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**TRAFFIC SIGNAL AND LIGHTIN MAINTENANCE OPERATIONS  
CONSULTANT AGREEMENT**

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THIS AGREEMENT for Traffic Signal and Lighting Maintenance Operations Services (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the County of Fresno, a political subdivision of the State of California (“County”) and \_\_\_\_\_, a California corporation, whose address is \_\_\_\_\_ (“Consultant”).

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**Recitals**

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1. The County needs to retain the Consultant to provide Traffic Signal and Lighting Maintenance Operations Services, which including providing maintenance, repair, and emergency services of traffic signals, highway lighting, and other lighted traffic facilities at various locations throughout Fresno County (“Projects”).

2. The Department has selected the Consultant in accordance with the Ordinance Code of the County of Fresno, Chapter 4.10, and in accordance with Chapter 10 of the California Department of Transportation’s (CALTRANS) Local Assistance Procedures Manual (LAPM), to provide the services necessary for the Projects, as specified herein.

3. Consultant represents that it can provide these services for the Projects in accordance with the terms of this Agreement.

The parties therefore agree as follows:

**Article 1**

**Contractor’s Services**

1.1 Consultant shall provide the services enumerated in “Scope of Services and List of Traffic Signals & Lighting,” attached as Exhibit A, and incorporated by this reference.

1.2 The Consultant’s services shall be performed as expeditiously as is consistent with professional skill and the orderly progress of the work, based on schedules for each specific Project mutually agreed upon in advance by the Contract Administrator, and the Consultant.

1 1.3 **Compliance with Laws.** The Consultant shall, at its own cost, comply with all  
2 applicable federal, state, and local laws and regulations in the performance of its obligations  
3 under this Agreement, including but not limited to workers compensation, labor, and  
4 confidentiality laws and regulations.

5 1.4 The Consultant's Project team staff shall be as listed in Exhibit B – Consultant  
6 Proposal, attached and incorporated by this reference. Any substitutions of personnel shall be  
7 approved by the Contract Administrator, approval of which shall not be unreasonably withheld.  
8 The Consultant shall notify the Contract Administrator of the names and classifications of  
9 employees assigned to each specific Project, and shall not reassign such employees to other  
10 projects of the Consultant without notification to and prior approval by the Contract  
11 Administrator.

12 1.5 The Consultant's services shall be performed as expeditiously as is consistent with  
13 professional skill and the orderly progress of the work, based on schedules for each specific  
14 Project mutually agreed upon in advance by the Contract Administrator and the Consultant,  
15 and consistent with schedules established under Article 3, "Compensation, Invoices, and  
16 Payments."

17 1.6 The individual listed below is designated as the Consultant's Project Manager for  
18 this Agreement, and shall remain so unless the Consultant requests and the Director approves,  
19 in writing, a change of the Consultant's Project Manager, approval of which shall not be  
20 unreasonably withheld:

21 **Name, Title**

22 **Address**

23 **City, State Zip**

24 **Phone number**

25 **Email**

26  
27 **Article 2**

28 **County's Responsibilities**

2.1 County shall issue Task Orders on a project-by-project basis. Task Orders will at a

1 minimum include scope of work, and schedule for the Project.

2 2.2 County shall provide the Consultant with a Project Scope and Schedule, and  
3 compensate the Consultant as provided in this Agreement.

4 2.3 County shall provide an individual Project Administrator to serve as a representative  
5 of the County who will coordinate and communicate with the Consultant on all Project traffic  
6 signal and lighting operation maintenance work, to the extent appropriate, in an effort to  
7 facilitate the Consultant's performance of its obligations in accordance with the provisions of  
8 this Agreement.

9 2.4 County shall examine documents submitted to the County by the Consultant and  
10 timely render decisions pertaining to those documents.

11 2.5 County shall give reasonably prompt consideration to all matters submitted for  
12 approval by the Consultant in an effort to assist the Consultant in avoiding any substantial  
13 delays in the Consultant's program of work. An approval, authorization, or request to the  
14 Consultant given by the County will be binding upon the County under the terms of this  
15 Agreement only if it is made in writing and signed on behalf of the County by Contract  
16 Administrator.

17 2.6 County shall organize, attend, and participate in meetings with the Consultant and  
18 other agencies as required.

19 2.7 County shall provide existing timing card and controller type at each of the existing  
20 traffic control signal.

21 2.8 The County may provide available traffic data or information, as is available and  
22 relevant for projects.

23 2.9 The County may provide data/information as requested by the Consultant for use  
24 for this Agreement. Consultant shall make any such request four (4) weeks in advance to allow  
25 County staff to set up the proper equipment. If the information is unavailable or out of date, the  
26 County reserves the right to request that the Consultant obtain the data/information  
27 independently.

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1 2.10 The Director, or his or her designee, is authorized to modify the List of Traffic  
2 Signals and Lighting, on behalf of the County (under Scope of Services, sections Additions to  
3 the List, and Deletions to the List).

4 2.11 The individual listed below is designated as the Contract Administrator for this  
5 Agreement on behalf of the County, and shall remain so unless the Consultant is otherwise  
6 notified in writing by the County's Director of Public Works and Planning or his/her designee(s)  
7 ("Director"):

8 Erin Haagenson, Program Manager

9 2220 Tulare Street, 6th Floor, Fresno, CA 93721

10 559-388-7292

11 [ehaagenson@fresnocountyca.gov](mailto:ehaagenson@fresnocountyca.gov)

### 12 **Article 3**

#### 13 **Compensation, Invoices, and Payments**

14 3.1 The County agrees to pay, and the Consultant agrees to receive, compensation for  
15 the performance of its services under this Agreement as described in this Article 3.

16 3.2 **Maximum Compensation.** The maximum compensation payable to the Consultant  
17 for services provided pursuant to this Agreement is one million two hundred fifty thousand  
18 dollars (\$1,250,000.00) over the entire term of the Agreement. The Consultant acknowledges  
19 that the County is a local government entity and does so with notice that the County's powers  
20 are limited by the California Constitution and by State law, and with notice that the Consultant  
21 may receive compensation under this Agreement only for services performed according to the  
22 terms of this Agreement and while this Agreement is in effect, and subject to the maximum  
23 amount payable under this section. The Consultant further acknowledges that County  
24 employees have no authority to pay the Consultant except as expressly provided in this  
25 Agreement.

26 3.3 **Consultant Fee.** The Consultant's Cost Proposal is attached as Exhibit C and  
27 incorporated by this reference. If there is any conflict between the provisions set forth in the  
28 text of this Agreement and the provisions of Exhibit C, this Agreement shall take precedence.

1       3.4     **Invoices.** The Contractor shall submit invoices to  
2 [PWPBusinessOffice@fresnocountyca.gov](mailto:PWPBusinessOffice@fresnocountyca.gov). The Contractor shall submit each invoice within 60  
3 days after the month in which the Contractor performs services, and in any case within 60 days  
4 after the end of the term or termination of this Agreement. Invoices shall include the items  
5 under Scope of Services, section invoicing, and shall be submitted with the documentation  
6 identified in Section 3.8.

7       3.5     **Payment.** Upon receipt of a proper invoice, the Contract Administrator will take a  
8 maximum of ten (10) working days to review, approve, and submit it to the County Auditor-  
9 Controller/Treasurer-Tax Collector. Unsatisfactory or inaccurate invoices will be returned to the  
10 Consultant for correction and resubmittal. Payment shall be issued to the Consultant within forty  
11 (40) calendar days of the date the Auditor-Controller/Treasurer-Tax Collector receives the  
12 approved invoice.

13       3.6     **Retention.** In addition to any amounts withheld under this Article 3, the Consultant  
14 agrees that the County, at the discretion of the Contract Administrator, may withhold a five  
15 percent (5%) retention from the earned compensation of the Consultant. If the Contract  
16 Administrator determines that retention will not be withheld for a Project, the Contract  
17 Administrator will state that in writing prior to commencement of the Project by the Consultant.  
18 The Contract Administrator will identify in writing prior to commencement of the Project the  
19 Project-specific prerequisites (e.g., the successful completion of a Project phase) for the  
20 release of retention.

21       3.7     An unresolved dispute over a possible error or omission may cause the County to  
22 withhold payment of the Consultant fees in the disputed amount.

23       3.8     **Invoice Documentation.** Concurrently with invoices, the Consultant shall certify  
24 (through copies of issued checks, receipts, or other County pre-approved documentation) that  
25 complete payment, less a five percent (5%) retention if applicable, has been made to all  
26 subconsultants as provided herein, for all previous invoices paid by the County.

27       3.9     Final invoices, and separate invoices for retentions, shall be submitted to Contract  
28 Administrator no later than thirty (30) days after the phase is completed. Payment for  
retentions, if any, shall not be made until all services for the phase are completed.

1 3.10 In the event the Director reduces the scope of the Consultant's work under the  
2 Agreement for a specific Project (or discontinues a specific Project), whether due to a  
3 deficiency in the appropriation of anticipated funding or otherwise, the Consultant will be  
4 compensated on a pro rata basis for actual work completed and accepted by the Director in  
5 accordance with the terms of the Agreement.

6 3.11 **Incidental Expenses.** The Consultant is solely responsible for all of its costs and  
7 expenses that are not specified as payable by the County under this Agreement.

8 **Article 4**

9 **Term of Agreement**

10 4.1 **Term.** This Agreement is effective on execution and terminates after a period of  
11 three years, except as provided in section 4.2, "Extension," or Article 6, "Termination and  
12 Suspension," below.

13 4.2 **Extension.** The term of this Agreement may be extended for no more than two,  
14 one-year periods upon written approval of both parties at least 30 days before the first day of  
15 the next one-year extension period. The Director, or his or her designee is authorized to sign  
16 the written approval on behalf of the County based on the Consultant's satisfactory  
17 performance. The extension of this Agreement by the County is not a waiver or compromise of  
18 any default or breach of this Agreement by the Consultant existing at the time of the extension  
19 whether or not known to the County.

20 **Article 5**

21 **Notices**

22 5.1 **Contact Information.** The persons and their addresses having authority to give and  
23 receive notices provided for or permitted under this Agreement include the following:

24 **For the County:**

25 [Title Only]

26 County of Fresno

27 [Street Address]

28 [City, State ZIP]

[Optional: Generic Departmental Email Address (not one assigned to a particular person)]

[Optional:] Fax: [Fax Number]

**For the Contractor:**

1 [Title]  
2 [Name of Contractor]  
3 [Street Address]  
4 [City, State ZIP]  
5 [Optional: Email Address]  
6 [Optional:] Fax: [Fax Number]

7 5.2 **Change of Contact Information.** Either party may change the information in  
8 section 5.1 by giving notice as provided in section 5.3.

9 5.3 **Method of Delivery.** Each notice between the County and the Consultant provided  
10 for or permitted under this Agreement must be in writing, state that it is a notice provided under  
11 this Agreement, and be delivered either by personal service, by first-class United States mail,  
12 by an overnight commercial courier service, or by Portable Document Format (PDF) document  
13 attached to an email.

14 (A) A notice delivered by personal service is effective upon service to the recipient.

15 (B) A notice delivered by first-class United States mail is effective three County  
16 business days after deposit in the United States mail, postage prepaid, addressed to  
17 the recipient.

18 (C) A notice delivered by an overnight commercial courier service is effective one  
19 County business day after deposit with the overnight commercial courier service,  
20 delivery fees prepaid, with delivery instructions given for next day delivery, addressed to  
21 the recipient.

22 (D) A notice delivered by PDF document attached to an email is effective when  
23 transmission to the recipient is completed (but, if such transmission is completed  
24 outside of County business hours, then such delivery is deemed to be effective at the  
25 next beginning of a County business day), provided that the sender maintains a  
26 machine record of the completed transmission.

27 5.4 **Claims Presentation.** For all claims arising from or related to this Agreement,  
28 nothing in this Agreement establishes, waives, or modifies any claims presentation  
requirements or procedures provided by law, including the Government Claims Act (Division  
3.6 of Title 1 of the Government Code, beginning with section 810).

1 **Article 6**

2 **Termination and Suspension**

3 **6.1 Termination for Non-Allocation of Funds.** The terms of this Agreement are  
4 contingent on the approval of funds by the appropriating government agency. If sufficient funds  
5 are not allocated, then the County, upon at least 30 days' advance written notice to the  
6 Consultant, may:

7 (A) Modify the services provided by the Consultant under this Agreement; or

8 (B) Terminate this Agreement.

9 **6.2 Termination for Breach.**

10 (A) Upon determining that a breach (as defined in paragraph (C) below) has  
11 occurred, the County may give written notice of the breach to the Consultant. The  
12 written notice may suspend performance under this Agreement and must provide at  
13 least 30 days for the Consultant to cure the breach.

14 (B) If the Consultant fails to cure the breach to the County's satisfaction within the  
15 time stated in the written notice, the County may terminate this Agreement immediately.

16 (C) For purposes of this section, a breach occurs when, in the determination of the  
17 County, the Consultant has:

18 (1) Obtained or used funds illegally or improperly;

19 (2) Failed to comply with any part of this Agreement;

20 (3) Submitted a substantially incorrect or incomplete report to the County; or

21 (4) Improperly performed any of its obligations under this Agreement.

22 **6.3 Termination without Cause.** In circumstances other than those set forth above,  
23 the County may terminate this Agreement by giving at least 30 days advance written notice to  
24 the Consultant.

25 **6.4 No Penalty or Further Obligation.** Any termination of this Agreement by the  
26 County under this Article 6 is without penalty to or further obligation of the County.

27 **6.5 County's Rights upon Termination.** Upon termination for breach under this Article  
28 6, the County may demand repayment by the Consultant of any monies disbursed to the  
Consultant under this Agreement that, in the County's sole judgment, were not expended in



1 compliance with this Agreement. The Consultant shall promptly refund all such monies upon  
2 demand. This section survives the termination of this Agreement.

### 3 **Article 7**

#### 4 **Independent Contractors**

5 7.1 **Status.** In performing under this Agreement, the Consultant, including its officers,  
6 agents, employees, and volunteers, is at all times acting and performing as an independent  
7 Contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint  
8 venturer, partner, or associate of the County.

9 7.2 **Benefits.** Because of its status as an independent Consultant, the Consultant has  
10 no right to employment rights or benefits available to County employees. The Consultant is  
11 solely responsible for providing to its own employees all employee benefits required by law.  
12 The Consultant shall save the County harmless from all matters relating to the payment of  
13 Consultant's employees, including compliance with Social Security withholding and all related  
14 regulations.

15 7.3 **Services to Others.** The parties acknowledge that, during the term of this  
16 Agreement, the Consultant may provide services to others unrelated to the County.

### 17 **Article 8**

#### 18 **Indemnity and Defense**

19 8.1 **Indemnity.** The Consultant shall indemnify and hold harmless and defend the  
20 County (including its officers, agents, employees, and volunteers) against all claims, demands,  
21 injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and  
22 liabilities of any kind to the County, the Consultant, or any third party that arise from or relate to  
23 the performance or failure to perform by the Consultant (or any of its officers, agents,  
24 Subconsultants, or employees) under this Agreement. The County may conduct or participate  
25 in its own defense without affecting the Consultant's obligation to indemnify and hold harmless  
26 or defend the County.

27 8.2 **Survival.** This Article 8 survives the termination or expiration of this Agreement.

### 28 **Article 9**

#### **Insurance Requirements**

1 9.1 The Consultant shall comply with all the insurance requirements in Exhibit D to this  
2 Agreement.

### 3 **Article 10**

#### 4 **Cost Principles and Administrative Requirements**

5 10.1 The Consultant agrees that 48 CFR 31, Contract Cost Principles and Procedures,  
6 shall be used to determine the allowability of individual terms of cost.

7 10.2 The Consultant also agrees to comply with Federal procedures in accordance with 2  
8 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for  
9 Federal Awards.

10 10.3 Any costs for which payment has been made to the Consultant that are determined  
11 by subsequent audit to be unallowable under 48 CFR 31 or 2 CFR 200 are subject to  
12 repayment by the Consultant to County.

13 10.4 When a Consultant or Subconsultant is a Non-Profit Organization or an Institution of  
14 Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative  
15 Requirements, Cost Principles, and Audit Requirements for Federal Awards, shall apply.

### 16 **Article 11**

#### 17 **Inspections, Audits, and Public Records**

18 11.1 **Inspection of Documents.** The Consultant shall make available to the County, and  
19 the County may examine at any time during business hours and as often as the County deems  
20 necessary, all of the Consultant's records and data with respect to the matters covered by this  
21 Agreement, excluding attorney-client privileged communications. The Consultant shall, upon  
22 request by the County, permit the County to audit and inspect all of such records and data to  
23 ensure the Consultant's compliance with the terms of this Agreement.

24 11.2 **State Audit Requirements.** If the compensation to be paid by the County under  
25 this Agreement exceeds \$10,000, the Consultant is subject to the examination and audit of the  
26 California State Auditor, as provided in Government Code section 8546.7, for a period of three  
27 years after final payment under this Agreement. This section survives the termination of this  
28 Agreement.

1       11.3 **Public Records.** The County is not limited in any manner with respect to its public  
2 disclosure of this Agreement or any record or data that the Consultant may provide to the  
3 County. The County’s public disclosure of this Agreement or any record or data that the  
4 Consultant may provide to the County may include but is not limited to the following:

5           (A) The County may voluntarily, or upon request by any member of the public or  
6 governmental agency, disclose this Agreement to the public or such governmental  
7 agency.

8           (B) The County may voluntarily, or upon request by any member of the public or  
9 governmental agency, disclose to the public or such governmental agency any record  
10 or data that the Consultant may provide to the County, unless such disclosure is  
11 prohibited by court order.

12           (C) This Agreement, and any record or data that the Consultant may provide to the  
13 County, is subject to public disclosure under the Ralph M. Brown Act (California  
14 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

15           (D) This Agreement, and any record or data that the Consultant may provide to the  
16 County, is subject to public disclosure as a public record under the California Public  
17 Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning  
18 with section 6250) (“CPRA”).

19           (E) This Agreement, and any record or data that the Consultant may provide to the  
20 County, is subject to public disclosure as information concerning the conduct of the  
21 people’s business of the State of California under California Constitution, Article 1,  
22 section 3, subdivision (b).

23           (F) Any marking of confidentiality or restricted access upon or otherwise made with  
24 respect to any record or data that the Consultant may provide to the County shall be  
25 disregarded and have no effect on the County’s right or duty to disclose to the public or  
26 governmental agency any such record or data.

27       11.4 **Public Records Act Requests.** If the County receives a written or oral request  
28 under the CPRA to publicly disclose any record that is in the Consultant’s possession or  
control, and which the County has a right, under any provision of this Agreement or applicable

1 law, to possess or control, then the County may demand, in writing, that the Consultant deliver  
2 to the County, for purposes of public disclosure, the requested records that may be in the  
3 possession or control of the Consultant. Within five business days after the County's demand,  
4 the Consultant shall (a) deliver to the County all of the requested records that are in the  
5 Consultant's possession or control, together with a written statement that the Consultant, after  
6 conducting a diligent search, has produced all requested records that are in the Consultant's  
7 possession or control, or (b) provide to the County a written statement that the Consultant, after  
8 conducting a diligent search, does not possess or control any of the requested records. The  
9 Consultant shall cooperate with the County with respect to any County demand for such  
10 records. If the Consultant wishes to assert that any specific record or data is exempt from  
11 disclosure under the CPRA or other applicable law, it must deliver the record or data to the  
12 County and assert the exemption by citation to specific legal authority within the written  
13 statement that it provides to the County under this section. The Consultant's assertion of any  
14 exemption from disclosure is not binding on the County, but the County will give at least 10  
15 days' advance written notice to the Consultant before disclosing any record subject to the  
16 Consultant's assertion of exemption from disclosure. The Consultant shall indemnify the  
17 County for any court-ordered award of costs or attorney's fees under the CPRA that results  
18 from the Consultant's delay, claim of exemption, failure to produce any such records, or failure  
19 to cooperate with the County with respect to any County demand for any such records.

## 20 **Article 12**

### 21 **Disclosure of Self-Dealing Transactions**

22 12.1 **Applicability.** This Article 12 applies if the Consultant is operating as a corporation  
23 or changes its status to operate as a corporation.

24 12.2 **Duty to Disclose.** If any member of the Consultant's Board of Directors is party to a  
25 self-dealing transaction, he or she shall disclose the transaction by completing and signing a  
26 "Self-Dealing Transaction Disclosure Form" (Exhibit E to this Agreement) and submitting it to  
27 the County before commencing the transaction or immediately after.  
28



1       13.9 **Nondiscrimination.** During the performance of this Agreement, the Consultant  
2 shall not unlawfully discriminate against any employee or applicant for employment, or recipient  
3 of services, because of race, religious creed, color, national origin, ancestry, physical disability,  
4 mental disability, medical condition, genetic information, marital status, sex, gender, gender  
5 identity, gender expression, age, sexual orientation, military status or veteran status pursuant  
6 to all applicable State of California and federal statutes and regulation.

7       13.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or  
8 obligation of the Consultant under this Agreement on any one or more occasions is not a  
9 waiver of performance of any continuing or other obligation of the Consultant and does not  
10 prohibit enforcement by the County of any obligation on any other occasion.

11       13.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement  
12 between the Consultant and the County with respect to the subject matter of this Agreement,  
13 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,  
14 publications, and understandings of any nature, unless those things are expressly included in  
15 this Agreement. If there is any inconsistency between the terms of this Agreement without its  
16 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving  
17 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the  
18 exhibits.

19       13.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to  
20 create any rights or obligations for any person or entity except for the parties.

21       13.13 **Binding Upon Successors.** This Agreement shall be binding upon and inure to the  
22 benefit of the parties and their respective successors in interest, assigns, legal representatives,  
23 and heirs.

24       13.14 **Authorized Signature.** The Consultant represents and warrants to the County that:

25               (A) The Consultant is duly authorized and empowered to sign and perform its  
26 obligations under this Agreement.

27               (B) The individual signing this Agreement on behalf of the Consultant is duly  
28 authorized to do so and his or her signature on this Agreement legally binds the  
Consultant to the terms of this Agreement.

1 13.15 **Electronic Signatures.** The parties agree that this Agreement may be executed by  
2 electronic signature as provided in this section.

3 (A) An “electronic signature” means any symbol or process intended by an  
4 individual signing this Agreement to represent their signature, including but not limited  
5 to

6 (1) a digital signature; or

7 (2) an electronically scanned and transmitted (for example by PDF document)  
8 version of an original handwritten signature.

9 (B) Each electronic signature affixed or attached to this Agreement

10 (1) is deemed equivalent to a valid original handwritten signature of the person  
11 signing this Agreement for all purposes, including but not limited to evidentiary proof  
12 in any administrative or judicial proceeding, and

13 (2) has the same force and effect as the valid original handwritten signature of  
14 that person.

15 (C) The provisions of this section satisfy the requirements of Civil Code section  
16 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division  
17 3, Part 2, Title 2.5, beginning with section 1633.1).

18 (D) Each party using a digital signature represents that it has undertaken and  
19 satisfied the requirements of Government Code section 16.5, subdivision (a),  
20 paragraphs (1) through (5), and agrees that each other party may rely upon that  
21 representation.

22 (E) This Agreement is not conditioned upon the parties conducting the transactions  
23 under it by electronic means and either party may sign this Agreement with an original  
24 handwritten signature.

25 13.16 **Counterparts.** This Agreement may be signed in counterparts, each of which is an  
26 original, and all of which together constitute this Agreement.

## 27 **Article 14**

### 28 **Subconsultants**

14.1 The Consultant may retain, as subconsultants, specialists needed for theses

1 services All subconsultants used by the Consultant shall be approved in writing by the  
2 Contract Administrator before they are retained by the Consultant, approval of which shall not  
3 be unreasonably withheld. The subconsultants listed in Exhibit B, titled, "Consultant Proposal"  
4 attached hereto and incorporated herein, shall be considered as approved by the Contract  
5 Administrator. The maximum amount of compensation to be paid to the Consultant under  
6 Article 3 "Compensation, Allowable Costs and Payments" shall not be increased by any  
7 addition or substitution of subconsultants.

8 14.2 The Consultant shall be as fully responsible to the County for the negligent acts and  
9 omissions of its contractors and subcontractors or subconsultants, and of persons either  
10 directly or indirectly employed by them, in the same manner as persons directly employed by  
11 the Consultant.

12 14.3 Nothing contained in this Agreement shall create any contractual relationship  
13 between the County and any of the Consultant's subconsultants, and no subconsultant  
14 agreement shall relieve the Consultant of any of its responsibilities and obligations hereunder.  
15 The Consultant agrees to be as fully responsible to the County for the acts and omissions of its  
16 subconsultants and of persons either directly or indirectly employed by any of them as it is for  
17 the acts and omissions of persons directly employed by the Consultant. The Consultant's  
18 obligation to pay its subconsultants is a separate and independent obligation that is entirely  
19 unrelated to the County's obligation to make payments to the Consultant.

20 14.4 The Consultant shall perform the work contemplated with resources available within  
21 its own organization; and no portion of the work pertinent to this Agreement shall be  
22 subcontracted without prior written authorization by the Contract Administrator, excepting only  
23 those portions of the work and the responsible subconsultants that are expressly identified in  
24 Exhibit C.

25 14.5 Any subcontract in excess of \$25,000 entered into as a result of this Agreement,  
26 shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.

27 14.6 The Consultant shall pay its subconsultants within fifteen (15) calendar days from  
28 receipt of each progress payment made to the Consultant by the County.



1 14.7 Any substitution of subconsultant(s) must be approved in writing by the Contract  
2 Administrator in advance of assigning work to a substitute Subconsultant.

3 **Article 15**

4 **Conflict Of Interest**

5 15.1 The Consultant shall comply with the provisions of the Fresno County Department  
6 of Public Works and Planning Conflict of Interest Code, attached as Exhibit F and incorporated  
7 by this reference. Such compliance shall include the filing of annual statements pursuant to the  
8 regulations of the State Fair Political Practices Commission including, but not limited to,  
9 portions of Form 700.

10 15.2 During the term of this Agreement, the Consultant shall disclose any financial,  
11 business, or other relationship with the County that may have an impact upon the outcome of  
12 this Agreement, or any ensuing County construction project. The Consultant shall also list  
13 current clients who may have a financial interest in the outcome of this Agreement, or any  
14 ensuing County construction project, which will follow.

15 15.3 The Consultant certifies that it has disclosed to the County any actual, apparent, or  
16 potential conflicts of interest that may exist relative to the services to be provided pursuant to  
17 this Agreement. The Consultant agrees to advise the County of any actual, apparent or  
18 potential conflicts of interest that may develop subsequent to the date of execution of this  
19 Agreement. The Consultant further agrees to complete any statements of economic interest if  
20 required by either County ordinance or State law.

21 15.4 The Consultant hereby certifies that it does not now have, nor shall it acquire any  
22 financial or business interest that would conflict with the performance of services under this  
23 Agreement.

24 15.5 The Consultant hereby certifies that the Consultant or subconsultant and any firm  
25 affiliated with the Consultant or subconsultant that bids on any construction contract or on any  
26 Agreement to provide construction inspection for any construction project resulting from this  
27 Agreement has established necessary controls to ensure a conflict of interest does not exist.  
28 An affiliated firm is one, which is subject to the control of the same persons, through joint  
ownership or otherwise.

1 15.6 The Consultant and affiliated subconsultants shall not submit bids, or sub-bids, for  
2 the contract construction phase of the Project(s) assigned to the Consultant. The Consultant  
3 and its subconsultants, and all other service providers, shall not provide any Project-related  
4 services for, or receive any Project-related compensation from any construction contractor,  
5 subcontractor or service provider awarded a construction contract ("contractor") for all or any  
6 portion of the Project(s) for which the Consultant provides services hereunder. The Consultant  
7 and its subconsultants, and all other service providers, may provide services for, and receive  
8 compensation from a contractor who has been awarded a construction contract for all or any  
9 portion of the Project(s), provided that any such services which are rendered, and any  
10 compensation which is received therefor, relates to work outside the scope of the Agreement  
11 and does not pose a conflict of interest.

12 15.7 Except for subconsultants or subcontractors whose services are limited to providing  
13 surveying or materials testing information, no subcontractor who has provided design services  
14 in connection with this contract shall be eligible to bid on any construction contract, or on any  
15 contract to provide construction inspection for any construction project resulting from this  
16 Agreement; provided, however, that this shall not be construed as disallowing subcontractors  
17 who have provided design services for the Project from performing, pursuant to this Agreement  
18 or other agreement with the County, construction inspection services on behalf of the County  
19 for the Project.

## 20 **Article 16**

### 21 **Errors or Omissions Claims and Disputes**

#### 22 16.1 Definitions:

23 (A) "Consultant" is a duly licensed Architect or Engineer, or other provider of  
24 professional services, acting as a business entity (owner, partnership, corporation, joint  
25 venture or other business association) in accordance with the terms of an agreement  
26 with the County.

27 (B) "Claim" is a demand or assertion by one of the parties seeking, as a matter of  
28 right, adjustment or interpretation of contract terms, payment of money, extension of  
time, change orders, or other relief with respect to the terms of the contract. The term

1 "Claim" also includes other disputes and matters in question between the County and  
2 the Consultant arising out of or relating to the contract. Claims must be made by written  
3 notice. The provisions of Government Code section 901, et seq., shall apply to every  
4 claim made to the County. The responsibility to substantiate claims shall rest with the  
5 party making the claim. The term "Claim" also includes any allegation of an error or  
6 omission by the Consultant.

7 16.2 Should the Director believe the Consultant's work under this Agreement to have  
8 included negligent errors or omissions, or that the Consultant may otherwise have failed to  
9 comply with the provisions of this Agreement, either generally, or in connection with its duties  
10 as associated with a particular Project, and that the cause(s) for a claim by the construction  
11 Consultant may be attributable, in whole or in part, to such conduct on the part of the  
12 Consultant. Upon notice by the Director, the payments to the Consultant for such arguably  
13 deficient services shall be held in suspense by the County until a final determination has been  
14 made of the proportion that the Consultant's fault bears to the fault of all other parties  
15 concerned.

16 (A) Such amounts held in suspense shall not be paid to the Consultant, pending the  
17 final determination as to the Consultant's proportional fault. However, the appropriate  
18 percentage of such amount held in suspense shall be paid to the Consultant, once a  
19 final determination has been made, and the Consultant thereafter submits a proper  
20 invoice to the County. Payment shall be issued in accordance with the procedure  
21 outlined in Article 3 "Compensation, Invoices, and Payments", Section 3.4.

22 16.3 In the spirit of cooperation between the County and the Consultant, the following  
23 procedures are established in the event of any claim or dispute alleging a negligent error, act,  
24 or omission, of the Consultant.

25 (A) Claims, disputes or other matters in question between the parties, arising out of  
26 or relating to this Agreement, shall not be subject to arbitration, but shall be subject to  
27 the following procedures.

28 (B) The County and the Consultant shall meet and confer and attempt to reach  
agreement on any dispute, including what damages have occurred, the measure of

1 damages and what proportion of damages, if any, shall be paid by either party. The  
2 parties agree to consult and consider the use of mediation or other form of dispute  
3 resolution prior to resorting to litigation.

4 16.4 If the County and the Consultant cannot reach agreement under Section 16.3  
5 subsection B, the disputed issues may, upon concurrence by all parties, be submitted to a  
6 panel of three (3) for a recommended resolution. The Consultant and the County shall each  
7 select one (1) member of the panel, and the third member shall be selected by the other two  
8 panel members. The discovery rights provided by California Code of Civil Procedure for civil  
9 proceedings shall be available and enforceable to resolve the disputed issues. Either party  
10 requesting this dispute resolution process shall, when invoking the rights to this panel, give to  
11 the other party a notice describing the claims, disputes and other matters in question. Prior to  
12 twenty (20) working days before the initial meeting of the panel, both parties shall submit all  
13 documents such party intends to rely upon to resolve such dispute. If it is determined by the  
14 panel that any party has relied on such documentation but has failed to previously submit such  
15 documentation on a timely basis to the other party, the other party shall be entitled to a 20-  
16 working-day continuance of such initial meeting of the panel. The decision by the panel is not a  
17 condition precedent to arbitration, mediation or litigation.

18 16.5 Upon receipt of the panel's recommended resolution of the disputed issue(s), the  
19 County and the Consultant shall again meet and confer and attempt to reach agreement. If the  
20 parties still are unable to reach agreement, each party shall have recourse to all appropriate  
21 legal and equitable remedies.

22 (A) The procedures to be followed in the resolution of claims and disputes may be  
23 modified any time by mutual agreement of the parties hereto.

24 (B) The Consultant shall continue to perform its obligations under this Agreement  
25 pending resolution of any dispute, and the County shall continue to make payments of  
26 all undisputed amounts due under this Agreement.

27 (C) When a claim by either party has been made alleging the Consultant's negligent  
28 error, act, or omission, the County and the Consultant shall meet and confer within  
twenty-one (21) working days after the written notice of the claim has been provided.

1 **Article 17**

2 **Ownership of Data**

3 17.1 All documents, including preliminary documents, calculations, and survey data,  
4 required in performing services under this Agreement shall be submitted to, and shall remain at  
5 all times the property of the County regardless of whether they are in the possession of the  
6 Consultant or any other person, firm, corporation or agency.

7 17.2 The Consultant understands and agrees the County shall retain full ownership rights  
8 of the work product of the Consultant for the Project, to the fullest extent permitted by law. In  
9 this regard, the Consultant acknowledges and agrees the Consultant's services are on behalf  
10 of the County and are "works made for hire," as that term is defined in copyright law, by the  
11 County; that the work product to be prepared by the Consultant are for the sole and exclusive  
12 use of the County, and that the County shall be the sole owner of all patents, copyrights,  
13 trademarks, trade secrets and other rights and contractual interests in connection therewith  
14 which are developed and compensated solely under this Agreement; that all the rights, title and  
15 interest in and to the work product will be transferred to the County by the Consultant to the  
16 extent the Consultant has an interest in and authority to convey such rights; and the Consultant  
17 will assist the County to obtain and enforce patents, copyrights, trademarks, trade secrets, and  
18 other rights and contractual interests relating to said work product, free and clear of any claim  
19 by the Consultant or anyone claiming any right through the Consultant. The Consultant further  
20 acknowledges and agrees the County's ownership rights in such work product, shall apply  
21 regardless of whether such work product, or any copies thereof, are in possession of the  
22 Consultant, or any other person, firm, corporation, or entity. For purposes of this Agreement the  
23 terms "work product" shall mean all reports and study findings commissioned, either alone or  
24 jointly with others, that result from the tasks assigned to the Consultant by the County under  
25 this Agreement.

26 17.3 If this Agreement is terminated during or at the completion of any phase under  
27 Article 6, electronic and reproducible copies of report(s) or preliminary documents shall be  
28 submitted by the Consultant to the County, which may use them to complete the Project(s) at a  
future time.

1 17.4 Documents, including drawings and specifications, prepared by the Consultant  
2 pursuant to this Agreement are intended to be suitable for reuse by the County or others on  
3 extensions of the services provided for Project. Any use of completed documents for projects  
4 other than Project(s) and/or any use of uncompleted documents will be at the County's sole  
5 risk and without liability or legal exposure to the Consultant.

6 17.5 The electronic files provided by the Consultant to the County are submitted for an  
7 acceptance period lasting until the expiration of this Agreement (i.e., throughout the duration of  
8 the contract term, including any extensions). Any defects the County discovers during such  
9 acceptance period will be reported to the Consultant and will be corrected as part of the  
10 Consultant's "Basic Scope of Work."

11 17.6 The Consultant shall not be liable for claims, liabilities or losses arising out of, or  
12 connected with (1) the modification or misuse by the County or anyone authorized by the  
13 County, of such CAD data, or (2) decline of accuracy or readability of CAD data due to  
14 inappropriate storage conditions or duration, or (3) any use by the County, or anyone  
15 authorized by the County, of such CAD data or other Project documentation for additions to the  
16 Project for the completion of the Project by others, or for other projects, except to the extent  
17 that said use may be expressly authorized, in writing, by the Consultant.

18 17.7 The County, in the discretion of its Board of Supervisors, may permit the  
19 copyrighting of reports or other products. If copyrights are permitted, the Consultant hereby  
20 agrees and this Agreement shall be deemed to provide that the Federal Highway  
21 Administration shall have the royalty-free nonexclusive and irrevocable right to reproduce,  
22 publish, or otherwise use, and to authorize others to use, the work for government purposes.

## 23 **Article 18**

### 24 **State Prevailing Wage Rates**

25 18.1 No Consultant or Subconsultant may be awarded an Agreement containing public  
26 work elements unless registered with the Department of Industrial Relations (DIR) pursuant to  
27 Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of  
28 this Agreement, including any subsequent amendments.

1 18.2 The Consultant shall comply with all of the applicable provisions of the California  
2 Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate  
3 Determinations applicable to work under this Agreement are available from the Department of  
4 Industrial Relations website <http://www.dir.ca.gov>. These wage rates are made a specific part  
5 of this Agreement by reference pursuant to Labor Code §1773.2 and will be applicable to work  
6 performed at a construction project site. Prevailing wages will be applicable to all inspection  
7 work performed at County construction sites, at County facilities and at off-site locations that  
8 are set up by the construction contractor or one of its subcontractors solely and specifically to  
9 serve County projects. Prevailing wage requirements do not apply to inspection work  
10 performed at the facilities of vendors and commercial materials suppliers that provide goods  
11 and services to the general public.

12 18.3 Payroll Records: Each Consultant and Subconsultant shall keep accurate certified  
13 payroll records and supporting documents, as mandated by Labor Code §1776 and as defined  
14 in 8 CCR §16000, showing the name, address, social security number, work classification,  
15 straight time and overtime hours worked each day and week, and the actual per diem wages  
16 paid to each journeyman, apprentice, worker, or other employee employed by the Consultant  
17 or Subconsultant in connection with the public work. Each payroll record shall contain or be  
18 verified by a written declaration that it is made under penalty of perjury, stating both of the  
19 following:

- 20 a. The information contained in the payroll record is true and correct.
- 21 b. The employer has complied with the requirements of Labor Code §1771, §1811, and  
22 §1815 for any work performed by his or her employees on the public works project.

23 18.4 The payroll records enumerated under Section 18.3 shall be certified as correct by  
24 the Consultant under penalty of perjury. The payroll records and all supporting documents shall  
25 be made available for inspection and copying by County representatives at all reasonable  
26 hours at the principal office of the Consultant. The Consultant shall provide copies of certified  
27 payrolls or permit inspection of its records as follows:

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

4 b. A certified copy of all payroll records enumerated in Section 18.3 shall be made  
5 available for inspection or furnished upon request to a representative of the County,  
6 the Division of Labor Standards Enforcement and the Division of Apprenticeship  
7 Standards of the Department of Industrial Relations. Certified payrolls submitted to  
8 the County, the Division of Labor Standards Enforcement and the Division of  
9 Apprenticeship Standards shall not be altered or obliterated by the Consultant.

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

14 18.5 Each Consultant shall submit a certified copy of the records enumerated in Section  
15 18.3 to the entity that requested the records within ten (10) calendar days after receipt of a  
16 written request.

17 18.6 Any copy of records made available for inspection as copies and furnished upon  
18 request to the public or any public agency by the County shall be marked or obliterated in such  
19 a manner as to prevent disclosure of each individual's name, address, and social security  
20 number. The name and address of the Consultant or Subconsultant performing the work shall  
21 not be marked or obliterated.

22 18.7 The Consultant shall inform the County of the location of the records enumerated  
23 under Section 18.3, including the street address, city and county, and shall, within five (5)  
24 working days, provide a notice of a change of location and address.

25 18.8 The Consultant or Subconsultant shall have ten (10) calendar days in which to  
26 comply subsequent to receipt of written notice requesting the records enumerated in Section  
27 18.3. In the event the Consultant or Subconsultant fails to comply within the ten (10) day  
28 period, he or she shall, as a penalty to the County, forfeit one hundred dollars (\$100) for each  
calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such



1 penalties shall be withheld by the County from payments then due. The County is not subject to  
2 a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply  
3 with this section.

4 18.9 When prevailing wage rates apply, the Consultant is responsible for verifying  
5 compliance with certified payroll requirements. Invoice payment will not be made until the  
6 invoice is approved by the Contract Administrator.

7 18.10 Penalty: The Consultant and any of its Subconsultants shall comply with Labor  
8 Code §1774 and §1775. Pursuant to Labor Code §1775, the Consultant and any  
9 Subconsultant shall forfeit to the County a penalty of not more than two hundred dollars (\$200)  
10 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as  
11 determined by the Director of DIR for the work or craft in which the worker is employed for any  
12 public work done under the Agreement by the Consultant or by its Subconsultant in violation of  
13 the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

14 18.11 The amount of this forfeiture shall be determined by the Labor Commissioner and  
15 shall be based on consideration of mistake, inadvertence, or neglect of the Consultant or  
16 Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of  
17 the Consultant or Subconsultant in meeting their respective prevailing wage obligations, or the  
18 willful failure by the Consultant or Subconsultant to pay the correct rates of prevailing wages. A  
19 mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not  
20 excusable if the Consultant or Subconsultant had knowledge of the obligations under the Labor  
21 Code. The Consultant is responsible for paying the appropriate rate, including any escalations  
22 that take place during the term of the Agreement.

23 18.12 In addition to the penalty and pursuant to Labor Code §1775, the difference  
24 between the prevailing wage rates and the amount paid to each worker for each calendar day  
25 or portion thereof for which each worker was paid less than the prevailing wage rate shall be  
26 paid to each worker by the Consultant or Subconsultant.

27 18.13 If a worker employed by a Subconsultant on a public works project is not paid the  
28 general prevailing per diem wages by the Subconsultant, the prime Consultant of the project is  
not liable for the penalties described above unless the prime Consultant had knowledge of that

1 failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or  
2 unless the prime Consultant fails to comply with all of the following requirements:

3 18.14 The Agreement executed between the Consultant and the Subconsultant for the  
4 performance of work on public works projects shall include a copy of the requirements in Labor  
5 Code §§ 1771, 1775, 1776, 1777.5, 1811,1812, 1813, and 1815.

6 18.15 The Consultant shall monitor the payment of the specified general prevailing rate of  
7 per diem wages by the Subconsultant to the employees by periodic review of the certified  
8 payroll records of the Subconsultant.

9 18.16 Upon becoming aware of the Subconsultant's failure to pay the specified prevailing  
10 rate of wages to the Subconsultant's workers, the Consultant shall diligently take corrective  
11 action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the  
12 Subconsultant for work performed on the public works project.

13 18.17 Prior to making final payment to the Subconsultant for work performed on the public  
14 works project, the Consultant shall obtain an affidavit signed under penalty of perjury from the  
15 Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem  
16 wages to the Subconsultant's employees on the public works project and any amounts due  
17 pursuant to Labor Code §1813.

18 18.18 Pursuant to Labor Code §1775, the County shall notify the Consultant on a public  
19 works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant  
20 has failed to pay workers the general prevailing rate of per diem wages.

21 18.19 If the County determines that employees of a Subconsultant were not paid the  
22 general prevailing rate of per diem wages and if the County did not retain sufficient money  
23 under the Agreement to pay those employees the balance of wages owed under the general  
24 prevailing rate of per diem wages, the Consultant shall withhold an amount of moneys due the  
25 Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages  
26 if requested by the County.

27 18.20 Hours of Labor: Eight (8) hours labor constitutes a legal day's work. The Consultant  
28 shall forfeit, as a penalty to the County, twenty-five dollars (\$25) for each worker employed in  
the execution of the Agreement by the Consultant or any of its Subconsultants for each

1 calendar day during which such worker is required or permitted to work more than eight (8)  
2 hours in any one calendar day and forty (40) hours in any one calendar week in violation of the  
3 provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that  
4 work performed by employees in excess of eight (8) hours per day, and forty (40) hours during  
5 any one week, shall be permitted upon compensation for all hours worked in excess of eight (8)  
6 hours per day and forty (40) hours in any week, at not less than one and one half (1.5) times  
7 the basic rate of pay, as provided in §1815.

8 18.21 Employment of Apprentices: Where either the prime Agreement or the  
9 subconsultant agreement exceeds thirty thousand dollars (\$30,000), the Consultant and any  
10 subconsultants under him or her shall comply with all applicable requirements of Labor Code  
11 §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

12 18.22 Consultant and all subconsultants are required to comply with all Labor Code  
13 requirements regarding the employment of apprentices, including mandatory ratios of journey  
14 level to apprentice workers. Prior to commencement of work, the Consultant and  
15 subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at  
16 <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices  
17 and for the specific journey-to-apprentice ratios for the Agreement work. The Consultant is  
18 responsible for all subconsultants' compliance with these requirements. Penalties are specified  
19 in Labor Code §1777.7.

## 20 **Article 19**

### 21 **Equipment Purchase**

22 19.1 Prior authorization, in writing, by the Contract Administrator shall be required before  
23 the Consultant enters into any unbudgeted purchase order, or subcontract exceeding five  
24 thousand dollars (\$5,000) for supplies, equipment, or Consultant services. The Consultant shall  
25 provide an evaluation of the necessity or desirability of incurring such costs.

26 19.2 Prior authorization by the Contract Administrator shall be required for purchase of  
27 any item, service or consulting work in excess of \$5,000 that is not covered in the Consultant's  
28 Cost Proposal; and the Consultant's request must be accompanied by at least three  
competitive quotations, unless the absence of proposal is adequately justified to the

1 satisfaction of the Contract Administrator in his/her discretion, by written explanation provided  
2 by the Consultant with its submittal.

3 19.3 Any authorized purchase of equipment as a result of this Agreement is subject to  
4 the following: "The Consultant shall maintain an inventory of all nonexpendable property.  
5 Nonexpendable property is defined as having a useful life of at least two years and an  
6 acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold  
7 or traded in, the County shall receive a proper refund or credit at the conclusion of the contract,  
8 or if the contract is terminated, the Consultant may either keep the equipment and credit the  
9 County in an amount equal to its fair market value, or sell such equipment at the best price  
10 obtainable at a public or private sale, in accordance with established County procedures; and  
11 credit the County in an amount equal to the sales price. If the Consultant elects to keep the  
12 equipment, fair market value shall be determined at the Consultant's expense, on the basis of a  
13 competent independent appraisal of such equipment. Appraisals shall be obtained from an  
14 appraiser mutually agreeable to by the County and the Consultant, if it is determined to sell the  
15 equipment, the terms and conditions of such sale must be approved in advance by the  
16 County." Title 49 CFR, Part 200 requires a credit to Federal funds when participating  
17 equipment with a fair market value greater than \$5,000.00 is credited to the Project.

## 18 **Article 20**

### 19 **Rebates, Kickbacks or Other Unlawful Consideration**

20 20.1 The Consultant warrants that this Agreement was not obtained or secured through  
21 rebates, kickbacks or other unlawful consideration, either promised or paid to any County  
22 employee. For breach or violation of this warranty, the County shall have the right, in its  
23 discretion, to terminate this Agreement without liability; or to pay only for the value of the work  
24 actually performed; or to deduct from this Agreement price or otherwise recover the full amount  
25 of such rebate, kickback or other unlawful consideration.

## 26 **Article 21**

### 27 **Prohibition of Expending County State or Federal Funds for Lobbying**

28 21.1 The Consultant certifies (Exhibit F) to the best of his or her knowledge and belief  
that:

1 21.2 No state, federal or County appropriated funds have been paid, or will be paid by or  
2 on behalf of the Consultant to any person for influencing or attempting to influence an officer or  
3 employee of any state or federal agency; a Member of the State Legislature or United States  
4 Congress; an officer or employee of the Legislature or Congress; or any employee of a  
5 Member of the Legislature or Congress, in connection with any of the following:

6 (A) the awarding of any state or federal contract;

7 (B) the making of any state or federal grant;

8 (C) the making of any state or federal loan;

9 (D) the entering into of any cooperative agreement, or

10 (E) the extension, continuation, renewal, amendment, or modification of any state  
11 or federal contract, grant, loan, or cooperative agreement.

12 21.3 If any funds other than federally appropriated funds have been paid, or will be paid  
13 to any person for influencing or attempting to influence an officer or employee of any federal  
14 agency; a Member of Congress; an officer or employee of Congress, or an employee of a  
15 Member of Congress; in connection with this federal contract, grant, loan, or cooperative  
16 agreement, then the Consultant shall complete and submit Standard Form-LLL, "Disclosure  
17 Form to Report Lobbying" (Exhibit G), in accordance with its instructions.

18 21.4 The certification required by the provisions of this Article is a material representation  
19 of fact upon which reliance was placed when this transaction was made or entered into.  
20 Submission of this certification is a prerequisite for making or entering into this transaction  
21 imposed by Title 31, U.S. Code Section 1352. Any person who fails to file the required  
22 certification shall be subject to a civil penalty of not less than \$10,000 and not more than  
23 \$100,000 for each such failure.

24 21.5 The Consultant also agrees by signing this document that he or she shall require  
25 that the language of this certification be included in all lower-tier subcontracts, which exceed  
26 \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

## 27 **Article 22**

### 28 **Non-Discrimination Clause and Statement of Compliance**

1        22.1    The Consultant's signature affixed herein, and dated, shall constitute a certification  
2 under penalty of perjury under the laws of the State of California that the Consultant has,  
3 unless exempt, complied with, the nondiscrimination program requirements of Government  
4 Code §12990 and 2 CCR § 8103.

5        22.2    During the performance of this Agreement, the Consultant and its subconsultants  
6 shall not deny this Agreement's benefits to any person on the basis of race, religious creed,  
7 color, national origin, ancestry, physical disability, mental disability, medical condition, genetic  
8 information, marital status, sex, gender, gender identity, gender expression, age, sexual  
9 orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or  
10 allow harassment against any employee or applicant for employment because of race, religious  
11 creed, color, national origin, ancestry, physical disability, mental disability, medical condition,  
12 genetic information, marital status, sex, gender, gender identity, gender expression, age,  
13 sexual orientation, or military and veteran status. The Consultant and subconsultants shall  
14 ensure that the evaluation and treatment of their employees and applicants for employment are  
15 free from such discrimination and harassment.

16        22.3    The Consultant and subconsultants shall comply with the provisions of the Fair  
17 Employment and Housing Act (Gov. Code §12990 et seq.) and the applicable regulations  
18 promulgated thereunder (2 CCR §11000 et seq.), the provisions of Government Code §§11135  
19 et seq., and the regulations or standards adopted by the County to implement such provisions.  
20 The applicable regulations of the Fair Employment and Housing Commission implementing  
21 Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the  
22 California Code of Regulations, are incorporated into this Agreement by reference and made a  
23 part hereof as if set forth in full.

24        22.4    Consultant shall permit access by representatives of the Department of Fair  
25 Employment and Housing and the County upon reasonable notice at any time during the  
26 normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its  
27 books, records, accounts, and all other sources of information and its facilities as said  
28 Department or the County shall require in order to ascertain compliance with the requirements  
of this Article 22.

1 22.5 The Consultant and subconsultants shall give written notice of their obligations  
2 under this Article 22 to labor organizations with which they have a collective bargaining or other  
3 agreement.

4 22.6 The Consultant and subconsultants shall include the nondiscrimination and  
5 compliance provisions of this Article 22 in all subcontracts to perform work under this  
6 Agreement.

7 22.7 The Consultant, with regard to the work performed under this Agreement, shall act  
8 in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI  
9 provides that the recipients of federal assistance will implement and maintain a policy of  
10 nondiscrimination in which no person in the United States shall, on the basis of race, color,  
11 national origin, religion, sex, age, disability, be excluded from participation in, denied the  
12 benefits of or subject to discrimination under any program or activity by the recipients of federal  
13 assistance or their assignees and successors in interest.

14 22.8 The Consultant shall comply with regulations relative to non-discrimination in  
15 federally assisted programs of the U.S. Department of Transportation (49 CFR Part 21 -  
16 Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the Consultant shall not  
17 participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5,  
18 including employment practices and the selection and retention of Subconsultants.

19 22.9 The Consultant, subrecipient or subconsultant will never exclude any person from  
20 participation in, deny any person the benefits of, or otherwise discriminate against anyone in  
21 connection with the award and performance of any contract covered by 49 CFR 26 on the  
22 basis of race, color, sex, or national origin.

## 23 **Article 23**

### 24 **Debarment and Suspension Certification**

25 23.1 The Consultant's signature affixed herein shall constitute a certification under  
26 penalty of perjury under the laws of the State of California, that the Consultant has  
27 complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension  
28 Certificate, which certifies that the Consultant or any person associated therewith in the  
capacity of owner, partner, director, officer, or manager:

1 (A) Is not currently under suspension, debarment, voluntary exclusion, or  
2 determination of ineligibility by any federal agency;

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

5 (C) Does not have a proposed debarment pending; and

6 (D) Has not been indicted, convicted, or had a civil judgment rendered against it by  
7 a court of competent jurisdiction in any matter involving fraud or official misconduct  
8 within the past three (3) years.

9 23.2 Any exceptions to this certification must be disclosed to the County on Exhibit H  
10 "Debarment and Suspension Certification." Exceptions will not necessarily result in denial of  
11 recommendation for award but will be considered in determining Consultant responsibility.  
12 Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

13 23.3 Exceptions to the Federal Government Excluded Parties Listing System maintained  
14 by the General Services Administration are to be determined by the Federal Highway  
15 Administration.

## 16 **Article 24**

### 17 **Executive Order N-6-22**

18 24.1 Under Executive Order N-6-22 as a contractor, subcontractor, or grantee,  
19 compliance with the economic sanctions imposed in response to Russia's actions in Ukraine is  
20 required, including with respect to, but not limited to, the federal executive orders identified in  
21 the EO and the sanctions identified on the U.S. Department of the Treasury website  
22 ([https://home.treasury.gov/policy-issues/financialsanctions/sanctions-programs-and-country-](https://home.treasury.gov/policy-issues/financialsanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions)  
23 [information/ukraine-russia-related-sanctions](https://home.treasury.gov/policy-issues/financialsanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions)). Failure to comply may result in the termination of  
24 contracts or grants, as applicable.

25 24.2 Specially Designated Nationals and Blocked Persons List (SDN)  
26 [https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-](https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-andblocked-persons-list-sdn-human-readable-lists)  
27 [andblocked-persons-list-sdn-human-readable-lists](https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-andblocked-persons-list-sdn-human-readable-lists)

## 28 **Article 25**

### **Contingent Fees**





1 **Article 28**

2 **Confidentiality Of Data**

3 28.1 All financial, statistical, personal, technical, or other data and information relative to  
4 the County's operations, which are designated confidential by the County and made available  
5 to the Consultant in order to carry out this Agreement, shall be protected by the Consultant  
6 from unauthorized use and disclosure.

7 28.2 Permission to disclose information on one occasion, or public hearing held by the  
8 County relating to the contract, shall not authorize the Consultant to further disclose such  
9 information, or disseminate the same on any other occasion.

10 28.3 The Consultant shall not comment publicly to the press or any other media  
11 regarding this Agreement or the County's actions on the same, except to the County's staff, the  
12 Consultant's own personnel involved in the performance of this Agreement, at public hearings  
13 or in response to questions from a Legislative committee.

14 28.4 The Consultant shall not issue any news release or public relations item of any  
15 nature, whatsoever, regarding work performed or to be performed under this Agreement  
16 without prior review of the contents thereof by the County, and receipt of the County's written  
17 permission.

18 28.5 All information related to the construction estimate is confidential and shall not be  
19 disclosed by the Consultant to any entity other than the County, Caltrans, and/or FHWA. All of  
20 the materials prepared or assembled by the Consultant pursuant to performance of this  
21 Contract are confidential and the Consultant agrees that they shall not be made available to  
22 any individual or organization without the prior written approval of the County or except by court  
23 order. If the Consultant or any of its officers, employees, or subcontractors does voluntarily  
24 provide information in violation of this Contract, the County has the right to reimbursement and  
25 indemnity from the Consultant for any damages caused by the Consultant's releasing the  
26 information, including, but not limited to, the County's attorney's fees and disbursements,  
27 including without limitation experts' fees and disbursements.

28 **Article 29**

**National Labor Relations Board Certification**

1 29.1 In accordance with Public Contract Code § 10296, the Consultant hereby states  
2 under penalty of perjury that no more than one final unappealable finding of contempt of court  
3 by a federal court has been issued against the Consultant within the immediately preceding  
4 two-year period, because of the Consultant's failure to comply with an order of a federal court  
5 that orders the Consultant to comply with an order of the National Labor Relations Board.

6 **Article 30**

7 **Evaluation Of The Consultant**

8 30.1 The Consultant's performance will be evaluated by the County. A copy of the  
9 evaluation will be sent to the Consultant for comments. The evaluation, together with the  
10 comments, shall be retained as part of the Agreement record.

11 **Article 31**

12 **Funding Requirements**

13 31.1 It is mutually understood between the parties that this Agreement may have been  
14 written before ascertaining the availability of funds or appropriation of funds, for the mutual  
15 benefit of both parties, in order to avoid program and fiscal delays that would occur if the  
16 Agreement were executed after that determination was made.

17 31.2 This Agreement is valid and enforceable only if sufficient funds are made available  
18 to the County for the purpose of this Agreement. In addition, this Agreement is subject to any  
19 additional restrictions, limitations, conditions, or any statute enacted by the Congress, State  
20 Legislature, or the County governing board that may affect the provisions, terms, or funding of  
21 this Agreement in any manner.

22 31.3 It is mutually agreed that if sufficient funds are not appropriated, this Agreement  
23 may be amended to reflect any reduction in funds.

24 31.4 The County has the option to terminate the Agreement pursuant to Article 6  
25 Termination and Suspension, or by mutual agreement to amend the Agreement to reflect any  
26 reduction of funds.

27 **Article 32**

28 **Title VI Assurances**

1 32.1 The provisions of Title VI are hereby attached, unmodified as part of this Agreement  
2 (Exhibit I). Exhibit I, "Title VI Assurances" Appendices A and E, and if applicable Appendices B,  
3 C, and D, must be inserted, unmodified, in all subcontracts to perform work under the  
4 Agreement.

5 (A) The clauses of Appendix B of this Assurance shall be included as a covenant  
6 running with the land, in any deed from the United States effecting or recording a  
7 transfer of real property, structures, use, or improvements thereon or interest therein to  
8 the County.

9 (B) The clauses set forth in Appendix C and Appendix D of this Assurance shall be  
10 included as a covenant running with the land, in any future deeds, leases, licenses,  
11 permits, or similar instruments entered into by the County with other parties:

12 (1) for the subsequent transfer of real property acquired or improved under the  
13 applicable activity, project, or program; and

14 (2) for the construction or use of, or access to, space on, over, or under real  
15 property acquired or improved under the applicable activity, project, or program.

16  
17 [SIGNATURE PAGE FOLLOWS]  
18  
19  
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21  
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24  
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27  
28

The parties are signing this Agreement on the date stated in the introductory clause.

Name of Vendor, Business Type

County of Fresno

Signature

Nathan Magsig, Chairman  
of the Board of Supervisors of the  
County of Fresno

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

\_\_\_\_\_  
Title

**ATTEST:**  
Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

Company Name & Address

By \_\_\_\_\_

Deputy

For accounting use only:

ORG: 45104511 / 45104512 / 45104513 / 45104514

FUND: 0001

SUBCLASS: 10000

ACCOUNT: 7295

**Revised**  
**Attachment A**  
**Scope of Services**

- A.1. The work to be performed by the Consultant under this Agreement includes engineering services, scheduled maintenance and unscheduled repair and emergency services of traffic signals, highway lighting, and other lighted traffic facilities at various locations throughout Fresno County for the Department of Public Works and Planning (Department).
- A.2. The services that may be furnished by the Consultant under this Agreement are for all or a portion of the services the Consultant is allowed to provide within the applicable professional discipline limits, as defined in California State License Law, for various Projects on an as needed basis.
- A.3. The Consultant agrees to provide the services that are necessary for each Project when expressly authorized by a Department authorized designee.
- A.4. Assist the Department, at the Director's express, written authorization, with any claim resolution process involving the Consultant and the Department as specified hereunder, including serving as a witness in connection with any public hearings or legal proceeding, and also including dispute resolutions required by law or hereunder. The parties recognize that this clause is provided as a means of expediting resolution of claims among the Consultant and the Department. However, it is understood the Consultant is not an intended third-party beneficiary of this clause. Compensation for these services shall be computed and invoiced at the same hourly rates listed in the Agreement, including travel costs that are being paid for the Consultant's personnel services under this Agreement. Any assistance provided by the Consultant as described in this Section A.4 shall be subject to the provisions of Article 3 in the agreement.
- A.5. Not used.
- A.6. Not used.
- A.7. DEPARTMENT TO PROVIDE:
  - 1) The Department will provide to the Consultant the names and phone numbers of the Manager of the Department's Road Maintenance and Operations Division, and/or the designees, as well as a call-out list of other authorized Department staff. The Manager of the Road Maintenance and Operations Division, and/or the designees shall be available to the Consultant during normal work hours for consultation, clarification of task assignments, etc. After hours, authorized Department staff, on the call-out list, may be contacted in emergency situations.
  - 2) The Department will provide the Consultant access to all facilities covered by this RFP while performing services under this agreement.
  - 3) The Department will issue keys to the Consultant for applicable signal and lighting equipment (i.e. lock-jaw pull box lids, signal cabinets, or other electrical control boxes) covered by this RFP while performing services under this agreement. Department may request the return of these keys by Consultant at any time.
  - 4) The Department will organize, attend, and participate in meetings with the Consultant and other agencies, as required.

- 5) The Department will provide existing timing card and controller types at each of the existing traffic control signals.
- 6) The Department may provide traffic data/information as requested by the Consultant for use for this contract. Any request shall be done 4 weeks in advanced to provide Department staff time to set up the proper equipment. The Department may decline the request for data/information, and if this is the case, then the Department will request the Consultant obtain the data/information.

A.8. INVOICING:

Consultant's invoice to Department shall include the following:

- Contract Agreement Number provided by the Department (e.g. A-24-000).
- 'Attention To' Department designee for receiving invoices.
- Name of caller who requested repair or service.
- TSSL ID Number found in the list Attachment C, Traffic Signals and Lighting.
- Location intersection/description.
- Location Type of Facility.
- Date received call.
- Date responded to call.
- Date(s) performed repair or service.
- Description of repair or service.

A.9. KEY FOR LOCK-JAW PULL BOX LID, OR SIGNAL CABINET, OR OTHER ELECTRICAL CONTROL BOX:

Keys are available to the Consultant at the Department Road Maintenance & Operations office:

Address: 2220 Tulare St, 10<sup>th</sup> Floor, Fresno, CA 93721.

Hours: Monday through Friday, 8:00 AM to 5:00 PM (closed for lunch from 12:00 PM to 1:00 PM).

A.10. THE LIST ATTACHMENT C, TRAFFIC SIGNALS AND LIGHTING:

Consultant must provide service to traffic signals and lighting facilities in the list, Attachment C.

A.11. ADDITIONS TO THE LIST ATTACHMENT C, TRAFFIC SIGNALS AND LIGHTING:

Consultant must provide service to additional traffic signals and lighting locations as the Department may add to the list, Attachment C. The Director of the Department is authorized to make additions to this list. The Consultant may request a copy of this list at any time.

A.12. DELETIONS TO THE LIST ATTACHMENT C, TRAFFIC SIGNALS AND LIGHTING:

Consultant must cease service to deleted traffic signals and lighting locations as the Department may delete from the list, Attachment C. The Director of the Department is authorized to make deletions to this list. The Consultant may request a copy of this list at any time.

A.13. TRAFFIC SIGNAL TIMING – PROGRAMMING AND TESTING:

Consultant shall assist Department with:

- 1) Preparation of new traffic signals, including programming the timing into the controller and testing the controller. Timing card to be provided by other.
- 2) Updating of existing traffic signals, including reprogramming the timing into the controller and testing the controller. Timing card to be provided by other.
- 3) Verifying/testing of existing traffic signals, as listed under Scheduled Maintenance Service. Existing timing card to be provided.

A.14. Not Used.

A.15. Unscheduled Maintenance Call-Out Service for Existing Traffic Signals and Lighting (in Attachment C):

- 1) Emergency call-out.
  - i. Consultant required to provide immediate service.
- 2) Non-Emergency call-out.
  - i. Consultant not required to provide immediate service.

Consultant to assist with Department in determining the level-of-emergency, of a call-out.

Consultant shall provide to the Department a valid up-to-date phone number and email address for receiving calls 24 hours per day, 7 days per week, 365 days per year. Phone number shall be able to receive voice messaging, if a person is not able to answer. Consultant shall respond within 1 hour of receiving call, either by verbal response to Department designee, or by email response to Department designee. Calls may originate from Department designee, or California Highway Patrol (CHP), or Fresno County Sheriff, or other law enforcement officer, or any City agency.

A.16. Scheduled Preventative Maintenance Inspection (PMI) Service for Existing Traffic Signals (in Attachment C, where PMI = "Yes"):

- 1) Type 1 – Annual Operational Inspection (General Traffic Signal Checklist, see below).
- 2) Type 2 – Bi-Annual Operational Inspection (Conflict Monitor Unit Checklist, see below).

A.17. GENERAL SERVICES FOR TRAFFIC SIGNALS, INCLUDE BUT NOT LIMITED TO:

- 1) Scheduled Preventative Maintenance Inspections (PMI's):
- 2) Emergency 24-Hour Response.
- 3) Trouble Shooting, Equipment Testing, and Corresponding Repairs.
- 4) Review of Plans & Submittals.
- 5) Camera Installation/Maintenance.
- 6) Video Detection Installation/Maintenance.
- 7) Audible Pedestrian System Installation/Maintenance.
- 8) Emergency Vehicle Preemption Installations/Programming/Maintenance.
- 9) Railroad Preemption Installations/Programming/Maintenance.



- 10) Bus Rapid Transit Installation/Programming/Maintenance.
- 11) Underground Service Alert (USA) locate:
  - a. Department Design project existing signal modification.
  - b. Permit project.
  - c. Development Services project.
  - d. Repair call outs.
  - e. Maintenance calls.
- 12) Traffic Signal Construction Inspection.
- 13) Street Light Construction Inspection.
- 14) ITS Construction Inspection.
- 15) New Signal Activation.
- 16) Special Event Modifications.
- 17) 332 Cabinet Testing.
- 18) Flash Requests:
  - a. Construction project.
  - b. Power outage with temporary Stop signs.
- 19) Inspection of special projects (e.g. Sheriff camera project).

A.18. Type 1 – Annual Operational Inspection (General Traffic Signal Checklist).

Cabinet:

- 1) Replace filter (s).
- 2) Lubricate locks and hinges as needed.
- 3) Check fan and thermostat operation.
- 4) Check conduit sealant.
- 5) Check gaskets and seals, repair or lubricate as needed.
- 6) Remove graffiti, tape residue, signs, etc.
- 7) Spot painted as needed.
- 8) Inspect wiring and terminations for burnt terminals and/or damaged insulation.
- 9) Test GFCI receptacle prior to use.
- 10) Vacuum or blow out accumulated dirt / debris.

Controller:

- 1) Observe indicators for proper operation.
- 2) Verify that cards or modules are properly sealed.
- 3) Verify that connectors are secure.

- 4) Verify operation/timing per timing sheet.

Conflict Monitor:

- 1) Verify operation with watchdog trip.
- 2) Reset monitor.
- 3) Observe indicators for proper operation.
- 4) Inspect ribbon cable on "Plus" monitors for damage.
- 5) Verify that the program card is properly sealed.
- 6) Verify that connectors are secure.

Switch Packs:

- 1) Observe indicators for proper operation.
- 2) Verify that switches are properly sealed.

Flashers:

- 1) Observe indicators for proper operation.
- 2) Verify that switches are properly seated.
- 3) Check flash operation; Cabinet, Police & CMU.

Relays:

- 1) Check for burnt or overheated contacts.
- 2) Verify that relays are properly seated.

Clocks:

- 1) Check for correct time / Day-of-week (DOW) settings.
- 2) Manually verify output switch operation.

Preemption:

- 1) Simulate actuation, verify proper operation.

Coordination:

- 1) Observe that current plan is per TOD.
- 2) Check for correct time / DOW setting.

Signal Heads:

- 1) Inspect alignment and visibility.
- 2) Check for broken lenses.
- 3) Check for burned out lamps / LED's.
- 4) Check for missing / damaged visors and backplates.

Poles and Mastarms:

- 1) Check for missing / damaged hand hole covers.
- 2) Check anchor bolt hardware for tightness.
- 3) Check condition of grout.

- 4) Check plumb of pole.
- 5) Check for damage, dents, etc.
- 6) If painted, spot prime / paint as needed.
- 7) Remove graffiti, tape residue, signs, etc.

Pedestrian Push Buttons:

- 1) Check all buttons for proper operation.
- 2) Check signs for legibility.
- 3) Verify proper field operation.

Detector Loops:

- 1) Inspect roadway along loop perimeter for exposed wire / conduit, pot holes, missing sealant, etc.

Detector Amplifiers:

- 1) Verify that vehicles are being detected.
- 2) Verify appropriate call is registered in controller.

Pull Boxes:

- 1) Check boxes and lids for breakage.
- 2) Remove accumulated dirt and water.
- 3) Treat for insects, if needed.
- 4) Check for condition of grout.
- 5) Check for missing delineator posts.
- 6) Check duct seal.

Electrical Service:

- 1) Check lock for serviceability.
- 2) If pedestal, check meter window for clarity, spray with silicone.
- 3) Remove graffiti, tape residue, signs, etc.
- 4) Check duct seal.
- 5) Turn on and check safety lights for burned out lamps / LED's.
- 6) If pole mounted:
  - a. Inspect conduit for damage.
  - b. Check ground connection for tightness.

A.19. Type 2 – Bi-Annual Operational Inspection (Conflict Monitor Unit Checklist).

Testing as per CalTrans Model 210 Conflict Monitor Certification Report:

- 1) Perform Diagnostic Test.
- 2) System Timing Tests.
- 3) Voltage Tests.

- 4) Permissive Tests.
- 5) Watchdog Tests.
- 6) Logic GND Tests.

A.20. GENERAL REPAIR ITEMS FOR STREET LIGHTING AND OTHER LIGHTED FACILITIES, INCLUDE BUT NOT LIMITED TO:

- 1) Fixtures.
- 2) Lamps.
- 3) Visors.
- 4) Poles.
- 5) Wiring / Conductors / Conduit.
- 6) Fuses.
- 7) Batteries.
- 8) Solar panels.
- 9) Electrical control box components.

A.21. Stock of spare parts and inventory:

Consultant must stock spare parts and keep an inventory list, as determined necessary and approved by Department. Consultant to store spare parts in a safe appropriate location, and to always provide Department with access to spare parts. Consultant to be liable for spare parts stolen or damaged. Consultant may invoice Department for spare parts stocked. Consultant shall prepare an inventory list with minimum recommended spare parts and submit this list to Department for approval. Parts may include but not limited to:

- 1) Signal Cabinet.
- 2) Signal Indicator (red, yellow, green).
- 3) Signal/Lighting Pole standard (10-ft, etc).
- 4) Signal mast arm.
- 5) Signal Controller.
- 6) Signal vehicle head.
- 7) Signal pedestrian head.
- 8) Battery for Railroad pre-emption signal battery backup.
- 9) Blank out.
- 10) Signal Ahead flashing beacon.
- 11) Safety lights.

## Insurance Requirements

### 1. Required Policies

Without limiting the County's right to obtain indemnification from the Consultant or any third parties, Consultant, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Consultant shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Consultant's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- (E) **Professional Liability.** Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) the Consultant shall maintain the policy and provide to the County annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the Consultant shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.
- (F) **Technology Professional Liability (Errors and Omissions).** Technology professional liability (errors and omissions) insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and in the aggregate. Coverage must encompass all of the Consultant's obligations under this Agreement, including but not limited to claims involving Cyber Risks.
- (G) **Cyber Liability.** Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must include claims involving Cyber Risks. The cyber liability policy must be endorsed to cover the full replacement value of damage to,

alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the Consultant.

**Definition of Cyber Risks.** “Cyber Risks” include but are not limited to (i) Security Breach, which may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) data breach; (iii) breach of any of the Consultant’s obligations under [identify the Article, section, or appendix containing data security obligations] of this Agreement; (iv) system failure; (v) data recovery; (vi) failure to timely disclose data breach or Security Breach; (vii) failure to comply with privacy policy; (viii) payment card liabilities and costs; (ix) infringement of intellectual property, including but not limited to infringement of copyright, trademark, and trade dress; (x) invasion of privacy, including release of private information; (xi) information theft; (xii) damage to or destruction or alteration of electronic information; (xiii) cyber extortion; (xiv) extortion related to the Consultant’s obligations under this Agreement regarding electronic information, including Personal Information; (xv) fraudulent instruction; (xvi) funds transfer fraud; (xvii) telephone fraud; (xviii) network security; (xix) data breach response costs, including Security Breach response costs; (xx) regulatory fines and penalties related to the Consultant’s obligations under this Agreement regarding electronic information, including Personal Information; and (xxi) credit monitoring expenses.

If the Consultant is a governmental entity, it may satisfy the policy requirements above through a program of self-insurance, including an insurance pooling arrangement or joint exercise of powers agreement.

## 2. Additional Requirements

(A) **Verification of Coverage.** Within 30 days after the Consultant signs this Agreement, and at any time during the term of this Agreement as requested by the County’s Risk Manager or the County Administrative Office, the Consultant shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 93721, or HRRiskManagement@fresnocountyca.gov, and by mail or email to the person identified to receive notices under this Agreement, certificates of insurance and endorsements for all of the coverages required under this Agreement.

- (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the Consultant has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
- (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County

shall be excess only and not contributing with insurance provided under the Consultant's policy.

- (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
  - (iv) The professional liability insurance certificate, if it is a claims-made policy, must also state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.
  - (v) The technology professional liability insurance certificate must also state that coverage encompasses all of the Consultant's obligations under this Agreement, including but not limited to claims involving Cyber Risks, as that term is defined in this Agreement.
  - (vi) The cyber liability insurance certificate must also state that it is endorsed, and include an endorsement, to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the Consultant.
- (B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.
- (C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, the Consultant shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Consultant shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Consultant shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the Consultant or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.
- (D) **County's Entitlement to Greater Coverage.** If the Consultant has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Consultant shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.
- (E) **Waiver of Subrogation.** The Consultant waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Consultant is solely responsible to obtain any policy endorsement that may be necessary to accomplish that

waiver, but the Consultant's waiver of subrogation under this paragraph is effective whether or not the Consultant obtains such an endorsement.

- (F) **County's Remedy for Consultant's Failure to Maintain.** If the Consultant fails to keep in effect at all times any insurance coverage required under this Agreement, the County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Consultant. The County may offset such charges against any amounts owed by the County to the Consultant under this Agreement.
- (G) **Subconsultants.** The Consultant shall require and verify that all Subconsultants used by the Consultant to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize the Consultant to provide services under this Agreement using Subconsultants.



## SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

*"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"*

The definition above will be utilized for purposes of completing this disclosure form.

### INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
  - a. The name of the agency/company with which the corporation has the transaction; and
  - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			
<b>(2) Company/Agency Name and Address:</b>			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):</b>			
<b>(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):</b>			
<b>(5) Authorized Signature</b>			
<b>Signature:</b>		<b>Date:</b>	



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Conflict of interest forms shall be filed as follows:

1. As required by Government Code section 87500, subdivision (e), the County Administrative Officer, District Attorney, County Counsel, and Auditor-Controller/Treasurer-Tax Collector shall file one original of their statements with the County Clerk, who shall make and retain a copy and forward the original to the Fair Political Practices Commission, which shall be the filing officer.

2. As required by Government Code section 87500, subdivision (j), all other department heads shall file one original of their statements with their departments. The filing officer of each department shall make and retain a copy and forward the original to the Clerk to the Board of Supervisors, who shall be the filing officer.

3. All other designated employees shall file one original of their statements with their departments.

Adopted at a regular meeting of the Board of Supervisors, held on the 2nd day of October, 2007, by the following vote, to wit:

Ayes: Supervisors Larson, Perea, Anderson, Case and Waterston

Noes: None

Absent: None



Chairman, Board of Supervisors

Attest:



Clerk



# Conflict of Interest Code Local Agency Annual / Biennial Report

[\[Email Me\]](#)  
Double click!

In accordance with Government Code Section 87306.5, this department has reviewed its Conflict of Interest Code and has determined that (check one of the following):

- 1.  Our department’s Conflict of Interest Code accurately designates all positions within our department which make or participate in the making of decisions which may foreseeably have a material effect on any financial interest; and the disclosure category assigned to each such position accurately requires the disclosure of all of the specific types of investments, business positions, interests in real property, and sources of income that are reportable under Government Code Section 87302 (“reportable under Government Code Section 87302” means: an investment, business position, interest in real property, or source of income shall be made reportable by the Conflict of Interest Code if the business entity in which the investment or business position is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his or her position); or,
  
- 2.  Our department’s Conflict of Interest Code is in need of amendment. We have determined that the following amendments are necessary (check applicable items, and refer to Exhibits “A” and “B” for detail if appropriate):
  - A.  Include new positions (including consultants) that must be designated.
  - B.  Include or delete positions because changes in duties.
  - C.  Include positions that manage public investments.
  - D.  Revise disclosure categories.
  - E.  Revise the titles of existing positions.
  - F.  Delete titles of positions that have been abolished.
  - G.  Other (*describe*)

<b>CONTACT PERSON</b> Sam Mann	<b>DEPARTMENT</b> Public Works and Planning
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**I hereby approve the foregoing reported information for our department:**

<u>stwhite 12/13/2021 4:01:37 PM</u> Department Head Signature / Date	<a href="#">[Sign]</a> Double click!
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**Note:** Government Code Section 87306 requires that when an agency (e.g., your department) has determined that amendments or revisions are necessitated by changed circumstances, the amendments or revisions shall be submitted to the code reviewing body within 90 days after the changed circumstances have become apparent.

## EXHIBIT "A"

PUBLIC WORKS AND PLANNING

<u>Classification</u>	<u>Category</u>
Accountant I / II	2
Architect	1
<del>Assistant Director of Public Works &amp; Planning- Planning and Resource Management Official.</del>	1
Building Inspector I / II	1
Building Plans Engineer	1
Chief Building Inspector	1
Chief of Field Surveys	1
Consultant	*
Deputy Director of Public Works	1
Development Services & Capital Projects Manager	1
Director of Public Works and Planning	1
Disposal Site Supervisor	2
Engineer I / II / III	1
Field Survey Supervisor	3
Financial Analyst I / II / III	1
Housing Rehabilitation Specialist I / II	1
Information Technology Analyst I / II / III / IV	2
Landfill Operations Manager	1
Planner I / II / III	1
Principal Accountant	1
Principal Planner	1
Principal Staff Analyst	1
Public Works and Planning Business Manager	1
Public Works and Planning Information Technology Manager	1
Public Works Division Engineer	1
Resources Division Manager	1
Right-of-Way Agent II / III	1
Road Maintenance & Operations Division Manager	1
Road Maintenance Supervisor	1
Road Superintendent	1
Senior Accountant	2
Senior Engineer	1
Senior Engineering Technician	2
Senior Information Technology Analyst	2
Senior Planner	1
Senior Staff Analyst	1

<b><u>Classification</u></b>	<b><u>Category</u></b>
Staff Analyst I / II / III	1
Supervising Accountant	1
Supervising Architect	1
Supervising Building Inspector	1
Supervising Engineer	1
Supervising Water/Wastewater Specialist	1
Traffic Maintenance Supervisor	2
Water & Natural Resources Manager	1

- \* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation: The Director of Public Works and Planning may determine in writing that a particular consultant, although a “designated position”, is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The Director of Public Works and Planning’s determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.





**INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES**

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

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

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

**DEBARMENT AND SUSPENSION CERTIFICATION TITLE 49, CODE  
OF FEDERAL REGULATIONS, PART 29**

The consultant, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, and manager:

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

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

For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

**Notes:**

Providing false information may result in criminal prosecution or administrative sanctions.

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

## Exhibit I

### TITLE VI ASSURANCES APPENDIX A

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

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT'S noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - i. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

**APPENDIX B**  
**CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

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

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

**(HABENDUM CLAUSE)**

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

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

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

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

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.\*

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

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

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

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

this Assurance.

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

## APPENDIX E

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

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority

Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).