

COUNTY OF SACRAMENTO
MUNICIPAL SERVICES AGENCY

**AGREEMENT FOR
TITLE**

THIS AGREEMENT is made and entered into on _____, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and _____ name of contracting party and nature of entity _____ hereinafter referred to as "CONSULTANT."

RECITALS

WHEREAS, for _____ (name of project) _____, COUNTY has been awarded funding from the _____ name the federal funding source) _____; and

WHEREAS, on _____ (date) _____, COUNTY _____ (describe RFQ/P Process, publication dates and due dates, etc.) _____; and

WHEREAS, COUNTY selected CONSULTANT from among the respondents to the aforementioned RFP on the basis of CONSULTANT'S qualifications and experience to provide the required services and then negotiated with CONSULTANT to determine compensation; and

WHEREAS, COUNTY established an Underutilized Disadvantaged Business Enterprise (UDBE) goals for this project in the RFP of _____ (list goals) _____, and CONSULTANT is _____ (describe accomplishment or good faith efforts) _____; and

WHEREAS, CONSULTANT has proposed to provide the requested services for the compensation to be provided herein; and

WHEREAS, the services to be provided by CONSULTANT for the subject project are not services provided by county employees and, therefore, not subject to the requirements of Sacramento County Charter Section 71-J; and

WHEREAS, the services to be provided by CONSULTANT are authorized by Government Code Section 31000; and

WHEREAS, pursuant to Sacramento County Code section 2.61.440, the department or agency which has authority to execute this Agreement on behalf of COUNTY has authority to amend this Agreement so as to increase the maximum payment amount, provided that such increase does not exceed the lesser of ten percent (10%) of the annual payment amount or \$20,000.

WHEREAS, COUNTY and CONSULTANT desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CONSULTANT agree as follows:

1. **SCOPE OF SERVICES**

CONSULTANT shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

2. **TERM**

This Agreement shall be effective and commence as of the date first written above and shall remain in effect until all services covered by this Agreement are completed, which is estimated to be **DATE**. COUNTY'S Director is authorized to amend this Agreement with CONSULTANT to extend the term.

3. **NOTICE**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

To COUNTY:

Attn: Project Manager
Address

To CONSULTANT:

Attn:
Firm Name
Address

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

4. **COMPLIANCE WITH LAWS AND WITH FEDERAL FUNDING**

CONSULTANT shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances, including but not limited to those requirements set forth in Exhibit D attached hereto and incorporated herein by this reference.

5. **GOVERNING LAWS AND JURISDICTION**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

6. **LICENSES AND PERMITS**

CONSULTANT shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.

7. **PREVAILING WAGES**

CONSULTANT shall comply with the provisions of the California Labor Code, specifically, but not limited to, Chapter 1, commencing at Section 1720, of Part 7 of Division 2 (payment of prevailing wages). The prevailing rates for per diem wages shall be those rates determined by the Director of the California Department of Industrial Relations.

8. PERFORMANCE STANDARDS

CONSULTANT shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to CONSULTANT'S services.

9. OWNERSHIP OF WORK PRODUCT

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONSULTANT provided hereunder shall be the exclusive property of COUNTY and shall be delivered to COUNTY upon completion of the services authorized hereunder. CONSULTANT may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by COUNTY. COUNTY recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of CONSULTANT'S services and are not designed for use other than what is intended by this Agreement.

10. STATUS OF CONSULTANT

OPTION 1

- 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. CONSULTANT'S assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. COUNTY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of this Agreement; and as an independent contractor, CONSULTANT hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
- B. It is further understood and agreed by the parties hereto that CONSULTANT in the performance of its obligation hereunder is subject to the control or direction of COUNTY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONSULTANT for accomplishing the results.
- C. If, in the performance of this Agreement, any third persons are employed by CONSULTANT, such person shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONSULTANT, and the COUNTY shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of COUNTY, neither the CONSULTANT nor CONSULTANT'S assigned personnel shall have any entitlement as a COUNTY employee, right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligation whatsoever. CONSULTANT shall not be covered by worker's compensation; nor shall CONSULTANT be entitled to compensated sick

leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the COUNTY to employees of the COUNTY.

- E. It is further understood and agreed that CONSULTANT must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONSULTANT'S assigned personnel under the terms and conditions of this Agreement.

OPTION 2

- 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. CONSULTANT'S assigned personnel shall not be entitled to any benefits payable to employees of COUNTY as an independent contractor, CONSULTANT hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
- B. It is further understood and agreed by the parties hereto that CONSULTANT in the performance of its obligation hereunder is subject to the control or direction of COUNTY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONSULTANT for accomplishing the results.
- C. If, in the performance of this Agreement, any third persons are employed by CONSULTANT, such person shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONSULTANT, and the COUNTY shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of COUNTY, neither the CONSULTANT nor CONSULTANT'S assigned personnel shall have:
 - (1) Any entitlement as a COUNTY employee.
 - (2) Except as otherwise provided by this Agreement, the right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligation whatsoever.
 - (3) CONSULTANT shall not be covered by worker's compensation; nor shall CONSULTANT be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the COUNTY to employees of the COUNTY.
- E. Notwithstanding CONSULTANT'S status as an independent contractor, COUNTY shall withhold from payments made to CONSULTANT such sums as

are required to be withheld from employees by the Federal Internal Revenue Code; the Federal Insurance Compensation Act; the State Personal Income Tax Law and the State Unemployment Insurance Code; provided, however, that said withholding is for the purpose of avoiding COUNTY'S liability under said laws and does not abrogate CONSULTANT'S status as an independent contractor as described in this Agreement. Further, CONSULTANT is not included in any group covered by COUNTY'S present agreement with the federal Social Security Administration.

OPTION 3

- F. Notwithstanding subparagraphs (A) and (E), it is further understood and agreed that COUNTY shall withhold seven percent (7%) of all income paid to CONSULTANT under this agreement for payment and reporting to the California Franchise Tax Board because CONSULTANT does not qualify as (1) a corporation with its principal place of business in California, (2) a partnership with a permanent place of business in California, (3) a corporation qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

11. CONSULTANT IDENTIFICATION

CONSULTANT shall provide the COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.160: CONSULTANT'S name, address, telephone number, social security number, and whether dependent health insurance coverage is available to CONSULTANT.

12. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS

- A. CONSULTANT shall comply with all applicable state, federal and local laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California State Family Code and Chapter 2.160 of the Sacramento County Code. CONSULTANT shall comply with all earnings assignment orders with respect to its employees and shall provide the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- B. Failure to comply with state and federal reporting requirements regarding CONSULTANT'S employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment shall constitute a default under this Agreement. Failure to cure such default within 90 days of notice by the COUNTY shall be grounds for termination of this Agreement.

13. BENEFITS WAIVER

If CONSULTANT is unincorporated, CONSULTANT acknowledges and agrees that CONSULTANT is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the

Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should CONSULTANT or any employee or agent of CONSULTANT seek to obtain such benefits from COUNTY, CONSULTANT agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

14. CONFLICT OF INTEREST

CONSULTANT and CONSULTANT'S officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

15. LOBBYING AND UNION ORGANIZATION ACTIVITIES

A. CONSULTANT shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.

B. If services under this Agreement are funded with state funds granted to COUNTY, CONSULTANT shall not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and shall comply with the provisions of Government Code Sections 16645 through 16649.

16. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

A. CONSULTANT agrees and assures COUNTY that CONSULTANT and any subconsultants shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONSULTANT shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.

B. CONSULTANT represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code § 12900 et seq.), and regulations and guidelines issued pursuant thereto.

C. CONSULTANT agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.

D. CONSULTANT shall include this nondiscrimination provision in all subcontracts related to this Agreement.

17. INDEMNIFICATION

For work or services provided under this Agreement, CONSULTANT shall indemnify, defend, and hold harmless the COUNTY OF SACRAMENTO, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of this Agreement, but only to the extent of the negligent acts, errors, omissions, recklessness or willful misconduct on the part of the CONSULTANT or the CONSULTANT'S subconsultants or subcontractors.

18. INSURANCE

Without limiting CONSULTANT'S indemnification, CONSULTANT shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance as specified in Exhibit B. It is the responsibility of CONSULTANT to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit B. It is understood and agreed that COUNTY shall not pay any sum to CONSULTANT under this Agreement unless and until COUNTY is satisfied that all insurance required by this Agreement is in force at the time services hereunder are rendered. Failure to maintain insurance as required in this agreement may be grounds for material breach of contract.

19. INFORMATION TECHNOLOGY ASSURANCES

CONSULTANT shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONSULTANT in the performance of services under this Agreement, other than those owned or provided by COUNTY, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to COUNTY under this Agreement.

20. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS

- A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit C, or Exhibit C as modified by COUNTY in accordance with express provisions in this Agreement.
- B. CONSULTANT shall submit an invoice in accordance with the procedures prescribed by COUNTY on a monthly basis for services performed during the previous month. Invoices shall be submitted to COUNTY no later than the fifteenth (15th) day following the invoice period, and COUNTY shall pay CONSULTANT within thirty (30) days after receipt of an appropriate and correct invoice.
- C. CONSULTANT shall maintain for four years following termination of this agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.
- D. In the event CONSULTANT fails to comply with any provisions of this Agreement, COUNTY may withhold payment until such non-compliance has been corrected.

21. SUBCONTRACTS, ASSIGNMENT

- A. CONSULTANT shall obtain prior written approval from COUNTY before subcontracting any of the services delivered under this Agreement. CONSULTANT remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONSULTANT shall be held responsible by COUNTY for the performance of any subconsultant whether approved by COUNTY or not.
- B. This Agreement is not assignable by CONSULTANT in whole or in part, without the prior written consent of COUNTY.

22. AMENDMENT AND WAIVER

- A. Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.
- B. This Agreement may be amended to increase the maximum payment amount; provided, however, that such increase shall not exceed the lesser of ten percent (10%) of the annual payment amount under this Agreement or \$20,000.

23. SUCCESSORS

This Agreement shall bind the successors of COUNTY and CONSULTANT in the same manner as if they were expressly named.

24. TIME

Time is of the essence of this Agreement.

25. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

26. DIRECTOR

As used in this Agreement, "Director" shall mean the Director of the Department of Transportation, or his/her designee.

27. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, CONSULTANT shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. COUNTY shall not be required to make payments for any services that are the subject of this dispute resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may

pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

28. TERMINATION

- A. COUNTY may terminate this Agreement without cause upon 14 days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by COUNTY to CONSULTANT and it is later determined that CONSULTANT was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. COUNTY may terminate this Agreement for cause immediately upon giving written notice to CONSULTANT should CONSULTANT materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If notice of termination for cause is given by COUNTY to CONSULTANT and it is later determined that CONSULTANT was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
- C. COUNTY may terminate or amend this Agreement immediately upon giving written notice to CONSULTANT, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof, including if distribution of such funds to the County is suspended or delayed; 2) if funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State; 3) if funds in COUNTY's yearly proposed and/or final budget are not appropriated by COUNTY for this Agreement or any portion thereof; or 4) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by COUNTY as a result of mid-year budget reductions.
- D. If this Agreement is terminated by COUNTY under paragraph (A) or (C) above:
 - 1. CONSULTANT shall cease rendering services pursuant to this Agreement as of the termination date.
 - 2. CONSULTANT shall deliver to COUNTY copies of all writings prepared pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, drawings, blueprints, printing, electronic media, photostating, photographing, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
 - 3. CONSULTANT shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that CONSULTANT can legally cancel.

- E. If this Agreement is terminated under paragraphs (A) or (C), above, CONSULTANT shall be paid for authorized and approved services performed prior to the termination date in accordance with the provisions of the Compensation and Payment of Invoices Limitations provision of this Agreement.
- F. The Director has authority to terminate this Agreement under paragraphs (A), (B), or (C), above.

29. REPORTS

CONSULTANT shall, without additional compensation therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by DIRECTOR concerning CONSULTANT'S activities as they affect the contract duties and purposes herein. COUNTY shall explain procedures for reporting the required information.

30. AUDITS AND RECORDS

Upon COUNTY'S request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at CONSULTANT'S premises, CONSULTANT'S financial and program records as COUNTY deems necessary to determine CONSULTANT'S compliance with legal and contractual requirements and the correctness of claims submitted by CONSULTANT. CONSULTANT shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon COUNTY'S request at COUNTY'S expense. COUNTY shall have the right to withhold any payment under this Agreement until CONSULTANT has provided access to CONSULTANT'S financial and program records related to this Agreement.

31. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between COUNTY and CONSULTANT regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CONSULTANT regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

32. SEVERABILITY

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

33. FORCE MAJEURE

Neither CONSULTANT nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

34. SURVIVAL OF TERMS

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

35. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

36. COUNTERPARTS

This Agreement may be executed in counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

COUNTY OF SACRAMENTO, a political subdivision of the State of California

Name of CONSULTANT, type of business

By: _____
Michael J. Penrose, Director
Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____

Date: _____

Signed by the Director under the authority delegated by Resolution Number 99-0327.

Agreement approved by Board of Supervisors:

Agenda Date: _____

Item Number: _____

Compliance with Charter Section 71-J:

Resolution No.: _____

Contract and Consultant Tax Status Reviewed and Approved by County Counsel

By: _____
Deputy County Counsel

Date: _____

Prepared by: _____
_____, Administrative Services Officer II
Contract Services Section / Accounting & Fiscal Services
Sacramento County Municipal Services Agency
Phone: (916) _____

insert file name/path

EXHIBIT A to Agreement

SCOPE OF SERVICES

1. REQUEST FOR PROPOSAL AND CONSULTANT'S PROPOSAL

use appropriate option and revise accordingly

A. The scope of services to be provided by this Agreement consists of those services set forth in CONSULTANT'S Proposal dated _____ attached hereto as Attachment 1 and incorporated herein by this reference. In the event of any conflict, inconsistency or ambiguity between this Agreement and the Proposal, this Agreement shall govern. CONSULTANT agrees to perform all services stated in this Agreement for the compensation described herein.

OR

A. The scope of services to be provided by this Agreement are those services identified in COUNTY'S Request for Proposal (RFP) dated _____, and CONSULTANT'S Proposal dated _____. Both the RFP and the Proposal are hereby incorporated into this Agreement as Attachments 1 and 2, respectively, and made a part of this Agreement. In the event of any inconsistencies or ambiguities, the Proposal shall govern over the RFP, and this Agreement shall govern over all. CONSULTANT agrees to perform all services stated in this Agreement for the compensation described herein.

AND

B. The COUNTY'S Director or designee, may negotiate with CONSULTANT and approve reasonable modifications in tasks, work products, schedules, milestones, and staff assignments so long as such modifications are within the general scope of services provided under this Agreement, do not exceed the Maximum Total Payment Amount, and are determined to be in the best interest of COUNTY.

2. SCHEDULE

CONSULTANT shall complete the services in an expeditious manner and transmit all applicable materials to the COUNTY as stated in the _____ or as mutually adjusted with COUNTY'S Project Manager.

OR

CONSULTANT shall perform the services in an expeditious manner in accordance with a mutually acceptable schedule developed between COUNTY and CONSULTANT.

3. RESPONSIBILITIES OF COUNTY AND CONSULTANT FOR SCOPE

A. COUNTY, or its authorized representatives, shall review all documents submitted by CONSULTANT and render decisions pertaining thereto as promptly as is reasonable under the circumstances at the time in order to avoid unreasonable delay of the progress of CONSULTANT. COUNTY shall furnish information and services as required by this Agreement and shall render approvals and decisions as expeditiously as is reasonably necessary under the circumstances at the time for the orderly progress of the CONSULTANT'S services and of the project.

B. CONSULTANT shall be solely responsible for the quality and accuracy of its work and the work of its subconsultants performed in connection with this Agreement. Any review, approval, or concurrence therewith by the COUNTY

shall not be deemed to constitute acceptance or waiver by the COUNTY of any error or omission as to such work. CONSULTANT shall coordinate the activities of any subconsultants and is responsible to ensure that all plans, drawings, and specifications are coordinated and interface with the other applicable plans, drawings, and specifications to produce a unified, workable, and acceptable whole functional product.

4. AUTHORITY OF CONSULTANT PERFORMING SCOPE OF WORK

CONSULTANT is retained to provide and perform the scope of services covered by this Agreement. CONSULTANT, including CONSULTANT'S assigned personnel, shall have no authority to represent COUNTY or COUNTY staff at any meetings of public or private agencies unless an appropriate COUNTY official provides prior written authorization for such representation which outlines the purpose, scope and duration of such representation. CONSULTANT shall possess no authority or right to act on behalf of COUNTY in any capacity whatsoever as agent, nor to bind COUNTY to any obligations whatsoever. COUNTY is responsible for making all policy and governmental decisions related to the work covered by this Agreement.

5. PUBLICATION OF DOCUMENTS AND DATA

CONSULTANT shall not publish, or disclose to any third party, documents, data, or any confidential information relative to the work of the COUNTY without the prior written consent of COUNTY, however, submission or distribution to meet official regulatory requirements, or for other purposes authorized by this Agreement, shall not be construed as publication in derogation of the rights of either the COUNTY or CONSULTANT.

6. PROJECT PERSONNEL

In the performance of the services hereunder, CONSULTANT shall provide the personnel as set forth in the Proposal. Any change in such personnel or reassignment in their project responsibilities must be agreed to in writing by the Director or his authorized representative before any such change may be made. Key contacts for this project shall be as follows:

COUNTY: NAME:
 PHONE:
 FAX:
 E-MAIL:

CONSULTANT: NAME:
 PHONE:
 FAX:
 E-MAIL:

EXHIBIT B to Agreement

**COUNTY OF SACRAMENTO
INSURANCE REQUIREMENTS**

Without limiting CONSULTANT'S indemnification, CONSULTANT shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by CONSULTANT, its agents, representatives or employees. COUNTY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of COUNTY Risk Manager, insurance provisions in these requirements do not provide adequate protection for COUNTY and for members of the public, COUNTY may require CONSULTANT to obtain insurance sufficient in coverage, form and amount to provide adequate protection. COUNTY'S requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

1. Verification of Coverage

CONSULTANT shall furnish COUNTY with certificates evidencing coverage required below. **Copies of required endorsements must be attached to the certificates provided.** COUNTY Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of COUNTY and general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by COUNTY before performance commences. COUNTY reserves the right to require that CONSULTANT provide complete, certified copies of any policy of insurance including endorsements offered in compliance with these specifications.

2. Minimum Scope of Insurance

Coverage shall be at least as broad as:

GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by COUNTY Risk Manager.

AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 00 01. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply. Personal Lines automobile insurance shall apply if vehicles are individually owned.

WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.

PROFESSIONAL LIABILITY or Errors and Omissions Liability insurance appropriate to CONSULTANT'S profession.

ENVIRONMENTAL IMPAIRMENT LIABILITY (POLLUTION LIABILITY): Insurance which includes coverage for the clean-up and remediation of the CONTRACTOR'S facility to which this Agreement applies. keep/delete as appropriate

UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

3. Minimum Limits of Insurance *These are standard limits; limits will be increased for special risk projects such as bridges, work near railroads, explosives, etc.*

CONSULTANT shall maintain limits no less than:

General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

General Aggregate:	\$2,000,000
Products Comp/Op Aggregate:	\$2,000,000
Personal & Adv. Injury:	\$1,000,000
Each Occurrence:	\$1,000,000
Fire Damage:	\$ 100,000

Building Trades CONSULTANTS and CONSULTANTS engaged in other projects of construction shall have their general liability Aggregate Limit of Insurance endorsed to apply separately to each job site or project, as provided for by Insurance Services Office form CG-2503 Amendment-Aggregate Limits of Insurance (Per Project). keep/delete as appropriate

Automobile Liability:

- a. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$1,000,000 Combined Single Limit.
- b. Personal Lines Automobile Liability for Individually owned vehicles, \$250,000 per person, \$500,000 each accident, \$100,000 property damage.

Workers' Compensation: Statutory.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Professional Liability or Errors and Omissions Liability: \$1,000,000 per claim and aggregate.

4. Deductibles and Self-Insured Retention

Any deductible or self-insured retention that apply to any insurance required by this Agreement must be declared and approved by COUNTY.

5. Claims Made Professional Liability Insurance

If professional liability coverage is written on a Claims Made form:

- a. The "Retro Date" must be shown, and must be on or before the date of the Agreement or the beginning of Agreement performance by CONSULTANT.
- b. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the Agreement.
- c. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, CONSULTANT must purchase "extended reporting" coverage for a minimum of one (1) year after completion of the Agreement.

6. Other Insurance Provisions

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provisions:

7. All Policies:

- a. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII. COUNTY Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of COUNTY and the general public are adequately protected.
- b. MAINTENANCE OF INSURANCE COVERAGE: CONSULTANT shall maintain all insurance coverages and limits in place at all times and provide COUNTY with evidence of each policy's renewal ten (10) days in advance of its anniversary date.

CONSULTANT is required by this Agreement to immediately notify COUNTY if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. CONSULTANT shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

8. Commercial General Liability and/or Commercial Automobile Liability:

- a. ADDITIONAL INSURED STATUS: COUNTY, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds 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 owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no endorsed limitations on the scope of protection afforded to COUNTY, its officers, directors, officials, employees, or volunteers.
- b. CIVIL CODE PROVISION: Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

- c. PRIMARY INSURANCE: For any claims related to this agreement, CONSULTANT'S insurance coverage shall be endorsed to be primary insurance as respects COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, directors, officials, employees, or volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it.
- d. SEVERABILITY OF INTEREST: CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. SUBCONTRACTORS: CONSULTANT shall be responsible for the acts and omissions of all its subcontractors and additional insured endorsements as provided by CONSULTANT'S subcontractor.

9. Professional Liability:

PROFESSIONAL LIABILITY PROVISION: Any professional liability or errors and omissions policy required hereunder shall apply to any claims, losses, liabilities, or damages, demands and actions arising out of or resulting from professional services provided under this Agreement.

10. Workers' Compensation:

WORKERS' COMPENSATION WAIVER OF SUBROGATION: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against COUNTY, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by CONSULTANT. Should CONSULTANT be self-insured for workers' compensation, CONSULTANT hereby agrees to waive its right of subrogation against COUNTY, its officers, directors, officials, employees, agents or volunteers.

11. Property *keep/delete as appropriate*

COURSE OF CONSTRUCTION (COC) WAIVER OF SUBROGATION: Any Course of Construction (COC) policies maintained by CONSULTANT in performance of the Agreement shall contain the following provisions:

- a. COUNTY shall be named as loss payee.
- b. The insurer shall waive all rights of subrogation against COUNTY.

INLAND MARINE WAIVER OF SUBROGATION: Any Inland Marine insurance policies maintained by CONSULTANT in performance of the Agreement shall be endorsed to state that the insurer shall waive all rights of subrogation against COUNTY.

12. Notification of Claim

If any claim for damages is filed with CONSULTANT or if any lawsuit is instituted against CONSULTANT, that arise out of or are in any way connected with CONSULTANT'S performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect COUNTY, CONSULTANT shall give prompt and timely notice thereof to COUNTY. Notice shall be prompt and timely if given within

Contract No.

thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

EXHIBIT C to Agreement

COMPENSATION

1. MAXIMUM PAYMENT TO CONSULTANT

The Maximum Total Payment Amount under this Agreement is \$ [REDACTED].

2. COST PLUS FIXED FEE

- A. Compensation for services rendered under this Agreement shall be paid as costs not to exceed \$ [REDACTED] plus a fixed fee of \$ [REDACTED] for a total of \$ [REDACTED] as set forth in CONSULTANT'S [REDACTED] dated [REDACTED] attached hereto as Attachment [REDACTED] and incorporated herein by this reference.
- B. The method of payment for this Agreement will be actual cost-plus-a fixed fee. COUNTY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in the performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in CONSULTANT'S Cost Proposal attached hereto as Attachment [REDACTED] and incorporated herein by this reference, unless additional reimbursement is provided for by formal written amendment to this Agreement. In no event will CONSULTANT be reimbursed for overhead costs at a rate that exceeds the overhead rate listed in CONSULTANT'S Cost Proposal. In the event that COUNTY determines a change to the work from that specified in CONSULTANT'S Cost Proposal and this Agreement is required, the time and/or actual costs reimbursable by COUNTY shall be adjusted by formal amendment to accommodate the changed work. The maximum total payment amount stated herein shall not be exceeded unless authorized by amendment.
- C. In addition to the allowable incurred costs as stated above, COUNTY will pay CONSULTANT a fixed fee in the amount stated above. The fixed fee is nonadjustable for the term of the Agreement except in the event of a significant change in the scope of work, and such adjustment shall be made by amendment to this Agreement.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the Cost Proposal.
- E. When milestone cost estimates are included in the Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from COUNTY'S Project Manager before exceeding such cost estimate.
- F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT'S fixed fee will be invoiced and included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in this Agreement, COUNTY may delay payment and/or terminate this Agreement in accordance with the Termination provision of this Agreement.

- G. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.
- H. Salary increases will be reimbursable if the new salary is within the salary range identified in the Cost Proposal. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.
- I. All of CONSULTANT’S subcontracts in excess of \$25,000.00 shall contain the foregoing compensation provisions.
- J. CONSULTANT shall, on all invoices submitted under this Agreement, provide a summation of all tasks and cost-plus-fixed fee compensation. For example:

COSTS					
Previously Invoiced					
CONSULTANT NAME					
Labor	Title	Hours	Rate	Total	
Total This Invoice					
Subconsultants – Names					
Total Subconsultants This Invoice					
Other Direct Costs					
Total Other Direct Costs This Invoice					
Amount Due This Invoice					
Total Invoiced to Date					
Budget: \$list maximum costs					
FIXED FEE					
Fixed Fee Previously Invoiced					
Fixed Fee This Invoice					
Cumulative Fee Earned Through This Period					
Fixed Fee Maximum: \$list maximum fixed fee					
TOTAL INVOICED TO DATE					
TOTAL BUDGET					\$list maximum payable
BUDGET AVAILABLE					

3. ITEMIZED TASKS AND SUBTASKS

If CONSULTANT’S Proposal contains a schedule of tasks or subtasks with identified levels of effort such as estimated hours and/or estimated costs, or identifiable work products, milestones, or other events, then compensation for these individual tasks or

activities shall not exceed the identified estimate or other limiting factors without the written approval of COUNTY'S Project Manager. CONSULTANT shall promptly notify COUNTY'S Project Manager in writing of any tasks, subtasks, work products, or milestones that need to be reevaluated and indicate the reason and/or justification for such reevaluation. COUNTY'S Project Manager is authorized to negotiate adjustments of individual tasks so long as the work is within the general scope of the project and the total compensation does not exceed the Maximum Total Payment Amount under this Agreement listed above.

4. WORK NOT IN SCOPE OF SERVICES

CONSULTANT shall immediately notify the COUNTY'S Project Manager in writing of any work that the COUNTY requests to be performed that CONSULTANT believes is outside of the original scope of work covered by this Agreement. If it is determined that said request is outside of the scope of work, such work shall not be performed unless and until the Director approves such request in writing and authorizes the use of any contingency funds for such work, or an amendment providing for an adjustment in CONSULTANT'S compensation is approved and executed by both parties.

5. NOTIFICATION OF 75% EXPENDITURE OF COMPENSATION

CONSULTANT shall notify COUNTY'S Project Manager in writing upon expenditure of seventy-five percent (75%) of the authorized Agreement amount. Such notice shall identify the percentage of funds expended, the percentage of work completed, an explanation of any variation between these two (2) percentages, and an assessment of the cost of the remaining work to be performed.

6. SUBMISSION OF INVOICES

CONSULTANT shall address and submit all invoices associated with this Agreement by U.S. mail or personal delivery to COUNTY at the address in the Notice provision of this Agreement. CONSULTANT shall include the following information on all invoices:

1. Contract Number
2. Project Name
3. Date of Invoice Submission
4. Time Period Invoice Covers
5. Services Provided and Respective Compensation Requested
6. Any other information deemed necessary by CONSULTANT and/or COUNTY.

7. PAYMENTS

In accordance with the Compensation and Payment of Invoices Limitations provision of this Agreement, COUNTY shall address and submit payments to CONSULTANT at address in the Notice provision of this Agreement.

Exhibit D to Agreement

FEDERAL FUNDING REQUIREMENTS

1. COMPLIANCE WITH FEDERAL REQUIREMENTS

CONSULTANT shall comply with all applicable requirements of the below-listed funding sources, as well as all other applicable requirements related to COUNTY'S receipt of federal funding for the project, including, but not limited to, the below-listed requirements.

2. FUNDING SOURCE(S)

A. COUNTY has requested federal funding for this project under _____ (for example: 117 USC 23 and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, specifically the High Priority Projects (HPP) Program and the Regional Surface Transportation Research, Development, and Deployment (STRRD) Program.)

B. It is mutually understood by COUNTY and CONSULTANT that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

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

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

3. DISADVANTAGED BUSINESS ENTERPRISES (DBEs)

A. An underutilized DBE participation goal of _____ percent (____%) has been established for performance of this Agreement.

B. CONSULTANT shall comply with the following as required by 49 CFR Part 26.13, and each contract CONSULTANT signs with a subcontractor shall include the following assurance:

The contractor [CONSULTANT], sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor [CONSULTANT] shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor [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 [COUNTY] deems appropriate.

C. COUNTY'S Notice to Proposers, Disadvantaged Business Enterprise Information, is attached hereto as Attachment _____ and incorporated herein by this reference. The terms "Agency" and "Proposer" in said attachment shall be deemed to refer to

COUNTY and CONSULTANT, respectively. (Use CalTrans LAPM Exhibit 10-I, which should have been modified w/County info and attached to the RFP.)

- D. CONSULTANT shall comply with the provisions of State of California Department of Transportation Local Assistance Procedures Manual Exhibit 10-J, Standard Agreement for Subcontractor/DBE Participation, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference. The terms, "Agency" and "Contractor" in said attachment shall be deemed to refer to COUNTY and CONSULTANT, respectively.
- E. CONSULTANT has accomplished _____% participation as evidenced by CONSULTANT'S completed Sacramento County – Proposer DBE Information (Consultant Contracts) form, a copy of which is attached hereto as Attachment _____ and incorporated herein by this reference. CONSULTANT shall maintain the minimum stated _____% participation, unless COUNTY consents in writing to a lessening of this percentage. (Use CalTrans LAPM Exhibit 10-01 and/or 10-02 as completed by the consultant as part of the RFP process.)

4. CALTRANS POST-AWARD AUDIT REQUIREMENTS

CONSULTANT'S Scope of Work Proposal and Cost Proposal are subject to a post-award audit. After any post-award audit recommendations are received, CONSULTANT'S Proposal shall be adjusted by CONSULTANT and approved by COUNTY to conform to the audit recommendations. CONSULTANT agrees that individual items of cost identified in the audit report may be incorporated into the Agreement at COUNTY'S sole discretion. Refusal by CONSULTANT to incorporate the post-award or interim audit recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.

5. COST PRINCIPLES

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Notwithstanding the requirements of Paragraph _____ of this Agreement to retain records for four years following termination of the Agreement, CONSULTANT shall retain all records under this Agreement for such longer period as may be required to comply with 49 CFR 18.36(i)(11), which requires retention for three years after COUNTY has made final payment and all other pending matters concerning the project are closed.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to COUNTY.
- D. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions of this paragraph.

6. NO COMMISSION, BROKERAGE, OR CONTINGENT FEE

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

7. STATE AND FEDERAL AUDITS AND REVIEW OF RECORDS

A. For the purpose of determining compliance with Public Contract Code 10115, et seq, and title 21, California Code of Regulations, Chapter 21, Section 2500 et seq, when applicant, and other matters connected with the performance of this Agreement pursuant to Government Code 8546.7, CONSULTANT, subcontractors and COUNTY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement term and for three years from the date of final payment under the Agreement.

B. The State of California, California State Auditor, Federal Highway Administration (FHWA) or any duly authorized representative of the federal government having jurisdiction under federal laws or regulations (including the financing of this Agreement, in whole or in part, with federal funds) shall have access to any books, records, and documents of the CONSULTANT that are pertinent to this Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

C. All subcontracts in excess of \$25,000 shall contain all the provisions of this paragraph.

8. INSPECTION OF WORK

CONSULTANT and any subcontractor shall permit COUNTY, the state, and the FHWA (if federal participating funds are used in this Agreement) to review and inspect the project activities and files at all reasonable times during the performance of this Agreement, including review and inspection on a daily basis.

9. SAFETY

A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by COUNTY. CONSULTANT personnel shall wear hard hats and safety vests at all time while working on the construction project site.

B. Pursuant to the authority contained in Vehicle Code Section 591, COUNTY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all the requirements set forth in Vehicle Code Divisions 11, 12, 13, 14, and 15. CONSULTANT shall take all reasonably

necessary precautions for safe operation of its vehicles and the protection of the traveling public from any injury and damage from such vehicles.

C. All subcontracts shall contain all the provisions of this paragraph.

10. CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR

A. If claims are filed by COUNTY'S construction contractor relating to work performed by CONSULTANT, and additional information or assistance from CONSULTANT is required to evaluate or defend against such claims, CONSULTANT agrees to make its personnel available for consultation with COUNTY and for testimony, if necessary, at depositions and at trial or other hearing proceedings.

B. CONSULTANT'S personnel that COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from COUNTY. Consultation or testimony will be reimbursed at the same rates, including travel costs, paid to CONSULTANT under this Agreement.

C. Services of CONSULTANT in connection with COUNTY'S construction contractor claims will be performed pursuant to a written amendment, if necessary, to finally resolve the claims.

D. All subcontracts in excess of \$25,000 shall contain all of the provisions of this paragraph.

11. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 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.

12. NONDISCRIMINATION COMPLIANCE

CONSULTANT'S signature on this Agreement shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2 of the California Administrative Code Section 8103.

13. DEBARMENT AND SUSPENSION CERTIFICATION

A. CONSULTANT'S signature on this Agreement shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that CONSULTANT or any person associated with CONSULTANT in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency, has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years, does not have a proposed debarment pending, and has not been indicted convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any

matter involving fraud or official misconduct within the past three years. Any exceptions to this certification must be disclosed to COUNTY.

- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. CONSULTANT will include this provision without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where a bidder/offeree/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to its solicitation/proposal.

14. CONFLICT OF INTEREST

- A. CONSULTANT shall disclose to COUNTY any financial, business or other relationship that may have an impact upon the outcome of this Agreement or any ensuing COUNTY construction project. CONSULTANT shall also disclose current clients who may have a financial interest in the outcome of this Agreement or any ensuing COUNTY construction project.
- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire, any financial or business interest that would conflict with the performance of services under this Agreement.
- C. All subcontracts in excess of \$25,000 shall contain all the provisions of this paragraph.
- D. CONSULTANT hereby certifies that neither CONSULTANT nor any firm affiliated with CONSULTANT will bid on any construction contract or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one which is subject to the control of the same persons through joint ownership or otherwise.
- E. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this Agreement shall be eligible to bid on any construction contract or any contract to provide construction inspection for any construction project resulting from this Agreement.

15. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

16. PROHIBITION OF EXPENDING FUNDS FOR LOBBYING

(Required for contracts that exceed \$100,000.)

- A. CONSULTANT certifies to the best of its knowledge and belief that:

- 1) No state, federal or COUNTY appropriated funds have been paid or will be paid by or on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency, a member, officer or employee of the State Legislature or United State Congress in connection with the awarding of any state or federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan or cooperative agreement.
 - 2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member, officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, CONSULTATN shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with the form's 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 Title 31, U.S. Code, Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. All subcontracts which exceed \$100,000 shall include all the provisions of this paragraph and shall require that such subcontractors shall certify and disclose accordingly.

17. FAIR EMPLOYMENT PRACTICES

CONSULTANT and all of CONSULTANT'S subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as it set forth in full. CONSULTANT and all of CONSULTANT'S subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other agreements, as appropriate.

18. COUNTY/CALTRANS MASTER AGREEMENT REQUIREMENTS

The following provisions of the Master Agreement between COUNTY and the State of California by and through its Department of Transportation, dated January 26, 2007, CalTrans Agreement No. 03-5924R, County Contract No. 70588, are incorporated into this Agreement by this reference. A copy of the Master Agreement is attached hereto as Exhibit F.

- A. Article IV – Fiscal Provisions.
- B. Article V – Audits, Third Party Contracting, Records Retention and Reports.
- C. Appendix A to Exhibit B – Title VI of the Civil Rights Act of 1964 and 49 CFR Part 21.