

CONTRACT NO. TPXXXX
PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT made and entered into on _____, by and between the SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, hereinafter called COMMISSION, and <<COMPANY NAME>>, hereinafter called CONSULTANT for <<services/project name>>. The parties agree as follows:

1. DUTIES.

- A. CONSULTANT agrees to exercise special skill to accomplish the following results: <<services/project name and location-if applicable>>, as specified in Scope of Services (Exhibit A), which by this reference is incorporated herein.
- B. CONSULTANT shall provide the personnel listed below to perform the above-specified services, which persons are hereby designated as key personnel under this AGREEMENT.

Name	Firm	Function
		Principal
		Project Manager

- C. No person named in paragraph B of this Article or in the Fee Schedule /Cost Proposal (Exhibit C), or his or her successor, shall be removed or replaced by CONSULTANT, nor shall his or her agreed-upon function hereunder be changed, without the prior written consent of the COMMISSION Contract Manager.
- D. This AGREEMENT includes the subcontractors and/or subconsultants listed in Fee Schedule/Cost Proposal (Exhibit C).
- E. Except as expressly authorized herein, CONSULTANT'S obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the COMMISSION. However, claims for money due or which become due to CONSULTANT from COMMISSION under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the COMMISSION.
- F. Consultant's Progress Reports and/or Meetings
 - 1. CONSULTANT shall perform the services in accordance with the Project Schedule attached hereto (Exhibit B) and incorporated by



reference. The CONSULTANT shall submit written progress reports with each invoice. The report should be sufficiently detailed for the Contract Manager to determine if the CONSULTANT is performing to expectations or is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

2. The CONSULTANT'S Project Manager shall meet with the COMMISSION'S Contract Manager, as needed, to discuss progress on the AGREEMENT.

2. COMPENSATION.

NOTE: This is a sample agreement and compensation type, and terms will be finalized during contract negotiations.

In consideration for CONSULTANT accomplishing work to be performed under this AGREEMENT (as described in Exhibit A Scope of Services and Exhibit B Project Schedule), COMMISSION shall compensate CONSULTANT in accordance with the approved Fee Schedule/Cost Proposal, dated <<DATE>>, attached hereto (Exhibit C) and incorporated by reference. If there is any conflict between the approved Fee Schedule/Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.

- A. The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. COMMISSION will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Fee Schedule/Cost Proposal (Exhibit C), unless additional reimbursement is provided for by written AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds COMMISSION'S approved overhead rate set forth in the Fee Schedule/Cost Proposal (Exhibit C). In the event, that COMMISSION determines that a change to the work from that specified in the Scope of Services (Exhibit A) of this AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by COMMISSION shall be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph I shall not be exceeded, unless authorized by AGREEMENT amendment.



- B. The consultant and subconsultant(s) indirect cost rate(s) established for this AGREEMENT is extended through the duration of this specific AGREEMENT.
- C. In addition to the allowable incurred costs, COMMISSION will pay CONSULTANT a fixed fee of <<\$XXXX>>. The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment approved by the COMMISSION in its sole discretion.
- D. Reimbursement for transportation and subsistence costs shall not exceed the per diem rates authorized to be paid rank and file State employees under current State Department of Personnel Administration (Cal HR), as specified in the approved Fee Schedule/Cost Proposal (Exhibit C).
- E. When milestone cost estimates are included in the approved Fee Schedule/Cost Proposal (Exhibit C), CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Manager before exceeding such cost estimate or shifting hours or costs between tasks.
- F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT'S fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Project Schedule (Exhibit B) or the Scope of Services (Exhibit A), COMMISSION shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article 6 Termination, unless such delay was waived or agreed to by the Contract Manager in writing.
- G. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by COMMISSION and notification to proceed has been issued by COMMISSION'S Contract Manager. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- H. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Fee Schedule/Cost Proposal (Exhibit C) and is approved by COMMISSION'S Contract Manager. Increases are not allowed until one (1) year after this agreement is executed and every year thereafter

- I. The total amount payable by for this AGREEMENT by the COMMISSION shall not exceed \$_____.
- J. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone. The final invoice shall be submitted within 60 calendar days after completion of CONSULTANT'S work. Invoices shall be submitted no more than once a month and emailed to:

<<Contract Manager>>@scrtc.org and @scrtc.org

The invoices must include the following information:

1. This agreement number and project title;
2. Percentage of work complete;
3. Labor (staff name, hours charged, hourly billing rate, current charges and cumulative charges) performed during the billing period by task;
4. Itemized expenses incurred during the billing period;
5. Total payment requested;
6. Total amount previously paid under this AGREEMENT; and
7. Report of expenditures by CONSULTANT and subconsultants for each task and subtask or milestone and estimated percentage completion by such divisions of work.

3. PROMPT PAYMENT FROM COMMISSION TO CONSULTANT

COMMISSION shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT. If COMMISSION fails to pay promptly, COMMISSION shall pay interest to the CONSULTANT, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, COMMISSION shall act in accordance with both of the following:

- A. Each payment request shall be reviewed by COMMISSION as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.



- B. Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt.
- C. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

D. PROMPT PAYMENT CERTIFICATION

Consult must submit LAPM Exhibit 9-P to the COMMISSION by the 15th of the month following the month of any payment(s). If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

The COMMISSION must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. The COMMISSION must email a copy of Exhibit 9-P to DBE.Forms@dot.ca.gov before the end of the month after receiving the Exhibit 9-P from the CONSULTANT.

4. FUNDING REQUIREMENTS

- A. It is mutually understood between the CONSULTANT and COMMISSION that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to COMMISSION for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, federal or state agency, or COMMISSION that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. COMMISSION has the option to terminate the AGREEMENT pursuant to Section 6 Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.



5. TERM.

- A. This AGREEMENT shall go into effect on _____; contingent upon prior approval by the COMMISSION. The AGREEMENT shall end on _____, unless earlier terminated pursuant to Article 6 below or extended by AGREEMENT amendment.
- B. The CONSULTANT is advised that this AGREEMENT is not binding and enforceable until it is approved by the COMMISSION and fully executed.

6. TERMINATION.

- A. This AGREEMENT may be terminated by COMMISSION, for cause or without cause provided that COMMISSION gives not less than ten (10) calendar days written notice of its intent to terminate and in the event of termination for cause, provides the reasons for termination stated in the notice.
- B. COMMISSION may temporarily suspend this AGREEMENT, at no additional cost to COMMISSION provided that CONSULTANT is given written notice of temporary suspension. If COMMISSION gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to the COMMISSION by termination of this AGREEMENT for damages sustained by COMMISSION by virtue of any breach of this AGREEMENT by CONSULTANT, and COMMISSION may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due to COMMISSION from CONSULTANT is determined.
- D. If COMMISSION terminates this AGREEMENT with CONSULTANT, COMMISSION shall pay CONSULTANT the sum due to CONSULTANT under this AGREEMENT for services satisfactorily performed prior to termination, unless the cost of completion to COMMISSION exceeds the funds remaining in the AGREEMENT in which case the overage shall be deducted from any sum due CONSULTANT under this AGREEMENT and the balance, if any, shall be paid to CONSULTANT upon demand.
- E. Upon termination, COMMISSION shall be entitled to all CONSULTANT'S work produced under this AGREEMENT, including, but not limited to, reports, investigations, appraisals, inventories,

studies, analysis, drawing and data estimates performed to that date, whether or not complete.

- F. COMMISSION may terminate this AGREEMENT for CONSULTANT'S default if a federal or State proceeding for the relief of debtors is undertaken by or against CONSULTANT, or CONSULTANT'S principal, or if CONSULTANT or CONSULTANT'S principal makes an assignment for the benefit of creditors.
- G. CONSULTANT may terminate this AGREEMENT by giving the COMMISSION at least one hundred and twenty (120) days advance written notice. CONSULTANT shall be liable for any and all reasonable costs incurred by COMMISSION as a result of such early termination, default, including but not limited to re-procurement costs of the same or similar services defaulted or not provided by CONSULTANT under this Agreement.

7. INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.

To the fullest extent permitted by law, CONSULTANT shall exonerate, indemnify, defend, protect, and hold harmless the COMMISSION, its governing body, officers, officials, agents, employees and volunteers from and against:

- A. Any and all claims, demands, costs, damages, losses, expenses, or liability arising from or connected with the services provided under this AGREEMENT due to the recklessness, willful misconduct or negligent acts, errors, or omissions of the CONSULTANT, its officers, subconsultants, employees, volunteers, or agents. The CONSULTANT will reimburse COMMISSION for any expenditure, including reasonable attorney's fees, incurred by COMMISSION in defending against claims ultimately determined to be due to recklessness, willful misconduct or to negligent acts, errors, or omissions of the CONSULTANT, its officers, subconsultants, employees, volunteers, or agents.
- B. Any and all federal, State and local taxes, charges, fees, penalties, or contributions required to be paid with respect to CONSULTANT and CONSULTANT'S officers, subconsultants employees, volunteers, and agents engaged in the performance of this AGREEMENT (including, without limitation, unemployment insurance, social security, and payroll tax withholding).
- C. In the event that CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR providing services under this AGREEMENT is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible

for enrollment in PERS as an employee of COMMISSION, CONTRACTOR shall indemnify, defend, and hold harmless COMMISSION for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONTRACTOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of COMMISSION.

D. The provisions of this section shall survive expiration, termination, or suspension of this AGREEMENT.

8. INSURANCE.

CONSULTANT, at its sole cost and expense, for the full term of this AGREEMENT, and any extensions thereof, shall obtain and maintain at a minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COMMISSION and any insurance or self-insurance maintained by COMMISSION shall be excess of CONSULTANT'S insurance coverage and shall not contribute to it. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A:VII if admitted in the State of California.

A. Types of Insurance and Minimum Limits

1. Workers' Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the CONSULTANT has no employees and certifies to this fact by initialing here: ____ / ____.
1. Automobile Liability Insurance for each of CONSULTANT'S vehicles used in the performance of this AGREEMENT, including owned, non-owned (e.g., owned by CONSULTANT'S employees), leased or hired vehicles, in the minimum amount of \$1,000,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by the CONSULTANT is not a material part of performance of this AGREEMENT and CONSULTANT and COMMISSION both certify to this fact by initialing here: ____ / ____.
2. Comprehensive or Commercial General Liability Insurance coverage at least as broad as ISO form CG 00 01, with a minimum limit of two million dollars (\$2,000,000) per occurrence, and \$4,000,000 in the aggregate, including coverage for: (a) products and completed operations, (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

3. Professional Liability Insurance in the minimum amount of one million dollars (\$1,000,000) combined single limit, if, and only if, this Subparagraph is initialed by CONSULTANT and COMMISSION here: ____/____.
4. If the CONSULTANT maintains broader coverage and/or higher limits than the minimums shown above, the COMMISSION requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONSULTANT. Policy should include coverage for completed operations for 10 years or the term matching statute of limitations. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COMMISSION. CONSULTANT hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this AGREEMENT.

B. Other Insurance Provisions

1. If any insurance coverage required in this AGREEMENT is provided on a "Claims Made" rather than "Occurrence" form, CONSULTANT agrees that the retroactive date thereof shall be no later than the effective date of this AGREEMENT, and that it shall maintain the required coverage for a period of three (3) years after the expiration of this AGREEMENT (hereinafter "POST AGREEMENT COVERAGE") and any extensions thereof. CONSULTANT may maintain the required POST AGREEMENT COVERAGE by renewal or purchase of prior acts or tail coverage. The COMMISSION will not be responsible for any premiums or assessments on the policy.
2. All policies of Commercial General Liability Insurance shall be endorsed to cover the Santa Cruz County Regional Transportation Commission, its governing body, officials, employees, agents and volunteers, as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of, the CONSULTANT, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85 or equivalent, covering ongoing operations and products and completed operations.
3. CONSULTANT agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COMMISSION on or before the effective date of this AGREEMENT with Certificates of Insurance and endorsements for all required

coverages. The Certificates of Insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible. The certificates shall require the carrier to notify COMMISSION in writing of any material change, cancellation, termination or non-renewal of the coverage at least thirty days (30) days in advance of the effective date of such cancellation, or material change, or non-renewal. Insurance shall not be canceled until after ten (10) days prior written notice in the event of nonpayment of premium. Failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent via email to:

@scrtc.org

4. The CONSULTANT agrees that the insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, the CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the COMMISSION. In the event the CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, the COMMISSION may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.
5. If any insurance policy of CONSULTANT required by this AGREEMENT includes language conditioning the insurer's legal obligation to defend or indemnify COMMISSION on the performance of any act(s) by the named insured, then said insurance policy, by endorsement, shall also name the COMMISSION as a named insured. Notwithstanding the foregoing, both the CONSULTANT and its insurers agree that by naming the COMMISSION as a named insured, the COMMISSION may at its sole direction, but is not obligated to, perform any act required by the named insured under said insurance policies.
6. CONSULTANT shall do all things required to be performed by it pursuant to its insurance policies including but not limited to paying within five (5) workdays, all deductibles and self-insured retentions (SIR) required to be paid under any insurance policy

that may provide defense or indemnity coverage to COMMISSION or any additional insured. If CONSULTANT'S insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this AGREEMENT so as to not prevent any of the parties to this AGREEMENT from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability.

7. CONSULTANT hereby grants to COMMISSION a waiver of any right of subrogation which any insurer of said CONSULTANT may acquire against the COMMISSION by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COMMISSION has received a waiver of subrogation endorsement from the insurer.
8. CONSULTANT shall cause the foregoing provisions to be inserted in all subcontracts for any work covered under this AGREEMENT, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

9. FEDERAL, STATE AND LOCAL LAWS.

- A. CONSULTANT warrants that in the performance of this AGREEMENT, it shall exercise usual and customary professional care in its efforts to comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder. In the event of a conflict between the laws and lawful regulations of any government entities having jurisdiction over the project, the CONSULTANT shall notify COMMISSION of the nature and impact of such conflict. The COMMISSION agrees to cooperate and work with the CONSULTANT in an effort to resolve any conflict.
- B. Those laws, statutes, ordinances, rules, regulations, and procedural requirements that are imposed on COMMISSION as a recipient of federal or state funds are imposed on CONSULTANT.

10. NON-DISCRIMINATION AND COMPLIANCE PROVISIONS.

- A. The CONSULTANT'S signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Government Code 12990 et seq. and 2 CCR 8103. CONSULTANT and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- B. During the performance of this AGREEMENT, the CONSULTANT and its subconsultants shall not deny the AGREEMENT benefits to any person on the basis of race, color, sex, gender, religious creed, national origin, ancestry, physical disability (including HIV and AIDS status), mental disability, medical condition (e.g., cancer), genetic information, marital status, gender, gender identity, gender expression, age, sexual orientation, military, or veteran status. CONSULTANT and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code §12990 et seq.) and the applicable regulations promulgated thereunder (.2 CCR 11000 et seq.), the provisions of Government Code section 11135 to 11139.5, and the regulations of standards adopted by the COMMISSION to implement such article.
- D. The CONSULTANT shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONSULTANT'S solicitation of goods and services. Definitions for Minority/Women/Disabled Business Enterprises are available from the California Department of Transportation, at <http://www.dot.ca.gov/obeo/index.html>.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other AGREEMENT.

- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. CONSULTANT and its subconsultants shall permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by State to investigate compliance with this Article.
- I. In the event of CONSULTANT'S non-compliance with the non-discrimination clauses of this AGREEMENT or with any of the said rules, regulations or orders, the COMMISSION may cancel, terminate or suspend the AGREEMENT in whole or in part. CONSULTANT may also be declared ineligible for further agreements with the COMMISSION.
- J. CONSULTANT, subrecipient, or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the COMMISSION components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

11. TITLE VI ASSURANCES

During the performance of this Agreement, the CONSULTANT, for itself, its assignees and successors in interest 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:

1. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 2. cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (A) through (E) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.
- G. 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 COMMISSION, State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- H. During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

Pertinent Non-Discrimination Authorities:

1. 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.
2. 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);
3. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
4. 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;

5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
6. 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);
7. 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);
8. 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;
9. 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);
10. 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;
11. 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); and
12. 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).

12. FEDERAL CERTIFICATIONS AND ASSURANCES.

- A. CONSULTANT and all subcontractors shall comply, as applicable, with the Federal Highway Administration (FHWA) "Transportation Planning Process Certification" requirements in accordance with 23 CFR 450.336, as may be amended, and the federal transportation act and its successors thereto. It may include but is not limited to:
1. 23 U.S.C. 134,49 U.S.C. 5303, and this subpart;
 2. In nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506 (c) and (d)) and 40 CFR part 93;
 3. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-1), 49 CFR Part 21, and the Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794;
 4. Section 1101(b) of the FAST Act Pub. L. 114-357) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;
 5. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and 49 CFR parts 27, 37, and 38;
 6. 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;
 7. 23 CFR part 230, regarding the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;
 8. The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
 9. Section 324 of title 23 U.S.C. regarding the prohibition of discrimination based on gender; and
 10. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.
- B. CONSULTANT shall also comply with "Certifications and Assurances for Federal Transportation Administration (FTA) Assistance", including "Certifications and Assurances Required of Each Applicant" and the "Lobbying Certification" in compliance with 49 U.S.C. Chapter 53,

published annually in the Federal Register and found online at <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances>

The 2022 FTA Certifications includes the following areas under "Assurances Required of Each Applicant:"

1. Authority of Applicant and its Representatives
2. Standard Assurances
3. Intergovernmental Review Assurance
4. Suspension and Debarment Certification
5. U.S. OMB Assurances in SF-424B and SF-424D

13. PROHIBITION OF EXPENDING COMMISSION, STATE, OR FEDERAL FUNDS FOR LOBBYING.

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal or COMMISSION appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the State Legislature or United States Congress, or any employee of a Member of the Legislature or Congress, in connection with the awarding this AGREEMENT or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
2. If any funds other than state or federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any local, State, or federal agency; a Member of the State Legislature or Congress; an officer or employee of the State Legislature or Congress, or any employee of a Member of the State Legislature or Congress; in connection with the awarding or making of this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or



entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- C. CONSULTANT also agrees by signing this AGREEMENT that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

14. CONFLICT OF INTEREST.

- A. During the term of this AGREEMENT, CONSULTANT shall disclose any financial, business, or other relationship with COMMISSION that may have an impact upon the outcome of this AGREEMENT, or any ensuing COMMISSION construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT, or any ensuing COMMISSION construction project, which will follow.
- B. CONSULTANT certifies that it has disclosed to COMMISSION any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise COMMISSION of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either COMMISSION ordinance or State law.
- C. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

15. LICENSES.

If a license of any kind is required of CONSULTANT, its employees, agents, or subcontractors by Federal or State law, CONSULTANT warrants that such license has been obtained, is valid and in good



standing, that CONSULTANT shall keep it in effect at all times during the terms of this AGREEMENT, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

16. DEBARMENT AND SUSPENSION CERTIFICATION.

- A. CONSULTANT’S signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (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 three (3) years.
- B. Any exceptions to this certification must be disclosed to the COMMISSION. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the FHWA.

17. INDEPENDENT CONSULTANT STATUS.

- A. CONSULTANT and COMMISSION have reviewed and considered the principal test and secondary factors herein and agree that CONSULTANT is an independent CONSULTANT and not an employee of COMMISSION. CONSULTANT is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONSULTANT is not entitled to any employee benefits provided by the COMMISSION, including any pension or PERS benefits. COMMISSION agrees that CONSULTANT shall have the right to control the manner and means of accomplishing the result contracted for herein.
 - 1. PRINCIPAL TEST: The CONSULTANT rather than COMMISSION has the right to control the manner and means of accomplishing the result contracted for.



2. SECONDARY FACTORS: (a) The extent of control which, by agreement, COMMISSION may exercise over the details of the work is slight rather than substantial; (b) CONSULTANT is engaged in a distinct occupation or business; (c) In the locality where the work is to be done by CONSULTANT is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONSULTANT rather than the COMMISSION supplies the instrumentalities, tools and work place; (f) The length of time for which CONSULTANT is engaged is of limited duration rather than indefinite; (g) The method of payment of CONSULTANT is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COMMISSION; (i) CONSULTANT and COMMISSION believe they are creating an independent CONSULTANT relationship rather than an employer-employee relationship; and (j) The COMMISSION conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent CONSULTANT relationship, but rather that overall there are significant secondary factors which indicate that CONSULTANT is an independent CONSULTANT.

- B. It is understood and agreed that CONSULTANT (including CONSULTANT'S employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONSULTANT'S assigned personnel, officers, employees, agents, or subconsultants shall not be entitled to any benefits payable to COMMISSION employees, including, but not limited to, healthcare, retirement, and leave benefits.
- C. CONSULTANT'S obligation to pay its subconsultant(s) is an independent obligation from COMMISSION'S obligation to make payments to the CONSULTANT.
- D. COMMISSION is not required to make any deductions or withholds from the compensation payable to CONSULTANT under the provisions of the AGREEMENT and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT'S assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the COMMISSION as to the designation of tasks to be performed and the results to be accomplished.

- E. Any third-party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision and control of CONSULTANT. CONSULTANT hereby indemnifies and holds COMMISSION, its governing body, officers, employees, and agents, harmless from any and all claims that may be made against COMMISSION based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.
- F. Except as expressly authorized herein, CONSULTANT'S obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the COMMISSION. However, claims for money due or which become due to CONSULTANT from COMMISSION under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the COMMISSION.

18. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS.

- A. CONSULTANT agrees that the AGREEMENT Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Part 31 or 2 CFR Part 200 are subject to repayment by CONSULTANT to COMMISSION.
- D. When a CONSULTANT or subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.
- E. Contractor and subcontractors shall establish and maintain, an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Requests for Reimbursement which segregate and accumulate the costs of work elements by line item (i.e., direct labor, other direct costs, subrecipients/subcontractor, etc.) and enable the determination of incurred costs at interim points

of completion, and provide support for reimbursement payment vouchers or invoices.

19. RETENTION OF RECORDS/AUDIT.

- A. For the purpose of determining compliance with Government Code section 8546.7, CONSULTANT, its subconsultants, and COMMISSION shall maintain and make available for inspection all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT, including but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT'S independent CPA, shall make such materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. If any action has occurred relative to the records, the records must be retained until completion of the action and resolution of all issues that arise from it.
- B. The State, State Auditor, COMMISSION shall have access to any books, records, and documents of CONSULTANT, subconsultants, and its/their certified public accountants' (CPA) work papers that are pertinent to the AGREEMENT. CONSULTANT shall furnish indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof if requested. The FHWA or other authorized representative of the federal government shall also have access to the records described in this paragraph, if federal funds are used in this AGREEMENT.

20. INSPECTION OF WORK.

The CONSULTANT and any subconsultant shall permit the COMMISSION, the STATE, and the FHWA or FTA if federal participating funds are used in this AGREEMENT, to review and inspect the project activities and files at all reasonable times during the term of this AGREEMENT including review and inspection on a daily basis if desired.

21. ACKNOWLEDGMENT.

CONSULTANT shall acknowledge in all reports and literature that the material is prepared for and on behalf of the COMMISSION.

22. WORK PRODUCTS/OWNERSHIP OF DATA.

- A. All material, data, information, and written, graphic or other work produced under this AGREEMENT shall be the property of



COMMISSION, as such the material, data, information, and written, graphic or other work is subject to the unqualified and unconditional right of the COMMISSION to use, reproduce, publish, display, and make derivative use of all such work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so. CONSULTANT shall have no property right therein whatsoever.

- B. Immediately upon termination or expiration of this AGREEMENT or upon completion of all work under this AGREEMENT, the COMMISSION shall be entitled to and the CONSULTANT shall deliver to the COMMISSION reports, investigations, appraisals, inventories, studies, analysis, drawing and data estimates performed to date, whether completed or not, and other such materials as may have been prepared by CONSULTANT in performing this AGREEMENT (which is not CONSULTANT'S privileged information, as defined by law or CONSULTANT'S personnel information) along with all other property belonging exclusively to the COMMISSION which is in the CONSULTANT'S possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by the COMMISSION.
- C. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of COMMISSION without restriction or limitation upon its use or dissemination by COMMISSION.
- D. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this AGREEMENT. Any reuse by COMMISSION for another project or project location shall be at COMMISSION'S sole risk.
- E. Applicable patent rights provisions regarding rights to inventions shall be included in the AGREEMENT as appropriate (48 CFR 27, Subpart 27.3—Patent Rights under Government Contracts for federal-aid contracts).
- F. The COMMISSION may permit copyrighting reports or other AGREEMENT products, subject to its rights in Section G below. If copyrights are permitted, the agreement shall provide that the COMMISSION shall have the royalty-free nonexclusive and

irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

- G. If any of the work is subject to copyright, trademark, service mark, or patent, CONSULTANT now grants to the COMMISSION a perpetual, royalty-free, nonexclusive and irrevocable license and/or right to use, reproduce, publish, use in the creation of derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense and/or right.

23. CONFIDENTIALITY OF DATA.

- A. All financial, statistical, personal, technical, or other data and information relative to COMMISSION'S operations, which are designated confidential by COMMISSION and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or disclosure pursuant to a public hearing held by COMMISSION relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or COMMISSION'S actions on the same, except to COMMISSION'S staff, CONSULTANT'S own personnel involved in the performance of this AGREEMENT, at public hearings or in response to questions from a government entity.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by COMMISSION, and receipt of COMMISSION'S written permission.

24. NATIONAL LABOR RELATIONS BOARD CERTIFICATION.

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

25. EVALUATION OF CONSULTANT.

CONSULTANT's performance will be evaluated by COMMISSION. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

26. DRUG-FREE WORKPLACE.

CONSULTANT shall comply with the provisions of Government Code § 8350 et seq., regarding Drug-Free Workplace Certification, and with the U.S. DOT regulations "Drug-Free Workplace Requirements Grants" in 49 CFR Part 29, Subpart F.

27. CHANGE IN TERMS.

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT, without prior written approval by COMMISSION's Contract Administrator.
- D. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the COMMISSION'S Contract Manager.

28. DISPUTES.

This AGREEMENT shall be construed under the laws of the State of California. Pending final resolution of a dispute hereunder, CONSULTANT shall proceed diligently with the performance of this AGREEMENT and shall comply with COMMISSION'S instructions.

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after thirty (30) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit disputes, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of the COMMISSION'S



Contract Manager and Executive Director, who may consider written or verbal information submitted by the CONSULTANT. The committee's determination regarding such dispute shall be final unless the committee determines, in its sole discretion, that the dispute shall be determined by the Board of COMMISSION.

- B. Not later than 30 days after completion of all work under the AGREEMENT, CONSULTANT may request review by COMMISSION of unresolved claims or disputes, other than audit. The request for review will be submitted in writing and carried out in accordance with the process described in paragraph A.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse the CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

29. CLAIMS FILED BY COMMISSION'S CONSTRUCTION CONTRACTOR.

- A. If claims are filed by COMMISSION'S construction contractor relating to work performed by CONSULTANT'S personnel, and additional information or assistance from CONSULTANT'S personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with COMMISSION'S construction AGREEMENT administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT'S personnel that COMMISSION considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from COMMISSION. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT'S personnel services under this AGREEMENT.
- C. Services of CONSULTANT'S personnel in connection with COMMISSION'S construction contractor claims will be performed pursuant to a written amendment to this AGREEMENT, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

30. AUDIT REVIEW PROCEDURES.

- A. Any dispute concerning a question of fact arising under an interim or post-completion audit of this AGREEMENT that is not disposed of by agreement, shall be reviewed by the COMMISSION'S Contract Manager and Executive Director



- B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the COMMISSION'S Executive Director of unresolved audit issues. The request for review will be submitted in writing. The Executive Director's determination regarding such dispute shall be final unless the Executive Director determines, in its sole discretion, that the dispute shall be determined by the Board of the COMMISSION.
- C. Neither the pendency of a dispute nor its consideration by the COMMISSION will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultants' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, an AGREEMENT Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the AGREEMENT, Fee Schedule/Cost Proposal (Exhibit C) and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review, it is CONSULTANT'S responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers, including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by COMMISSION Contract Manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by COMMISSION at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the COMMISSION, and/or Federal, State, or other local governments have access to CPA workpapers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT'S Fee Schedule/Cost Proposal (Exhibit C) may be subject to a CPA ICRA Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigation (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Fee Schedule/Cost Proposal (Exhibit C) shall be adjusted by the CONSULTANT and approved by the COMMISSION Contract Manager to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review

recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, COMMISSION will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%)—the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%)—the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%)—the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event,

this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.

4. CONSULTANT may submit to COMMISSION final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of COMMISSION; and (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO COMMISSION no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between COMMISSION and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

31. SUBCONTRACTING.

- A. The CONSULTANT is responsible for performing the work required under the AGREEMENT in a manner acceptable to COMMISSION. The CONSULTANT'S organization and all associated consultants and subconsultants must be identified in Article 1 of this CONTRACT or the Fee Schedule/Cost Proposal (Exhibit C). If the CONSULTANT wishes to use a subconsultant not specified in this AGREEMENT or Exhibit C, prior written approval must be obtained from the COMMISSION. The subcontract must contain all required provisions of this AGREEMENT. All subawards must include adequate oversight, management, and administration of engineering and design related consultant services and be administered in accordance with State laws and procedures specified in 23 U.S.C.106(g)(4) and 2 CFR 200.331.
- B. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between COMMISSION and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to COMMISSION for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT'S obligation to pay its subconsultant(s) is an independent obligation from COMMISSION'S obligation to make payments to the CONSULTANT.
- C. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this AGREEMENT shall be subcontracted without prior written authorization by the COMMISSION'S Contract Manager,

except that, which is expressly identified in the approved Fee Schedule/Cost Proposal (Exhibit C).

- D. CONSULTANT or subconsultant shall pay to any subconsultant, not later than seven (7) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.
- E. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.
- F. All subcontracts entered into as a result of this AGREEMENT shall contain all the provisions stipulated in this AGREEMENT to be applicable to subconsultants.
- G. Any substitution of subconsultants must be approved in writing by the COMMISSION'S Contract Manager prior to the start of work by the subconsultant.

32. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION.

- A. CONSULTANT or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the COMMISSION shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate Good Faith Efforts (GFE) to meet this goal. It is CONSULTANT'S responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification

Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible for documenting the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

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:

1. 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally funded agreement will assist the COMMISSION in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is _____%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 10-02: Consultant Contract DBE Commitment attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If

CONSULTANT has not met the DBE goal, complete and submit ADM-0312F: Bidder/Proposer DBE Good Faith Efforts Documentation to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance

Under 49 CFR 26.13(b):

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

Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments (see Article 2 Paragraph E);
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying CONSULTANT from future proposing as non-responsible

E. Termination and Replacement of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the COMMISSION'S written consent. CONSULTANT shall not terminate or replace a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the COMMISSION. Unless the COMMISSION'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.

Termination of DBE Subconsultants

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



1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The COMMISSION stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the COMMISSION'S bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
8. Listed DBE voluntarily withdraws with written notice from the Contract.
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. COMMISSION determines other documented good cause.
12. CONSULTANT must use the following procedures to request the termination of a DBE or portion of a DBE's work:
 - a. Send a written notice to the DBE of the CONSULTANT's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the COMMISSION. The written notice to the DBE must request they provide any response within five (5) business days to both the CONSULTANT and the COMMISSION by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.

- b. If the DBE does not respond within five (5) business days, CONSULTANT may move forward with the request as if the DBE had agreed to CONSULTANT's written notice.
- c. Submit CONSULTANT's DBE termination request by written letter to the COMMISSION and include:
 - One or more above listed justifiable reasons along with supporting documentation.
 - CONSULTANT's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of CONSULTANT's written notice
 - The DBE's response to CONSULTANT's written notice, if received. If a written response was not provided, provide a statement to that effect.
 - The COMMISSION shall respond in writing to CONSULTANT'S DBE termination request within five (5) business days.

Replacement of DBE Subconsultants

After receiving the COMMISSION's written authorization of DBE termination request, CONSULTANT must obtain the COMMISSION's written agreement for DBE replacement.

CONSULTANT must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

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

1. Submit a request to replace a DBE with other forces or material sources in writing to the COMMISSION which must include:
 - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
 - b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
 - Description of scope of work and cost proposal
 - Proposed subcontract agreement and written confirmation of agreement to perform on the Contract

- Revised Exhibit 10-02: Consultant Contract DBE Commitment
2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT's GFES to use DBE replacement firms within seven (7) days of COMMISSION's authorization to terminate the DBE. CONSULTANT may request the COMMISSION's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
- Search results of certified DBEs available to perform the original DBE work identified and or other work CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment
 - Solicitations of DBEs for performance of work identified
 - Correspondence with interested DBEs that may have included contract details and requirements
 - Negotiation efforts with DBEs that reflect why an agreement was not reached
 - If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
 - Copies of each DBE's and non-DBE's price quotes for work identified, as the COMMISSION may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
 - Additional documentation that supports CONSULTANT's GFE
 - The COMMISSION shall respond in writing to CONSULTANT's DBE replacement request within five (5) business days.

F. Commitment and Utilization

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

The COMMISSION shall request CONSULTANT to:

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

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

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

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

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

G. Commercially Useful Function

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

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

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

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

Within 10 days of a DBE initially performing work or supplying materials on the Contract, CONSULTANT shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

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

CONSULTANT must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation. CONSULTANT must submit to the COMMISSION these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

CONSULTANT must notify the COMMISSION immediately if they believe the DBE may not be performing a CUF.

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

CONSULTANT and DBEs must submit any additional CUF related records and documents within five (5) business days of COMMISSION'S request such as:

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

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

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

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

- H. 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.
- I. 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.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier.

The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT'S shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to COMMISSION'S Contract Manager within thirty (30) calendar days.
- L. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this Article.

33. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION.

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any COMMISSION employee. For breach or violation of this warranty, COMMISSION shall have the right in its

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

34. CONTINGENT FEE.

CONSULTANT warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage or contingent, excepting bona fide employees or bona fide commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the COMMISSION shall have the right to annul this AGREEMENT without liability, or at its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

35. NOTIFICATION.

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed or emailing with delivery receipt requested as follows:

CONSULTANT:

Firm
Project Manager
Address Line 1
Address Line 2
Email Address

COMMISSION:

Santa Cruz County Regional Transportation Commission
Rachel Moriconi, Senior Transportation Planner
1101 Pacific Avenue, Suite 250, Santa Cruz, CA 95060
@sccrtc.org

36. FORCE MAJEURE

Neither COMMISSION nor CONSULTANT will be liable for any breach or failure to perform under this AGREEMENT or any other documents incorporated by reference herein if such breach or failure to perform is due to acts beyond the reasonable control of such party, which include by way of illustration, but not limitation, acts of God or public enemy, acts of federal, state, or local government, either in its sovereign or



contractual capacity, fire, floods, epidemics and quarantines, civil disobedience, strikes, lock-outs, freight embargoes, or severe weather provided, however, that party which has been so affected will promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) therefore. The party claiming force majeure shall promptly notify the other party of the termination of the event and shall resume its performance under this AGREEMENT immediately upon the cessation of such cause(s). During the period that the performance by one of the parties of its obligations under this AGREEMENT has been suspended because of an event of force majeure, the other party may likewise suspend the performance of its obligations under this AGREEMENT to the extent that the suspension is reasonable.

37. COMPLETE AGREEMENT.

- A. AGREEMENT: The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named COMMISSION, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.
- B. COMMISSION DESIGNEE: The Executive Director of COMMISSION, or his or her designee, shall have the authority to act for and exercise any of the rights of COMMISSION as set forth in this AGREEMENT subsequent to, and in accordance with the authorization granted by the COMMISSION.
- C. COMPLETE AGREEMENT, INCLUDING ATTACHMENTS. This AGREEMENT includes all exhibits, attachments, and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the AGREEMENT between COMMISSION and CONSULTANT, and supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this AGREEMENT shall not affect the validity of other terms or conditions. The COMMISSION'S waiver of CONSULTANT'S performance of any term(s) or condition(s) of this AGREEMENT shall not be construed as a waiver for any future performance of such term(s) or conditions(s).
- D. Attachments

Exhibit A: Scope of Services



Exhibit B: Project Schedule

Exhibit C: Cost Proposal

Exhibit D: Consultant Contract DBE Commitment (LAPM Exhibit 10-02)

Exhibit E: Disclosure of Lobbying Activities, Standard Form (LAPM Exhibit 10-Q).

Exhibit F: Levine Act Statement

Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this AGREEMENT and that such execution is binding upon the entity for which he or she is executing this document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. TPXXXX to be executed on the date first written above.

SAMPLE



SIGNATURE PAGE

Agreement No. TPXXXX

1. CONSULTANT:

**2. SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION:**

By _____
Name
Title

By _____
Sarah Christensen
Executive Director

Date _____

Date _____

Firm Name
Address
City, State, Zip
Telephone
Email

1101 Pacific Avenue, Suite 250
Santa Cruz, CA 95060
(831) 460-3200
[@sccrtc.org](mailto:info@sccrtc.org)

3. APPROVED AS TO FORM:

4. APPROVED AS TO INSURANCE:

By _____
Steve Mattas
RTC Counsel

By _____
Yesenia Parra
RTC Administrative Services Officer

Date _____

Date _____

Distribution:

RTC Contract Manager, RTC Contract Coordinator, CONSULTANT

