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3 TABLE OF CONTENTS
4 ON-CALL AGREEMENT FOR
REAL PROPERTY APPRAISALS SERVICES

5	RECITALS	3
6	Article 1 Consultant 's Services	4
7	Article 2 County's Responsibilities	5
8	Article 3 Compensation, Invoices, and Payments	6
9	Article 4 Term of Agreement	9
10	Article 5 Notices	9
11	Article 6 Termination and Suspension	10
12	Article 7 Independent Consultant	12
13	Article 8 Indemnity and Defense	12
14	Article 9 Insurance	13
15	Article 10 Cost Principles and Administrative Requirements	13
16	Article 11 Inspections, Audits, and Public Records	13
17	Article 12 Disclosure of Self-Dealing Transactions	16
18	Article 13 General Terms	16
19	Article 14 Subconsultants	19
20	Article 15 Conflict of Interest	20
21	Article 16 Errors or Omissions Claims and Disputes	21
22	Article 17 Ownership of Data	23
23	Article 18 State Prevailing Wage Rates	25
24	Article 19 Disadvantaged Business Enterprises (DBE) Participation	25
25	Article 20 Equipment Purchase	25
26	Article 21 Rebates, Kickbacks or Other Unlawful Consideration	26
27	Article 22 Prohibition of Expending County State or Federal Funds for Lobbying	27
28	Article 23 Non-Discrimination Clause and Statement of Compliance	28
	Article 24 Debarment and Suspension Certification	30
	Article 25 Executive Order N-6-22	31
	Article 26 Contingent Fees	31
	Article 27 Inspection Of Work	31
	Article 28 Safety	32
	Article 29 Confidentiality Of Data	32
	Article 30 National Labor Relations Board Certification	33
	Article 31 Evaluation Of The Consultant	33
	Article 32 Funding Requirements	33
	Article 33 Title VI Assurances	34
25	Exhibits	
26	Exhibit A – List of Appraisers	
27	Exhibit B – Scope	
28	Exhibit C – Consultant Project Team Staff	
	Exhibit D – Subconsultants	
	Exhibit E – Consultant's Cost Proposal	

- 1 Exhibit F – Insurance Requirements
- Exhibit G – Self-Dealing Transaction Disclosure Form
- 2 Exhibit H – Fresno County Department of Public Works and Planning Conflict of Interest Code
- Exhibit I.1 – DBE Participation
- 3 Exhibit I.2 – LAPM Exhibit 10-I Notice to Proposers DBE Information
- 4 Exhibit I.3 – LAPM Exhibit 10-O2 Consultant Contract DBE Commitment
- Exhibit J – Disclosure Form to Report Lobbying
- 5 Exhibit K – Debarment and Suspension Certification
- Exhibit L – LAPM Exhibit 10-S Evaluation of the Consultant
- 6 Exhibit M – Title VI Assurances

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1 **ON-CALL AGREEMENT FOR**
2 **PROPERTY APPRAISALS SERVICES**

3 This Master Agreement for Appraisal Services, hereinafter referred to as “the
4 Agreement,” is made and entered into this _____ day of _____ 2024, by and
5 between the County of Fresno, a political subdivision of the State of California, hereinafter
6 referred to as “the County”; and those appraisers listed in Exhibit A, which is attached to the
7 Agreement and incorporated herein by reference, collectively hereinafter referred to as “the
8 Appraiser”.

9 **Recitals**

10 A. The County’s Department of Public Works and Planning (“Department”) desires to retain
11 the Appraiser to provide on-call real property appraisal services for partial and full parcel
12 acquisitions as necessary to assist the County in performing various roads and capital
13 improvement projects (“Project(s)”) proposed by the County.

14 B. The Department will be requiring services for several large-scale projects as well as
15 other projects of a smaller nature that may arise from time to time.

16 C. It is necessary that an appraisal be made on these parcels at fair market value of the
17 land and improvements taken, severance damages, if any, and special benefits, if any, and to
18 assist the County in determining the just compensation to be offered to the owners of said
19 parcels.

20 D. The Consultant represents that it is able to provide said appraisal review services
21 subject to the terms and conditions of this Agreement.

22 E. The Consultant has been selected in accordance with the County's Ordinance Code
23 Chapter 4.10 on the selection of architects, engineers, and other professionals to provide the
24 Real Property services necessary for the Projects, as specified herein; and in accordance with
25 Chapter 10 of the California Department of Transportation’s (CALTRANS) Local Assistance
26 Procedures Manual (LAPM), to provide certain professional services necessary for the
27 PROJECTS, as specified herein; and

28 F. The individual listed below:

Erin Haagenson, Program Manager
2220 Tulare Street, 6th Floor, Fresno, CA 93721
559-388-7292
ehaagenson@fresnocountyca.gov

is designated as the Contract Administrator for this Agreement on behalf of the County and shall remain so unless the Consultant is otherwise notified in writing by the County's Director of Public Works and Planning or his/her designee(s) ("Director").

G. The individual listed in Exhibit A, as the firm's "List of Appraisers" is designated as the Consultant's Project Manager for this Agreement and shall remain so unless the Consultant requests and the Director approves, in writing, a change of the Consultant's Project Manager, which approval will not be unreasonably withheld.

The parties therefore agree as follows:

Article 1

Consultant's Services

1.1 **Scope of Services.** The Consultant shall perform all consultant real property services required for the Project(s). as provided in Exhibit B to this Agreement, entitled "Scope of Services," attached hereto and incorporated herein.

1.2 **Representation.** The Consultant represents that it is qualified, ready, willing, and able to perform all of the services provided in this Agreement.

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

1.4 The Consultant's Project team staff shall be as listed in Exhibit C, attached hereto, and incorporated herein. Any substitutions of personnel shall be approved by the contract administrator, approval of which shall not be unreasonably withheld. The Consultant shall notify the Contract Administrator of the names and classifications of employees assigned to each specific Project and shall not reassign such employees to other Projects of the Consultant

1 without notification to and prior approval by the Contract Administrator.

2 1.5 The Consultant may retain, as subconsultants, specialists as the Consultant requires
3 to assist in completing the work in accordance with Article 13 "Subconsultants" and Article 18
4 "Disadvantaged Business Enterprises". The subconsultants shall be listed in Exhibit D, entitled
5 "Subconsultants," attached hereto and incorporated herein.

6 1.6 The Appraiser agrees the Appraiser's principal personnel are licensed as Certified
7 General Appraisers with the California Office of Real Estate Appraisers and hold an MAI
8 Designation from the Appraisal Institute and the professionals or other individuals performing
9 work on any Project(s) shall be adequately trained to perform the work as required by law or by
10 accepted standards of the applicable profession.

11 1.7 The Consultant's services shall be performed as expeditiously as is consistent with
12 professional skill and the orderly progress of the work, based on schedules for each specific
13 Project mutually agreed upon in advance by the Contract Administrator and the Consultant, and
14 consistent with schedules established under Article 3, "Compensation, Invoices, and Payments."

15 1.8 The Appraiser is responsible to being fully informed regarding the requirements of 49
16 CFR, Part 26 and the California Department of Transportation's (Caltrans) Disadvantage
17 Business Enterprise program developed pursuant to the regulations incorporated herein.

19 **Article 2**

20 **County's Responsibilities**

21 2.1 Provide an individual Project Administrator to serve as a representative of the County
22 who will coordinate and communicate with the Consultant on all Project technical work, to the
23 extent appropriate, in an effort to facilitate the Consultant's performance of its obligations in
24 accordance with the provisions of this Agreement.

25 2.2 Issue Task Orders on a project-by-project basis. Task Orders will at a minimum
26 include scope of work, location, and schedule for the Project.

27 2.3 Provide the Consultant with a Project Scope and Schedule, and compensate the
28 Consultant as provided in this Agreement.

1 2.4 Provide copies of any available existing as-built plans and right-of-way drawings from
2 the County's files.

3 2.5 Provide all surveying and staking.

4 2.6 Provide design of the Project(s) and prepare legal descriptions.

5 2.7 Prepare right-of-way maps.

6 2.8 Provide list of property owners with addresses for notification of property owners
7 upon the Consultant's request.

8 2.9 Examine documents submitted and render timely decisions pertaining thereto.

9 2.10 Examine documents submitted to the County by the Consultant and timely render
10 decisions pertaining thereto.

11 2.11 For appraisal reviews the County shall also provide written appraisals completed by
12 outside Appraisal firms which the Consultant will review for completeness and accuracy.

13 2.12 Give reasonably prompt consideration to all matters submitted for approval by the
14 Consultant in an effort to assist the Consultant in avoiding any substantial delays in the
15 Consultant's program of work. An approval, authorization or request issued to the Consultant by
16 the County will be binding upon the County under the terms of this Agreement only if it is made
17 in writing and signed on behalf of the County by Contract Administrator.

18 **Article 3**

19 **Compensation, Invoices, and Payments**

20 3.1 The County agrees to pay, and the Consultant agrees to receive, compensation for
21 the performance of its services under this Agreement as described in this section.

22 3.2 **Maximum Compensation.** The County has or will enter into up to five (5) separate
23 agreements, including this Agreement, for performance of the Scope of Services identified
24 hereinabove in Article 1, Section A and more thoroughly in Appendix B attached hereto. The
25 other Agreements are to be entered into by the County with the other consultant firms listed,
26 together with the Consultant, on the list of consultant firms attached hereto as Appendix A. The
27 total amount payable by the County for all the Agreements combined shall not exceed a
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1 cumulative maximum total value of Five Hundred Thousand Dollars (\$500,000), which “Not to
2 Exceed Sum” hereinafter shall be referenced as the “NTE Sum”.

3 3.3 It is understood and agreed that there is no guarantee, either expressed or implied,
4 that all or any specific portion of this maximum NTE Sum will be authorized under the On-Call
5 Appraisal Consultant Agreements through Task Orders. It is further understood and agreed that
6 there is no guarantee, either expressed or implied, that any Task Order will be assigned to the
7 Consultant or that the Consultant will receive any payment whatsoever, under the terms of this
8 Agreement. Each time a Task Order is awarded under any of the Agreements, the County shall
9 send written notification to the Consultant and each of the other consultants that entered into the
10 Agreements. Each such notice shall identify the cumulative total of funds allocated under all
11 Task Orders issued hereunder as of that date, and the remaining unencumbered amount of the
12 NTE Sum. The Consultant acknowledges and agrees that the County shall not pay any amount
13 under this Agreement that would cause the NTE Sum to be exceeded, and the Consultant shall
14 not enter into a Task Order that exceeds the remaining unencumbered amount of the NTE
15 Sum..

16 3.4 Consultant Fee. The approved Consultant’s Cost Proposal is attached hereto as
17 Exhibit E and incorporated by this reference as though fully set forth herein. If there is any
18 conflict between the provisions set forth in the text of this Agreement and the approved Cost
19 Proposal (Exhibit E), this Agreement shall take precedence.

20 3.5 **Invoices.** The Consultant shall submit invoices electronically to
21 PWPBusinessOffice@fresnocountyca.gov . The Consultant shall submit each invoice within 60
22 days after the month in which the Consultant performs services and in any case within 60 days
23 after the end of the term or termination of this Agreement. Invoices shall clearly identify the
24 Phase and Task of the work, the Notice to Proceed number and the date(s) on which the work
25 was performed and shall be submitted with the documentation identified in Article 3, Section 3.9
26 “Invoice Documentation.”

27 3.6 **Payment.** The County shall pay each correctly completed and timely submitted
28 invoice within 30 days after receipt. The County shall remit any payment to the Consultant’s

1 address specified in the invoice. Upon receipt of a proper invoice, the Contract Administrator will
2 take a maximum of ten (10) working days to review, approve, and submit it to the County
3 Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or inaccurate invoices will be
4 returned to the Consultant for correction and resubmittal. Payment, will be issued to the
5 Consultant within forty (40) calendar days of the date the Auditor-Controller/Treasurer-Tax
6 Collector receives the approved invoice.

7 3.7 An unresolved dispute over a possible error or omission may cause payment of the
8 Consultant fees in the disputed amount to be withheld by the County.

9 3.8 **Invoice Documentation.** Concurrently with the invoices, the CONSULTANT shall
10 certify (through copies of issued checks, receipts, or other County pre-approved documentation)
11 that complete payment, has been made to all subconsultants as provided herein for all previous
12 invoices paid by the County. However, the parties do not intend that the foregoing create in any
13 subconsultants or sub-consultant a third party beneficiary status or any third party beneficiary
14 rights, and do hereby expressly disclaim any such status or rights.

15 3.9 Final invoices, and separate invoices for release of retentions, shall be submitted to
16 Contract Administrator no later than thirty (30) days after the phase or task is completed.
17 Payment for retentions, if any, shall not be made until all services for the phase or task are
18 completed.

19 3.10 **Incidental Expenses.** The Consultant is solely responsible for all of its costs and
20 expenses that are not specified as payable by the County under this Agreement.

21 3.11 Retention From Earned Compensation No retainage will be withheld by the COUNTY
22 from the APPRAISER'S payment(s). Retainage by the APPRAISER or subconsultants is
23 prohibited, and no retainage will be held by the APPRAISER from progress due subconsultants.
24 Any violation of this provision shall subject the violating the APPRAISER or subconsultants to
25 the penalties, sanctions, and other remedies specified in Business and Professions Code
26 §7108.5. This requirement shall not be construed to limit or impair any contractual,
27 administrative, or judicial remedies, otherwise available to the APPRAISER or subconsultant in
28 the event of a dispute involving late payment or nonpayment by the APPRAISER or deficient

1 subconsultant performance, or noncompliance by a subconsultant. This provision applies to
2 both DBE and non-DBE APPRAISERS and subconsultants.

3 4 **Article 4**

5 **Term of Agreement**

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

9 4.2 **Extension.** The term of this Agreement may be extended for no more than one, one-
10 year period only upon written approval of both parties at least 30 days before the first day of the
11 next one-year extension period. The Director of Public Works and Planning or his or her
12 designee is authorized to sign the written approval on behalf of the County based on the
13 Consultant's satisfactory performance. The extension of this Agreement by the County is not a
14 waiver or compromise of any default or breach of this Agreement by the Consultant existing at
15 the time of the extension whether or not known to the County.

16 **Article 5**

17 **Notices**

18 5.1 **Contact Information.** The delivery of all notices hereunder and communications
19 regarding interpretation of the terms of this Agreement and any proposed changes thereto, shall
20 be accomplished by sending an e-mail, addressed to the Contract Administrator and the
21 Consultant's Project Manager as identified on Pages 3 and 4 of this Agreement. For all claims
22 arising out of or related to this Agreement, nothing in this section establishes, waives, or
23 modifies any claims presentation requirements or procedures provided by law, including but not
24 limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning
25 with section 810).

26 5.2 **Change of Contact Information.** Either party may change the information in section
27 5.1 by giving notice as provided in section 5.3.

- 1 (A) Modify the services provided by the Consultant under this Agreement; or
2 (B) Terminate this Agreement.

3 **6.2 Termination for Breach.**

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

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

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

- 12 (1) Obtained or used funds illegally or improperly;
13 (2) Failed to comply with any part of this Agreement;
14 (3) Submitted a substantially incorrect or incomplete report to the County; or
15 (4) Improperly performed any of its obligations under this Agreement.

16 **6.3 Termination without Cause.** In circumstances other than those set forth above, the
17 County may terminate this Agreement by giving at least 30 days advance written notice to the
18 Consultant .

19 **6.4 No Penalty or Further Obligation.** Any termination of this Agreement by the County
20 under this Article 6 is without penalty to or further obligation of the County.

21 **6.5 County's Rights upon Termination.** Upon termination for breach under this Article
22 6, the County may demand repayment by the Consultant of any monies disbursed to the
23 Consultant under this Agreement that, in the County's sole judgment, were not expended in
24 compliance with this Agreement. The Consultant shall promptly refund all such monies upon
25 demand. This section survives the termination of this Agreement.

1 **Article 7**

2 **Independent Consultant**

3 7.1 **Status.** In performing under this Agreement, the Consultant, including its officers,
4 agents, employees, and volunteers, is at all times acting and performing as an independent
5 consultant, in an independent capacity, and not as an officer, agent, servant, employee, joint
6 venturer, partner, or associate of the County.

7 7.2 **Verifying Performance.** When the Consultant is providing regular on-call consultant
8 services hereunder, the County has no right to control, supervise, or direct the manner or
9 method of the Consultant's shall perform its work and function. However, the County shall retain
10 the right to administer this Agreement so as to verify that the Consultant is performing its
11 obligations in accordance with the terms and conditions thereof.

12 7.3 **Benefits.** Because of its status as an independent Consultant, the Consultant has no
13 right to employment rights or benefits available to County employees. The Consultant is solely
14 responsible for providing to its own employees all employee benefits required by law. The
15 Consultant shall save the County harmless from all matters relating to the payment of
16 Consultant's employees, including compliance with Social Security withholding and all related
17 regulations.

18 7.4 **Services to Others.** The parties acknowledge that, during the term of this
19 Agreement, the Consultant may provide services to others unrelated to the County.

20 **Article 8**

21 **Indemnity and Defense**

22 8.1 **Indemnity.** The Consultant shall indemnify and hold harmless and defend the
23 County (including its officers, agents, employees, and volunteers) against all claims, demands,
24 injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and
25 liabilities of any kind to the County, the Consultant , or any third party that arise from or relate to
26 the performance or failure to perform by the Consultant (or any of its officers, agents,
27 subconsultant , or employees) under this Agreement. The County may conduct or participate in
28

1 its own defense without affecting the Consultant's obligation to indemnify and hold harmless or
2 defend the County.

3 8.2 **Survival.** This Article 8 survives the termination of this Agreement.

4 **Article 9**

5 **Insurance**

6 9.1 The Consultant shall comply with all the insurance requirements in Exhibit F to this
7 Agreement.

8 **Article 10**

9 **Cost Principles and Administrative Requirements**

10 10.1 The Consultant agrees that 48 CFR 31, Contract Cost Principles and Procedures,
11 shall be used to determine the allowability of individual terms of cost.

12 10.2 The Consultant also agrees to comply with Federal procedures in accordance with 2
13 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for
14 Federal Awards.

15 10.3 Any costs for which payment has been made to the Consultant that are determined
16 by subsequent audit to be unallowable under 48 CFR 31 or 2 CFR 200 are subject to repayment
17 by the Consultant to Local Agency.

18 10.4 When a Consultant or Subconsultant is a Non-Profit Organization or an Institution of
19 Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative
20 Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

21 **Article 11**

22 **Inspections, Audits, and Public Records**

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

1 11.2 **State Audit Requirements.** If the compensation to be paid by the County under this
2 Agreement exceeds \$10,000, the Consultant is subject to the examination and audit of the
3 California State Auditor, as provided in Government Code section 8546.7, for a period of three
4 years after final payment under this Agreement. This section survives the termination of this
5 Agreement.

6 11.3 **Public Records.** The County is not limited in any manner with respect to its public
7 disclosure of this Agreement or any record or data that the Consultant may provide to the
8 County. The County's public disclosure of this Agreement or any record or data that the
9 Consultant may provide to the County may include but is not limited to the following:

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

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

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

20 (D) This Agreement, and any record or data that the Consultant may provide to the
21 County, is subject to public disclosure as a public record under the California Public
22 Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning
23 with section 6250) ("CPRA").

24 (E) This Agreement, and any record or data that the Consultant may provide to
25 the County, is subject to public disclosure as information concerning the conduct of the
26 people's business of the State of California under California Constitution, Article 1,
27 section 3, subdivision (b).
28

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

5 **11.4 Public Records Act Requests.** If the County receives a written or oral request
6 under the CPRA to publicly disclose any record that is in the Consultant's possession or control,
7 and which the County has a right, under any provision of this Agreement or applicable law, to
8 possess or control, then the County may demand, in writing, that the Consultant deliver to the
9 County, for purposes of public disclosure, the requested records that may be in the possession
10 or control of the Consultant . Within five business days after the County's demand, the
11 Consultant shall (a) deliver to the County all of the requested records that are in the
12 Consultant's possession or control, together with a written statement that the Consultant, after
13 conducting a diligent search, has produced all requested records that are in the Consultant's
14 possession or control, or (b) provide to the County a written statement that the Consultant, after
15 conducting a diligent search, does not possess or control any of the requested records. The
16 Consultant shall cooperate with the County with respect to any County demand for such
17 records. If the Consultant wishes to assert that any specific record or data is exempt from
18 disclosure under the CPRA or other applicable law, it must deliver the record or data to the
19 County and assert the exemption by citation to specific legal authority within the written
20 statement that it provides to the County under this section. The Consultant's assertion of any
21 exemption from disclosure is not binding on the County, but the County will give at least 10
22 days' advance written notice to the Consultant before disclosing any record subject to the
23 Consultant's assertion of exemption from disclosure. The Consultant shall indemnify the County
24 for any court-ordered award of costs or attorney's fees under the CPRA that results from the
25 Consultant's delay, claim of exemption, failure to produce any such records, or failure to
26 cooperate with the County with respect to any County demand for any such records.

1 **Article 12**

2 **Disclosure of Self-Dealing Transactions**

3 12.1 **Applicability.** This Article 11 applies if the Consultant is operating as a corporation
4 or changes its status to operate as a corporation.

5 12.2 **Duty to Disclose.** If any member of the Consultant’s board of directors is party to a
6 self-dealing transaction, he or she shall disclose the transaction by completing and signing a
7 “Self-Dealing Transaction Disclosure Form” (Exhibit G to this Agreement) and submitting it to
8 the County before commencing the transaction or immediately after.

9 12.3 **Definition.** “Self-dealing transaction” means a transaction to which the Consultant is
10 a party and in which one or more of its directors, as an individual, has a material financial
11 interest.

12 **Article 13**

13 **General Terms**

14 13.1 **Modification.** Except as provided in Article 6, “Termination and Suspension,” this
15 Agreement may not be modified, and no waiver is effective, except by written agreement signed
16 by both parties. The Consultant acknowledges that County employees have no authority to
17 modify this Agreement except as expressly provided in this Agreement.

18 13.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations
19 under this Agreement without the prior written consent of the other party.

20 13.3 **Governing Law.** The laws of the State of California govern all matters arising from
21 or related to this Agreement.

22 13.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
23 County, California. Consultant consents to California jurisdiction for actions arising from or
24 related to this Agreement, and, subject to the Government Claims Act, all such actions must be
25 brought and maintained in Fresno County.

26 13.5 **Construction.** The final form of this Agreement is the result of the parties’ combined
27 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
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1 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
2 against either party.

3 13.6 **Days.** Unless otherwise specified, “days” means calendar days.

4 13.7 **Headings.** The headings and section titles in this Agreement are for convenience
5 only and are not part of this Agreement.

6 13.8 **Severability.** If anything in this Agreement is found by a court of competent
7 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in
8 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
9 this Agreement with lawful and enforceable terms intended to accomplish the parties’ original
10 intent.

11 13.9 **Nondiscrimination.** During the performance of this Agreement, the Consultant shall
12 not unlawfully discriminate against any employee or applicant for employment, or recipient of
13 services, because of race, religious creed, color, national origin, ancestry, physical disability,
14 mental disability, medical condition, genetic information, marital status, sex, gender, gender
15 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
16 all applicable State of California and federal statutes and regulation.

17 13.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
18 of the Consultant under this Agreement on any one or more occasions is not a waiver of
19 performance of any continuing or other obligation of the Consultant and does not prohibit
20 enforcement by the County of any obligation on any other occasion.

21 13.11 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
22 between the Consultant and the County with respect to the subject matter of this Agreement,
23 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,
24 publications, and understandings of any nature unless those things are expressly included in
25 this Agreement. If there is any inconsistency between the terms of this Agreement without its
26 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
27 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the
28 exhibits.

1 13.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to
2 create any rights or obligations for any person or entity except for the parties.

3 13.13 **Authorized Signature.** The Consultant represents and warrants to the County that:

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

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

9 13.14 **Electronic Signatures.** The parties agree that this Agreement may be executed by
10 electronic signature as provided in this section.

11 (A) An “electronic signature” means any symbol or process intended by an individual
12 signing this Agreement to represent their signature, including but not limited to (1) a
13 digital signature; (2) a faxed version of an original handwritten signature; or (3) an
14 electronically scanned and transmitted (for example by PDF document) version of an
15 original handwritten signature.

16 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed
17 equivalent to a valid original handwritten signature of the person signing this Agreement
18 for all purposes, including but not limited to evidentiary proof in any administrative or
19 judicial proceeding, and (2) has the same force and effect as the valid original
20 handwritten signature of that person.

21 (C) The provisions of this section satisfy the requirements of Civil Code section
22 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,
23 Part 2, Title 2.5, beginning with section 1633.1).

24 (D) Each party using a digital signature represents that it has undertaken and
25 satisfied the requirements of Government Code section 16.5, subdivision (a),
26 paragraphs (1) through (5), and agrees that each other party may rely upon that
27 representation.
28

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

4 13.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an
5 original, and all of which together constitute this Agreement.

6 **Article 14**

7 **Subconsultants**

8 14.1 The Consultant may retain, as subconsultants, specialists in such disciplines
9 including, but not limited to, title reports, appraisals, acquisition, and relocation assistance as
10 the Consultant requires to assist in completing the work. All subconsultants used by the
11 Consultant shall be approved in writing by the Contract Administrator before they are retained
12 by the Consultant, approval of which shall not be unreasonably withheld. Those subconsultants
13 listed in Exhibit D, shall be considered as approved by the Contract Administrator. The
14 maximum amount of compensation to be paid to the Consultant under Article 5 "Compensation,
15 Allowable Costs and Payments" shall not be increased by any addition or substitution of
16 subconsultants.

17 14.2 The Consultant shall be as fully responsible to the County for the negligent acts and
18 omissions of its consultant and/or subconsultants, and of persons either directly or indirectly
19 employed by them, in the same manner as persons directly employed by the Consultant.

20 14.3 Nothing contained in this Agreement shall create any contractual relationship
21 between the County and any of the Consultant's subconsultants, and no subconsultant
22 agreement shall relieve the Consultant of any of its responsibilities and obligations hereunder.
23 The Consultant agrees to be as fully responsible to the County for the acts and omissions of its
24 subconsultants and of persons either directly or indirectly employed by any of them as it is for
25 the acts and omissions of persons directly employed by the Consultant. The Consultant's
26 obligation to pay its subconsultants is a separate and independent obligation that is entirely
27 unrelated to the County's obligation to make payments to the Consultant.

1 14.4 The Consultant shall perform the work contemplated with resources available within
2 its own organization; and no portion of the work pertinent to this contract shall be subcontracted
3 without prior written authorization by the Contract Administrator, excepting only those portions of
4 the work and the responsible subconsultants that are expressly identified in Exhibit D.

5 14.5 Any subcontract in excess of \$25,000 entered into as a result of this Agreement,
6 shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

7 14.6 The Consultant shall pay its subconsultants within fifteen (15) calendar days from
8 receipt of each progress payment made to the Consultant by the County.

9 14.7 Any substitution of subconsultant(s) must be approved in writing by the Contract
10 Administrator in advance of assigning work to a substitute Subconsultant.

11 **Article 15**

12 **Conflict of Interest**

13 15.1 The Consultant shall comply with the provisions of the Fresno County Department of
14 Public Works and Planning Conflict of Interest Code, attached hereto as Exhibit H and
15 incorporated herein by this reference. Such compliance shall include the filing of annual
16 statements pursuant to the regulations of the State Fair Political Practices Commission
17 including, but not limited to, portions of Form 700.

18 15.2 During the term of this Agreement, the Consultant shall disclose any financial,
19 business, or other relationship with the County that may have an impact upon the outcome of
20 this contract, or any ensuing County construction project. The Consultant shall also list current
21 clients who may have a financial interest in the outcome of this contract, or any ensuing County
22 construction project, which will follow.

23 15.3 The Consultant certifies that it has disclosed to the County any actual, apparent, or
24 potential conflicts of interest that may exist relative to the services to be provided pursuant to
25 this Agreement. The Consultant agrees to advise the County of any actual, apparent or potential
26 conflicts of interest that may develop subsequent to the date of execution of this Agreement.
27 The Consultant further agrees to complete any statements of economic interest if required by
28 either County ordinance or State law.

1 15.4 The Consultant hereby certifies that it does not now have nor shall it acquire any
2 financial or business interest that would conflict with the performance of services under this
3 Agreement. The Consultant hereby certifies that the Consultant or subconsultant and any firm
4 affiliated with the Consultant or subconsultant that bids on any construction contract or on any
5 Agreement to provide construction inspection for any construction project resulting from this
6 Agreement, has established necessary controls to ensure a conflict of interest does not exist.

7 15.5 An affiliated firm is one, which is subject to the control of the same persons, through
8 joint ownership or otherwise.

9 **Article 16**

10 **Errors or Omissions Claims and Disputes**

11 16.1 Definitions:

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

16 (B) "Claim" is a demand or assertion by one of the parties seeking, as a matter of
17 right, adjustment or interpretation of contract terms, payment of money, extension of
18 time, change orders, or other relief with respect to the terms of the contract. The term
19 "Claim" also includes other disputes and matters in question between the County and
20 the Consultant arising out of or relating to the contract. Claims must be made by written
21 notice. The provisions of Government Code section 901, et seq., shall apply to every
22 claim made to the County. The responsibility to substantiate claims shall rest with the
23 party making the claim. The term "Claim" also includes any allegation of an error or
24 omission by the Consultant.

25 16.2 Should the Director believe the Consultant's work under this Agreement to have
26 included negligent errors or omissions, or that the Consultant may otherwise have failed to
27 comply with the provisions of this Agreement, either generally or in connection with its duties as
28 associated with a particular Project; and that the cause(s) for a claim by the construction

1 Consultant may be attributable, in whole or in part, to such conduct on the part of the
2 Consultant. Upon notice by the Director, the payments to the Consultant for such arguably
3 deficient services shall be held in suspense by the County until a final determination has been
4 made, of the proportion that the Consultant's fault bears to the fault of all other parties
5 concerned.

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

12 16.3 In the spirit of cooperation between the County and the Consultant, the following
13 procedures are established in the event of any claim or dispute alleging a negligent error, act, or
14 omission, of the Consultant.

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

18 (B) The County and the Consultant shall meet and confer and attempt to reach
19 agreement on any dispute, including what damages have occurred, the measure of
20 damages and what proportion of damages, if any, shall be paid by either party. The
21 parties agree to consult and consider the use of mediation or other form of dispute
22 resolution prior to resorting to litigation.

23 16.4 If the County and the Consultant cannot reach agreement under this Article 15
24 "Errors or Omissions Claims and Disputes", Section 15.2 Paragraph B, the disputed issues may,
25 upon concurrence by all parties, be submitted to a panel of three (3) for a recommended
26 resolution. The Consultant and the County shall each select one (1) member of the panel, and
27 the third member shall be selected by the other two panel members. The discovery rights
28 provided by California Code of Civil Procedure for civil proceedings shall be available and

1 enforceable to resolve the disputed issues. Either party requesting this dispute resolution
2 process shall, when invoking the rights to this panel, give to the other party a notice describing
3 the claims, disputes and other matters in question. At least twenty (20) working days before the
4 initial meeting of the panel, both parties shall submit all documents such party intends to rely
5 upon to resolve such dispute. If it is determined by the panel that any party has relied on such
6 documentation but has failed to previously submit such documentation on a timely basis to the
7 other party, the other party shall be entitled to a 20-working-day continuance of such initial
8 meeting of the panel. The decision by the panel is not a condition precedent to arbitration,
9 mediation or litigation.

10 16.5 15.5 Upon receipt of the panel's recommended resolution of the disputed issue(s),
11 the County and the Consultant shall again meet and confer and attempt to reach agreement. If
12 the parties still are unable to reach agreement, each party shall have recourse to all appropriate
13 legal and equitable remedies.

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

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

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

22 **Article 17**

23 **Ownership of Data**

24 17.1 All documents, including preliminary documents, calculations, and survey data,
25 required in performing services under this Agreement shall be submitted to, and shall remain at
26 all times the property of the County regardless of whether they are in the possession of the
27 Consultant or any other person, firm, corporation or agency.

1 17.2 The Consultant understands and agrees the County shall retain full ownership rights
2 of the work product of the Consultant for the Project, to the fullest extent permitted by law. In
3 this regard, the Consultant acknowledges and agrees the Consultant's services are on behalf of
4 the County and are "works made for hire," as that term is defined in copyright law, by the
5 County; that the work product to be prepared by the Consultant are for the sole and exclusive
6 use of the County, and that the County shall be the sole owner of all patents, copyrights,
7 trademarks, trade secrets and other rights and contractual interests in connection therewith
8 which are developed and compensated solely under this Agreement; that all the rights, title and
9 interest in and to the work product will be transferred to the County by the Consultant to the
10 extent the Consultant has an interest in and authority to convey such rights; and the Consultant
11 will assist the County to obtain and enforce patents, copyrights, trademarks, trade secrets, and
12 other rights and contractual interests relating to said work product, free and clear of any claim
13 by the Consultant or anyone claiming any right through the Consultant. The Consultant further
14 acknowledges and agrees the County's ownership rights in such work product, shall apply
15 regardless of whether such work product, or any copies thereof, are in possession of the
16 Consultant, or any other person, firm, corporation, or entity.

17 17.3 If this Agreement is terminated during or at the completion of any Project phase,
18 electronic and reproducible copies of report(s) or preliminary documents shall be submitted by
19 the Consultant to the County, which may use them to complete the Project(s) at a future time.

20 17.4 The files provided by the Consultant to the County are submitted for an acceptance
21 period lasting until the expiration of this Agreement (i.e., throughout the duration of the contract
22 term, including any extensions). Any defects the County discovers during such acceptance
23 period will be reported to the Consultant and will be corrected as part of the Consultant's "Basic
24 Scope of Work."
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1 **Article 18**

2 **State Prevailing Wage Rates**

3 18.1 The Consultant shall comply with the State of California's General Prevailing Wage
4 Rate requirements in accordance with California Labor Code, Section 1770, and all Federal,
5 State, and local laws and ordinances applicable to the work.

6 18.2 Any subcontract entered into as a result of this contract if for more than \$25,000 for
7 public works construction or more than \$15,000 for the alteration, demolition, repair, or
8 maintenance of public works, shall contain all of the provisions of this Article.

9 18.3 No Consultant or Subconsultant may be awarded an Agreement containing public
10 work elements unless registered with the Department of Industrial Relations (DIR) pursuant to
11 Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of
12 this Agreement, including any subsequent amendments.

13 **Article 19**

14 **Disadvantaged Business Enterprises (DBE) Participation**

15 19.1 This Agreement is subject to 49 Code of Federal Regulations (hereinafter referred to
16 as "49 CFR"), Part 26 Participation by Disadvantaged Business Enterprises in Department of
17 Transportation Financial Assistance Programs, Disadvantaged Business Enterprise programs
18 established by other federal agencies and/or the County's Disadvantaged Business Enterprise
19 Program (all of which are hereinafter referred to as "DBE Program(s)").

20 19.2 The Consultant is responsible for being fully informed regarding the requirements of
21 49 CFR, Part 26 and the CALTRANS Disadvantaged Business Enterprise program developed
22 pursuant to the regulations, as detailed in Exhibit I.1 attached hereto and incorporated herein.

23 19.3 Any subcontract entered into as a result of this Agreement shall contain all of the
24 provisions of this Article 19 "DBE Participation" and Exhibit I.1 "DBE Participation."

25 **Article 20**

26 **Equipment Purchase**

27 20.1 Prior authorization, in writing, by the Contract Administrator shall be required before
28 the Consultant enters into any unbudgeted purchase order, or subcontract exceeding five

1 thousand dollars (\$5,000) for supplies, equipment, or Consultant services. The Consultant shall
2 provide an evaluation of the necessity or desirability of incurring such costs.

3 20.2 Prior authorization by the Contract Administrator shall be required for purchase of
4 any item, service or consulting work in excess of \$5,000 that is not covered in the Consultant's
5 Cost Proposal; and the Consultant's request must be accompanied by at least three competitive
6 quotations, unless the absence of proposal is adequately justified, to the satisfaction of the
7 Contract Administrator in his/her discretion, by written explanation provided by the Consultant
8 with its submittal.

9 20.3 Any authorized purchase of equipment as a result of this Agreement is subject to the
10 following: "The Consultant shall maintain an inventory of all nonexpendable property.
11 Nonexpendable property is defined as having a useful life of at least two years and an
12 acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold
13 or traded in, the County shall receive a proper refund or credit at the conclusion of the contract,
14 or if the contract is terminated, the Consultant may either keep the equipment and credit the
15 County in an amount equal to its fair market value, or sell such equipment at the best price
16 obtainable at a public or private sale, in accordance with established County procedures; and
17 credit the County in an amount equal to the sales price. If the Consultant elects to keep the
18 equipment, fair market value shall be determined at the Consultant's expense, on the basis of a
19 Title 49 CFR, Part 200 requires a credit to Federal funds when participating equipment with a
20 fair market value greater than \$5,000.00 is credited to the Project. competent independent
21 appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable
22 to by the County and the Consultant, if it is determined to sell the equipment, the terms and
23 conditions of such sale must be approved in advance by the County."

24 **Article 21**

25 **Rebates, Kickbacks or Other Unlawful Consideration**

26 21.1 The Consultant warrants that this Agreement was not obtained or secured through
27 rebates, kickbacks or other unlawful consideration, either promised or paid to any County
28 employee. For breach or violation of this warranty, the County shall have the right, in its

1 discretion, to terminate this Agreement without liability; or to pay only for the value of the work
2 actually performed; or to deduct from this Agreement the price or consideration, or otherwise
3 recover, the full amount of such rebate, kickback or other unlawful consideration.

4 **Article 22**

5 **Prohibition of Expending County State or Federal Funds for Lobbying**

6 22.1 The Consultant hereby certifies to the best of his or her knowledge and belief that:

7 *“No state, federal or County appropriated funds have been paid, or will be paid by or on*
8 *behalf of the Consultant to any person for influencing or attempting to influence an officer or*
9 *employee of any state or federal agency; a Member of the State Legislature or United States*
10 *Congress; an officer or employee of the Legislature or Congress; or any employee of a*
11 *Member of the Legislature or Congress, in connection with any of the following:*

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

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

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

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

16 *(E) the extension, continuation, renewal, amendment, or modification of any state or*
17 *federal contract, grant, loan, or cooperative agreement.”*

18 22.2 If any funds other than federally appropriated funds have been paid, or will be paid to
19 any person for influencing or attempting to influence an officer or employee of any federal
20 agency; a Member of Congress; an officer or employee of Congress, or an employee of a
21 Member of Congress; in connection with this federal contract, grant, loan, or cooperative
22 agreement, then the Consultant shall complete and submit Standard Form-LLL, “Disclosure
23 Form to Report Lobbying” (a copy of which is attached hereto as Exhibit J), in accordance with
24 its instructions.

25 22.3 The certification required by the provisions of this Article 21 is a material
26 representation of fact upon which reliance was placed when this transaction was made or
27 entered into. Submission of this certification is a prerequisite for making or entering into this
28 transaction imposed by Title 31, U.S. Code Section 1352. Any person who fails to file the

1 required certification shall be subject to a civil penalty of not less than \$10,000 and not more
2 than \$100,000 for each such failure.

3 22.4 The Consultant also agrees by signing this document that he or she shall require that
4 the language of this certification be included in all lower-tier subcontracts, which exceed
5 \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

6 **Article 23**

7 **Non-Discrimination Clause and Statement of Compliance**

8 23.1 The Consultant's signature affixed herein, and dated, shall constitute a certification
9 under penalty of perjury under the laws of the State of California that the Consultant has, unless
10 exempt, complied with, the nondiscrimination program requirements of Government Code
11 §12990 and 2 CCR § 8103.

12 23.2 During the performance of this Agreement, the Consultant and its subconsultants
13 shall not deny this Agreement's benefits to any person on the basis of race, religious creed,
14 color, national origin, ancestry, physical disability, mental disability, medical condition, genetic
15 information, marital status, sex, gender, gender identity, gender expression, age, sexual
16 orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow
17 harassment against any employee or applicant for employment because of race, religious
18 creed, color, national origin, ancestry, physical disability, mental disability, medical condition,
19 genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual
20 orientation, or military and veteran status. The Consultant and subconsultants shall ensure that
21 the evaluation and treatment of their employees and applicants for employment are free from
22 such discrimination and harassment.

23 23.3 The Consultant and subconsultants shall comply with the provisions of the Fair
24 Employment and Housing Act (Gov. Code §12990 et seq.) and the applicable regulations
25 promulgated thereunder (2 CCR §11000 et seq.), the provisions of Government Code §§11135
26 et seq., and the regulations or standards adopted by the County to implement such provisions.
27 The applicable regulations of the Fair Employment and Housing Commission implementing
28 Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the

1 California Code of Regulations, are incorporated into this Agreement by reference and made a
2 part hereof as if set forth in full.

3 23.4 Consultant shall permit access by representatives of the Department of Fair
4 Employment and Housing and the County upon reasonable notice at any time during the normal
5 business hours, but in no case less than twenty-four (24) hours' notice, to such of its books,
6 records, accounts, and all other sources of information and its facilities as said Department or
7 the County shall require in order to ascertain compliance with the requirements of this Article 22.

8 23.5 The Consultant and subconsultants shall give written notice of their obligations under
9 this Article 22 to labor organizations with which they have a collective bargaining or other
10 agreement.

11 23.6 The Consultant and subconsultants shall include the nondiscrimination and
12 compliance provisions of this Article 22 in all subcontracts to perform work under this
13 Agreement.

14 23.7 The Consultant, with regard to the work performed under this Agreement, shall act in
15 accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI
16 provides that the recipients of federal assistance will implement and maintain a policy of
17 nondiscrimination in which no person in the United States shall, on the basis of race, color,
18 national origin, religion, sex, age, disability, be excluded from participation in, denied the
19 benefits of or subject to discrimination under any program or activity by the recipients of federal
20 assistance or their assignees and successors in interest.

21 23.8 The Consultant shall comply with regulations relative to non-discrimination in
22 federally assisted programs of the U.S. Department of Transportation (49 CFR Part 21 –
23 Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the Consultant shall not
24 participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including
25 employment practices and the selection and retention of Subconsultants.

26 23.9 The Consultant, subrecipient or subconsultant will never exclude any person from
27 participation in, deny any person the benefits of, or otherwise discriminate against anyone in
28 connection with the award and performance of any contract covered by 49 CFR 26 on the basis

1 of race, color, sex, or national origin. In administering the County components of the DBE
2 Program Plan, the Consultant, subrecipient or subconsultant will not, directly, or through
3 contractual or other arrangements, use criteria or methods of administration that have the effect
4 of defeating or substantially impairing accomplishment of the objectives of the DBE Program
5 Plan with respect to individuals of a particular race, color, sex, or national origin.

6 **Article 24**

7 **Debarment and Suspension Certification**

8 24.1 The Consultant's signature affixed herein, shall constitute a certification under
9 penalty of perjury under the laws of the State of California, that the Consultant has complied
10 with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate,
11 which certifies that the Consultant or any person associated therewith in the capacity of owner,
12 partner, director, officer, or manager:

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

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

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

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

21 24.2 Any exceptions to this certification must be disclosed to the County on Exhibit K
22 "Debarment and Suspension Certification." Exceptions will not necessarily result in denial of
23 recommendation for award but will be considered in determining Consultant responsibility.
24 Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

25 24.3 Exceptions to the Federal Government Excluded Parties Listing System maintained
26 by the General Services Administration are to be determined by the Federal Highway
27 Administration.

1 **Article 25**

2 **Executive Order N-6-22**

3 25.1 Under Executive Order N-6-22 as a consultant, subconsultant, or grantee,
4 compliance with the economic sanctions imposed in response to Russia's actions in Ukraine is
5 required, including with respect to, but not limited to, the federal executive orders identified in
6 the EO and the sanctions identified on the U.S. Department of the Treasury website
7 ([https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-](https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationalsandblocked-persons-list-sdn-human-readable-lists)
8 [nationalsandblocked-persons-list-sdn-human-readable-lists](https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationalsandblocked-persons-list-sdn-human-readable-lists)). Failure to comply may result in the
9 termination of contracts or grants, as applicable.

10 **Article 26**

11 **Contingent Fees**

12 26.1 The Consultant warrants, by execution of this Agreement that no person or selling
13 agency has been employed, or retained, to solicit or secure this Agreement upon an agreement
14 or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona
15 fide employees, or bona fide established commercial or selling agencies maintained by the
16 Consultant for the purpose of securing business. For breach or violation of this warranty, the
17 County has the right to: annul this Agreement without liability, and to pay only for the value of
18 the work actually performed; or in its discretion to deduct from the Agreement the price or
19 consideration, or otherwise recover, the full amount of such commission, percentage,
20 brokerage, or contingent fee.

21 **Article 27**

22 **Inspection Of Work**

23 27.1 The Consultant and any subconsultant shall permit the County, the state, and the
24 FHWA to review and inspect the Project activities and files at all reasonable times during the
25 performance period of this Agreement including review and inspection on a daily basis.
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1 **Article 28**

2 **Safety**

3 28.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding
4 necessary safety equipment or procedures. Consultant shall comply with safety instructions
5 issued by the County Safety Officer and other County representatives. Consultant personnel
6 shall wear hard hats and safety vests at all times while working on any Project-related
7 construction site.

8 28.2 Pursuant to the authority contained in Vehicle Code §591, the County has
9 determined that such areas are within the limits of the Project and are open to public traffic.
10 Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15
11 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe
12 operation of its vehicles and the protection of the traveling public from injury and damage from
13 such vehicles.

14 28.3 Any subcontract entered into as a result of this contract, shall contain all of the
15 provisions of this Article 27.

16 **Article 29**

17 **Confidentiality Of Data**

18 29.1 All financial, statistical, personal, technical, or other data and information relative to
19 the County's operations, which are designated confidential by the County and made
20 available to the Consultant in order to carry out this Agreement, shall be protected by
21 the Consultant from unauthorized use and disclosure.

22 29.2 Permission to disclose information on one occasion, or public hearing held by the
23 County relating to the contract, shall not authorize the Consultant to further disclose such
24 information, or disseminate the same on any other occasion.

25 29.3 The Consultant shall not comment publicly to the press or any other media regarding
26 this Agreement or the County's actions on the same, except to the County's staff, the
27 Consultant's own personnel involved in the performance of this Agreement, at public hearings or
28 in response to questions from a Legislative committee.

1 29.4 The Consultant shall not issue any news release or public relations item of any
2 nature, whatsoever, regarding work performed or to be performed under this Agreement without
3 prior review of the contents thereof by the County, and receipt of the County's written
4 permission.

5 29.5 If the Consultant or any of its officers, employees, or subconsultants does voluntarily
6 provide information in violation of this Contract, the County has the right to reimbursement and
7 indemnity from the Consultant for any damages caused by the Consultant's releasing the
8 information, including, but not limited to, the County's attorney's fees and disbursements,
9 including without limitation experts' fees and disbursements.

10 **Article 30**

11 **National Labor Relations Board Certification**

12 30.1 In accordance with Public Contract Code Section 10296, the Consultant hereby
13 states under penalty of perjury that no more than one final unappealable finding of contempt of
14 court by a federal court has been issued against the Consultant within the immediately
15 preceding two-year period, because of the Consultant's failure to comply with an order of a
16 federal court that orders the Consultant to comply with an order of the National Labor Relations
17 Board.

18 **Article 31**

19 **Evaluation Of The Consultant**

20 31.1 The Consultant's performance will be evaluated by the County. A copy of the
21 evaluation (Exhibit L) will be sent to the Consultant for comments. The evaluation together with
22 the comments shall be retained as part of the contract record.

23 **Article 32**

24 **Funding Requirements**

25 32.1 It is mutually understood between the parties that this Agreement may have been
26 written before ascertaining the availability of funds or appropriation of funds, for the mutual
27 benefit of both parties, in order to avoid program and fiscal delays that would occur if the
28 Agreement were executed after that determination was made.

1 32.2 This Agreement is valid and enforceable only if sufficient funds are made available to
2 the County for the purpose of this Agreement. In addition, this Agreement is subject to any
3 additional restrictions, limitations, conditions, or any statute enacted by the Congress, State
4 Legislature, or the County governing board that may affect the provisions, terms, or funding of
5 this Agreement in any manner.

6 32.3 It is mutually agreed that if sufficient funds are not appropriated, this Agreement may
7 be amended to reflect any reduction in funds.

8 32.4 In the event the Contractor reduces the scope of Consultant’s work under the
9 Agreement for a specific Project (or discontinues a specific Project), whether due to a deficiency
10 in the appropriation of anticipated funding or otherwise, the Consultant will be compensated on
11 a pro rata basis for actual work completed and accepted by the Contract Administrator in
12 accordance with the terms of the Agreement.

13 32.5 The County has the option to terminate the Agreement pursuant to Article 6
14 Termination and Suspension, or by mutual agreement to amend the Agreement to reflect any
15 reduction of funds.

16 **Article 33**

17 **Title VI Assurances**

18 33.1 The provisions of Title VI are hereby attached, unmodified as part of this Agreement
19 (Exhibit M). Exhibit M, “Title VI Assurances” Appendices A and E, and if applicable Appendices
20 B, C, and D, must be inserted, unmodified, in all subcontracts to perform work under the
21 Agreement.

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

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

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(1) for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
(2) for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

[SIGNATURE PAGE FOLLOWS]

DRAFT

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

2 [NAME OF CONSULTANT]

COUNTY OF FRESNO

3
4
5 _____
[Name], [Title]

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

6 [Street Address]
7 [City, State ZIP]

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

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10 By: _____
Deputy

11 For accounting use only:

12 Org No.: 0130 / 1910 / 1912 / 4360 / 4360 / 4365 / 45104511 / 45104512 / 45104513 /
13 45104514 / 7205 / 7910 / 8852 / 8853 / 8861 / 8863 / 8865 / 8867 / 9015 / 9020 / 9026 / 9028 /
9140

14 Fund No.: 0001 / 0010 / 0400 / 0700 / 0701 / 0710 / 0720 / 0801

15 Subclass No.: / 11000 / 15000 / 15001 / 16900 / 10052 / 10053 / 10061 / 10063 / 10065 / 10067

16 Account No.: 7295
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Exhibit F

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.

Exhibit G

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).

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

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**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF FRESNO
STATE OF CALIFORNIA**

In the matter of)
Amendment of Standard Conflict of) No.
Interest Code for All County)
Departments)

Whereas, the Political Reform Act, Government Code section 81000 et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes; and

Whereas, the Fair Political Practices Commission has adopted a regulation, Title 2, California Code of Regulations, section 18730, which contains the terms of a standard conflict of interest code, and which may be amended by the Fair Political Practices Commission after public notices and hearings to conform to amendments to the Political Reform Act; and

Whereas, any local agency may incorporate this standard conflict of interest code, and thereafter need not amend its code to conform to future amendments to the Political Reform Act or its regulations; and

Whereas, the Board of Supervisors may adopt the standard conflict of interest code on behalf of all County departments.

Now therefore be it resolved, that the terms of Title 2, California Code of Regulations, section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, are hereby incorporated by reference and, along with the Exhibits A and B approved previously, today, or in the future, by this Board for each County department, in which officers and employees are designated and disclosure categories are set forth, constitute the conflict of interest codes of each County department.

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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*)

CONTACT PERSON Sam Mann	DEPARTMENT Public Works and Planning
-----------------------------------	--

I hereby approve the foregoing reported information for our department:

<u>stwhite 12/13/2021 4:01:37 PM</u> Department Head Signature / Date	[Sign] Double click!
--	--------------------------------------

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.

PUBLIC WORKS AND PLANNING

<u>Classification</u>	<u>Category</u>
Accountant I / II	2
Architect	1
Assistant Director of Public Works & Planning- Planning and Resource Management Official.	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

<u>Classification</u>	<u>Category</u>
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.

DISADVANTAGED BUSINESS ENTERPRISES (DBE) Participation

1. Consultant, subrecipient (Local Agency), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the Local Agency shows a contract goal for DBEs. Consultant shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.
2. Consultant shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate Good Faith Efforts (GFE) to meet this goal. It is Consultant's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the contract. Additionally, the Consultant is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.
3. All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies Consultant purchases from DBEs counts towards the goal in the following manner:
 - 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
 - 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
 - Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."
4. This Agreement is subject to 49 CFR 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who enter into a federally-funded agreement will assist the Local Agency in a good faith effort to achieve California's statewide overall DBE goal.
5. The goal for DBE participation for this Agreement is _____%. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the Agreement. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
6. The Consultant can meet the DBE participation goal by either documenting commitments to DBEs to meet the Agreement goal, or by documenting adequate good faith efforts to meet the Agreement goal. An adequate good faith effort means that the Consultant must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If Consultant has not met the DBE goal, complete and submit Exhibit 15-H: Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
7. **Contract Assurance.** Under 49 CFR 26.13(b):
 - a. The Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

- b. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
 - b.1. Withholding monthly progress payments;
 - b.2. Assessing sanctions;
 - b.3. Liquidated damages; and/or
 - b.4. Disqualifying Consultant from future proposing as non-responsible

8. Termination and Replacement of DBE Subconsultants

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

b. Termination of DBE Subconsultants

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

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

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

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

9. Replacement of DBE Subconsultants

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

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

- a. Submit a request to replace a DBE with other forces or material sources in writing to the Local Agency which must include:
 - a.1. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
 - a.2. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
 - Description of scope of work and cost proposal
 - Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
 - Revised Exhibit 10-O2: Consultant Contract DBE Commitment
- b. If Consultant has not identified a DBE replacement firm, submits documentation of Consultant's GFEs to use DBE replacement firms within seven (7) days of Local Agency's authorization to terminate the DBE. Consultant may request the Local Agency's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
 - Search results of certified DBEs available to perform the original DBE work identified and or other work Consultant had intended to self-perform, to the extent needed to meet DBE commitment
 - Solicitations of DBEs for performance of work identified

- Correspondence with interested DBEs that may have included contract details and requirements
- Negotiation efforts with DBEs that reflect why an agreement was not reached
- If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
- Copies of each DBE's and non-DBE's price quotes for work identified, as the Local Agency may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
- Additional documentation that supports Consultant's GFE

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

10. Commitment and Utilization

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

The Local Agency shall request Consultant to:

- a. Notify the Local Agency's contract administrator or designated representative of any changes to its anticipated DBE participation
- b. Provide this notification before starting the affected work
- c. Maintain records including:
 - c.1. Name and business address of each 1st-tier subconsultant
 - c.2. Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
 - c.3. Date of payment and total amount paid to each business (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

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

If a DBE is decertified before completing its work, the DBE must notify Consultant in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify Consultant in writing of the certification date. Consultant shall submit the notifications to the Local Agency. On work completion, Consultant shall complete Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change and submit the form to the Local Agency within 30 days of contract acceptance.

Upon work completion, Consultant shall complete Exhibit 17-F: Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the Local Agency within 90 days of contract acceptance. The Local Agency will withhold \$10,000 until the form is submitted. The Local Agency will release the withhold upon submission of the completed form.

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

11. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will

only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

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

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

Within 10 days of a DBE initially performing work or supplying materials on the Contract,

Consultant shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

Consultant must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation.

Consultant must submit to the Local Agency these quarterly evaluations and validations by the 5th of the month for the previous three months of work. Consultant must notify the Local Agency immediately if they believe the DBE may not be performing a CUF.

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

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

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

- Inventory rosters

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

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

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

- DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE Consultant's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to Local Agency's Contract Administrator within thirty (30) calendar days.
- For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/Consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to local administering agencies.
For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the Consultant must now submit Exhibit 9-P to the Local Agency administering the contract. If the Consultant does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.
- Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

(Federally funded projects only)

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

1. TERMS AS USED IN THIS DOCUMENT

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

2. AUTHORITY AND RESPONSIBILITY

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

3. SUBMISSION OF DBE INFORMATION

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

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

4. DBE PARTICIPATION GENERAL INFORMATION

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

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

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

5. RESOURCES

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

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

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

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

EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT

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

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Local Agency to Complete this Section			\$
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____			%
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			14. TOTAL CLAIMED DBE PARTICIPATION
IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.			
_____ 23. Local Agency Representative's Signature		_____ 24. Date	_____ 15. Preparer's Signature
_____ 25. Local Agency Representative's Name		_____ 26. Phone	_____ 16. Date
_____ 27. Local Agency Representative's Title			_____ 17. Preparer's Name
			_____ 18. Phone
			_____ 19. Preparer's Title

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

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

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENTCONSULTANT SECTION

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

LOCAL AGENCY SECTION

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

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

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

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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

**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: _____

Consultant Performance Evaluation

Exhibit 10-S Consultant Performance Evaluation

1. PROJECT DATA		2. CONSULTANT DATA					
1a.	Project (include title, location, and Activity/CIP No.)	2a.	Consultant Name and Address				
1b.	Brief Description of Project (design, study, etc.)	2b.	Consultant's Manager				
1c.	Budget Cost for Project: \$ _____	2c.	Phone: _____				
3. AGENCY DEPARTMENT/SECTION RESPONSIBLE							
3a.	Department (include section and division)		3b. Agency Project Manager (name & phone)				
4. CONTRACT DATA (Engineering Services)							
4a.	Contract No.: _____		Termination date: _____		Base Fee: \$ _____		
	Agreement date: _____		Date terminated: _____		Contingency: \$ _____		
4b.	Amendment \$ _____ / # _____		\$ _____ / # _____				
	(Total Value)	(Initiated by Agency)	(Total Value)	(Initiated by Agency)			
4c.	Change Order \$ _____ / # _____		\$ _____ / # _____				
	(Total Value)	(Initiated by Agency)	(Total Value)	(Initiated by Agency)			
4d.	Total Fee per Agreement (4a. + 4b. + 4c.) \$ _____			Total Fee Paid \$ _____			
	(Do not include Contingency Listed in 4a.)						
4e. Type of Services (Design, study, etc.)	4f. Historical Record of Key Submittal Dates (enter date or n/a if not applicable)						
		Preliminary	30%	70%	90%	100%	Final
	Per Agreement						
	Delivery Date						
	Acceptance Date						
4g. Notice To Proceed _____ (date)	4j. Reasons for Change Orders: (Indicate total for each reason)						
		Errors/Omissions \$ _____	%	of Base Fee			
		Unforeseen Conditions \$ _____	%	of Base Fee			
4h. Number of Days _____ (number)		Changed Scope \$ _____	%	of Base Fee			
		Changed Quantities \$ _____	%	of Base Fee			
4i. Actual Number of Days _____ (number)		Program Task Options \$ _____	%	of Base Fee			
5. OVERALL RATING (Complete Section II on reverse, include comments as appropriate.)							
		Outstanding	Above Average	Average	Below Average	Poor	N/A
5a.	Plans/Specifications accuracy						
5b.	Consistency with budget						
5c.	Responsiveness to Agency Staff						
5d.	Overall Rating						
6. AUTHORIZING SIGNATURES							
6a.	Agency Design Team Leader	_____	Date: _____				
6b.	Agency Project Manager	_____	Date: _____				
6c.	Agency Public Works Manager	_____	Date: _____				
6d.	Consultant Representative	_____	Date: _____				

See Reverse Side

Consultant Performance Evaluation

PLANS/SPECIFICATIONS	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A	Responsiveness To Staff	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
ACCURACY													
Plans Specifications clear and concise							Timely Responses						
Plans/Specs Coordination							Attitude toward Client and review bodies						
Plans/Specs properly formatted							Follows directions and Chain of responsibility						
Code Requirements covered							Work product delivered on time						
Adhered to Agency Standard Drawings/Specs							Timeliness in notifying Agency of major problems						
Drawings reflect existing conditions							Resolution of field Problems						
As-Built Drawings							Consistency with budget						
Quality Design							Reasonable Agreement negotiation						
Change Orders due to design deficiencies are minimized							Adherence to fee schedule						
							Adherence to project Budget						

Section III **EXPLANATIONS AND SUPPLEMENTAL INFORMATION**
(Attach additional documentation as needed)

Item _____ : _____

Item _____ : _____

Item _____ : _____

Item _____ : _____

Item _____ : _____

Item _____ : _____

*Indicates supporting documentation attached.

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).