- Preliminary documents, plans and/or reports including findings and recommendations

- Final documents, plans and/or reports responding to City and other stakeholder comments
- Plans, Specifications and Estimates
- Handouts and graphical displays for public meetings
- Grant Applications

The selected firm(s) shall:

- Have an understanding of Federal/State/Local funding, Local Program Procedures (LPP) and policies,
- Have an understanding of Sacramento Area Council of Governments (SACOG) funding programs.
- Be familiar with SACOG traffic models SACSIM and SACMET
- Have a professional Civil and/or Traffic Engineer, who can sign and seal the work to be performed under the contract.
- Be available to commence services, as described herein, immediately as needs arise.
- Be able to complete assignments within the specified time.

## **ATTACHMENTS**

- A. Evaluation
- B. Sample Master Services Contract
- C. Notice to Proposers DBE Information (LAPM Exhibit 10-I)
- D. Consultant Proposal DBE Commitment (LAPM Exhibit 10-O1)
- E. Good Faith Effort (LAPM Exhibit 15-H)
- F. Disclosure of Lobbying Activities (LAPM 10-Q)
- G. Local Agency Proposer DBE Information (Consultant Contracts) (LAPM Exhibit 10-O2)
- H. Certification of Indirect Costs and Financial Management System form
- I. Sample Cost Proposal 1

## **Attachment A: Evaluation**

### **Evaluation Process**

SOQs deemed responsive will then be evaluated by a panel of staff representatives from City and potentially other partner agencies. All aspects of the SOQ evaluations, including any related discussions, documentation, correspondence and meeting recordings, will be kept confidential during the evaluation and negotiation process. SOQs will be analyzed for conformance with the instructions and requirements of this RFQ. SOQs that do not comply with these instructions and do not include the required information may be rejected at the sole discretion of the City.

The City will utilize an evaluation process based on the highest quality of service proposed that best matches the City requirements, a “Best Value” methodology. Consistent with this “Best Value” process, the SOQs will be evaluated as described below. Each SOQ will be worth a total of 100 points and will be evaluated according to the criteria listed below. If the City receives more than five (5) SOQs, the top five (5) scoring SOQs will be considered as most competitive and will continue with the selection process. The other SOQs will be eliminated from further consideration.

The evaluation criteria and related points:

**(30 Points)** The firm’s and any subcontractors’ (collectively referred to as the Team’s) and key staff’s knowledge of, expertise in and experience in providing traffic engineering and transportation engineering services for small and large scale projects, and familiarity of key staff with applicable Caltrans specifications, standards, regulations, policies and procedures with permitting and regulatory agencies involved in development of these projects;

**(15 Points)** The Team’s and key staff’s knowledge of, expertise in and experience in providing project traffic engineering and transportation engineering services for federal and state funded projects;

**(25 Points)** The Team’s ability to have qualified key staff available on an as-needed basis;

**(20 Points)** The Team’s and Project Manager’s method for project management and quality control/quality assurance, project understanding, and technical approach to successfully manage and direct Traffic Engineering & Transportation Engineering services;

**(10 Points)** Demonstrated availability within the Team’s personnel of specialized expertise relating to traffic engineering and transportation engineering services

Following the evaluation, the evaluation panel may elect to recommend award to qualified Consultants with or without interviews or to develop “short lists” of firms to be considered for selection. In-person interviews may be held with short-listed firms, and references may be contacted for any or all of the short-listed firms. References, including past performance on other projects performed by the firm for the selection panel members, if applicable, may be considered in the panel’s evaluation.

During the evaluation, any potential conflicts of interest will be considered. City may request additional information from any firm that appears to have an organizational conflict of interest, including its plan to mitigate any such conflicts. City will not award a contract to a firm with an actual conflict of interest, or with an apparent conflict of interest that cannot be adequately mitigated, in City's sole opinion.

City reserves the right to accept or reject any and all SOQ's submitted, to waive minor irregularities in SOQ's, and to request additional information from the proposers. City reserves the right not to convene oral interviews and to make awards on the basis of SOQ's alone. Awards if made will be made to the firms whose SOQ's are the most advantageous to City, based on the evaluation criteria listed above.

**Attachment B: Sample Master Services Contract**

# CITY OF ELK GROVE



MASTER SERVICES CONTRACT FOR

**CONSULTANT NAME**

On-Call Traffic Engineering and Transportation Engineering Professional  
Services

## MASTER SERVICES CONTRACT

THIS CONTRACT (“Contract”) is made on \_\_\_\_\_, 20\_\_\_\_, by and between the City of Elk Grove, a municipal corporation (the “City”) and **Consultant Name**, a \_\_\_\_\_ (the “Consultant”), collectively referred to as the “Parties.”

### WITNESSETH

WHEREAS, Consultant has presented a proposal to provide services, which services are identified in the Scope of Work attached hereto and incorporated herein by this reference as **Exhibit A**, and by reason of its qualifications, experience, and facilities, is duly authorized to perform the type of services contemplated herein; and,

WHEREAS, City desires to hire Consultant to perform the Scope of Work pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, City and Consultant agree to as follows:

#### **1. SCOPE OF SERVICES**

A. Consultant shall do all work described herein, and as further set forth in individual task orders issued by the City to Consultant. The terms and conditions of this Contract shall control all Task Orders (“Task Orders”).

B. Consultant agrees it has satisfied itself by its own, investigation and research, regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

C. There shall be no change in Consultant’s Project Manager or members of the proposed project team, as listed in the approved Cost Proposal attached hereto and incorporated herein as a part of Exhibit B Compensation and Method of Payment, which is a part of this Contract without prior written approval by City’s contract administrator as designated from time to time by the Public Works Director.

#### **2. TERM OF CONTRACT**

A. This Contract shall be effective as of the date executed by the Parties and approved as to form by the City Attorney and shall terminate at 11:59 p.m. on June 30, 2027, with the option by City, in City’s sole discretion shall have the option to extend the term of the Contract for up to two (2), one (1), year extensions, unless earlier terminated pursuant to Section 14 of this Contract. Notwithstanding any other provision of this Contract, the City Manager shall be authorized to modify the Scope of Work and/or extend the termination date of this Contract (including, as necessary, modification of the Scope of Work and/or Schedule of Performance as to time of performance) by a writing signed by the City Manager and the Consultant prior to the initial termination or any extended termination date.

B. The period of performance for each specific task shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Contract for





work to continue, the Contract must be extended by written Contract amendment. Should an extension not be executed by written Contract amendment no further Task Order work shall be billed to the City.

### **3. SCHEDULE FOR PERFORMANCE**

Performance shall be in accordance with the terms of this Contract and each individual Task Order as issued. Consultant's failure to complete work in accordance with the Schedule of Performance may result in delayed compensation as described in Section 4 and/or termination of the Contract.

### **4. COMPENSATION**

A. City shall pay Consultant on a time and expense basis as described in the Scope of Work and the Not to Exceed amount set forth in each individual Task Order in accordance with the rate schedule set forth on Exhibit "C", which is attached hereto and incorporated herein by reference. The specified hourly billing rates shall include (actual cost) direct salary costs, employee benefits, overhead, and a fixed fee. Actual costs may also include travel, equipment rental costs, and other direct costs incurred by the Consultant. Said amount shall be paid upon submittal of a monthly invoice showing completion of the tasks that month, including the services rendered, the costs incurred for materials, the person(s) rendering performed services, the amount of time spent by such person(s) and the applicable hourly rate. Consultant shall only be reimbursed for incurred (actual) direct costs other than hourly billing costs that are identified in the executed Task Order. In no event shall Consultant be entitled to compensation for work not included in each Task Order's Scope of Work, unless a written task order amendment or authorization describing the extra work and payment terms has been executed by City. In no event shall total compensation paid to Consultant under this Contract, including all Task Orders, exceed One Million Dollars and No Cents (\$ 1,000,000.00), without City's prior written approval.

B. The indirect cost rate established for this Contract is extended through the duration of this specific Contract.

C. In addition to the allowable incurred actual costs, the City will pay the Consultant a fixed fee of X% for hourly billing rates. The fixed fee is nonadjustable for the term of the Contract, except in the event of a significant change in the scope of work and such adjustment is made by Contract amendment.

D. If Consultant's performance is not in conformity with the Scope of Work, including but not limited to, failure to satisfactorily complete any deliverable in the sole discretion of the City, lack of conformity to the Schedule of Performance, or claims for compensation that don't conform to the billing practices in section A above, invoices will be rejected and payments may be delayed or denied in whole or in part, unless otherwise agreed to by City in writing.

E. Consultant shall designate an invoice manager which shall serve as a single point of contact for the City to address any invoicing questions, concerns, credits, or revisions.



F. If the work is halted at the request of City, compensation shall be based upon the proportion that the work performed bears to the total work required by this Contract, subject to Section 14, Termination.

**5. NOTICES**

A. Consultant shall transmit invoices and any notices required by this Contract, to City as follows:

City of Elk Grove  
Attn: Finance Department  
8401 Laguna Palms Way  
Elk Grove, California 95758

City of Elk Grove  
Attn: City Attorney's Office  
8401 Laguna Palms Way  
Elk Grove, California 95758

Consultant shall serve the City notice in writing by certified mail prior to a change of address. The notice shall include the new address where notices and communications related to the Agreement may be sent, the point of contact for the Agreement, and include the point of contact's phone number and email address.

B. City shall transmit payments on invoiced amounts and any notices required by this Contract to Consultant as follows:



**6. PROFESSIONAL SERVICES**

Consultant agrees that services shall be performed and completed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and its subcontractors or agents are engaged. Consultant shall not, either during or after the term of this Contract, make public any reports or articles, or disclose to any third party any information, confidential or otherwise, relative to the work of City or the operations or procedures of City without the prior written consent of City.

Consultant further agrees that it shall not, during the term of this Contract, take any action that would affect its impartiality or professionalism due to City whether perceived or actual.

**7. INDEPENDENT CONTRACTOR**

A. 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.



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

C. City is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of the Contract and is not required to issue W-2 Forms for income and employment tax purposes for any of Consultant's assigned personnel.

D. Consultant, in the performance of its obligation hereunder, is only subject to the control or direction of City as to the designation of tasks to be performed and the results to be accomplished.

E. Any third-party person(s) employed by Consultant shall be entirely and exclusively under the direction, supervision, and control of Consultant.

F. 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 Contract.

## **8. PREVAILING WAGE RATES**

A. Consultant and Subconsultant(s) performing Public Works shall register 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 Contract, including any subsequent amendments.

B. The Consultant shall comply with all 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 Contract 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 Contract 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 website at <http://www.dir.ca.gov>.

### **D. Payroll Records**

1. Each Consultant and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Consultant or Subconsultant in connection with the public work. Each



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

- a. The information contained in the payroll record is true and correct.
- b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.

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

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

- b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of 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.

- c. The public shall not be given access to certified payroll records by the Consultant. The Consultant is required to forward any requests for certified payrolls to the City Contract Administrator by both email and regular mail within one 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 the 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.

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 Contract 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 Contract.

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

4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the Consultant which the Project Contract is awarded to (prime Consultant) 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:

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



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

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

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

5. Pursuant to Labor Code §1775, 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.

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 Contract 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 monies 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 Contract 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 signed contract with the selected prime Consultant (prime Contract) or the sub consultant contract (subcontract) 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 Contract work. The Consultant is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

## **9. PROHIBITION OF EXPENDING CITY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

A. The Consultant certifies, to the best of their knowledge and belief, that:

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

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

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

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

## **10. NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

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

B. During the performance of this Contract, Consultant and its subconsultants shall not deny the Contract's benefits to any person on the basis of race, religious creed, color, national origin,



ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

C. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by the City to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this 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 Contract.

G. The Consultant, with regard to the work performed under this Contract, 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 shall 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.

## **11. AUTHORITY OF CONSULTANT**

Consultant shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity whatsoever as agent, or to bind City to any obligations whatsoever.

## **12. CONFLICT OF INTEREST**

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 Contract. 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 Contract. Consultant further agrees to complete any statements of economic interest if required by either City ordinance or State law.

## **13. AMENDMENTS, CHANGES OR MODIFICATIONS**

Amendments, changes or modifications in the terms of this Contract may only be made by mutual written Contract amendment between the Parties hereto and shall be signed by the persons authorized to bind the Parties, in the case of the City such amendments shall be authorized by the City Manager.

## **14. TERMINATION**

A. This Contract 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, and in accordance with Section 21, Property of City.

B. City may temporarily suspend this Contract, at no additional cost to 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 Contract. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this section.

C. Notwithstanding any provisions of this Contract, Consultant shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Contract 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.



D. In the event of termination, Consultant shall be compensated as provided for in this Contract, except as provided in Section 14C. 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, and in accordance with Section 18, Property of City.

## **15. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

The 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 this Contract without liability, to pay only for the value of the work actually performed, or to deduct from this Contract price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

## **16. 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.

## **17. RETENTION OF RECORD/AUDITS**

For the purpose of determining compliance with Gov. Code § 8546.7, the Consultant and Subconsultants, maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the Contract including, but not limited to, the costs of administering the Contract. 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 Contract period and for three (3) years from the date of final payment under the Contract and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. City, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Consultant, Subconsultants, and the Consultant's Independent CPA, that



are pertinent to the Contract for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

## **18. FUNDING**

Consultant agrees and understands that renewal of this Contract in subsequent years is contingent upon action by City Council, consistent with the appropriations limits of Article XIII B of the California Constitution, and that the City Council may determine not to fund this Contract in subsequent years.

## **19. NOTICE TO PROCEED**

Prior to commencing work under this Contract, Consultant shall receive a written "Notice to Proceed" from the City's Public Works Director, or their authorized representative. A Notice to Proceed shall not be issued until all necessary bonds and insurances have been received. City shall not be obligated to pay Consultant for any services prior to issuance of the Notice to Proceed.

## **20. EXTENSIONS OF TIME**

Consultant may, for good cause, request extensions of time to perform the services required hereunder. Such extensions must be authorized in advance by City, in writing, and at City's sole discretion. Such extensions, if authorized, shall be incorporated in written amendments to this Contract or the attached Scope of Work in the manner provided in Section 13.

## **21. PROPERTY OF CITY**

A. It is mutually agreed that all materials prepared by Consultant under this Contract 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 Contract which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to City which is in Consultant's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this Contract must be approved in writing by City.

B. Additionally, it is agreed that the Parties intend this to be a contract 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.

## **22. COMPLIANCE WITH LAW**

Consultant shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract.

## **23. REPRESENTATIONS**

A. Consultant agrees and represents that it is qualified to properly provide the services set forth herein, in a manner which is consistent with the generally accepted standards of Consultant's profession.

B. Consultant agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, State and local law.

C. Consultant shall designate a contract manager who at all times shall represent Consultant before City on all matters relating to this Contract. The contract manager shall continue in such capacity unless and until they are removed at the request of City, is no longer employed by Consultant, or is replaced with the written approval of City, which approval shall not be unreasonably withheld.

D. Consultant shall have a quality management plan in place. The quality management plan must include, but is not limited to, internal quality control and quality assurance procedures with clear separation of responsibilities between for both procedures. The Consultant shall utilize the quality management plan procedures as part of the submittal of all work products and all work products shall be reviewed before submittal to the City. Consultant shall certify that each work product has been reviewed using the procedures from the quality management plan. Each certification shall be signed by the preparer of the work product, quality control reviewer and quality assurance reviewer approving the work product for submittal to the City. Consultant shall utilize quality control staff with demonstrated experience and competence in the area involved in the work product. Consultant shall retain a copy of the quality management plan and the quality control and quality assurance completed for each work product. No payment shall be paid for work products submitted to the City which have not been reviewed and certified. The Consultant shall provide the City with a copy of the quality management plan and the quality control and quality assurance completed for each work product, if requested. The Consultant shall update the quality management plan at least annually and in consideration of input from the City.

E. Consultant shall provide corrective services without charge to City for services which fail to meet the above professional and legal standards and which are reported to Consultant in writing within sixty (60) calendar days of discovery. Should Consultant fail or refuse to perform promptly its



obligations, City may render or undertake performance thereof and Consultant shall be liable for any expenses thereby incurred.

#### **24. APPROVAL OF STAFF MEMBERS**

A. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Contract. Consultant shall notify City of any changes in Consultant's staff to be assigned to perform the services required under this Contract and shall obtain the approval of the City's Public Works Director or their authorized representative of a list of all proposed staff members who are to be assigned to perform services under this Contract prior to any such performance. The list shall include staff member names, corresponding classification or job title, hourly billing rate, location and qualifications.

#### **25. ASSIGNMENT AND SUBCONTRACTING:**

A. Except as expressly authorized herein, Consultant's obligations under this Contract are not assignable or transferable, and Consultant shall not subcontract any work, without the prior written approval of City. However, claims for money due or which become due to Consultant from City under this Contract may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to City.

B. Nothing contained in the Contract or otherwise, shall create any contractual relationship between the City and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be fully responsible to the 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 omission of persons directly employed by Consultant. Consultant shall review all work produced by any subconsultant prior to providing such to the City and certify such work under the process found in Section 22(D). Consultant's obligation to pay its subconsultant(s) is an independent obligation from the City's obligation to make payments to the Consultant.

C. Any substitution of subconsultant(s) or contractor(s) must be approved in writing by the City's Public Works Director or his/her authorized representative prior to the start of work by the subconsultant(s).

D. Consultant shall be as fully responsible to City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by Consultant.

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

F. Consultant shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the Consultant by the City.



G. Any substitution of Subconsultants must be approved in writing by the City's Public Works Director or their authorized representative in advance of assigning work to a substitute Subconsultant.

H. Prompt Progress Payment

Consultant or subconsultant shall pay to any subconsultant, not later than seven (7) days after receipt of each progress payment, 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 bona fide 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 pursuant to the California Public Contract Code. As a disciplinary action, the City will withhold payment until subconsultant is paid.

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.

**26. MATERIALS CONFIDENTIAL**

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.

**27. LIABILITY OF CONSULTANT—NEGLIGENCE**

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally-accepted standards of Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. City shall have no right of control over the manner in which the work is to be done but only as to its outcome and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.





**28. INDEMNITY AND LITIGATION COSTS**

To the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City, its officers, officials, agents, employees and volunteers from and against any and all 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 Contract 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. Unless and until such judicial determination is made, or as otherwise agreed by the parties, Contractor shall remain obligated to defend, indemnify, and hold harmless City, its officers, officials, employees, volunteers, and agents pursuant to this Contract. The provisions of this section shall survive termination or suspension of this Contract.

In any contract that Consultant enters into with any subcontractor in any capacity related to any and all duties under this Contract, there must be an indemnification provision identical to the one provided in this Section applicable to the subcontractor requiring the subcontractor to assume the defense, indemnify and save harmless City to the same extent as Consultant. Consultant’s failure to include such an indemnification provision in any contract with a subcontractor shall constitute a material breach of this Contract. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, and save harmless City as prescribed under this Section.

**29. EVIDENCE OF INSURANCE COVERAGE**

Prior to commencement of any work under this Contract, Consultant shall provide and maintain in effect during the term of this Contract evidence of insurance coverage as set forth in **Exhibit D**, attached hereto and incorporated herein by reference. These insurance requirements are summarized as follows:

<b>TYPE</b>	<b>SINGLE LIMIT / OCCURRENCE</b>	<b>AGGREGATE</b>	<b>ENDORSEMENTS***</b>
General Liability	\$1,000,000	\$1,000,000	Additional Insured Waiver of Subrogation Primary Non-Contributory
Auto Liability	\$1,000,000 (Sched, Hired, & Non-Owned)		Additional Insured Waiver of Subrogation
Work Comp Employer’s Liability	Statutory \$1,000,000 each		Waiver of Subrogation
Professional Liability/Errors and Omissions	\$2,000,000	\$2,000,000	Requirement extends 3 years past contract expiration



\*\*\*Must be actual endorsements. Typed statements on Certificates of Liability are unacceptable.

This is a summary only. Please refer to the insurance section and/or exhibit of this contract for specific requirements.

Furthermore, Consultant shall certify its compliance with Labor Code Section 3700 in the form attached hereto and incorporated by reference, as **Exhibit E**.

### **30. EVIDENCE OF INSURANCE COMPLIANCE**

Consultant or its insurance broker shall deliver the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage to City. City may designate an insurance certificate processor (“Processor”) to accept and process Consultant’s proof of insurance. Consultant shall deliver copies of the actual insurance policies, renewals, or replacements directly to City or Processor upon their request.

### **31. EMPLOYMENT PRACTICES**

Consultant, by execution of this Contract, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices.

### **32. UNAUTHORIZED ALIENS**

Consultant hereby promises and agrees to comply with all of the provisions of the federal immigration and nationality act (8 U.S.C.A. § 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Contract, and should the federal government impose sanctions against City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys’ fees, incurred by City in connection therewith.

### **33. LICENSES, PERMITS, AND OTHER APPROVALS**

Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature legally required for Consultant to practice its profession and perform the work described herein. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, obtain and/or keep in effect at all times during the term of this Contract any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.





#### **34. RECORDS AND INSPECTION**

Consultant shall maintain records, books, documents and other evidence directly pertinent to the performance of work under this Contract in accordance with generally accepted accounting principles and practices. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

For the purpose of determining compliance with Gov. Code § 8546.7, the Consultant, Subconsultants, and City shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the Contract including, but not limited to, the costs of administering the Contract. 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 Contract period and for three (3) years from the date of final payment under the Contract. City, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Consultant, Subconsultants, and the Consultant's Independent CPA, that are pertinent to the Contract for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

#### **35. AUDIT REVIEW PROCEDURES**

A. Any dispute concerning a question of fact arising under an interim or post audit of this Contract that is not disposed of by Contract, shall be reviewed by City's Finance Director.

B. Not later than thirty (30) calendar days after issuance of the final audit report, Consultant may request a review by City's Finance Director of unresolved audit issues. The request for review shall 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 Contract.

D. Consultant and subconsultant Contracts, including cost proposals and Indirect Cost Rates (ICR), may be 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, City, 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 administrator to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the 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, City 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 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.

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 shall 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 shall become the actual and final ICR for reimbursement purposes under this Contract.

4. Consultant may submit to the 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 Contract has been completed to the satisfaction of the 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 shall apply to this Contract and all other contracts executed between the City and the Consultant, or subconsultant, with the same fiscal period ICR.



### **36. DEBARMENT AND SUSPENSION CERTIFICATION**

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

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

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

3. Does not have a proposed debarment pending; and

4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the 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 List System maintained by the U.S. General Services Administration are to be determined by FHWA.

### **37. DISADVANTAGE BUSINESS ENTERPRISES (DBE) PARTICIPATION**

A. Consultant, City, or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in this 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.

B. 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 at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes or work code applicable to the type of work the firm will perform on the contract. Additionally, the Consultant is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

Consultant has met the DBE Goal for this Project based on Exhibit A, "Scope of Work" and Exhibit C, "Compensation and Method of Payment".



C. 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:

1. 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
3. 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."

D. This Contract is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who enter into a federally-funded Contract shall assist the City in a good faith effort to achieve California's statewide overall DBE goal.

E. The goal for DBE participation for this Contract is 3% for this Project. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in Exhibit 10-O1: Consultant Proposal DBE Commitment , or in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the Contract. 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.

F. Consultant can meet the DBE participation goal by either documenting commitments to DBEs to meet the Contract goal, or by documenting adequate good faith efforts to meet the Contract 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.

G. 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 the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:



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

H. Termination and Replacement of DBE Subconsultants

Consultant shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless Consultant or DBE subconsultant obtains the City's written consent. Consultant shall not terminate or replace a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the 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.

Termination of DBE Subconsultants

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

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



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

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

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

#### Replacement of DBE Subconsultants

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

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

1. Submit a request to replace a DBE with other forces or material sources in writing to the City which must include:
  - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
  - b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
    - Description of scope of work and cost proposal
    - Proposed subcontract agreement and written confirmation of agreement to perform the Contract





- Revised Exhibit 10-O2: Consultant Contract DBE Commitment
2. If Consultant has not identified a DBE replacement firm, submits documentation of Consultant's GFEs to use DBE replacement firms within seven (7) days of City's authorization to terminate the DBE. Consultant may request the City's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, as such:
- Search results of certified DBEs available to perform the original DBE work identified and or other work Consultant had intended to self-perform, to the extent needed to meet DBE commitment
  - Solicitations of DBEs for performance of work identified
  - Correspondence with interested DBEs that may have included contract details and requirements
  - Negotiation efforts with DBEs that reflect why an agreement was not reached
  - If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable for excessive
  - Copies of each DBE's and non-DBE's price quotes for work identified, as the City may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
  - Additional documentation that supports Consultant's GFE

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

#### I. 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:
  - Name and business address of each 1<sup>st</sup>-tier subconsultant
  - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)



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

If a DBE is decertified before completing its work, the DBE must notify Consultant in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify Consultant in writing of the certification date. Consultant shall submit the notifications to the 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.

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

#### J. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the Contract 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 Contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

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

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

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

- Subcontract agreement with the DBE





- Purchase orders
- Invoices
- Proof of payment

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

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

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

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

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

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

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



approval. The City will then authorize the prior noncompliant portion of work for the DBE's committed work.

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

K. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Contract, 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.

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

M. 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.

N. If a DBE subconsultant is decertified during the life of the Contract, 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 Contract, the subconsultant shall notify Consultant in writing with the date of certification. Any changes shall be reported to City's Contract Administrator within thirty (30) calendar days.

O. By the 15th day of the month following the month of any payment(s), the Consultant must submit Exhibit 9-P to the City. If the Consultant does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

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

### **38. 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.



### 39. ASSURANCES

#### APPENDICES A and E

#### APPENDIX A

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

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



not limited to:

- i. withholding of payments to Consultant under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: Consultant shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

## APPENDIX E

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

### **Pertinent Non-Discrimination Authorities:**

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



amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

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

#### **40. MISCELLANEOUS PROVISIONS**

A. Attorneys’ Fees: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Contract, the prevailing party shall be entitled to reasonable attorneys’ fees and all litigation expenses, including, but not limited to expert’s fees and disbursements.

B. Venue: This Contract shall be deemed to be made in, and the rights and liabilities of the Parties, and the interpretation and construction of the Contract governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Contract shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.



C. Enforceability: If any term or provision of this Contract is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Contract shall remain binding.

D. Time: All times stated herein or in any other Contract Documents are of the essence.

E. Binding: This Contract shall bind and inure to the heirs, devisees, assignees and successors in interest of Consultant and to the successors in interest of City in the same manner as if such parties had been expressly named herein.

F. Survivorship: Any responsibility of Consultant for warranties, insurance, indemnity, record-keeping or compliance with laws with respect to this Contract shall not be invalidated due to the expiration, termination or cancellation of this Contract.

G. Construction and Interpretation: Consultant and City agree and acknowledge that the provisions of this Contract have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Contract and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Contract shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Contract.

H. Waiver: The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Contract shall not be deemed a waiver with respect to any subsequent default or other matter.

I. Severability: The invalidity, illegality or unenforceability, of any provision of this Contract shall not render the other provisions invalid, illegal or unenforceable.

J. No Third-Party Beneficiary: It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to City and Consultant. Nothing contained in the agreement shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of City and Consultant that any such person or entity, other than City or Consultant, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.

K. Non-Discrimination/Non-Preferential Treatment Statement: In performing this Contract, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.

L. Authority to Execute: The person or persons executing this Contract on behalf of the Consultant warrant and represent that they have the authority to execute this Contract on behalf of their agency and further warrant and represent that they have the authority to bind Consultant to the performance of its obligations hereunder.



M. Dispute Resolution: Prior to either party commencing any legal action under this Contract, 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 pursue available legal and equitable remedies against the other.

N. Force Majeure: Neither party shall be in default by reason of any failure in the performance of this Contract if such failure arises out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, strikes, freight embargoes, failure of transmission or power supply, mechanical difficulties with equipment which could not have been reasonably forecasted or provided for, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.

**41. ENTIRE CONTRACT**

This instrument and any attachments hereto constitute the entire Contract between City and Consultant concerning the subject matter hereof and supersedes any and all prior oral and written communications between the Parties regarding the subject matter hereof.

AGREED to this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by the Parties as follows:

Approved to as form:

**CONSULTANT**

By: \_\_\_\_\_  
Attorney for Consultant

By: \_\_\_\_\_  
**Name, Title**

Approved as to form:

**CITY OF ELK GROVE**

By: \_\_\_\_\_  
Jonathan P. Hobbs, City Attorney

By: \_\_\_\_\_  
Jason Behrmann, City Manager

Attest to:

By: \_\_\_\_\_  
Jason Lindgren, City Clerk

Dated: \_\_\_\_\_





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## EXHIBIT A

### Scope of Work

Services provided by Consultant shall be on an On-Call basis as requested by the City in writing over the term of the Contract period. Consultant shall perform a task in any one, or a combination of, services within the Consultant's area of expertise as listed below and as requested by City in a written Task Order signed by the City's Public Works Director or authorized representative. The City has no obligation to request any services under this Contract.

A request for services shall be made by City on a project-by-project basis under a Task Order approved by the City specifying a detailed scope of work, schedule, budget and performance measurements. All Task Orders shall be prepared based on the approved schedule of fees stated in this Contract and in accordance with each Task order. On an as needed basis, Consultant shall provide the following on-call services:



City of Elk Grove

***Consultant Name***

Re: On-Call Traffic Engineering and Transportation Services

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## **EXHIBIT B**

### **Schedule of Performance**

Performance shall be in accordance with each individual Task Order as issued.

City of Elk Grove

**Consultant Name**

Re: On-Call Traffic Engineering and Transportation Services



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## EXHIBIT C

### Compensation and Method of Payment

**INSERT HOURLY RATES**

Under no circumstances will the aggregate amount paid under this Contract exceed the amount specified in Section 4A above and if the Contract is approved by the City Manager, all compensation paid to Consultant each year shall meet the cost limitation set forth in City of Elk Grove Municipal Code Chapter 3.42.



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## EXHIBIT D

### Insurance Requirements

Prior to commencement of any work under this Contract, Consultant shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Contract, at its sole cost and expense, policies of insurance as set forth herein. Consultant shall comply with all reporting and other provisions of the policies of insurance as set forth herein including, but not limited to, timely reporting of claims and suits. Further, should Consultant maintain any programs of self-insurance, Consultant shall comply with the applicable fulfillment of any self-insured retentions.

1. General Liability:

- a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:

Each occurrence:	One Million Dollars (\$1,000,000)
Aggregate:	One Million Dollars (\$1,000,000)
- e. The City, its officials, employees, agents and authorized volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of Consultant, products and completed operations of Consultant, premises owned, occupied, or used by Consultant, or automobiles leased, hired, or borrowed by Consultant on a separate endorsement acceptable to the City.
- f. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents, and authorized volunteers for losses arising from work performed by Consultant.
- g. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents, or authorized volunteers.
- h. Provision or endorsement stating that for any claims related to this contract, Consultant's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents, and authorized volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officials, employees, agents, or authorized volunteers shall be in excess of Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.



2. Automobile Liability:

- a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of operation, maintenance, or use of scheduled, hired, and non-owned automobiles.
- b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbols 7, 8, and 9 (schedule, hired, and non-owned) and shall not exclude City-owned vehicles. Consultant's coverage providing symbol 1 (Any Auto) shall be satisfactory
- c. The limits of liability per accident shall not be less than:

Combined Single Limit	One Million Dollars (\$1,000,000)
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- d. The City, its officials, employees, agents and authorized volunteers shall be covered and specifically named as additional insured.
  - e. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents, and authorized volunteers for losses arising from work performed by Consultant.
3. Worker's Compensation:
- a. Worker's Compensation Insurance, with coverage as required by the State of California (unless Consultant is a qualified self-insurer with the State of California or is not required by California law to carry workers' compensation coverage), and Employers Liability coverage. Consultant shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in Exhibit E.
  - b. Employer's Liability Coverage shall not be less than the statutory requirements.
  - c. If an injury occurs to any employee of Consultant for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due Consultant under this Contract, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to Consultant.
  - d. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents, and authorized volunteers for losses arising from work performed by Consultant.



4. Errors and Omissions; Malpractice; Professional Liability:
  - a. Errors and omissions, malpractice, or professional liability insurance sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Contract.
  - b. The limits of liability shall not be less than:

Each occurrence or claim:	Two Million Dollars (\$2,000,000)
Aggregate:	Two Million Dollars (\$2,000,000)
  - c. Both occurrence and claims-made policies are acceptable. Upon termination of this Contract the same insurance requirements in this section will apply for a Three (3) year period following such termination. A “tail” policy may be purchased as an alternative to satisfy this requirement.
5. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII**.
6. Any deductibles, aggregate limits, pending claims or lawsuits that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the City.
7. Consultant shall furnish the City with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Contract. At the written request of the City, Consultant agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
8. The City, due to unforeseen risk or exhaustion, failure, or dilution of Consultant’s insurance coverage, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
9. Consultant shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
10. If Consultant fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance



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procured by the City shall be deducted and retained from any sums due Consultant under the contract.

11. Failure of the City to obtain such insurance shall in no way relieve Consultant from any of its responsibilities under the contract.
12. The making of progress payments to Consultant shall not be construed as relieving Consultant or its Sub-Consultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
13. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
14. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.



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**EXHIBIT E**

**Certificate of Compliance With Labor Code § 3700, Release and Indemnification**

The undersigned, on behalf of and as the duly certified representative of Consultant, certifies as follows:

1. Consultant is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant has complied or will comply with such provisions before commencing the performance of the work of this contract.
2. Should Consultant fail to secure Workers' Compensation coverage as required by the State of California, Consultant shall release, hold harmless, defend and indemnify the City of Elk Grove from and against any damage, liability, claim, cause of action and any other loss, including without limitation, court costs, reasonable attorney's fees and costs resulting from any failure to take and/or maintain Workers' Compensation insurance as required by law. The provisions of this Exhibit shall survive termination, suspension and/or completion of this Contract. It is further understood and agreed that this release and assumption of risk is to be binding on Consultant's successors, heirs and assigns.

CONSULTANT

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

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



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## EXHIBIT F

### Required Forms

The forms and conditions contained in this Exhibit F are hereby incorporated into this Contract by reference. Consultant shall review, complete, and execute the following forms as applicable for the execution of this Contract and/or subsequent Task Orders issued under this Contract and as requested by City.

LAPM = Caltrans Local Assistance Procedures Manual

IOAI = Independent Office of Audits and Investigations.

1. Forms/Documentation Required for Execution of Contract
  - a. Certification of Indirect Costs and Financial Management (IOAI)
  - b. Disclosure of Lobbying Activities (LAPM Exhibit 10-Q)
  - c. Consultant Proposal DBE Commitment (LAPM Exhibit 10-O1)
  - d. Consultant Contract DBE Commitment (LAPM Exhibit 10-O2)
  - e. DBE Information - Good Faith Efforts (LAPM Exhibit 15-H) (if necessary)
  
2. Forms that May Be Requested by the City's Public Works Director or their authorized representative:
  - a. Final Report – Utilization of DBEs (LAPM Exhibit 17-F)
  - b. DBE Certification Status Change (LAPM Exhibit 17-O)
  - c. Indirect cost rate calculations and documentation
  - d. Copies of prior and current CPA indirect cost rate (ICR) audit reports and rate schedules, if any

**\* OTHER FORMS MAY BE REQUIRED BY STATE AND FEDERAL LAW OR FUNDING REQUIREMENTS AND CONSULTANT SHALL BE REQUIRED TO FILL OUT AND SIGN THOSE FORMS IN A TIMELY MANNER AS REQUESTED.**



**Attachment C: Notice to Proposers DBE Information (LAPM Exhibit 10-I)**

**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.

**Attachment D: Consultant Proposal DBE Commitment (LAPM Exhibit 10-01)**

**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 %
<b>Local Agency to Complete this Section</b>		<b>11. TOTAL CLAIMED DBE PARTICIPATION</b>	%
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.		_____ _____ _____ _____
21. Local Agency Representative's Signature _____ 22. Date _____ _____			
23. Local Agency Representative's Name _____ 24. Phone _____ _____			
25. Local Agency Representative's Title _____			
12. Preparer's Signature _____ 13. Date _____ 14. Preparer's Name _____ 15. Phone _____ 16. Preparer's Title _____			

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

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

**INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT**CONSULTANT SECTION

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

LOCAL AGENCY SECTION

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

**Attachment E: Good Faith Effort (LAPM Exhibit 15-H)**

**EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS**

Cost Proposal Due Date \_\_\_\_\_ PE/CE

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

The \_\_\_\_\_ established a Disadvantaged Business Enterprise (DBE) goal of 0.00% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

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

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

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

Publications	Dates of Advertisement

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

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



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

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

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

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

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

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

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

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

Name of Agency/Organization	Method/Date of Contact	Results
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

**Attachment F: Disclosure of Lobbying Activities (LAPM 10-Q)**

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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

**Attachment G: Local Agency Proposer DBE Information (Consultant Contracts) (LAPM Exhibit 10-O2)**

**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
<b>Local Agency to Complete this Section</b>			\$
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.			
			<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>
IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.			
_____ 23. Local Agency Representative's Signature		_____ 24. Date	_____ 15. Preparer's Signature
_____ 25. Local Agency Representative's Name		_____ 26. Phone	_____ 16. Date
_____ 27. Local Agency Representative's Title			_____ 17. Preparer's Name
			_____ 18. Phone
			_____ 19. Preparer's Title

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

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

**INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT**CONSULTANT SECTION

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

LOCAL AGENCY SECTION

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



**Attachment H: Certification of Indirect Costs and Financial Management System form**



# Inspector General

California Department of Transportation

## Certification of Indirect Costs and Financial Management System

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required)

Consultant's Full Legal Name: \_\_\_\_\_

**Important:** Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

### Indirect Cost Rate (ICR):

Combined Rate: \_\_\_\_\_ Or

Home Office Rate: \_\_\_\_\_ and Field Office Rate (if applicable): \_\_\_\_\_

Facilities Capital Cost of Money (if applicable): \_\_\_\_\_

**Fiscal Period:\*** \_\_\_\_\_

\* Fiscal period is annual one year applicable accounting period that the ICR was developed (not the contract period). The ICR is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an ICR(s) for the fiscal period as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the ICR(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31).
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31.
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on the Financial Document Review Request form.

### Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\); 48 CFR Part 31.201-2\(d\); 23 CFR, Chapter 1, Part 172.11\(a\)\(2\)](#); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirements.

**Cost Reimbursements on Contracts:**

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

**All A&E Contract Information:**

- Total participation amount \_\_\_\_\_ on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is \_\_\_\_\_
- Years of consultant’s experience with 48 CFR Part 31 is \_\_\_\_\_
- Identify the type of audits listed below that the consultant has had performed (if applicable):

Cognizant ICR Audit	Local Govt ICR Audit	Caltrans ICR Audit
CPA ICR Audit	Federal Govt ICR Audit	

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the ICR Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name:\*\* \_\_\_\_\_ Title\*\*:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Phone\*\*:

Email\*\*:

\*\*An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: Both prime and subconsultants as parties of a contract must complete their own forms. Caltrans will not process local agency’s invoices until a complete form is accepted and approved by the Independent Office of Audits and Investigations.

**Attachment I: Sample Cost Proposal 1**

**SAMPLE COST PROPOSAL 1**

**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Prime Consultant     Subconsultant     2<sup>nd</sup> Tier Subconsultant

Consultant \_\_\_\_\_

Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_ Date \_\_\_\_\_

**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**LABOR COSTS**

a) Subtotal Direct Labor Costs \_\_\_\_\_

b) Anticipated Salary Increases (see page 2 for calculation) \_\_\_\_\_

c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]** \_\_\_\_\_

**INDIRECT COSTS**

d) Fringe Benefits (Rate: \_\_\_\_\_ )      e) Total Fringe Benefits [(c) x (d)] \_\_\_\_\_

f) Overhead (Rate: \_\_\_\_\_ )      g) Overhead [(c) x (f)] \_\_\_\_\_

h) General and Administrative (Rate: \_\_\_\_\_ )      i) Gen & Admin [(c) x (h)] \_\_\_\_\_

j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)]** \_\_\_\_\_

**FIXED FEE**

k) **TOTAL FIXED FEE [(c) + (j) x fixed fee \_\_\_\_\_ ]** \_\_\_\_\_

**l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)**

Description of Item	Quantity	Unit	Unit Cost	Total

l) **TOTAL OTHER DIRECT COSTS** \_\_\_\_\_

**m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

Subconsultant 1: \_\_\_\_\_

Subconsultant 2: \_\_\_\_\_

Subconsultant 3: \_\_\_\_\_

Subconsultant 4: \_\_\_\_\_

m) **TOTAL SUBCONSULTANTS' COSTS** \_\_\_\_\_

n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]** \_\_\_\_\_

**TOTAL COST [(c) + (j) + (k) + (n)]** \_\_\_\_\_

**NOTES:**

- Key personnel **must** be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

**SAMPLE COST PROPOSAL 1**  
**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**  
 (CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

**1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	<b>5 Year Contract Duration</b>
\$250,000.00	500		\$50.00	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)**

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$50.00	+	2%	=	\$51.00	Year 2 Avg Hourly Rate
Year 2	\$51.00	+	2%	=	\$52.02	Year 3 Avg Hourly Rate
Year 3	\$52.02	+	2%	=	\$53.06	Year 4 Avg Hourly Rate
Year 4	\$53.06	+	2%	=	\$54.12	Year 5 Avg Hourly Rate

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	20.0%		5000	=	1000	Estimated Hours Year 1
Year 2	40.0%		5000	=	2000	Estimated Hours Year 2
Year 3	15.0%		5000	=	750	Estimated Hours Year 3
Year 4	15.0%		5000	=	750	Estimated Hours Year 4
Year 5	100%		5000	=	500	Estimated Hours Year 5
Total	100%		Total	=	5000	

**4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)**

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$50.00		1000	=	\$50,000.00	Estimated Hours Year 1
Year 2	\$51.00		2000	=	\$102,000.00	Estimated Hours Year 2
Year 3	\$52.02		750	=	\$39,015.00	Estimated Hours Year 3
Year 4	\$53.06		750	=	\$39,795.30	Estimated Hours Year 4
Year 5	\$54.12		500	=	\$27,060.80	Estimated Hours Year 5
	Total Direct Labor Cost with Escalation			=	\$257,871.10	
	Direct Labor Subtotal before Escalation			=	\$250,000.00	
	Estimated total of Direct Labor Salary Increase			=	\$7,871.10	Transfer to Page 1

**NOTES:**

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable.  
(i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

SAMPLE COST PROPOSAL 1

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: \_\_\_\_\_ Title \*: \_\_\_\_\_

Signature : \_\_\_\_\_ Date of Certification (mm/dd/yyyy): \_\_\_\_\_

Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract: