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- 1 Exhibit F – Insurance Requirements
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1 **ON-CALL AGREEMENT FOR**  
2 **TITLE REPORTS & RELATED SERVICES**

3 This Master Agreement for Title Reports and Related Services, hereinafter referred to as  
4 “the 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 firms listed in Exhibit A, which is attached to the  
7 Agreement and incorporated herein by reference, collectively hereinafter referred to as  
8 “Consultant”.

9 **Recitals**

10 A. The County’s Department of Public Works and Planning (“Department”) desires to retain  
11 the Consultant to provide on-call preliminary title reports, litigation guarantees, escrow services  
12 and any other services deemed necessary for parcels to be acquired for various road, bridge,  
13 capital and community development 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. The Consultant represents that it is able to provide said title and related services subject  
17 to the terms and conditions of this Agreement.

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

24 E. The individual listed below:

25 Erin Haagenson, Program Manager

26 2220 Tulare Street, 6th Floor, Fresno, CA 93721

27 559-388-7292

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

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

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

8 The parties therefore agree as follows:

## 9 **Article 1**

### 10 **Consultant's Services**

11 1.1 **Scope of Services.** The Consultant shall perform all consultant real property  
12 services required for the Project(s). as provided in Exhibit B to this Agreement, entitled "Scope  
13 of Services," attached hereto and incorporated herein.

14 1.2 **Representation.** The Consultant represents that it is qualified, ready, willing, and  
15 able to perform all of the services provided in this Agreement.

16 1.3 **Compliance with Laws.** The Consultant shall, at its own cost, comply with all  
17 applicable federal, state, and local laws and regulations in the performance of its obligations  
18 under this Agreement, including but not limited to workers compensation, labor, and  
19 confidentiality laws and regulations.

20 1.4 The Consultant's Project team staff shall be as listed in Exhibit C, attached hereto,  
21 and incorporated herein. Any substitutions of personnel shall be approved by the contract  
22 administrator, approval of which shall not be unreasonably withheld. The Consultant shall notify  
23 the Contract Administrator of the names and classifications of employees assigned to each  
24 specific Project and shall not reassign such employees to other Projects of the Consultant  
25 without notification to and prior approval by the Contract Administrator.

26 1.5 The Consultant may retain, as subconsultants, specialists as the Consultant requires  
27 to assist in completing the work in accordance with Article 13 "Subconsultants" and Article 18  
28 "Disadvantaged Business Enterprises". The subconsultants shall be listed in Exhibit D, entitled

1 “Subconsultants,” attached hereto and incorporated herein.

2 1.6 The Consultant agrees their principal personnel are licensed as Certified General  
3 Appraisers with the California Office of Real Estate Appraisers and hold an MAI Designation  
4 from the Appraisal Institute and the professionals or other individuals performing work on any  
5 Project(s) shall be adequately trained to perform the work as required by law or by accepted  
6 standards of the applicable profession.

7 1.7 The Consultant’s services shall be performed as expeditiously as is consistent with  
8 professional skill and the orderly progress of the work, based on schedules for each specific  
9 Project mutually agreed upon in advance by the Contract Administrator and the Consultant, and  
10 consistent with schedules established under Article 3, “Compensation, Invoices, and Payments.”

11 1.8 The Consultant is responsible to being fully informed regarding the requirements of  
12 49 CFR, Part 26 and the California Department of Transportation’s (Caltrans) Disadvantage  
13 Business Enterprise program developed pursuant to the regulations incorporated herein.

## 14 **Article 2**

### 15 **County’s Responsibilities**

16  
17 2.1 Provide an individual Project Administrator to serve as a representative of the County  
18 who will coordinate and communicate with the Consultant on all Project technical work, to the  
19 extent appropriate, in an effort to facilitate the Consultant’s performance of its obligations in  
20 accordance with the provisions of this Agreement.

21 2.2 Issue Task Orders on a project-by-project basis. Task Orders will at a minimum  
22 include scope of work, location, and schedule for the Project.

23 2.3 Provide the Consultant with a Project Scope and Schedule, and compensate the  
24 Consultant as provided in this Agreement.

25 2.4 Provide copies of any available existing as-built plans and right-of-way drawings from  
26 the County’s files.

27 2.5 Provide all surveying and staking.

28 2.6 Provide design of the Project(s) and prepare legal descriptions.

1 2.7 Prepare right-of-way maps.

2 2.8 Provide list of property owners with addresses for notification of property owners  
3 upon the Consultant's request.

4 2.9 Examine documents submitted and render timely decisions pertaining thereto.

5 2.10 Examine documents submitted to the County by the Consultant and timely render  
6 decisions pertaining thereto.

7 2.11 For appraisal reviews the County shall also provide written appraisals completed by  
8 outside Appraisal firms which the Consultant will review for completeness and accuracy.

9 2.12 Give reasonably prompt consideration to all matters submitted for approval by the  
10 Consultant in an effort to assist the Consultant in avoiding any substantial delays in the  
11 Consultant's program of work. An approval, authorization or request issued to the Consultant by  
12 the County will be binding upon the County under the terms of this Agreement only if it is made  
13 in writing and signed on behalf of the County by Contract Administrator.

### 14 **Article 3**

#### 15 **Compensation, Invoices, and Payments**

16 3.1 The County agrees to pay, and the Consultant agrees to receive, compensation for  
17 the performance of its services under this Agreement as described in this section.

18 3.2 **Maximum Compensation.** The County has or will enter into up to five (5) separate  
19 agreements, including this Agreement, for performance of the Scope of Services identified  
20 hereinabove in Article 1, Section A and more thoroughly in Appendix B attached hereto. The  
21 other Agreements are to be entered into by the County with the other consultant firms listed,  
22 together with the Consultant, on the list of consultant firms attached hereto as Appendix A. The  
23 total amount payable by the County for all the Agreements combined shall not exceed a  
24 cumulative maximum total value of Three Hundred Thousand Dollars (\$300,000), which "Not to  
25 Exceed Sum" hereinafter shall be referenced as the "NTE Sum".

26 3.3 It is understood and agreed that there is no guarantee, either expressed or implied,  
27 that all or any specific portion of this maximum NTE Sum will be authorized under the On-Call  
28

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

12 3.4 **Consultant Fee.** The approved Consultant's Cost Proposal is attached hereto as  
13 Exhibit E and incorporated by this reference as though fully set forth herein. If there is any  
14 conflict between the provisions set forth in the text of this Agreement and the approved Cost  
15 Proposal (Exhibit E), this Agreement shall take precedence.

16 3.5 **Invoices.** The Consultant shall submit invoices electronically to  
17 [PWPBusinessOffice@fresnocountyca.gov](mailto:PWPBusinessOffice@fresnocountyca.gov) . The Consultant shall submit each invoice within 60  
18 days after the month in which the Consultant performs services and in any case within 60 days  
19 after the end of the term or termination of this Agreement. Invoices shall clearly identify the  
20 Phase and Task of the work, the Notice to Proceed number and the date(s) on which the work  
21 was performed and shall be submitted with the documentation identified in Article 3, Section 3.9  
22 "Invoice Documentation."

23 3.6 **Payment.** The County shall pay each correctly completed and timely submitted  
24 invoice within 45 days after receipt. The County shall remit any payment to the Consultant's  
25 address specified in the invoice. Upon receipt of a proper invoice, the Contract Administrator will  
26 take a maximum of ten (10) working days to review, approve, and submit it to the County  
27 Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or inaccurate invoices will be  
28 returned to the Consultant for correction and resubmittal. Payment, will be issued to the

1 Consultant within forty (40) calendar days of the date the Auditor-Controller/Treasurer-Tax  
2 Collector receives the approved invoice.

3 3.7 An unresolved dispute over a possible error or omission may cause payment of the  
4 Consultant fees in the disputed amount to be withheld by the County.

5 3.8 **Invoice Documentation.** Concurrently with the invoices, the CONSULTANT shall  
6 certify (through copies of issued checks, receipts, or other County pre-approved documentation)  
7 that complete payment, has been made to all subconsultants as provided herein for all previous  
8 invoices paid by the County. However, the parties do not intend that the foregoing create in any  
9 subconsultants or sub-consultant a third party beneficiary status or any third party beneficiary  
10 rights, and do hereby expressly disclaim any such status or rights.

11 3.9 Final invoices, and separate invoices for release of retentions, shall be submitted to  
12 Contract Administrator no later than thirty (30) days after the phase or task is completed.  
13 Payment for retentions, if any, shall not be made until all services for the phase or task are  
14 completed.

15 3.10 **Incidental Expenses.** The Consultant is solely responsible for all of its costs and  
16 expenses that are not specified as payable by the County under this Agreement.

17 3.11 **Retention From Earned Compensation.** No retainage will be withheld by the  
18 COUNTY from the Consultant's payment(s). Retainage by the Consultant or subconsultants is  
19 prohibited, and no retainage will be held by the Consultant from progress due subconsultants.  
20 Any violation of this provision shall subject the violating the Consultant or subconsultants to the  
21 penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5.  
22 This requirement shall not be construed to limit or impair any contractual, administrative, or  
23 judicial remedies, otherwise available to the Consultant or subconsultant in the event of a  
24 dispute involving late payment or nonpayment by the Consultant or deficient subconsultant  
25 performance, or noncompliance by a subconsultant. This provision applies to both DBE and  
26 non-DBE Consultants and subconsultants.



1 **Article 4**

2 **Term of Agreement**

3 4.1 **Term.** This Agreement is effective on execution and terminates after a period of  
4 three years, except as provided in section 4.2, "Extension," or Article 6, "Termination and  
5 Suspension," below.

6 4.2 **Extension.** The term of this Agreement may be extended for no more than one, one-  
7 year period only upon written approval of both parties at least 30 days before the first day of the  
8 next one-year extension period. The Director of Public Works and Planning or his or her  
9 designee is authorized to sign the written approval on behalf of the County based on the  
10 Consultant's satisfactory performance. The extension of this Agreement by the County is not a  
11 waiver or compromise of any default or breach of this Agreement by the Consultant existing at  
12 the time of the extension whether or not known to the County.

13 **Article 5**

14 **Notices**

15 5.1 **Contact Information.** The delivery of all notices hereunder and communications  
16 regarding interpretation of the terms of this Agreement and any proposed changes thereto, shall  
17 be accomplished by sending an e-mail, addressed to the Contract Administrator and the  
18 Consultant's Project Manager as identified on Pages 3 and 4 of this Agreement. For all claims  
19 arising out of or related to this Agreement, nothing in this section establishes, waives, or  
20 modifies any claims presentation requirements or procedures provided by law, including but not  
21 limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning  
22 with section 810).

23 5.2 **Change of Contact Information.** Either party may change the information in section  
24 5.1 by giving notice as provided in section 5.3.

25 5.3 **Method of Delivery.** Each notice between the County and the Consultant provided  
26 for or permitted under this Agreement must be in writing, state that it is a notice provided under  
27 this Agreement, and be delivered either by personal service, by first-class United States mail, by  
28

1 an overnight commercial courier service, or by Portable Document Format (PDF) document  
2 attached to an email.

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

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

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

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

16 5.4 **Claims Presentation.** For all claims arising from or related to this Agreement,  
17 nothing in this Agreement establishes, waives, or modifies any claims presentation  
18 requirements or procedures provided by law, including the Government Claims Act (Division 3.6  
19 of Title 1 of the Government Code, beginning with section 810).

## 20 **Article 6**

### 21 **Termination and Suspension**

22 6.1 **Termination for Non-Allocation of Funds.** The terms of this Agreement are  
23 contingent on the approval of funds by the appropriating government agency. If sufficient funds  
24 are not allocated, then the County, upon at least 30 days' advance written notice to the  
25 Consultant , may:

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

27 (B) Terminate this Agreement.

28 6.2 **Termination for Breach.**

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

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

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

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

13 **6.3 Termination without Cause.** In circumstances other than those set forth above, the  
14 County may terminate this Agreement by giving at least 30 days advance written notice to the  
15 Consultant .

16 **6.4 No Penalty or Further Obligation.** Any termination of this Agreement by the County  
17 under this Article 6 is without penalty to or further obligation of the County.

18 **6.5 County's Rights upon Termination.** Upon termination for breach under this Article  
19 6, the County may demand repayment by the Consultant of any monies disbursed to the  
20 Consultant under this Agreement that, in the County's sole judgment, were not expended in  
21 compliance with this Agreement. The Consultant shall promptly refund all such monies upon  
22 demand. This section survives the termination of this Agreement.

## 23 **Article 7**

### 24 **Independent Consultant**

25 **7.1 Status.** In performing under this Agreement, the Consultant, including its officers,  
26 agents, employees, and volunteers, is at all times acting and performing as an independent  
27 consultant, in an independent capacity, and not as an officer, agent, servant, employee, joint  
28 venturer, partner, or associate of the County.



1 **Article 10**

2 **Cost Principles and Administrative Requirements**

3 10.1 The Consultant agrees that 48 CFR 31, Contract Cost Principles and Procedures,  
4 shall be used to determine the allowability of individual terms of cost.

5 10.2 The Consultant also agrees to comply with Federal procedures in accordance with 2  
6 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for  
7 Federal Awards.

8 10.3 Any costs for which payment has been made to the Consultant that are determined  
9 by subsequent audit to be unallowable under 48 CFR 31 or 2 CFR 200 are subject to repayment  
10 by the Consultant to Local Agency.

11 10.4 When a Consultant or Subconsultant is a Non-Profit Organization or an Institution of  
12 Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative  
13 Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

14 **Article 11**

15 **Inspections, Audits, and Public Records**

16 11.1 **Inspection of Documents.** The Consultant shall make available to the County, and  
17 the County may examine at any time during business hours and as often as the County deems  
18 necessary, all of the Consultant's records and data with respect to the matters covered by this  
19 Agreement, excluding attorney-client privileged communications. The Consultant shall, upon  
20 request by the County, permit the County to audit and inspect all of such records and data to  
21 ensure the Consultant's compliance with the terms of this Agreement.

22 11.2 **State Audit Requirements.** If the compensation to be paid by the County under this  
23 Agreement exceeds \$10,000, the Consultant is subject to the examination and audit of the  
24 California State Auditor, as provided in Government Code section 8546.7, for a period of three  
25 years after final payment under this Agreement. This section survives the termination of this  
26 Agreement.

27 11.3 **Public Records.** The County is not limited in any manner with respect to its public  
28 disclosure of this Agreement or any record or data that the Consultant may provide to the

1 County. The County's public disclosure of this Agreement or any record or data that the  
2 Consultant may provide to the County may include but is not limited to the following:

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

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

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

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

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

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

25 **11.4 Public Records Act Requests.** If the County receives a written or oral request  
26 under the CPRA to publicly disclose any record that is in the Consultant's possession or control,  
27 and which the County has a right, under any provision of this Agreement or applicable law, to  
28 possess or control, then the County may demand, in writing, that the Consultant deliver to the

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

## 19 **Article 12**

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

21 12.1 **Applicability.** This Article 11 applies if the Consultant is operating as a corporation  
22 or changes its status to operate as a corporation.

23 12.2 **Duty to Disclose.** If any member of the Consultant's board of directors is party to a  
24 self-dealing transaction, he or she shall disclose the transaction by completing and signing a  
25 "Self-Dealing Transaction Disclosure Form" (Exhibit G to this Agreement) and submitting it to  
26 the County before commencing the transaction or immediately after.





1 this Agreement with lawful and enforceable terms intended to accomplish the parties' original  
2 intent.

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

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

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

21       13.12 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to  
22 create any rights or obligations for any person or entity except for the parties.

23       13.13 **Authorized Signature.** The Consultant represents and warrants to the County that:

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

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

1 13.14 **Electronic Signatures.** The parties agree that this Agreement may be executed by  
2 electronic signature as provided in this section.

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

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

13 (C) The provisions of this section satisfy the requirements of Civil Code section  
14 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,  
15 Part 2, Title 2.5, beginning with section 1633.1).

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

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

23 13.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an  
24 original, and all of which together constitute this Agreement.

## 25 **Article 14**

### 26 **Subconsultants**

27 14.1 The Consultant may retain, as subconsultants, specialists in such disciplines  
28 including, but not limited to, title reports, appraisals, acquisition, and relocation assistance as

1 the Consultant requires to assist in completing the work. All subconsultants used by the  
2 Consultant shall be approved in writing by the Contract Administrator before they are retained  
3 by the Consultant, approval of which shall not be unreasonably withheld. Those subconsultants  
4 listed in Exhibit D, shall be considered as approved by the Contract Administrator. The  
5 maximum amount of compensation to be paid to the Consultant under Article 5 "Compensation,  
6 Allowable Costs and Payments" shall not be increased by any addition or substitution of  
7 subconsultants.

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

11 14.3 Nothing contained in this Agreement shall create any contractual relationship  
12 between the County and any of the Consultant's subconsultants, and no subconsultant  
13 agreement shall relieve the Consultant of any of its responsibilities and obligations hereunder.  
14 The Consultant agrees to be as fully responsible to the County for the acts and omissions of its  
15 subconsultants and of persons either directly or indirectly employed by any of them as it is for  
16 the acts and omissions of persons directly employed by the Consultant. The Consultant's  
17 obligation to pay its subconsultants is a separate and independent obligation that is entirely  
18 unrelated to the County's obligation to make payments to the Consultant.

19 14.4 The Consultant shall perform the work contemplated with resources available within  
20 its own organization; and no portion of the work pertinent to this contract shall be subcontracted  
21 without prior written authorization by the Contract Administrator, excepting only those portions of  
22 the work and the responsible subconsultants that are expressly identified in Exhibit D.

23 14.5 Any subcontract in excess of \$25,000 entered into as a result of this Agreement,  
24 shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

25 14.6 The Consultant shall pay its subconsultants within fifteen (15) calendar days from  
26 receipt of each progress payment made to the Consultant by the County.

27 14.7 Any substitution of subconsultant(s) must be approved in writing by the Contract  
28 Administrator in advance of assigning work to a substitute Subconsultant.

1 **Article 15**

2 **Conflict of Interest**

3 15.1 The Consultant shall comply with the provisions of the Fresno County Department of  
4 Public Works and Planning Conflict of Interest Code, attached hereto as Exhibit H and  
5 incorporated herein by this reference. Such compliance shall include the filing of annual  
6 statements pursuant to the regulations of the State Fair Political Practices Commission  
7 including, but not limited to, portions of Form 700.

8 15.2 During the term of this Agreement, the Consultant shall disclose any financial,  
9 business, or other relationship with the County that may have an impact upon the outcome of  
10 this contract, or any ensuing County construction project. The Consultant shall also list current  
11 clients who may have a financial interest in the outcome of this contract, or any ensuing County  
12 construction project, which will follow.

13 15.3 The Consultant certifies that it has disclosed to the County any actual, apparent, or  
14 potential conflicts of interest that may exist relative to the services to be provided pursuant to  
15 this Agreement. The Consultant agrees to advise the County of any actual, apparent or potential  
16 conflicts of interest that may develop subsequent to the date of execution of this Agreement.  
17 The Consultant further agrees to complete any statements of economic interest if required by  
18 either County ordinance or State law.

19 15.4 The Consultant hereby certifies that it does not now have nor shall it acquire any  
20 financial or business interest that would conflict with the performance of services under this  
21 Agreement. The Consultant hereby certifies that the Consultant or subconsultant and any firm  
22 affiliated with the Consultant or subconsultant that bids on any construction contract or on any  
23 Agreement to provide construction inspection for any construction project resulting from this  
24 Agreement, has established necessary controls to ensure a conflict of interest does not exist.

25 15.5 An affiliated firm is one, which is subject to the control of the same persons, through  
26 joint ownership or otherwise.

1 **Article 16**

2 **Errors or Omissions Claims and Disputes**

3 16.1 Definitions:

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

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

17 16.2 Should the Director believe the Consultant's work under this Agreement to have  
18 included negligent errors or omissions, or that the Consultant may otherwise have failed to  
19 comply with the provisions of this Agreement, either generally or in connection with its duties as  
20 associated with a particular Project; and that the cause(s) for a claim by the construction  
21 Consultant may be attributable, in whole or in part, to such conduct on the part of the  
22 Consultant. Upon notice by the Director, the payments to the Consultant for such arguably  
23 deficient services shall be held in suspense by the County until a final determination has been  
24 made, of the proportion that the Consultant's fault bears to the fault of all other parties  
25 concerned.

26 (A) Such amounts held in suspense shall not be paid to the Consultant, pending the  
27 final determination as to the Consultant's proportional fault. However, the appropriate  
28 percentage of such amount held in suspense shall be paid to the Consultant, once a

1 final determination has been made, and the Consultant thereafter submits a proper  
2 invoice to the County. Payment shall be issued in accordance with the procedure  
3 outlined in Article 3 "Compensation, Invoices, and Payments", Section 3.4.

4 16.3 In the spirit of cooperation between the County and the Consultant, the following  
5 procedures are established in the event of any claim or dispute alleging a negligent error, act, or  
6 omission, of the Consultant.

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

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

15 16.4 If the County and the Consultant cannot reach agreement under this Article 15  
16 "Errors or Omissions Claims and Disputes", Section 15.2 Paragraph B, the disputed issues may,  
17 upon concurrence by all parties, be submitted to a panel of three (3) for a recommended  
18 resolution. The Consultant and the County shall each select one (1) member of the panel, and  
19 the third member shall be selected by the other two panel members. The discovery rights  
20 provided by California Code of Civil Procedure for civil proceedings shall be available and  
21 enforceable to resolve the disputed issues. Either party requesting this dispute resolution  
22 process shall, when invoking the rights to this panel, give to the other party a notice describing  
23 the claims, disputes and other matters in question. At least twenty (20) working days before the  
24 initial meeting of the panel, both parties shall submit all documents such party intends to rely  
25 upon to resolve such dispute. If it is determined by the panel that any party has relied on such  
26 documentation but has failed to previously submit such documentation on a timely basis to the  
27 other party, the other party shall be entitled to a 20-working-day continuance of such initial  
28

1 meeting of the panel. The decision by the panel is not a condition precedent to arbitration,  
2 mediation or litigation.

3 16.5 Upon receipt of the panel's recommended resolution of the disputed issue(s), the  
4 County and the Consultant shall again meet and confer and attempt to reach agreement. If the  
5 parties still are unable to reach agreement, each party shall have recourse to all appropriate  
6 legal and equitable remedies.

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

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

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

## 15 **Article 17**

### 16 **Ownership of Data**

17 17.1 All documents, including preliminary documents, calculations, and survey data,  
18 required in performing services under this Agreement shall be submitted to, and shall remain at  
19 all times the property of the County regardless of whether they are in the possession of the  
20 Consultant or any other person, firm, corporation or agency.

21 17.2 The Consultant understands and agrees the County shall retain full ownership rights  
22 of the work product of the Consultant for the Project, to the fullest extent permitted by law. In  
23 this regard, the Consultant acknowledges and agrees the Consultant's services are on behalf of  
24 the County and are "works made for hire," as that term is defined in copyright law, by the  
25 County; that the work product to be prepared by the Consultant are for the sole and exclusive  
26 use of the County, and that the County shall be the sole owner of all patents, copyrights,  
27 trademarks, trade secrets and other rights and contractual interests in connection therewith  
28 which are developed and compensated solely under this Agreement; that all the rights, title and

1 interest in and to the work product will be transferred to the County by the Consultant to the  
2 extent the Consultant has an interest in and authority to convey such rights; and the Consultant  
3 will assist the County to obtain and enforce patents, copyrights, trademarks, trade secrets, and  
4 other rights and contractual interests relating to said work product, free and clear of any claim  
5 by the Consultant or anyone claiming any right through the Consultant. The Consultant further  
6 acknowledges and agrees the County's ownership rights in such work product, shall apply  
7 regardless of whether such work product, or any copies thereof, are in possession of the  
8 Consultant, or any other person, firm, corporation, or entity.

9 17.3 If this Agreement is terminated during or at the completion of any Project phase,  
10 electronic and reproducible copies of report(s) or preliminary documents shall be submitted by  
11 the Consultant to the County, which may use them to complete the Project(s) at a future time.

12 17.4 The files provided by the Consultant to the County are submitted for an acceptance  
13 period lasting until the expiration of this Agreement (i.e., throughout the duration of the contract  
14 term, including any extensions). Any defects the County discovers during such acceptance  
15 period will be reported to the Consultant and will be corrected as part of the Consultant's "Basic  
16 Scope of Work."

## 17 **Article 18**

### 18 **State Prevailing Wage Rates**

19 18.1 The Consultant shall comply with the State of California's General Prevailing Wage  
20 Rate requirements in accordance with California Labor Code, Section 1770, and all Federal,  
21 State, and local laws and ordinances applicable to the work.

22 18.2 Any subcontract entered into as a result of this contract if for more than \$25,000 for  
23 public works construction or more than \$15,000 for the alteration, demolition, repair, or  
24 maintenance of public works, shall contain all of the provisions of this Article.

25 18.3 No Consultant or Subconsultant may be awarded an Agreement containing public  
26 work elements unless registered with the Department of Industrial Relations (DIR) pursuant to  
27 Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of  
28 this Agreement, including any subsequent amendments.



1 **Article 19**

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

3 19.1 This Agreement is subject to 49 Code of Federal Regulations (hereinafter referred to  
4 as "49 CFR"), Part 26 Participation by Disadvantaged Business Enterprises in Department of  
5 Transportation Financial Assistance Programs, Disadvantaged Business Enterprise programs  
6 established by other federal agencies and/or the County's Disadvantaged Business Enterprise  
7 Program (all of which are hereinafter referred to as "DBE Program(s)").

8 19.2 The Consultant is responsible for being fully informed regarding the requirements of  
9 49 CFR, Part 26 and the CALTRANS Disadvantaged Business Enterprise program developed  
10 pursuant to the regulations, as detailed in Exhibit I-1 attached hereto and incorporated herein.

11 19.3 Any subcontract entered into as a result of this Agreement shall contain all of the  
12 provisions of this Article 19 "DBE Participation" and Exhibit I-1 "DBE Participation."

13 **Article 20**

14 **Equipment Purchase**

15 20.1 Prior authorization, in writing, by the Contract Administrator shall be required before  
16 the Consultant enters into any unbudgeted purchase order, or subcontract exceeding five  
17 thousand dollars (\$5,000) for supplies, equipment, or Consultant services. The Consultant shall  
18 provide an evaluation of the necessity or desirability of incurring such costs.

19 20.2 Prior authorization by the Contract Administrator shall be required for purchase of  
20 any item, service or consulting work in excess of \$5,000 that is not covered in the Consultant's  
21 Cost Proposal; and the Consultant's request must be accompanied by at least three competitive  
22 quotations, unless the absence of proposal is adequately justified, to the satisfaction of the  
23 Contract Administrator in his/her discretion, by written explanation provided by the Consultant  
24 with its submittal.

25 20.3 Any authorized purchase of equipment as a result of this Agreement is subject to the  
26 following: "The Consultant shall maintain an inventory of all nonexpendable property.  
27 Nonexpendable property is defined as having a useful life of at least two years and an  
28 acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold

1 or traded in, the County shall receive a proper refund or credit at the conclusion of the contract,  
2 or if the contract is terminated, the Consultant may either keep the equipment and credit the  
3 County in an amount equal to its fair market value, or sell such equipment at the best price  
4 obtainable at a public or private sale, in accordance with established County procedures; and  
5 credit the County in an amount equal to the sales price. If the Consultant elects to keep the  
6 equipment, fair market value shall be determined at the Consultant's expense, on the basis of a  
7 Title 49 CFR, Part 200 requires a credit to Federal funds when participating equipment with a  
8 fair market value greater than \$5,000.00 is credited to the Project. competent independent  
9 appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable  
10 to by the County and the Consultant, if it is determined to sell the equipment, the terms and  
11 conditions of such sale must be approved in advance by the County."

## 12 **Article 21**

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

14 21.1 The Consultant warrants that this Agreement was not obtained or secured through  
15 rebates, kickbacks or other unlawful consideration, either promised or paid to any County  
16 employee. For breach or violation of this warranty, the County shall have the right, in its  
17 discretion, to terminate this Agreement without liability; or to pay only for the value of the work  
18 actually performed; or to deduct from this Agreement the price or consideration, or otherwise  
19 recover, the full amount of such rebate, kickback or other unlawful consideration.

## 20 **Article 22**

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

22 22.1 The Consultant hereby certifies to the best of his or her knowledge and belief that:

23 *"No state, federal or County appropriated funds have been paid, or will be paid by or on*  
24 *behalf of the Consultant to any person for influencing or attempting to influence an officer or*  
25 *employee of any state or federal agency; a Member of the State Legislature or United States*  
26 *Congress; an officer or employee of the Legislature or Congress; or any employee of a*  
27 *Member of the Legislature or Congress, in connection with any of the following:*

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



1        23.2 During the performance of this Agreement, the Consultant and its subconsultants  
2 shall not deny this Agreement's benefits to any person on the basis of race, religious creed,  
3 color, national origin, ancestry, physical disability, mental disability, medical condition, genetic  
4 information, marital status, sex, gender, gender identity, gender expression, age, sexual  
5 orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow  
6 harassment against any employee or applicant for employment because of race, religious  
7 creed, color, national origin, ancestry, physical disability, mental disability, medical condition,  
8 genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual  
9 orientation, or military and veteran status. The Consultant and subconsultants shall ensure that  
10 the evaluation and treatment of their employees and applicants for employment are free from  
11 such discrimination and harassment.

12        23.3 The Consultant and subconsultants shall comply with the provisions of the Fair  
13 Employment and Housing Act (Gov. Code §12990 et seq.) and the applicable regulations  
14 promulgated thereunder (2 CCR §11000 et seq.), the provisions of Government Code §§11135  
15 et seq., and the regulations or standards adopted by the County to implement such provisions.  
16 The applicable regulations of the Fair Employment and Housing Commission implementing  
17 Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the  
18 California Code of Regulations, are incorporated into this Agreement by reference and made a  
19 part hereof as if set forth in full.

20        23.4 Consultant shall permit access by representatives of the Department of Fair  
21 Employment and Housing and the County upon reasonable notice at any time during the normal  
22 business hours, but in no case less than twenty-four (24) hours' notice, to such of its books,  
23 records, accounts, and all other sources of information and its facilities as said Department or  
24 the County shall require in order to ascertain compliance with the requirements of this Article 22.

25        23.5 The Consultant and subconsultants shall give written notice of their obligations under  
26 this Article 22 to labor organizations with which they have a collective bargaining or other  
27 agreement.

28



1 which certifies that the Consultant or any person associated therewith in the capacity of owner,  
2 partner, director, officer, or manager:

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

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

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

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

11 24.2 Any exceptions to this certification must be disclosed to the County on Exhibit K  
12 “Debarment and Suspension Certification.” Exceptions will not necessarily result in denial of  
13 recommendation for award but will be considered in determining Consultant responsibility.  
14 Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

15 24.3 Exceptions to the Federal Government Excluded Parties Listing System maintained  
16 by the General Services Administration are to be determined by the Federal Highway  
17 Administration.

## 18 **Article 25**

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

20 25.1 Under Executive Order N-6-22 as a consultant, subconsultant, or grantee,  
21 compliance with the economic sanctions imposed in response to Russia’s actions in Ukraine is  
22 required, including with respect to, but not limited to, the federal executive orders identified in  
23 the EO and the sanctions identified on the U.S. Department of the Treasury website  
24 ([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)  
25 [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  
26 termination of contracts or grants, as applicable.

1 **Article 26**

2 **Contingent Fees**

3 26.1 The Consultant warrants, by execution of this Agreement that no person or selling  
4 agency has been employed, or retained, to solicit or secure this Agreement upon an agreement  
5 or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona  
6 fide employees, or bona fide established commercial or selling agencies maintained by the  
7 Consultant for the purpose of securing business. For breach or violation of this warranty, the  
8 County has the right to: annul this Agreement without liability, and to pay only for the value of  
9 the work actually performed; or in its discretion to deduct from the Agreement the price or  
10 consideration, or otherwise recover, the full amount of such commission, percentage,  
11 brokerage, or contingent fee.

12 **Article 27**

13 **Inspection Of Work**

14 27.1 The Consultant and any subconsultant shall permit the County, the state, and the  
15 FHWA to review and inspect the Project activities and files at all reasonable times during the  
16 performance period of this Agreement including review and inspection on a daily basis.

17 **Article 28**

18 **Safety**

19 28.1 Consultant shall comply with OSHA regulations applicable to Consultant regarding  
20 necessary safety equipment or procedures. Consultant shall comply with safety instructions  
21 issued by the County Safety Officer and other County representatives. Consultant personnel  
22 shall wear hard hats and safety vests at all times while working on any Project-related  
23 construction site.

24 28.2 Pursuant to the authority contained in Vehicle Code §591, the County has  
25 determined that such areas are within the limits of the Project and are open to public traffic.  
26 Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15  
27 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe  
28

1 operation of its vehicles and the protection of the traveling public from injury and damage from  
2 such vehicles.

3 28.3 Any subcontract entered into as a result of this contract, shall contain all of the  
4 provisions of this Article 27.

## 5 **Article 29**

### 6 **Confidentiality Of Data**

7 29.1 All financial, statistical, personal, technical, or other data and information relative to  
8 the County's operations, which are designated confidential by the County and made  
9 available to the Consultant in order to carry out this Agreement, shall be protected by  
10 the Consultant from unauthorized use and disclosure.

11 29.2 Permission to disclose information on one occasion, or public hearing held by the  
12 County relating to the contract, shall not authorize the Consultant to further disclose such  
13 information, or disseminate the same on any other occasion.

14 29.3 The Consultant shall not comment publicly to the press or any other media regarding  
15 this Agreement or the County's actions on the same, except to the County's staff, the  
16 Consultant's own personnel involved in the performance of this Agreement, at public hearings or  
17 in response to questions from a Legislative committee.

18 29.4 The Consultant shall not issue any news release or public relations item of any  
19 nature, whatsoever, regarding work performed or to be performed under this Agreement without  
20 prior review of the contents thereof by the County, and receipt of the County's written  
21 permission.

22 29.5 If the Consultant or any of its officers, employees, or subconsultants does voluntarily  
23 provide information in violation of this Contract, the County has the right to reimbursement and  
24 indemnity from the Consultant for any damages caused by the Consultant's releasing the  
25 information, including, but not limited to, the County's attorney's fees and disbursements,  
26 including without limitation experts' fees and disbursements.



1 **Article 30**

2 **National Labor Relations Board Certification**

3 30.1 In accordance with Public Contract Code Section 10296, the Consultant hereby  
4 states under penalty of perjury that no more than one final unappealable finding of contempt of  
5 court by a federal court has been issued against the Consultant within the immediately  
6 preceding two-year period, because of the Consultant's failure to comply with an order of a  
7 federal court that orders the Consultant to comply with an order of the National Labor Relations  
8 Board.

9 **Article 31**

10 **Evaluation Of The Consultant**

11 31.1 The Consultant's performance will be evaluated by the County. A copy of the  
12 evaluation (Exhibit L) will be sent to the Consultant for comments. The evaluation together with  
13 the comments shall be retained as part of the contract record.

14 **Article 32**

15 **Funding Requirements**

16 32.1 It is mutually understood between the parties that this Agreement may have been  
17 written before ascertaining the availability of funds or appropriation of funds, for the mutual  
18 benefit of both parties, in order to avoid program and fiscal delays that would occur if the  
19 Agreement were executed after that determination was made.

20 32.2 This Agreement is valid and enforceable only if sufficient funds are made available to  
21 the County for the purpose of this Agreement. In addition, this Agreement is subject to any  
22 additional restrictions, limitations, conditions, or any statute enacted by the Congress, State  
23 Legislature, or the County governing board that may affect the provisions, terms, or funding of  
24 this Agreement in any manner.

25 32.3 It is mutually agreed that if sufficient funds are not appropriated, this Agreement may  
26 be amended to reflect any reduction in funds.

27 32.4 In the event the Contractor reduces the scope of Consultant's work under the  
28 Agreement for a specific Project (or discontinues a specific Project), whether due to a deficiency

1 in the appropriation of anticipated funding or otherwise, the Consultant will be compensated on  
2 a pro rata basis for actual work completed and accepted by the Contract Administrator in  
3 accordance with the terms of the Agreement.

4 32.5 The County has the option to terminate the Agreement pursuant to Article 6  
5 Termination and Suspension, or by mutual agreement to amend the Agreement to reflect any  
6 reduction of funds.

7 **Article 33**

8 **Title VI Assurances**

9 33.1 The provisions of Title VI are hereby attached, unmodified as part of this Agreement  
10 (Exhibit M). Exhibit M, "Title VI Assurances" Appendices A and E, and if applicable Appendices  
11 B, C, and D, must be inserted, unmodified, in all subcontracts to perform work under the  
12 Agreement.

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

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

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

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

24 *[SIGNATURE PAGE FOLLOWS]*

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

8  
9  
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  
17  
18  
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# Attachment A

## Scope of Services

The Consultant will furnish Title Reports, Escrow Services, Updates and Other Services as requested by the County.

The Consultant will make a good faith effort to deliver Title Reports requested by the County within 30 (30) days following receipt of the request. The Consultant will provide the County with PDF copies of each Report to the person identified in the request. Each Report will include a copy of the vesting paragraph and will recite the exact title as it would appear on a grant deed or other valid instrument of title, followed by the date of recordation and the other recording data of the vesting deed. The Consultant reserves the right to add additional language to the vesting area as it deems necessary. The Report will use the standard ALTA or CLTA format and include, but not be limited to, the following:

- 1) A copy of the vesting deed;
- 2) Legal description of property;
- 3) All liens, encumbrances, easements and right of way record, which would purport to affect the condition of the title at the date of the guarantee or report;
- 4) Assessor's parcel number and valuation;
- 5) APN map with property marked; and
- 6) Names, interest and addresses of all parties of record.
- 7) Permanent hyperlinks embedded for any/all the requested documents listed in the report.

The Consultant will advise the County within three (3) days of receipt of the initial services request if the Consultant will be unable to deliver any of the requested Reports within the thirty (30) day period. Thereafter, if so requested by the County in writing, the Consultant will cease further work on the requested Reports.

The Consultant will provide services which facilitate a transfer of an interest in real property (Escrow Services) and in which documents and funds are delivered by the County to Consultant

**Attachment A**

1 as an escrow holder, pursuant to specific escrow instructions from the County, which includes  
2 providing California Land Title Association standard coverage title insurance policy(s) (current  
3 form).

4

5

6

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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](mailto: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.

1. 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 the Consultant in writing with the date of certification. Any changes should be reported to County's Contract Administrator within thirty (30) calendar days.
2. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the Consultant shall complete and email the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the County.

## 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).

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

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

In the matter of ) No.  
Amendment of Standard Conflict of )  
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.

Exhibit H

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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:

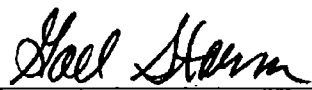
  
Clerk



Exhibit H

# Conflict of Interest Code Local Agency Annual / Biennial Report

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

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

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

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

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

## Exhibit H

### PUBLIC WORKS AND PLANNING

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

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

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



## DBE Participation

1. The Consultant, subrecipient (the County), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR Part 26). To ensure equal participation of DBEs as provided in 49 CFR Section 26.5, the County specifies a contract goal for DBEs. The Consultant shall make work available to DBEs and allocate portions of the work consistent with available DBE subconsultants and suppliers.
2. The Consultant shall meet the DBE goal shown elsewhere in these special provisions or demonstrate its having made adequate good faith efforts to meet this goal. It is the Consultant's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (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 Section 26.55 defines "manufacturer" and "regular dealer."
4. This Agreement is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Any Consultant who enters into a federally funded agreement will assist the County in a good faith effort to achieve California's statewide overall DBE goal.
5. The goal for DBE participation for this Agreement is listed in Exhibit G.2 Notice to Proposers DBE Information. Participation by a 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 as Exhibit G.3. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace them 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 the Consultant has not met the DBE goal, the Consultant must then complete

1 and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document its efforts to  
2 meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith  
efforts to meet the DBE goal.

3 **7. Contract Assurance.** Under 49 CFR Section 26.13(b):

- 4 a. The Consultant, subrecipient or subconsultant shall not discriminate on the basis  
5 of race, color, national origin, or sex in the performance of this contract. The  
6 Consultant shall carry out applicable requirements of 49 CFR Part 26 in the  
award and administration of federal-aid contracts.
- 7 b. Failure by the Consultant to carry out these requirements is a material breach of  
8 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  
9 to:
- 10 b.1. Withholding monthly progress payments;
- 11 b.2. Assessing sanctions;
- 12 b.3. Liquidated damages; and/or
- 13 b.4. Disqualifying Consultant from future proposing as non-responsible

14 **8. Termination and Substitution of DBE Subconsultants.**

- 15 a. The Consultant shall utilize the specific DBEs listed to perform the work and  
16 supply the materials for which each is listed unless the Consultant or DBE  
17 subconsultant obtains the County's written consent. The Consultant shall not  
18 terminate or substitute a listed DBE for convenience and perform the work with  
19 their own forces or obtain materials from other sources without authorization from  
the County. Unless the County's consent is provided, the Consultant shall not be  
entitled to any payment for work or material unless it is performed or supplied by  
the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form,  
included in the Bid.
- 20 b. The County authorizes a request to use other forces or sources of materials if the  
21 Consultant shows any of the following justifications:
- 22 b.1. Listed DBE fails or refuses to execute a written contract based on plans  
and specifications for the project.
- 23 b.2. The County stipulated that a bond is a condition of executing the  
24 subcontract and the listed DBE fails to meet the County's bond  
requirements.
- 25 b.3. Work requires a consultant's license and listed DBE does not have a valid  
26 license under Contractors License Law.
- 27 b.4. Listed DBE fails or refuses to perform the work or furnish the listed  
28 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).

- 1 b.5. Listed DBE's work is unsatisfactory and not in compliance with the  
contract.
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- 3 b.6. Listed DBE is ineligible to work on the project because of suspension or  
debarment.
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- 5 b.7. Listed DBE becomes bankrupt or insolvent.
- 6 b.8. Listed DBE voluntarily withdraws with written notice from the Contract
- 7 b.9. Listed DBE is ineligible to receive credit for the type of work required.
- 8 b.10. Listed DBE owner dies or becomes disabled resulting in the inability to  
perform the work on the Contract.
- 9 b.11. The County determines other documented good cause.
- 10 c. The Consultant shall notify the original DBE of the intent to use other forces or  
material sources and provide the reasons and provide the DBE with 5 days to  
11 respond to the notice and advise the Consultant and the County of the reasons  
why the use of other forces or sources of materials should not occur.
- 12 d. The Consultant's request to use other forces or material sources must include:
- 13 d.1. One or more of the reasons listed in the preceding paragraph.
- 14 d.2. Notices from the Consultant to the DBE regarding the request.
- 15 d.3. Notices from the DBEs to the Consultant regarding the request.
- 16 e. If a listed DBE is terminated or substituted, the Consultant must make good faith  
17 efforts to find another DBE to substitute for the original DBE. The substitute DBE  
18 must perform at least the same amount of work as the original DBE under the  
contract to the extent needed to meet or exceed the DBE goal.

19 **9. Commitment and Utilization**

- 20 a. The County's DBE program must include a monitoring and enforcement  
mechanism to ensure that DBE commitments reconcile to DBE utilization.
- 21 b. The County shall request the Consultant to:
- 22 b.1. Notify the County's contract administrator or designated representative of  
23 any changes to its anticipated DBE participation
- 24 b.2. Provide this notification before starting the affected work
- 25 b.3. Maintain records including:
- 26 • Name and business address of each 1st-tier subconsultant
- 27 • Name and business address of each DBE subconsultant, DBE vendor, and DBE  
28 trucking company, regardless of tier

- 1 • Date of payment and total amount paid to each business (see Exhibit 9-F  
2 Monthly Disadvantaged Business Enterprise Payment)
- 3 c. If the Consultant is a DBE Consultant, it shall include the date(s) of work  
4 performed by its own forces and the corresponding value of all such work. If a  
5 DBE is decertified before completing its work, the DBE must notify Consultant in  
6 writing of the decertification date. If a business becomes a certified DBE before  
7 completing its work, the business must notify the Consultant in writing of the  
8 certification date. The Consultant shall submit the notifications to the County. On  
9 work completion, the Consultant shall complete a Disadvantaged Business  
10 Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the  
11 form to the County within 30 days of contract acceptance.
- 12 d. Upon work completion, the Consultant shall complete Exhibit 17-F Final Report –  
13 Utilization of Disadvantaged Business Enterprises (DBE), First-Tier  
14 Subcontractors and submit it to the County within 90 days of contract  
15 acceptance. The County will withhold \$10,000 until the form is submitted. The  
16 County will release the withhold upon submission of the completed form. In the  
17 County's reports of DBE participation to Caltrans, the County must display both  
18 commitments and attainments.
- 19 10. **Eligibility** - A DBE is only eligible to be counted toward the Agreement goal if it performs a  
20 commercially useful function (CUF) on the Agreement. CUF must be evaluated on an  
21 agreement-by-agreement basis. A DBE performs a Commercially Useful Function (CUF)  
22 when it is responsible for execution of the work of the Agreement and is carrying out its  
23 responsibilities by actually performing, managing, and supervising the work involved. To  
24 perform a CUF, the DBE must also be responsible, with respect to materials and supplies  
25 used on the Agreement, for negotiating price, determining quality and quantity, ordering the  
26 material and installing (where applicable), and paying for the material itself. To determine  
27 whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry  
28 practices, whether the amount the firm is to be paid under the Agreement is commensurate  
with the work it is actually performing, and other relevant factors.
11. A 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.
12. 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.
13. The 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 Consultants shall also show the date of work performed  
by their own forces along with the corresponding dollar value of the work.

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- 14. 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 the Consultant in writing with the date of certification. Any changes should be reported to County’s Contract Administrator within thirty (30) calendar days.
- 15. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the Consultant shall complete and email the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the County.

## 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
<b>Local Agency to Complete this Section</b>			\$
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____			%
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>
_____ 23. Local Agency Representative's Signature			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.
_____ 24. Date			_____ 15. Preparer's Signature
_____ 25. Local Agency Representative's Name			_____ 16. Date
_____ 26. Phone			_____ 17. Preparer's Name
_____ 27. Local Agency Representative's Title			_____ 18. Phone
_____ 19. Preparer's Title			_____ 18. Phone

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

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



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

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

LOCAL AGENCY SECTION

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

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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 \_\_\_\_\_ : \_\_\_\_\_  
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Item \_\_\_\_\_ : \_\_\_\_\_  
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 \_\_\_\_\_

\*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 on 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).