**MASTER AGREEMENT BETWEEN**
**PLACER COUNTY TRANSPORTATION PLANNING AGENCY**
**AND**
**[INSERT NAME]**

THIS AGREEMENT ("Agreement" or "Contract"), is made and entered into as of this _____ day of _____ _____, 20____, at _____, California, by and between the Placer County Transportation Planning Agency (hereinafter referred to as "PCTPA" or "Agency"), and _____ _____ (hereinafter referred to as "Contractor" or "Consultant").

**RECITALS:**

1. Contractor represents that it is specially trained and/or has the experience and expertise necessary to competently perform the services set forth in this Agreement; and

2. Contractor is willing to perform the services and work described in this Agreement under the terms and conditions set forth in this Agreement; and

3. PCTPA desires to contract with Contractor to perform the services and work described in this Agreement under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties mutually agree as follows:

1. Employment of Contractor.
Contractor hereby agrees to perform services identified in letters of task agreement, submitted hereafter by PCTPA (hereinafter "Letters of Task Agreement"). Each Letter of Task Agreement shall specifically define and obligate the budget for services, the scope of services, and the expected term of the specified activity or project. All provisions of this Master Agreement shall be incorporated by reference into subsequent Letters of Task Agreement.

2. Scope of Services.
Contractor agrees to fully perform the work described in, and to abide by any additional terms and conditions set forth in, each fully executed Letter of Task Agreement. PCTPA reserves the right to review and approve all work to be performed by Contractor in relation to this Agreement and Letter of Task Agreement. Any proposed amendment to the scope of services must be submitted by Contractor in writing for prior review and written approval by PCTPA's Executive Director. Approval shall not be presumed unless such approval is made by PCTPA in writing.

3. Compliance with Laws and Incorporation of Federal and State Guidelines.
Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders and decrees. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775. Contractor warrants and represents to PCTPA that Contractor shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals that are legally required for Contractor to practice its profession or are necessary and incident to the performance of the services and work Contractor performs under this Agreement. Contractor shall provide written proof of such licenses, permits, insurance and approvals upon request by PCTPA. PCTPA is not responsible or liable for Contractor's failure to comply with any or all of the requirements contained in this paragraph.

The terms of all relevant Federal and State grant provisions and guidelines, as presently written, bearing on this Agreement are hereby wholly incorporated by reference herein and made a part of this Agreement and take precedence over any inconsistent terms of this Agreement.

4. Term.
a. This Master Agreement shall go into effect on (START DATE), contingent upon approval by PCTPA, and Contractor shall commence work after notification to proceed by PCTPA's Project Manager, pursuant to a Letter of Task Agreement. This Agreement shall end on (END DATE), unless extended by written amendment pursuant to Section 16 below.

b. Contractor is advised that any recommendation for contract award is not binding on PCTPA until the contract is fully executed and approved by PCTPA.

c. Time is of the essence in the performance of this contract, and production and delivery schedules set forth in each Letter of Task Agreement must be met.

5. Standard of Quality.

All work performed by Contractor under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Contractor's field of expertise.

6. Compensation.

a. Payment to the Contractor shall be made as set forth in each Letter of Task Agreement. The amount to be paid shall not exceed the amount specified in the applicable Letter of Task Agreement, which amount shall constitute full and complete compensation for the Contractor's services. In no instance shall PCTPA be liable for any payments or costs for work in excess of this amount, nor for any unauthorized or ineligible costs. Contractor shall be paid at the times and in the manner set forth in this Agreement and the applicable Letter of Task Agreement. The consideration to be paid Contractor, as provided in the applicable Letter of Task Agreement, shall be in compensation for all of Contractor's expenses incurred in the performance of work under the applicable Letter of Task Agreement, including travel and per diem, unless otherwise expressly so provided.

b. Cost Principles and Administrative Requirements:

(1) The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000, et seq., and "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR, Part 200, or its successor, shall be used to determine the allowability of individual items of cost.

(2) The Contractor 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," and 2 CFR Part 225.

(3) Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq.; 23 CFR, 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 225, or any other applicable State or Federal Regulations, are subject to repayment by the Contractor to PCTPA. Disallowed costs must be reimbursed to PCTPA within thirty (30) days unless PCTPA approves in writing an alternative repayment plan. Should Contractor fail to return disallowed costs to PCTPA within thirty (30) days, PCTPA is authorized to withhold payments due to Contractor from other PCTPA contracts.

(4) The Contractor and subcontractors shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) which segregates and accumulates reasonable, allowable, and allocable costs and matching funds for work elements by line item and produces quarterly reports which clearly identify reimbursable costs and other expenditures and shall provide support for all invoices sent to PCTPA.

(5) Contractor is hereby expressly put on notice that no employee of PCTPA has authority to authorize in writing or otherwise any additional work which would increase the cost of a Letter of Task Agreement without approval by the Executive Director of PCTPA.

(6) Contractor shall comply with, and shall require its subcontractors to comply with, the requirements for non-State employee travel and subsistence (per diem) expenses found in the California Department of Transportation ("Caltrans") Travel Guide, Non-State Employee Travel (referencing the current California Department of Personnel Administration rules) at the following link: http://www.dot.ca.gov/hqasc/travel/index.htm. Lodging rates shall not exceed rates authorized to be paid non-State employees unless written verification is supplied that such rates are not commercially available to Contractor and/or its subcontractors at the

time and location required as specified in the Caltrans Travel Guide Exception Process.

(7) Contractor shall provide PCTPA with the Caltrans, Local Assistance Procedures Manual, Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System.

(8) Contractors and subcontractors shall comply with: 23 CFR; Caltrans' Local Assistance Procedures Manual (at http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm); Caltrans' Local Assistance Programs Guidelines (at http://www.dot.ca.gov/hq/LocalPrograms/lam/lapg.htm); California Public Contract Code, Sections 10300 to 10334, and 10335 to 10381; and all other applicable State and Federal statutes, regulations, and guidelines or additional restrictions, limitations, conditions, or any statute enacted by the state Legislature or adopted by the California Transportation Commission that may affect the provisions, terms, or funding of this project in any manner.

(9) Any subcontract in excess of $25,000 entered into as a result of this Agreement, shall contain all of the provisions of Sections 6.b (1) through (8) above.

7. Reporting and Payment.

a. During the term of an operative Letter of Task Agreement, the Contractor shall submit to PCTPA, attention Executive Director, a requisition for payment and narrative progress report not more frequently than once monthly. Each requisition for payment shall refer to the Work Element referenced in the Letter of Task Agreement, and shall conform to the following: (1) be prepared on Contractor's letterhead; (2) be signed by Contractor's Project Manager; (3) contain a unique invoice number; (4) attach appropriate documentation; (5) invoice each work element/milestone separately; and (6) if subcontractors are used, include a separate invoice for each subcontractor in the required format and include a summary of all subcontractors' invoices.

b. Contractor shall submit written requisitions for payment to PCTPA, and shall specify the time, date, personnel, and hours billed since the date of the preceding requisition for payment, if any, and shall indicate that it has satisfactorily performed the work and completed the percent of product for which payment is being requisitioned in conformance with the Letter of Task Agreement, and that it is therefore entitled to receive the amount so requisitioned under the terms of the agreement.

c. PCTPA shall pay the Contractor 90 percent (90%) of the amount invoiced until the Contract is completed to PCTPA's satisfaction, as required by the terms of the Letter of Task Agreement. Following final product acceptance by PCTPA, the final 10 percent (10%) of the contract amount will be released upon Contractor requisition for final contract payment.

d. Contractor shall establish and maintain separate account records for the fiscal activities of each Letter of Task Agreement. The requisitions for payment shall include documentation of reimbursable expenses and other invoiced items sufficient for PCTPA, in its opinion, to substantiate billings. PCTPA reserves the right to withhold payment of disputed amounts.

e. Contractor's accounting system shall conform to generally accepted accounting principles. Contractor's accounting records, together with supporting documents, shall be kept separate from other documents and records and shall be kept available for inspection by PCTPA and other authorized agencies during the period of performance of the contract, and for three (3) years after PCTPA makes final payments, and all other pending matters are closed.

f. In the event that any of the expenses for which PCTPA reimburses the Contractor are later disallowed pursuant to Section 28, Contractor expressly agrees to reimburse PCTPA an amount equal to that disallowed. PCTPA agrees to assert any appeal for a disallowed expense on behalf of Contractor.

g. Allowable Costs and Payments:

The method of payment for this agreement will be based on actual cost plus a fixed fee. PCTPA will reimburse Contractor for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by Contractor in performance of the work. Contractor 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 the approved Contractor's Cost Proposal, unless additional reimbursement is provided for by Agreement amendment. In no event, will Contractor be reimbursed for overhead costs at a rate that exceeds PCTPA's approved overhead rate set forth in the Cost Proposal. In the event, that PCTPA determines that a change to the work from that specified in the Cost Proposal and Agreement is required, the Agreement time or actual costs reimbursable by PCTPA shall be adjusted by

Agreement amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "G" of this Article shall not be exceeded, unless authorized by Agreement amendment.

The indirect cost rate established for this Agreement is extended through the duration of this specific Agreement. Contractor's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or Agreement award.

In addition to the allowable incurred costs, PCTPA will pay Contractor a fixed fee of $100,000. 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 is made by Agreement amendment.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

When milestone cost estimates are included in the approved Cost Proposal, Contractor shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of Contractor's fixed fee will be included in the monthly progress payments. If Contractor fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, PCTPA shall have the right to delay payment or terminate this Agreement.

No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.

Contractor will be reimbursed promptly according to California Regulations upon receipt by PCTPA's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Contractor is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due PCTPA including any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of Contractor's work. Invoices shall be mailed to PCTPA's Contract Administrator at the following address:

Cory Peterson, AICP
Senior Transportation Planner
2260 Douglas Blvd, Suite 130
Roseville, CA 95661

The total amount payable by PCTPA including the fixed fee shall not exceed $100,000.

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.

8. Rebudgeting of Funds.
Prompt notification and approval by PCTPA of all rebudgeting in excess of $1,000 is required. Such notification may be accomplished by submission of a revised copy of the budget forms. Approval of minor adjustments to an approved budget is not required. A minor adjustment will constitute reallocation of the dollar sum of $1,000 or less.

9. Data to be Furnished by Contractor.
Whenever information that Contractor previously provided to PCTPA in its response to the request for proposals (RFP) is no longer complete, accurate, or up-to-date, Contractor shall notify PCTPA, attention Executive Director, and amend its response so that PCTPA has the most current information regarding:
   a. The Contractor's name, local address, telephone number, and contact person.
   b. A general description of the Contractor's services.
   c. The names and titles of the individuals who can provide the planning and support services

described in PCTPA's RFP.

d. A description of the work performed and the skills and training of the individuals so named, including a current resume for each individual.

e. The hourly billing rates and charges for the individuals named.

f. Contractor's Affidavit of Disadvantaged Business Enterprise (if applicable).

10. Submission of Reports.

a. All reports specified in a Letter of Task Agreement must be submitted to PCTPA in draft form for review, to the attention of the Executive Director. In the absence of an express, written statement of dissatisfaction within thirty (30) working days, any draft report submitted will be deemed satisfactory.

b. No final report shall be prepared in form for publication prior to approval by PCTPA.

11. Personnel.

a. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under a Letter of Task Agreement.

b. During periods in which Contractor's personnel may be physically housed at PCTPA while performing services under a Letter of Task Agreement, PCTPA may be responsible for administrative support and overhead expenses associated with such personnel, if agreed to in the applicable Letter of Task Agreement. During periods in which Contractor's personnel are not physically housed at PCTPA, Contractor shall be responsible for their administrative support and overhead expenses.

c. All of the services required under a Letter of Task Agreement shall be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.

12. Independent Contractor.

The Contractor, and the agents and employees of the Contractor, in the performance of this Agreement, shall act as and be independent contractors and not officers or employees or agents of PCTPA. Contractor, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit PCTPA to any decision or course of action, and shall not represent to any person or business that they have such power. Contractor has and shall retain the right to exercise full control of the supervision of the services and work and over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of services under this Agreement. Contractor shall be solely responsible for all matters relating to the payment of its employees, including but not limited to compliance with social security and income tax withholding, workers' compensation insurance and all regulations governing such matters.

13. Contractors and Subcontractors.

Contractor shall not subcontract any portion of the work without the prior express written authorization of PCTPA. If PCTPA consents to a subcontract, Contractor shall be fully responsible for all work performed by the subcontractor.

a. PCTPA reserves the right to review and approve any contract or agreement to be funded in whole or in part using funds provided under this Agreement.

b. Nothing contained in this Agreement or otherwise, shall create any contractual relation between PCTPA and any subcontractor, and no subcontract shall relieve Contractor of its responsibilities and obligations hereunder. Contractor agrees to be as fully responsible to PCTPA for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. Contractor's obligation to pay its subcontractors is an independent obligation from PCTPA's obligation to make payments to the Contractor.

c. Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by PCTPA's Project Manager, except that which is expressly identified in the approved Cost Proposal.

d. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to Contractor by PCTPA.

e. Any contract or sub-contract shall contain the same applicable provisions of this Agreement, and shall require the contractor and its subcontractors, if any, to:

(1) Comply with applicable State and Federal requirements that pertain to, among other things, labor standards, non-discrimination, the Americans with Disabilities Act, Equal

Employment Opportunity, and Drug-Free Workplace, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000, *et seq.*, 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR, Part 200, and "Contract Cost Principles and Procedures." Maintain at least the minimum State-required Workers' Compensation Insurance for those employees who will perform the work or any part of it.

(2) Maintain unemployment insurance and disability insurance as required by law, along with liability insurance in an amount that is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the Contractor or any subcontractor in performing work associated with this Agreement or any part of it.

(3) Retain all books, records, computer records, accounts, documentation, and all other materials pertaining to the performance of this Agreement for a period of three(3) years from the date of termination of this Agreement, or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.

(4) Permit PCTPA and/or its designees, upon reasonable notice, unrestricted access to any or all books, records, computer records, accounts, documentation, and all other materials pertaining to the performance of this Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

(5) Comply with all applicable requirements of Title 49, Part 26 of the Code of Federal Regulations, as set forth in Section 42, Disadvantaged Business Enterprise Participation.

f. Any substitution of subcontractors must be approved in writing by PCTPA's Project Manager prior to the start of work by the subcontractors.

14. Prohibition Against Contingent Fees.

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage, fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, PCTPA shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

15. Termination.

a. PCTPA reserves the right to terminate this Agreement or any Letter of Task Agreement upon thirty (30) calendar days written notice to Contractor with any reason or no reason for termination stated in the notice. The notice shall be deemed served and effective for all purposes on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to Contractor at the address indicated in Section 36.

b. PCTPA may terminate this Agreement with Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, PCTPA may proceed with the work in any manner deemed proper by PCTPA. If PCTPA terminates this Agreement with Contractor, PCTPA shall pay Contractor the sum due to Contractor under this Agreement prior to Contractor's failure to perform, unless the cost of completion to PCTPA exceeds the funds remaining in the Agreement. In which case, the overage shall be deducted from any sum due Contractor under this Agreement and the balance, if any, shall be paid to Contractor upon demand.

c. The maximum amount for which the PCTPA shall be liable if this contract is terminated is [One Hundred Thousand] Dollars ($100,000).

d. If PCTPA issues a notice of termination:

(1) Contractor shall immediately cease rendering services pursuant to this Agreement.

(2) Contractor shall deliver to PCTPA copies of all Writings prepared by the Contractor under the Letter of Task Agreement, whether or not completed, which were prepared by Contractor, its employees or its subcontractors, if any, pursuant to this Agreement. The term "Writings" shall include, but not be limited to, handwriting, typesetting, computer files and records, drawings, blueprints, printing, photostating, photographs, and every other means of recording upon any

tangible thing, any form of communication or representation, including, letters, works, pictures, sounds, symbols computer data, or combinations thereof.

(3) PCTPA shall pay Contractor for work actually performed up to the effective date of the notice of termination, subject to the limitations in Sections 6 and 7, less any compensation to PCTPA for damages suffered as a result of Contractor's failure to comply with the terms of this Agreement. Such payment shall be in accordance with Section 7. However, if this Agreement is terminated because the work of Contractor does not meet the terms or standards specified in this Agreement, then PCTPA shall be obligated to compensate Contractor only for that portion of Contractor's services which is of benefit to PCTPA.

16. Contract Amendments.

PCTPA may, from time to time, require changes in the Agreement, including changes to the scope of the services of the Contractor to be performed pursuant to a Letter of Task Agreement. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between PCTPA and the Contractor, shall be incorporated in written amendments to the Letter of Task Agreement. No oral understanding or agreement not placed in writing shall be binding on any of the parties hereto. Amendments inconsistent with the provisions and intent of this Agreement are invalid.

17. Conflict of Interest.

a. Contractor shall disclose any financial, business, or other relationship with PCTPA that may have an impact upon the outcome of this Agreement, or any ensuing PCTPA construction project. Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing PCTPA construction project, which will follow.

b. Contractor hereby certifies that no employee of Contractor or any subcontractor, has, nor shall it acquire, any past, ongoing, or potential financial or business interest that would conflict with the performance of services under this Agreement. Contractor and any subcontractors shall exercise reasonable care and diligence to prevent any actions or conditions that could be deemed a conflict of interest under the Fair Political Practices Act or other law. During the term of this Agreement, the Contractor shall not accept any employment or engage in any consulting work that would create a conflict of interest with PCTPA or in any way compromise the services to be performed under this Agreement.

c. Contractor shall immediately notify PCTPA of any and all potential violations of this paragraph upon becoming aware of the potential violation.

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

18. Political Reform Act Compliance.

The Contractor is aware and acknowledges that certain contractors that perform work for governmental agencies are "consultants" under the Political Reform Act (the "Act") (Government Code § 81000, et seq.) and its implementing regulations (2 California Code of Regulations § 18110, et seq.). The Contractor agrees that any of its officers or employees deemed to be "consultants" under the Act by PCTPA, as provided for in the Conflict of Interest Code for PCTPA, shall promptly file economic disclosure statements for the disclosure categories determined by PCTPA, to be relevant to the work to be performed under this Agreement and shall comply with the disclosure and disqualification requirements of the Act, as required by law.

19. National Labor Relations Board Certification.

Contractor, by signing this Agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court which orders Contractor to comply with an order of the National Labor Relations Board (Public Contract Code § 10296).

20. Americans with Disabilities Act (ADA) of 1990.

By signing this Agreement, Contractor assures PCTPA that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA including, but not limited to, those found within the Code of Federal Regulations, Title 49, parts 27, 37, and 38. Contractor

also agrees that it will award no construction contract unless its plans and specifications for such facilities conform to the provisions of California Government Code section 4450 and 4454, if applicable.

21. Drug-Free Certification.

By signing this Agreement, Contractor hereby certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, et seq.) and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:
   (1) The dangers of drug abuse in the workplace;
   (2) The person's or the organization's policy of maintaining a drug-free workplace;
   (3) Any available counseling, rehabilitation, and employee assistance programs; and
   (4) Penalties that may be imposed upon employees for drug abuse violations.

c. Every employee of Contractor who works under this Agreement shall:
   (1) Receive a copy of Contractor's Drug-Free Workplace Policy Statement; and
   (2) Agree to abide by the terms of Contractor's Statement as a condition of employment on this Agreement.

22. Union Organizing.

By signing this Agreement, Contractor hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.

a. Contractor will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.

b. Contractor will not, for any business conducted under this Agreement, use any public property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the public property is equally available to the general public for holding meetings.

23. Campaign Contribution Disclosure.

Contractor has complied with the campaign contribution disclosure provisions of the California Levine Act (Government Code § 84308) and has completed the Levine Act Disclosure Statement attached hereto as Exhibit A.

24. Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors, assigns, or other representatives. The Contractor shall not assign or delegate any interest in this Agreement or a Letter of Task Agreement, and shall not transfer any interest in the same, without the prior written consent of PCTPA.

25. Disclosure of Information.

Contractor acknowledges that PCTPA is a public agency subject to public disclosure laws and may reveal information concerning this Agreement and the project described in a Letter of Task Agreement in accordance with the California Public Records Act, the Freedom of Information Act, 5 USC 552, and other applicable law. The provisions of this Section shall survive the expiration, termination, or assignment of this Agreement.

26. Minimum Insurance Requirements.

Contractor hereby warrants that it carries and shall maintain, at its sole cost and expense, in full force and effect during the full term of this Agreement and any extensions to this Agreement, the following described insurance coverage as outlined below:

| POLICY | MINIMUM LIMITS OF LIABILITY |
|---|---|
| (1) Workers' Compensation; Employer's Liability. | Statutory requirements for Workers' Compensation; $ 1,000,000 Employers' Liability. |
| (2) Comprehensive Automobile: Insurance Services Office, form #CA 0001 covering Automobile Liability, code 1 (any auto). | Bodily Injury/Property Damage $1,000,000 each accident. |
| (3) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001). | $1,000,000 per occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit, such limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. |
| (4) Errors and Omissions/Professional Liability | $1,000,000 per claim and $2,000,000 in aggregate |

a. Deductibles and Self-insured Retentions: Any deductibles or self-insured retentions over $5,000 must be declared to and approved by PCTPA.

b. Required Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(1) For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects PCTPA, its directors, officers, employees and agents. Any insurance or self-insurance maintained by PCTPA, its directors, officers, employees or agents shall be in excess of Consultant's insurance and shall not contribute to it.

(2) Any failure by Consultant to comply with reporting or other provisions of the policies including breaches of warrants shall not affect coverage provided to PCTPA, its directors, officers, employees or agents.

(3) 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.

(4) Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to PCTPA.

c. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by PCTPA.

d. Certificate of Insurance and Additional Insured Requirement: Consultant shall furnish to PCTPA an original Certificate of Insurance on a standard ACORD form, or other form acceptable to PCTPA, substantiating the required coverages and limits set forth above and also containing the following:

(1) Thirty (30) days prior written notice to PCTPA of the cancellation, non-renewal or reduction in coverage of any policy listed on the Certificate; and

(2) The following statement with respect to the Commercial General Liability policy: "PCTPA and its directors, officers, agents, employees, and volunteers are made additional insureds, but only insofar as the operations under this Agreement are concerned."

e. Certified Copies of Policies: Upon request by PCTPA, Consultant shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.

f. Consultant's Responsibility: Nothing herein shall be construed as limiting in any way the extent to which Consultant may be held responsible for damages resulting from Consultant's operations, acts, omissions, or negligence. Insurance coverage obtained in the minimum amounts specified above shall not relieve Consultant of liability in excess of such minimum coverage, nor shall it preclude PCTPA from taking other actions available to it under this Agreement or by law, including but not limited to, actions pursuant to Consultant's indemnity obligations.

27. Notice of Assistance Regarding Patent and Copyrights Infringement.

The Contractor agrees to report to PCTPA and other appropriate state and federal agencies promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of a Letter of Task Agreement of which the Contractor has knowledge. In the event of any claim or suit against

PCTPA and other appropriate state and federal agencies on account of any alleged patent or copyright infringement arising out of the performance of a Letter of Task Agreement or out of the use of any supplies furnished or work or services performed thereunder, the Contractor agrees to furnish to PCTPA and other appropriate state and federal agencies, when requested by PCTPA and all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of PCTPA and other appropriate state and federal agencies except where the Contractor has agreed to indemnify PCTPA and other appropriate state and federal agencies.

28. Retention of Records and Audit Procedures.

a. PCTPA or its designee, including but not limited to any State or Federal agency, shall have the right to review, obtain, and copy all books, records, computer records, accounts, documentation and any other materials (collectively "Records") pertaining to performance of this Agreement, including any Records in the possession of any subcontractors, for the purpose of monitoring, auditing, or otherwise examining the Records. Such Records shall include all records of employment, employment advertisements, employment application forms, and other pertinent employment data, as well as any records pertaining to compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq. (when applicable) and other matters connected with the performance of the contract pursuant to Government Code 8546.7.

b. If so directed by PCTPA upon expiration of this Agreement, the Contractor shall cause all Records to be delivered to PCTPA as depository.

c. Contractor and its subcontractors agree to cooperate with the State and PCTPA by making all appropriate and relevant project Records available for audit, inspection, and/or copying by the State, the California State Auditor, or any duly authorized representative of the State or Federal government. Such Records shall be available at all reasonable times during the term of this Agreement and for three (3) years from the date of submission of the final expenditure report by the State to FHWA.

d. 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 applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7), Contractor, subcontractors, and PCTPA shall maintain and make available for inspection all Records, and other evidence pertaining to the performance of the contract including, but not limited to, the costs of administering the Agreement.

(1) All parties shall make such 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 Agreement. The State, State Auditor, PCTPA, FHWA, or any duly authorized representative of the State or Federal Government shall have access to any books, records, and documents of Contractor and it's certified public accountants (CPA) work papers that are pertinent to the Agreement, and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

(2) Subcontracts in excess of $25,000 shall contain this entire Section 28.

e. Audit Review Procedures:

(1) Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by PCTPA's Chief Executive Officer.

(2) Not later than 30 days after issuance of the final audit report, Contractor may request a review by PCTPA's Chief Executive Officer of unresolved audit issues. The Contractor's request for review will be submitted in writing.

(3) Neither the pendency of a dispute nor its consideration by PCTPA will excuse Contractor from full and timely performance in accordance with the terms of this Agreement.

(4) Contractor and subcontractor contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit workpaper review. If selected for audit or review, the Agreement, cost proposal, ICR and related workpapers, 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 Contractor's responsibility to ensure Federal, State, or local government officials are allowed full access to the CPA's workpapers including making copies as necessary. The Agreement, Cost Proposal, and

ICR shall be adjusted by Contractor and approved by PCTPA to conform to the audit or review recommendations. Contractor agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by PCTPA at its sole discretion. Refusal by Contractor to incorporate audit or review recommendations, or to ensure that the Federal, State or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

29. Compliance with Non-Discrimination and Equal Employment Opportunity Laws

It is Agency's policy to comply with state and federal laws and regulations including Title VI of the Civil Rights Act of 1964, Americans with Disabilities Act of 1990 (ADA) and other federal discrimination laws and regulations (including 49 CFR Part 21 through Appendix C, 23 CFR part 200, 23 CFR part 230, 49 U.S.C. 5332, 42 U.S.C. 12101 et seq., and the Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794), as well as the Unruh Civil Rights Act of 1959, the California Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and other California State discrimination laws and regulations. The Agency does discriminate against any employee or applicant for employment because of race, religion (including religious dress and grooming practices) color, national origin, (includes use and possession of a driver's license issued to persons unable to prove their presence in the United States is authorized under federal law), ancestry, disability, (including physical and mental, including HIV and AIDS) medical condition, (including genetic characteristics, cancer or a record or history of cancer), military or veteran status, marital status, sex/gender (includes pregnancy, childbirth, breastfeeding, and/or related medical conditions), age (40 and above), gender identity, gender expression, or sexual orientation pursuant to Sections 12940 et seq. of the Government Code. The Agency prohibits discrimination by its employees, contractors and consultants.

Contractor hereby certifies, under penalty of perjury under the laws of California, that it complies with, and that Contractor will require that its subcontractors comply with, the following non-discrimination and equal opportunity laws. Any failure by Contractor to comply with these provisions shall constitute a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Agency may deem appropriate.

a. Contractor and its subcontractors shall comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., with U.S. D.O.T. regulations, "Non-discrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act", 49 C.F.R. Part 21, and with any applicable implementing federal directives that may be issued. Title VI provides that the recipients of federal assistance will implement and maintain a policy of non-discrimination in which no person in the State of California shall, on the basis of race, color, national origin, religion, sex, age, or 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.

b. Contractor and its subcontractors shall comply with all applicable equal employment opportunity (EEO) provisions of 42 U.S.C. §§ 2000e, implementing federal regulations, and any applicable implementing federal directives that may be issued. Contractor and its subcontractors shall ensure that applicants and employees are treated fairly without regard to their race, color, creed, sex, disability, age, or national origin.

c. Contractor and its subcontractors will act in accordance with Title VI and will not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religion, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age or marital status, and shall comply with the obligations of the "Administering Agency, as set forth in Exhibit F, "Fair Employment Practices Addendum" and Exhibit G, "Non-Discrimination Assurances" attached hereto and incorporated herein by this reference. Contractor and its subcontractors will further ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religion (including religious dress and grooming practices) color, national origin, (includes use and possession of a driver's license issued to persons unable to prove their presence in the United States is authorized under federal law), ancestry, disability, (including physical and mental, including HIV and AIDS) medical condition, (including genetic characteristics, cancer or a record or history of cancer), military or veteran status, marital status, sex/gender (includes pregnancy, childbirth, breastfeeding, and/or related medical conditions), age (40 and above), gender identity, gender expression, or sexual orientation pursuant to Sections 12940 et seq. of the Government Code. Contractor

and its subcontractors will comply with all applicable federal and state employment laws and regulations including, without limitation, the provisions of the California Fair Employment and Housing Act (Government Code § 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0, et seq.), as well as Title 2, California Administrative Code, Section 8103. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §§ 12990 (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 if set forth in full. Contractor and its subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

d. Contractor shall also comply with the Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age, Section 324 of Title 23 U.S.C., prohibiting discrimination based on gender, and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.

e. Contractor, with regard to the work performed by it during the Agreement, shall act in accordance with Title VI. Specifically, the Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

f. Contractor will include the non-discrimination and equal employment opportunity provisions of this section (provisions a. through e. above) in all contracts to perform work funded under this Agreement.

30. Governing Law and Forum.

Any dispute not resolved by informal negotiation between the parties to this contract shall be adjudicated in the Superior Court of Placer County. This Agreement shall be administered and interpreted under the laws of the State of California.

31. Costs and Attorneys' Fees: If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and reasonable attorneys' fees.

32. Indemnification.

Contractor specifically agrees to indemnify, defend, and hold harmless Agency, its directors, officers, members, agents, and employees (collectively the "Indemnitees") from and against any and all actions, claims, demands, losses, costs, expenses, including reasonable attorneys' fees and costs, damages, and liabilities (collectively "Losses") arising out of or in any way connected with the performance of this Agreement, excepting only Losses caused by the sole, active negligence or willful misconduct of an Indemnitee. Contractor shall pay all costs and expenses that may be incurred by Agency in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this Section shall survive the expiration, termination, or assignment of this Agreement.

33. Ownership of Documents; Permission.

a. Contractor agrees that all work products, including, but not limited to, original documents, methodological explanations, computer programs, drawings, designs, reports and other written materials generated in the performance of this Agreement shall belong to and become the sole property of PCTPA; provided that Contractor may retain file copies of said work products. Contractor shall provide said work products to PCTPA upon request.

b. Contractor represents and warrants that: (i) all materials used or work products produced in the performance of this Agreement, including, without limitation, all computer software materials and all written materials, are either owned by or produced by Contractor or that all required permissions and license agreements have been obtained and paid for by Contractor; and (ii) PCTPA is free to use, reuse, publish or otherwise deal with all such materials or work products. Consultant shall defend, indemnify and hold harmless PCTPA and its directors, officers, employees, and agents from any claim, loss, damage, cost, liability, or expense to the extent of any violation or falsity of the foregoing representation and warranty.

34. Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to

any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

35. Integration.
This Agreement represents the entire understanding of PCTPA and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in accordance with Section 16.

36. Notices and Project Managers.
Any notice or notices required or permitted to be given pursuant to this Contract or a Letter of Task Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the following addresses:

Matt Click, Executive Director
Placer County Transportation Planning Agency
2260 Douglas Blvd. Suite 130
Roseville, California 95661

[CONSULTANT NAME]
[Firm Name]
[ADDRESS]

37. Authority.
Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.

38. Force Majeure.
Neither PCTPA nor Contractor shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God or of the public enemy, acts of government, in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather, or any similar cause beyond the reasonable control of PCTPA or Contractor.

39. Counterparts: This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

40. Waivers: No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of PCTPA to enforce at any time the provisions of this Agreement or to require at any time performance by the Contractor of these provisions, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of PCTPA to enforce these provisions.

41. Litigation: Contractor shall notify PCTPA immediately of any claim or action undertaken by it or against it that affects or may affect this Agreement or PCTPA, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of PCTPA.

42. Disadvantaged Business Enterprises (DBE) Participation:
Contractor, or subcontractor, shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26).

In accordance with 49 CFR 26.13(b):

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

Failure by the Contractor 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 PCTPA

deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;
(2) Assessing sanctions; and/or
(3) Disqualifying CONSULTANT from future proposing as non-responsible.

b. Prompt Payments to DBE and Non-DBE Subcontractors:

PCTPA shall hold retainage from Contractor and shall make prompt and regular incremental acceptances of portions, as determined by PCTPA of the contract work and pay retainage to Contractor based on these acceptances. Contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by PCTPA. Any delay or postponement of payment may take place only for good cause and with PCTPA's prior written approval. Any violation of these provisions shall subject the violating Contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by Contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non DBE subcontractors.

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

c. Records: Contractor shall maintain records of all subcontracts entered into with certified DBE subcontractors and records of materials purchased from certified DBE suppliers. The records shall show the name and business address of each DBE subcontractor or vendor and the total dollar amount actually paid each DBE subcontractor or vendor. The records shall show the date of payment and the total dollar figure paid to all firms. Upon completion of the contract, a summary of these records shall be prepared and submitted to PCTPA.

d. Termination and replacement of a DBE: In conformance with 49 CFR Section 26.53:

(1) Contractor shall not terminate a listed DBE subcontractor unless Contractor has received prior written authorization from PCTPA's Project Manager. PCTPA's Project Manager will authorize termination only if the Project Manager determines that Contractor has good cause to terminate the DBE subcontractor. As used in this Section, "good cause" includes those circumstances listed in 49 CFR Section 26.53(f)(3).

(2) Prior to requesting PCTPA's authorization to terminate and/or substitute a DBE subcontractor, Contractor shall give notice in writing to the DBE subcontractor, with a copy to PCTPA, of its intent to request termination and/or substitution, and the reason for the request. Justifiable reasons for termination with written authorization of PCTPA include:

a) Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
b) PCTPA stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the PCTPA's bond requirements.
c) Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
d) Listed DBE fails or refuses to perform the work or furnish the listed materials.
e) Listed DBE's work is unsatisfactory and not in compliance with the contract.
f) Listed DBE is ineligible to work on the project because of suspension or debarment.
g) Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
h) Listed DBE voluntarily withdraws with written notice from the contract.
i) Listed DBE is ineligible to receive credit for the type of work required.

j) Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
k) PCTPA determines other documented good cause.

The DBE subcontractor shall have five days to respond to the Contractor's notice and state the reasons, if any, why it objects to the proposed termination of its subcontract and why PCTPA should not approve the Contractor's action. PCTPA may, in instances of public necessity, approve a response period shorter than five days.

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

1. Send a written notice to the DBE of the Consultant's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to PCTPA. The written notice to the DBE must request they provide any response within five (5) business days to both the Consultant and the PCTPA 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 LOCAL AGENCY and include:

• One or more above listed justifiable reasons along with supporting documentation.
• Consultant's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of Consultant's written notice
• The DBE's response to Consultant's written notice, if received. If a written response was not provided, provide a statement to that effect.

PCTPA shall respond in writing to Consultant's DBE termination request within five (5) business days. Replacement of DBE Subconsultants After receiving PCTPA's written authorization of DBE termination request, Consultant must obtain PCTPA's written agreement for DBE replacement. Consultant must find or demonstrate good faith efforts 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 PCTPA which must include:

a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.

b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:

• Description of scope of work and cost proposal
• Proposed subcontract agreement and written confirmation of agreement to perform on the contract

2. If Consultant has not identified a DBE replacement firm, submits documentation of Consultant's good faith efforts to use DBE replacement firms within seven (7) days of PCTPA's authorization to terminate the DBE. Consultant may request PCTPA's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
• Search results of certified DBEs available to perform the original DBE 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 or excessive
• Copies of each DBE's and non-DBE's price quotes for work identified, as PCTPA may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
• Additional documentation that supports Consultant's good faith efforts

PCTPA will respond in writing to Consultant's DBE replacement request within five (5) business days.

(3) If a DBE subcontractor is terminated or fails to complete its work for any reason, Contractor shall be required to make good faith efforts to replace the original DBE subcontractor with another DBE.

e. DBE Certification and Decertification: If a DBE subcontractor is decertified during the life of the contract, the decertified subcontractor shall notify Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the contract, the subcontractor shall notify Contractor in writing with the date of certification. Contractor shall then provide to the Project Manager of PCTPA written documentation indicating the DBE's existing certification status.

f. Subcontractor Prompt Payment Certification: In accordance with California Business and Professions Code section 7108.5, the prime contractor or subcontractor shall pay to any subcontractor, not later than seven days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, the prime contractor or subcontractor 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 subcontractor, of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative or criminal.
The Contractor must submit Exhibit 9-P to the Local Agency administering the contract by the 15th of the month following the month of any payment(s). If the Contractor does not make any payments to subcontractors, 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.

g. Noncompliance by Contractor: Contractor's failure to comply with any requirement of this Section is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as PCTPA may deem appropriate.

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

43. Debarment, Suspension, and Other Responsibilities
The Contractor certifies and warrants that neither the Contractor firm nor any owner, partner, director, officer, or principal of Contractor, nor any person in a position with management responsibility or responsibility for the administration of funds:
a. Is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency.
b. Has within the three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
c. Is presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commissions of any of the offenses enumerated in paragraph "b" above.
d. Has within a three-year period preceding this Agreement, had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.
e. Contractor shall complete the Debarment Certification Form, attached hereto as Exhibit B.

The Contractor further certifies that is shall not knowingly enter into any transaction with any subconsultant, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

44. Prohibition of Expending State or Federal Funds for Lobbying

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

(1) No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure of Lobbying Activities," in accordance with its instructions.

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

c. The Contractor also agrees by signing this Agreement that it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

45. Rebates, Kickbacks, or Other Unlawful Consideration: Contractor warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any PCTPA employee. For breach or violation of this warranty, PCTPA 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.

46. Equipment Purchase:

a. Prior authorization in writing, by PCTPA's Project Manager shall be required before Contractor enters into any unbudgeted purchase order, or subcontract exceeding $5,000 for supplies, equipment, or Contractor services. Contractor shall provide an evaluation of the necessity or desirability of incurring such costs.

b. For purchase of any item, service or consulting work not covered in Contractor's Cost Proposal and exceeding $5,000 prior authorization by PCTPA's Project Manager, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

c. Any equipment purchased as a result of this contract is subject to the following: "Contractor shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least one year and an acquisition cost of $5,000 or more. If the purchased equipment needs replacement and is sold or traded in, PCTPA shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Contractor may either keep the equipment and credit PCTPA in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established PCTPA procedures, and credit PCTPA in an amount equal to the sales price. If Contractor elects to keep the equipment, fair market value shall be determined at Contractor's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to PCTPA and Contractor, and if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by PCTPA." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than $5,000 is credited to the project.

d. All subcontracts in excess $25,000 shall contain the above provisions.

47. State Prevailing Wage Rates: If the Scope of Work is for a public works project pursuant to California Labor Code Section 1720, *et seq.*, including surveying work, then the following provisions apply:

a. Contractor shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
b. Any subcontract entered into as a result of this contract, if for more than $25,000 for public works construction or more than $15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Section.
c. When prevailing wages apply to the services described in the Scope of Work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See http://www.dir.ca.gov.

48. Clean Air Act**:** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, including sections 174 and 176, subdivisions (c) and (d) (42 U.S.C. §§ 7504, 7506 (c) and (d)) and 40 CFR part 93 ("Clean Air requirements"). Contractor agrees to report each Clean Air requirement violation to PCTPA and understands and agrees that PCTPA will, in turn, report each Clean Air requirement violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

49. Disputes: Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be submitted in writing to a committee consisting of PCTPA's Project Manager and Technical Advisory Committee (TAC). This Committee may consider the written information or additional verbal information submitted by Contractor at the request of the Committee. A determination shall be made by the Committee within 10 business days. In the event that Contractor disputes the Committee's determination, Contractor may request review by PCTPA's Executive Director of unresolved claims or disputes, other than audit, not later than 30 days after completion of all work under the Agreement. The Contractor's request for review must be submitted in writing. Neither the pendency of a dispute, nor its consideration by the Committee, will excuse Contractor from full and timely performance in accordance with this Agreement.

50. Confidentiality of Data:
a. All financial, statistical, personal, technical, or other data and information relative to PCTPA's operations, which are designated confidential by PCTPA and made available to Contractor in order to carry out this Agreement, shall be protected by Contractor from unauthorized use and disclosure.
b. Permission to disclose information on one occasion, or public hearing held by PCTPA relating to the contract, shall not authorize Contractor to further disclose such information, or disseminate the same on any other occasion.
c. Contractor shall not comment publicly to the press or any other media regarding this Agreement or PCTPA's actions on the same, except to PCTPA's staff, Contractor's own personnel involved in the performance of this contract, or in response to questions from a Legislative committee.
d. Contractor shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by PCTPA, and receipt of PCTPA'S written permission.
e. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Section.
f. All information related to cost estimates is confidential, and shall not be disclosed by Contractor to any entity other than PCTPA.

51. Evaluation of Contractor Performance: Contractor's performance may be evaluated by PCTPA. A copy of the evaluation will be sent to Contractor for comments. The evaluation together with the comments shall be retained as part of the contract file.

52. Funding Requirements:
a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
b. This Agreement is valid and enforceable only, if sufficient funds are made available to PCTPA 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 PCTPA's governing Board that may affect the provisions, terms, or funding of this Agreement in any manner.

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

d. PCTPA has the option to void the contract under the 30-day termination clause pursuant to Section 15 of this Agreement, or by mutual agreement to amend the contract to reflect any reduction of funds.

53. United States-flag Vessels: Per 46 CFR 381, Use of United States-flag vessels, the contractor agrees:

a. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

b. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

c. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

54. Program Fraud and False or Fraudulent Statements or Related Acts:

(1) The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

(2) The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

(3) The Consultant agrees to include the above two (2) clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-consultant who will be subject to the provisions.

55. Recovered Materials: The consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The consultant agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR part 247.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF the Placer County Transportation Planning Agency and the Contractor have executed this

agreement as of the date first above written.

| | |
|---|---|
| Placer County Transportation Planning Agency | (CONSULTANT NAME) |
| _____ | _____ |
| Matt Click, AICP | (NAME) |
| Executive Director | (TITLE) |
| Date: _____ | Date: _____ |

Enclosures

1) Exhibit A: Levine Act Disclosure Statement
2) Letter of Task Agreement #xxx, dated xxx *(to be included with final contract)*
3) Exhibit B: Debarment Certification Form
4) Exhibit 9-L: Bidders/Proposer's List
5) Exhibit 9-P: Prompt Payment Certification
6) Exhibit 10-H: Cost Proposal
7) Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System
8) Exhibit D: Fair Employment Practices Addendum
9) Exhibit E: Non-discrimination Assurances

**EXHIBIT A**
**LEVINE ACT DISCLOSURE STATEMENT**

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than $250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract.

Current members of the Placer County Transportation Planning Agency (PCTPA) Board are:

| | |
|---|---|
| Dan Wilkins | Alice Dowdin Calvillo |
| Suzanne Jones | Ben Brown |
| Ken Broadway | Bruce Houdesheldt |
| Trinity Burruss | Amanda Cortez |
| Anthony DeMattei | |

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than $250 to any PCTPA Boardmember(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

   ___ YES ___ NO
   If yes, please identify the Boardmember(s)_____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than $250 to any PCTPA Boardmember(s) in the three months following the award of the contract?

   ___ YES ___ NO
   If yes, please identify the Boardmember(s)_____

Answering yes to either of the two questions above does not preclude PCTPA from awarding a contract to your firm. It does, however, preclude the identified Boardmember(s) from participating in the contract award process for this contract.

_____ DATE

_____
(SIGNATURE OF AUTHORIZED OFFICIAL)

_____
(TYPE OR WRITE APPROPRIATE NAME, TITLE)

_____
(TYPE OR WRITE NAME OF COMPANY)

**EXHIBIT B**
**DEBARMENT CERTIFICATION FORM**

The Contractor certifies that, neither the Contractor firm nor any owner, partner, director, officer, or principal of the Contractor, nor any person in a position with management responsibility or responsibility for the administration of federal funds:

(a) Is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency;
(b) Has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
(c) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or
(d) Has within a three-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

The Contractor further certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

Dated this _____day of _____, 20 _____

By_____
Authorized Signature for Contractor

_____
Printed Name and Title

_____
Contractor Firm Name and Type of Entity (*Corp., Partnership, Sole Proprietor*)

_____
Address

_____
City/State/Zip Code

_____
Area Code/Telephone Number and E-Mail Address

## Exhibit 9-L: Bidder's/Proposer's List

The bidder/proposer must list all subcontractors, subconsultants, truckers, or suppliers (both DBE and non-DBE) in accordance with 49 CFR 26.11, who provided a quote or proposal to the project regardless of whether the firm was selected to participate. None of the information requested on this form is material to determine a bidder's/proposer's responsiveness.

## General Project Information

| **Local Public Agency Name** | | | **Federal Project Number** |
|---|---|---|---|
| Placer County Transportation Planning Agency | | | |
| **Project Name– Description or Location** | | | |
| Colfax Comprehensive Safety Action Plan<br>Colfax, CA | | | |
| **Contract Type (Mark all that apply)** | | | |
| ☐ **A&E Contract** | ☒ **Non-A&E Contract** | ☐ **On-Call** | ☐ **Construction** |

## Prime Contractor/Prime Consultant Information

| **Prime Contractor/Prime Consultant Name** | | | **Year Firm Established** | **DBE / Non-DBE** | **DBE Cert. Number** | **Applicable NAICS Code for Scope of Work** | **Firm's Annual Gross Receipts** |
|---|---|---|---|---|---|---|---|
| | | | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |
| *Address* | | | | | | | |
| | | | | | | | |
| *City* | *State* | *Zip Code* | | | | | |
| | | | | | | | |

## Subcontractor/Subconsultant Information

| | **Subcontractor/Subconsultant Name** | | | **Year Firm Established** | **DBE / Non-DBE** | **DBE Cert. Number** | **Applicable NAICS Code for Scope of Work** | **Firm's Annual Gross Receipts** |
|---|---|---|---|---|---|---|---|---|
| **1** | | | | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |
| | *Address* | | | | | | | |
| | | | | | | | | |
| | *City* | *State* | *Zip Code* | | | | | |
| | | | | | | | | |
| | **Subcontractor/Subconsultant Name** | | | **Year Firm Established** | **DBE / Non-DBE** | **DBE Cert. Number** | **Applicable NAICS Code for Scope of Work** | **Firm's Annual Gross Receipts** |
| **2** | | | | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |
| | *Address* | | | | | | | |
| | | | | | | | | |
| | *City* | *State* | *Zip Code* | | | | | |
| | | | | | | | | |

| | Subcontractor/Subconsultant Name | Year Firm Established | DBE / Non-DBE | DBE Cert. Number | Applicable NAICS Code for Scope of Work | Firm's Annual Gross Receipts |
|---|---|---|---|---|---|---|
| **3** | Address<br>City / State / Zip Code | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |
| **4** | Subcontractor/Subconsultant Name | Year Firm Established | DBE / Non-DBE | DBE Cert. Number | Applicable NAICS Code for Scope of Work | Firm's Annual Gross Receipts |
| | Address<br>City / State / Zip Code | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |
| **5** | Subcontractor/Subconsultant Name | Year Firm Established | DBE / Non-DBE | DBE Cert. Number | Applicable NAICS Code for Scope of Work | Firm's Annual Gross Receipts |
| | Address<br>City / State / Zip Code | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |
| **6** | Subcontractor/Subconsultant Name | Year Firm Established | DBE / Non-DBE | DBE Cert. Number | Applicable NAICS Code for Scope of Work | Firm's Annual Gross Receipts |
| | Address<br>City / State / Zip Code | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |
| **7** | Subcontractor/Subconsultant Name | Year Firm Established | DBE / Non-DBE | DBE Cert. Number | Applicable NAICS Code for Scope of Work | Firm's Annual Gross Receipts |
| | Address<br>City / State / Zip Code | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |

| | Subcontractor/Subconsultant Name | Year Firm Established | DBE / Non-DBE | DBE Cert. Number | Applicable NAICS Code for Scope of Work | Firm's Annual Gross Receipts |
|---|---|---|---|---|---|---|
| **8** | Address<br>City / State / Zip Code | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |
| **9** | Address<br>City / State / Zip Code | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |
| **10** | Address<br>City / State / Zip Code | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |
| **11** | Address<br>City / State / Zip Code | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |
| **12** | Address<br>City / State / Zip Code | | ☐ DBE<br>☐ Non-DBE | | | ☐ < $1 Million<br>☐ $1- $3 Million<br>☐ $3 - $6 Million<br>☐ $6 - $10 Million<br>☐ > $10 Million |

**INSTRUCTIONS:**

Bidder/Proposer is to complete each section in the form beginning with the General Project Information:

- Local Agency Name
- Federal Project Identification
- Project Title or Location

Select the contract type, A&E, Non-A&E, On-call, or Construction Contract. More than one checkbox may apply for consultant contracts (i.e., A&E On-call).

Complete the Prime Contractor/Prime Consultant Information fields fully and legibly:

- Firm name
- Firm address - including required ZIP code
- Firm's status as a DBE or non-DBE
- NAICS code, if applicable (**NAICS Code List**)
- Age of the firm
- Annual gross Receipts

Complete the Subcontractor/Subconsultant information fully and legibly for each subcontractor/subconsultant bid/proposal received:

- Firm name
- Firm address - including required ZIP code
- Firm's status as a DBE or non-DBE
- NAICS code, if applicable (**NAICS Code List**)
- Age of the firm
- Annual gross Receipts

LPAs are required to collect the completed LAPM Exhibit 9-L from each bidder/proposer from their project advertisement and submit to their DLAE within sixty (60) days following contract award, pursuant to 49 CFR 26.11.

# EXHIBIT 9-P: PROMPT PAYMENT CERTIFICATION

Section 7108.5 of the California Business and Professions Code (CBPC) requires a prime contractor or subcontractor (i.e. builders) to pay any subcontractor not later than seven (7) days after receipt of each progress payment received or final retention payment. Section 3321 of the California Civil Code (CCC) requires prime design professionals (prime consultants directly in contract with a public agency) to pay any subconsultant not later than fifteen (15) days after receipt of each progress payment or final retention payment. The payment cannot be delayed because of disagreements on other contracts. Any delay or postponement of payment among the parties may take place only for good cause with the agency's prior written approval. This requirement applies to both DBE and non-DBE subcontractors.

## 1. CONTRACT INFORMATION

| (1) Prime Contractor/Consultant | (2) Local Agency | (3) Federal Project Number | (4) Local Contract Number | (5) Total Contract Award Amt ($) | (6) Total DBE Commitment Amt ($) | (7) DBE Commitment (%) | (8) DBE Contract Goal (%) | (9) Reporting Period (MM/YYYY) |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

## 2. PAYMENT INFORMATION

| (10) Subcontractor/Subconsultant Name | (11) DBE Cert. Number | (12) Subcontract Type | (13) Date Payment Received by Prime | (14) Date of Prime Payment to Sub | (15) Amount of Payment ($) | (16) Amount Paid To Sub to Date ($) | (17) Total Committed to This Subcontractor ($) | (18) Promptly Paid? (Y/N) | (19) Incremental Retainage Paid? (Y/N) | (20) Comments or Reason for Non-Payment/Non-Prompt Payment, including Payment of incremental Retainage * |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | Totals | $0.00 | $0.00 | $0.00 | | | |

List all subcontractors/subconsultants, whether or not the firms were originally listed in Exhibit 10-O2 or 15-G as a DBE commitment. If the actual DBE utilization was different than that approved at the time of award, provide comments in box (20). All payments reported, including payments to contractor/consultant, are for the date listed.

* Only reasons based on dispute on subcontractor or supplier noncompliance may be accepted.

## 3. CERTIFICATION

**The prime contractor or consultant hereby certifies that the foregoing Prompt Payment Certification Form is true and correct.**

(21) Prime Contractor Manager's Signature

(22) Date

(25) Prime Contractor Manager's Name

(26) Phone

**Local Agency certifies that all information in this form is complete and verified.**

(23) Local Agency Representative's Signature

(24) Date

(27) Local Agency Representative 's Name

(28) Phone

## EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) 

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

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Consultant Consultant Name Contract No. Contract No Date 1/1/2016

**DIRECT LABOR**

| Classification/Title | Name | Hours | Actual Hourly Rate | Total |
|---|---|---|---|---|
| (project manager) | | 1 | $ 1.00 | $ 1.00 |
| (Sr. civil Engineer) | | 2 | $ 2.50 | $ 5.00 |
| (Envio. Scientist) | | 3 | $ 4.00 | $ 12.00 |
| (Jr. Highway Engr) | | 4 | $ 5.00 | $ 20.00 |
| | | 5 | $ 6.00 | $ 30.00 |

**LABOR COSTS**

a) Subtotal Direct Labor Costs $ 68.00

b) Anticipated Salary Increases (see page 2 for sample) $ 7,871.10

c) **TOTAL DIRECT LABOR COSTS** [(a) + (b)] **$** 7,936.10

**FRINGE BENEFITS**

d) Fringe Benefits (Rate: 10.00% )

e) **TOTAL FRINGE BENEFITS** [(c) x (d)] **$** 793.61

**INDIRECT COSTS**

f) Overhead (Rate: 20.00%)

g) Overhead [(c) x (f)] $ 1,587.22

h) General and Administrative (Rate: 15.00% )

i) Gen & Admin [(c) x (h)] $ 1,190.42

j) **TOTAL INDIRECT COSTS** [(e) + (g) + (i)] **$** 3,571.05

**FEE (Profit)**

q) (Rate: 25.00% )

k) **TOTAL FIXED PROFIT** [(c) + (j)] x (q)]**$** 2,876.79

**OTHER DIRECT COSTS (ODC)**

| | Description | Unit(s) | Unit Cost | Total |
|---|---|---|---|---|
| l) | Travel/Mileage Costs (supported by consultant actual costs) | 1 | $ 1.00 | $ 1.00 |
| m) | Equipment Rental and Supplies (itemize) | 1 | $ 2.00 | $ 2.00 |
| n) | Permit Fees (itemize), Plan sheets (each), Test Holes (each), etc. | 1 | $ 3.00 | $ 3.00 |
| o) | Subconsultant Costs (attach detailed cost proposal in same format as prime consultant estimate for each subconsultant) | 1 | $ 4.00 | $ 4.00 |

p) **TOTAL OTHER DIRECT COSTS** [(l) + (m) + (n) + (o)] **$** 10.00

**TOTAL COST** [(c) + (j) + (k) + (p)] **$** 14,393.37

NOTES:

- Employees subject to prevailing wage requirements to be marked with an *.
- ODC items should be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost.
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate.

## EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) 

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

(SAMPLE CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant Consultant Name Contract No. Contract No Date 1/1/2016

**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 | **5 Year Contract Duration** |
|---|---|---|---|---|---|
| $ 250,000.00 | | 5000 | = | $ 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 | + | 2.00% | = | $ 51.00 | Year 2 Avg Hourly Rate |
| Year 2 | $ 51.00 | + | 2.00% | = | $ 52.02 | Year 3 Avg Hourly Rate |
| Year 3 | $ 52.02 | + | 2.00% | = | $ 53.06 | Year 4 Avg Hourly Rate |
| Year 4 | $ 53.06 | + | 2.00% | = | $ 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% | * | 5,000 | = | 1,000 | Estimated Hours Year 1 |
| Year 2 | 40.0% | * | 5,000 | = | 2,000 | Estimated Hours Year 2 |
| Year 3 | 15.0% | * | 5,000 | = | 750 | Estimated Hours Year 3 |
| Year 4 | 15.0% | * | 5,000 | = | 750 | Estimated Hours Year 4 |
| Year 5 | 10.0% | * | 5,000 | = | 500 | Estimated Hours Year 5 |
| Total | 100% | | Total | = | 5,000 | |

**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 | * | 1,000 | = | $ 50,000.00 | Estimated Hours Year 1 |
| Year 2 | $ 51.00 | * | 2,000 | = | $ 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:

- 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.
- 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)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.

## EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #2) 

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant or Subconsultant Consultant Name Contract No. Contract No Date 1/1/2016

Fringe Benefit 10.00% + Overhead 20.00% + General Administration 15.00% = 45.00% Combined Indirect Cost Rate (ICR)
(= 0% if Included in OH) (= 0% if Included in OH)

FEE = 25.00%

| BILLING INFORMATION | | | | CALCULATION INFORMATION | | | | |
|---|---|---|---|---|---|---|---|---|
| Name/Job Title/Classification[1] | Hourly Billing Rates[2] Straight | OT(1.5x) | OT(2x) | Effective date of hourly rate From | To | Actual **or** Avg. hourly rate[3] | % or $ increase | Hourly range - for classifications only |
| | | | | | | | 0.00%<br>0.00%<br>0.00% | |
| | | | | | | | 0.00%<br>0.00%<br>0.00% | |
| | | | | | | | 0.00%<br>0.00%<br>0.00% | |
| | | | | | | | 0.00%<br>0.00%<br>0.00% | |
| | | | | | | | 0.00%<br>0.00%<br>0.00% | |
| | | | | | | | 0.00%<br>0.00% | |

1. Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.
2. Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Agreed upon billing rates are not adjustable for the term of contract.
3. For named employees enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

NOTES:

- Denote all employees subject to prevailing wage with an asterisks (*)
- For "Other Direct Cost" listing, see page 2 of this Exhibit

## EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #2) 

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant or Subconsultant Consultant Name Contract No. Contract No Date 1/1/2016

### SCHEDULE OF OTHER DIRECT COST ITEMS

| PRIME CONSULTANT | | | | SUBCONSULTANT #1 | | | | SUBCONSULTANT #2 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| DESCRIPTION OF ITEMS | UNIT | UNIT COST | TOTAL | DESCRIPTION OF ITEMS | UNIT | UNIT COST | TOTAL | DESCRIPTION OF ITEMS | UNIT | UNIT COST | TOTAL |
| | | | $ 0.00 | | | | $ 0.00 | | | $ 1.00 | $ 0.00 |
| | | | $ 0.00 | | | | $ 0.00 | | | $ 1.00 | $ 0.00 |
| | | | $ 0.00 | | | | $ 0.00 | | | | $ 0.00 |
| | | | $ 0.00 | | | | $ 0.00 | | | | $ 0.00 |
| | | | $ 0.00 | | | | $ 0.00 | | | | $ 0.00 |
| | | | $ 0.00 | | | | $ 0.00 | | | | $ 0.00 |
| | | | $ 0.00 | | | | $ 0.00 | | | | $ 0.00 |
| | | | $ 0.00 | | | | $ 0.00 | | | | $ 0.00 |
| | | | $ 0.00 | | | | $ 0.00 | | | | $ 0.00 |
| PRIME TOTAL ODCs = | | | $ 0.00 | SUBCONSULTANT #1 ODCs = | | | $ 0.00 | SUBCONSULTANT #2 ODCs = | | | $ 0.00 |

IMPORTANT NOTES:

1. List direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentations.
2. Proposed items should be consistently billed directly to all clients (Commercial entities, Federal Govt., State Govt., and Local Govt. Agency), and not just when the client will pay for them as a direct cost.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency.
7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is their standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.

**EXHIBIT 10-K CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL MANAGEMENT SYSTEM**

***(Note: If requesting to utilize the Safe Harbor Indirect Cost Rate submit Attachment 1 of DLA-OB 13-07 - Safe Harbor Indirect Cost Rate for Consultant Contracts found at http://www.dot.ca.gov/hq/LocalPrograms/DLA_OB/DLA_OB.htm in lieu of this form.)***

**Certification of Final Indirect Costs:**

Consultant Firm Name: _____

Indirect Cost Rate: _____ * for fiscal period _____ (mm/dd/yyyy to mm/dd/yyyy)

*Fiscal period covered for Indirect Cost Rate developed (not the contract period).

Local Government: _____

Contract Number: _____ Project Number: _____

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

1. All costs included in this proposal to establish final Indirect Cost Rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR, Part 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization, and Indirect Cost Rates have been disclosed as of the date of proposal preparation noted above.

**Certification of Financial Management System:**

I, the undersigned, certify to the best of my knowledge and belief that our Financial Management System meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR of Title 49, CFR, Part 18.20 to the extent applicable to Consultant.

**Certification of Dollar Amount for all A&E Contracts:**

I, the undersigned, certify that the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to this firm within the last three (3) calendar years for all State DOT and Local Agencies is $_____ and the number of states in which the firm does business is _____.

**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 reasonable, allowable and allocable to the contract in accordance with the cost principles of the FAR of Title 48, CFR, Part 31. Allowable direct costs to a Government contract shall be:

1. Compliant with Generally Accepted Accounting Principles (GAAP) and standards promulgated by the Cost Accounting Standards Board (when applicable).
2. Compliant with the terms of the contract and is incurred specifically for the contract.

3. Not prohibited by 23 CFR, Chapter 1, Part 172 – Administration of Engineering and Design Related Service Contracts to the extent requirements are applicable to Consultant.

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files.

**Subconsultants (if applicable)**
Proposed Contract Amount (or amount not to exceed if on-call contract): $ _____

**Prime Consultants (if applicable)**
Proposed **Total** Contract Amount (or amount not to exceed if on-call contract): $ _____

Prime, list all subconsultants and proposed subcontract dollar amounts (attach additional page if necessary):

_____ $_____
_____ $_____
_____ $_____
_____ $_____
_____ $_____

Consultant Certifying (Print Name and Title):

Name: _____

Title: _____

Consultant Certification Signature **: _____

Date of Certification (mm/dd/yyyy): _____

Consultant Contact Information:

Email: _____

Phone number: _____

**An individual executive or financial officer of the consultant's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the Indirect Cost Rate proposal submitted in conjunction with the contract.

Note: *Per 23 U.S.C. 112(b)(2)(B), Subconsultants must comply with the FAR Cost Principles contained in 48 CFR, Part 31. 23 CFR Part 172.3 Definitions state: Consultant means the individual or firm providing engineering and design related services as a party to the contract. Therefore, subconsultants as parties of a contract must complete a certification and send originals to A&I and keep copies in Local Agency Project Files.*

**Distribution:** 1) Original to Caltrans Audits and Investigations
2) Retained in Local Agency Project Files

# EXHIBIT D

## FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 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 if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the non-discrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

# EXHIBIT E

## NONDISCRIMINATION ASSURANCES

ADMINISTERING AGENCY HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADMINISTERING AGENCY receives federal financial assistance from the Federal Department of Transportation. ADMINISTERING AGENCY HEREBY GIVES ASSURANCE THAT ADMINISTERING AGENCY will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, ADMINISTERING AGENCY hereby gives the following specific assurances with respect to its federal-aid Program:

1. That ADMINISTERING AGENCY agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That ADMINISTERING AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

> ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That ADMINISTERING AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where ADMINISTERING AGENCY receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where ADMINISTERING AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That ADMINISTERING AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the ADMINISTERING AGENCY with other parties:

> Appendix C;
> (a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates ADMINISTERING AGENCY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates ADMINISTERING AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which ADMINISTERING AGENCY retains ownership or possession of the property.

9. That ADMINISTERING AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that ADMINISTERING AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That ADMINISTERING AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. ADMINISTERING AGENCY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. ADMINISTERING AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of STATE assisted contracts. ADMINISTERING AGENCY'S DBE Race-Neutral Implementation Agreement is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved DBE Race-Neutral Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31USC 3801 es seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

## APPENDIX A TO EXHIBIT E

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

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

(2) Nondiscrimination: ADMINISTERING AGENCY, 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. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY 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 ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

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

(5) Sanctions for Noncompliance: In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
(a) withholding of payments to ADMINISTERING AGENCY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
(b) cancellation, termination or suspension of the Agreement, in whole or in part.

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

## APPENDIX B TO EXHIBIT E

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that ADMINISTERING AGENCY will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ADMINISTERING AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto ADMINISTERING AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) *

(2) that ADMINISTERING AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.*

---

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

## APPENDIX C TO EXHIBIT E

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7(a) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY and its assigns.

---

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

## APPENDIX D TO EXHIBIT E

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7 (b) of Exhibit B.

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

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY, and its assigns.

---

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.