

Attachment D

Request for Proposals #10951



**COUNTY OF MONTEREY
DEPARTMENT OF PUBLIC WORKS, FACILITIES
AND PARKS
1441 SCHILLING PLACE, SOUTH 2ND FLOOR
SALINAS, CA 93901-4527
(831) 755-4800**

REQUEST FOR PROPOSALS #10951

For PROFESSIONAL ENGINEERING SERVICES FOR CHUALAR WASTEWATER CONSOLIDATION PROJECT NO. C-06-8676-110

Proposals are due by 3:00 p.m. PST on Friday, April 25, 2025

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
SUSAN K. BLITCH, COUNTY COUNSEL

Signed by:
Mary Grace Perry

MARY GRACE PERRY
DEPUTY COUNTY COUNSEL

3/20/2025 | 3:24 PM PDT

Date

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TABLE OF CONTENTS:

SOLICITATION DETAILS SECTION 4

1.0 INTENT 5

2.0 BACKGROUND 5

3.0 CALENDAR OF EVENTS 6

4.0 COUNTY POINT OF CONTACT 7

5.0 SCOPE OF WORK..... 7

6.0 AGREEMENT TERM..... 9

7.0 LICENSING/SECURITY REQUIREMENTS..... 10

8.0 PROPOSAL/QUALIFICATIONS PACKAGE REQUIREMENTS..... 10

9.0 SUBMITTAL INSTRUCTIONS & CONDITIONS 14

10.0 SELECTION CRITERIA 15

11.0 PRICING..... 15

12.0 INDEMNIFICATION: 16

13.0 INSURANCE REQUIREMENTS..... 17

14.0 AGREEMENT AWARD..... 20

14.0 PREVAILING WAGE..... 21

15.0 SEQUENTIAL AGREEMENT NEGOTIATION..... 21

16.0 AGREEMENT TERMS AND CONDITIONS 21

17.0 COLLUSION..... 22

18.0 RIGHTS TO PERTINENT MATERIALS 22

SAMPLE AGREEMENT SECTION 22

ATTACHMENTS/EXHIBITS AND SIGNATURE PAGE..... 22

SIGNATURE PAGE 24

ATTACHMENT A – CHUALAR LOCATION MAP..... 25

ATTACHMENT B – PRICING 26

ATTACHMENT C – GRANT APPLICATION 28

ATTACHMENT D – EXHIBIT B – FEDERAL PROVISIONS 28

SOLICITATION DETAILS SECTION

1.0 INTENT

- 1.1 The County of Monterey Public Works, Facilities and Parks Department (PWFP), hereinafter referred to as “County”, is soliciting proposals to provide **Professional Engineering Services for the Chualar Wastewater Consolidation, Project No. C-06-8676-110**, hereinafter referred to as “Project”, as outlined within Section 5.0, Scope of Work. The purpose of this solicitation is to provide the County with a qualified firm or firms to provide engineering services, hereinafter referred to as “CONTRACTOR” or “CONTRACTORS”. The objective of the CONTRACTOR is to evaluate options to repair/upgrade the Chualar Wastewater Treatment Plant, construct a new wastewater treatment plant, and to connect the Chualar wastewater collection system with the City of Salinas collection system for treatment at the Monterey One Water Regional Treatment and Recycling Facility. The Project will also evaluate options for connecting additional parcels outside of the existing Chualar wastewater collection system.
- 1.2 This solicitation is intended for a single, exclusive AGREEMENT.

2.0 BACKGROUND

- 2.1 The community of Chualar is an unincorporated census designated, disadvantaged community, within the unincorporated area of the County of Monterey which is within the jurisdictional boundaries of County Service Area 75 (CSA 75 – Chualar). The CSA-75 Chualar Wastewater System consists of a wastewater collection system within the community of Chualar and a wastewater treatment facility (WWTF) approximately two miles west of Chualar. The WWTF utilizes a series of unlined oxidation ponds to treat and dispose of wastewater. The ponds are adjacent to the Salinas River within the 100-year flood plain with no mechanism for reclaiming water for future reuse. CSA 75 is currently operating near capacity and cannot accept new wastewater connections. The County of Monterey has long been interested in assessing the possibility of phasing out the oxidation ponds through implementation of a potentially cost-effective, regulatory compliant, environmentally superior, and sustainable replacement wastewater treatment system allowing for recycled wastewater reuse and facilitating the ability for the community of Chualar to expand.

On December 23, 2024, the Director PWFP received a formal grant offer and Agreement from the State Water Board to provide for a \$2.5 million, 100% planning grant from the State of California - Clean Water State Revolving Fund (CWSRF) to support Chualar, a disadvantaged community. The Agreement was executed on January 23, 2025, and formally ratified and accepted by the Board of Supervisors on February 18, 2025.

The funding will be used to evaluate options to repair/upgrade the Chualar Wastewater Treatment Plant by constructing a new wastewater treatment plant, and/or connecting the Chualar wastewater collection system with the City of Salinas collection system for

treatment at the Monterey One Water Regional Treatment and Recycling Facility. The Project will also evaluate options for connecting additional parcels outside of the existing Chualar wastewater collection system.

Preliminary design, environmental documents, probable cost estimate (including 20-year life cycle costs) and inter-agency agreements will be completed for the selected construction project. The work to be completed will include all technical materials necessary to comply with the requirements for preparation and submittal of a CWSRF Financial Assistance Application for actual construction of the selected project.

AGREEMENT NO. D2401012 BY AND BETWEEN COUNTY OF MONTEREY AND CALIFORNIA STATE WATER RESOURCES CONTROL BOARD (“State Water Board”) is attached for reference in compiling responses to this Request for Proposals.

- 2.2 The Request for Proposals (RFP) #10951 seeks qualified CONTRACTORS who will abide by all local, state, and federal regulations and who are also capable of providing all necessary materials and supervision in the course of providing professional engineering services for the Project.

3.0 CALENDAR OF EVENTS

3.1	Release RFP	March 27, 2025
3.2	Deadline for Written Questions	5:00 p.m., PST, April 11, 2025
3.3	Posted Response to Written Questions	5:00 p.m., PST, April 16, 2025
3.4	Proposal Submittal Deadline	3:00 p.m., PST, April 25, 2025
3.5	Estimated Notification of Selection	May 2025
3.6	Estimated AGREEMENT Date	June 2025

This schedule is subject to change as necessary.

- 3.7 **FUTURE ADDENDA:** CONTRACTORS who received notification of this solicitation by means other than through a County mailing shall contact the person designated in the COUNTY POINT OF CONTACT herein to request to be added to the mailing list. Inclusion on the mailing list is the only way to ensure timely notification of any addenda and/or information that may be issued prior to the solicitation submittal date. **IT IS EACH CONTRACTOR’S SOLE RESPONSIBILITY TO ENSURE THAT THEY RECEIVE ANY AND ALL ADDENDA FOR THIS RFP** by either informing the County of their mailing information or by regularly checking the County’s Solicitation

Center web page at <https://www.co.monterey.ca.us/government/departments-administrative-office/contracts-purchasing/solicitation-center>. Addenda will be posted on the website the day they are released.

4.0 COUNTY POINT OF CONTACT

4.1 Questions and correspondence regarding this solicitation shall be directed to:

Primary Contact for the County: **Benny J. Young, Management Specialist**
County of Monterey
Department of Public Works, Facilities and Parks
1441 Schilling Place South, 2nd Floor
Salinas, CA 93901-4527
Phone: (831) 755-5019
Email: youngb@countyofmonterey.gov

4.2 All questions regarding this solicitation shall be submitted in writing (email is acceptable and preferable). Answers to questions received by the County will be communicated to all known interested CONTRACTORS after the deadline for receipt of questions.

4.3 The deadline for submitting written questions regarding this solicitation is indicated in the **CALENDAR OF EVENTS** herein. Questions submitted after the deadline will not be answered.

4.4 Only answers to questions communicated by formal written addenda will be binding.

4.5 Prospective CONTRACTOR(s) shall not contact County officers or employees with questions or suggestions regarding this solicitation except through the primary contact person listed above. **Any unauthorized contact may be considered undue pressure and cause for disqualification of the CONTRACTOR(s).**

5.0 SCOPE OF WORK

1. Project Report and Preliminary Design

1.1 Prepare a Project Report that documents existing system conditions, evaluates project alternatives, and identifies required permits, environmental and design work, schedule, and budget for two possible construction projects. The Project Report will identify possible funding sources and include preliminary rate estimates for each alternative. The Project Report will also evaluate a 20-year life cycle cost as part of the financial analysis. The Project Report will include 10% design plans for the two possible construction projects. The Project Report will identify a Selected Construction Project

and will comply with the Project Report requirements for a CWSRF Financial Assistance Application for Construction.

Item 1 Submittals:

- a) **Draft Project Report – Estimated due date to State Water Board: 09/30/25.**
- b) **Final Project Report – Estimated due date to State Water Board: 12/31/25.**

2. Plans and Specifications

- 2.1 Complete 30% Plans, Specifications, and Engineer's Opinion of Probable Cost for the Selected Construction Project.

Item 2 Submittals:

- a) 30% Plans and Specifications and Engineer's Opinion of Probable Cost
Estimated due date to State Water Board: 5/31/26.

3. Environmental Documents

- 3.1 Complete all necessary environmental documents for the Selected Construction Project, including California Environmental Quality Act (CEQA) and Federal Cross-Cutter Documents, to satisfy the CWSRF Financial Assistance Application for Construction requirements. CEQA Document will include an analysis of environmental alternatives for the Selected Construction Project, unless exempt.

Item 3 Submittals:

- a) Draft Environmental Documents - **Estimated due date to State Water Board 7/31/26.**
- b) Final Environmental Documents - **Estimated due date to State Water Board: 11/30/26.**

4. Governance Structure and Agency Agreements (if applicable)

- 4.1 Complete the necessary legal work and agency agreements for the Selected Construction Project.

Item 4 Submittals:

- a) Draft Agency Agreements - **Estimated due date to State Water Board: 4/30/26.**
- b) Final Agency Agreements - **Estimated due date to State Water Board: 4/30/28.**

5. Easement Identification

- 5.1 Identify the necessary permanent and temporary construction easements needed for the Selected Construction Project.

Item 5 Submittal:

- a) Easement Summary Report - **Estimated due date to State Water Board: 8/10/26.**

6. Permits and Related Studies

- 6.1 Create draft permit applications as identified for the Selected Construction Project in the Project Report. Submit applications as appropriate based on the Project schedule. This line item includes additional studies that may be required to support permit applications.

Item 6 Submittal:

- a) Draft Permit Applications - **Estimated due date to State Water Board: 2/22/27.**
- b) Permit Applications as Submitted (If applicable) - **Estimated due date to State Water Board 5/17/27.**

7. Financial Assistance Applications

- 7.1 Develop a draft Financial Package for the CWSRF Financial Assistance Application for Construction that includes the following:
 - a) CWSRF Potential Flags Worksheet;
 - b) Three years of audited financial statements or tax returns;
 - c) Budget projections for at least the next two fiscal years;
 - d) Rate adoption resolution or a copy of rates; and Schedule of related debt and debt document copies (if applicable), or a letter from the Authorized Representative stating the Recipient has no debt.
- 7.2 Submit a complete CWSRF Financial Assistance Application for Construction (General, Technical, Environmental, and Financial Packages, including all supporting materials) for the Selected Construction Project.

Item 7 Submittals:

- a) Draft Financial Package for Construction - **Estimated due date to State Water Board: 3/31/27.**
- b) Financial Assistance Application for Construction - **Estimated due date to State Water Board: 6/31/27.**

8. Project Administration

- 8.1 Perform necessary project administration duties including communicating with the State Water Board and professional contractors, submitting disbursement requests, submitting progress reports, and record keeping to fulfill requirements of the Agreement.

6.0 AGREEMENT TERM

- 6.1 The term of the AGREEMENT will be for a period of three (3) years with the option to extend the AGREEMENT for two (2) additional years.
- 6.1.1 County is not required to state a reason if it elects not to renew.
- 6.2 If the AGREEMENT includes options for renewal or extension, CONTRACTOR must commence negotiations for any desired rate changes a minimum of ninety (90) days prior to the expiration of the AGREEMENT.
- 6.2.1 Both parties must agree upon rate extension(s) or changes in writing.
- 6.3 The AGREEMENT shall contain a clause that provides that County reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with a thirty (30) day written notice, or immediately with cause.

7.0 LICENSING/SECURITY REQUIREMENTS

- 7.1 CONTRACTOR shall ensure that all services, costs, and materials must, at minimum, meet the specifications for the State of California and the Division of Occupational Safety and Health (Cal-OSHA) regulations, as applicable.
- 7.2 CONTRACTOR shall ensure that insurance and required licenses under both state and local jurisdictions are current during the full term of the AGREEMENT.

8.0 PROPOSAL/QUALIFICATIONS PACKAGE REQUIREMENTS

8.1 CONTENT AND LAYOUT:

- 8.1.1 CONTRACTOR should provide the information as requested and as applicable to the proposed goods and services. The proposal package shall be organized as per the table below; headings and section numbering utilized in the proposal package shall be the same as those identified in the table. Proposal packages shall include, at a minimum, but not limited to, the following information in the format indicated:

<u>Proposal or Qualifications Package Layout; Organize and Number Sections as Follows:</u>	
Section 1	COVER LETTER (INCLUDING CONTACT/FIRM INFORMATION)
	SIGNED SIGNATURE PAGE
	SIGNED ADDENDA (IF ANY)

	TABLE OF CONTENTS
Section 2	PROPOSED SCOPE OF WORK QUALIFICATIONS
	LICENSING AND WORK QUALIFICATIONS
Section 3	ASSIGNED KEY STAFF RESUMES
	RELATED PROJECT EXPERIENCE
	REFERENCES
Section 4	ENVIRONMENTALLY FRIENDLY PRACTICES
Section 5	PRICING (ATTACHMENT B) (SUBMIT FEE SCHEDULE AND COST PROPOSAL IN SEPARATE SEALED ENVELOPE)
Section 6	EXCEPTIONS
Section 7	APPENDIX

Section 1 Requirements:

Cover Letter: All proposals must be accompanied by a cover letter not exceeding two (2) pages and should provide contact and firm information as follows:

Contact Information: The name, address, and telephone number of CONTRACTOR's primary contact person during the solicitation process through to potential AGREEMENT award.

Firm Information: Description of the type of organization (e.g., corporation, partnership, including joint venture teams and subcontractors) and how many years it has been in existence.

Signed Signature Page and Signed Addenda (if any addenda were released for this solicitation). Any proposal or qualifications package submitted without this page will be deemed non-responsive. All signatures must be manual and in BLUE ink. All prices and notations must be typed or written in BLUE ink. Errors may be crossed out and corrections printed in BLUE ink or typed adjacent, and must be initialed in BLUE ink by the person signing the proposal.

Table of Contents

Section 2, Pre-Qualifications/Licensing Requirements:

Pre-Qualifications/Licensing: CONTRACTOR must acknowledge in writing that it meets all the pre-qualifications and licensing requirements as set forth in Section 7.0, Licensing/Security Requirements, herein.

Section 3, Project Experience & References:

Key Staff Persons: CONTRACTOR shall identify key staff and their qualifications and experience proposed for the service identified herein.

Experience & References: CONTRACTOR shall describe at least three (3) similar projects for which it provided services like the scope of work described

herein. Please include phone number and email address if possible as the County will conduct reference checks using this information.

Violations: CONTRACTOR shall submit copies of all notices of violations, corrective action notices, enforcement actions or orders, warning notices, writings, or other forms of permit violation/non-compliance documentation (such as Cal-OSHA notices) received by CONTRACTOR, or any business organization owned or operated by the CONTRACTOR, which are its parent company and/or subsidiaries, from any public agency during 2020 up to and including the present day.

Section 4, Environmentally Friendly Practices:

CONTRACTOR shall summarize all environmentally friendly practices it adheres to while doing business as relevant to the County's Climate-Friendly Purchasing Policy at:

<https://www.co.monterey.ca.us/home/showpublisheddocument/22305/636241459023900000>.

CONTRACTOR shall indicate whether it is a 'Green Certified' Business and state which governing authority administered the certification.

Section 5, Pricing: (ATTACHMENT B) (Submit in separate sealed envelope.)

CONTRACTOR shall complete and submit ATTACHMENT B – PRICING attached hereto, which includes a Fee Schedule and Cost Proposal by task, and submit within their proposal package in a separate sealed envelope. Fees may be negotiated after the tentative award announcement is made for this solicitation. If fee negotiations with the firm determined most qualified are not successful, and/or the fees discussed are outside the budgetary constraints for the Project, County reserves the right to suspend negotiations with the most qualified firm, and proceed to second most qualified firm, and so on.

Selection of CONTRACTOR shall be based on qualifications per the Selection Criteria listed herein.

Section 6, Exceptions:

Submit all exceptions to this solicitation on separate pages, and clearly identify the top of each page with "EXCEPTION TO COUNTY OF MONTEREY REQUEST FOR PROPOSALS #10951". Each exception shall reference the page number and section number, as appropriate. CONTRACTOR should note that the submittal of an exception does not obligate the County to revise the terms of the RFP or AGREEMENT.

Section 7, Appendix:

Appendices: CONTRACTOR may provide any additional information that it believes to be applicable to this proposal or qualifications package and include such information in an Appendix section.

8.2 ADDITIONAL REQUIREMENTS: To be considered “responsive”, submitted proposal packages shall adhere to the following:

- 8.2.1 Three (3) sets of the proposal package (one [1] original proposal marked “Original” plus two [2] copies) shall be submitted in response to this solicitation. Each copy shall include a cover indicating the company name submitting, and reference to “RFP #10951”. In addition, submit one (1) electronic version of the entire proposal package on a digital media, or USB memory stick. Additional copies may be requested by the County at its discretion.
- 8.2.2 Proposal package shall be prepared on 8-1/2” x 11” paper, preferably duplex printed bound with front and back covers. Fold out charts, tables, spreadsheets, brochures, pamphlets, and other pertinent information or work product examples may be included as appendices.
- 8.2.3 Reproductions of the County of Monterey Seal shall not be used in any documents submitted in response to this solicitation.
- 8.2.4 CONTRACTOR shall not use white-out or a similar correction product to make late changes to their proposal or qualifications package but may instead line out and initial in BLUE ink any item which no longer is applicable or accurate.
- 8.2.5 To validate your proposal or qualifications package, **submit the SIGNATURE PAGE (contained herein) with your proposal.** Proposal packages submitted without that page will be deemed non-responsive. Proposal signature must be manual, in BLUE ink, and included with the original copy of the proposal. Photocopies of the Signature Page may be inserted into the remaining proposal copies. All prices and notations must be typed or written in BLUE ink in the original proposal copy as well. Errors may be crossed out and corrections printed in BLUE ink or typed adjacent and must be initialed in BLUE ink by the person signing the proposal.

8.3 CONFIDENTIAL OR PROPRIETARY CONTENT: All proposals become the property of the County, which is a public agency subject to disclosure requirements of the California Public Records Act (“CPRA”). If CONTRACTOR proprietary information is contained in documents submitted to County, and CONTRACTOR claims that such information falls within one (1) or more CPRA exemptions, CONTRACTOR must clearly mark such information “CONFIDENTIAL AND PROPRIETARY” and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to CONTRACTOR prior to such disclosure. If CONTRACTOR contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in the County of

Monterey before the County's deadline for responding to the CPRA request. If CONTRACTOR fails to obtain such remedy within County's deadline for responding to the CPRA request, County may disclose the requested information. CONTRACTOR further agrees that it shall defend, indemnify, and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the CONTRACTOR.

9.0 SUBMITTAL INSTRUCTIONS & CONDITIONS

- 9.1 Submittal Identification Requirements: ALL SUBMITTALS MAILED OR DELIVERED CONTAINING PROPOSAL PACKAGES MUST BE SEALED AND BEAR ON THE OUTSIDE, PROMINENTLY DISPLAYED IN THE LOWER LEFT CORNER THE SOLICITATION NUMBER: **RFP #10951** and **CONTRACTOR'S COMPANY NAME**.
- 9.2 Mailing Address: Proposal packages shall be mailed to County at the mailing address indicated on the **Signature Page** of this solicitation.
- 9.3 Due Date: Proposal packages must be received by County ON OR BEFORE the time and date specified, at the location and to the person specified on the **Signature Page** of this solicitation. It is the sole responsibility of the CONTRACTOR to ensure that the proposal package is received at or before the specified time. Postmarks and facsimiles are not acceptable. Proposals received after the deadline shall be rejected and returned unopened.
- 9.4 Shipping Costs: Unless stated otherwise, the Free on Board (FOB) for receivables shall be destination. Charges for transportation, containers, packaging, and other related shipping costs shall be borne by the shipper.
- 9.5 Acceptance: Proposals are subject to acceptance at any time within ninety (90) days after opening. County reserves the right to reject any and all proposal packages, or part of any proposal package, to postpone the scheduled deadline date(s), to make an award in its own best interest, and to waive any informalities or technicalities that do not significantly affect or alter the substance of an otherwise responsible proposal package and that would not affect a CONTRACTOR's ability to perform the work adequately as specified.
- 9.6 Ownership: All submittals in response to this solicitation become the property of the County of Monterey. If a CONTRACTOR does not wish to submit a proposal package but wishes to acknowledge the receipt of the request, the reply envelope shall be marked "No Bid".
- 9.7 Compliance: Proposal packages that do not follow the format, content and submittal requirements as described herein, or fail to provide the required documentation, may receive lower evaluation scores, or be deemed non-responsive.

- 9.8 Cal-OSHA: The items proposed shall conform to all applicable requirements of the California Occupational Safety and Health Administration Act of 1973 (Cal-OSHA).

10.0 SELECTION CRITERIA

- 10.1 The selection of CONTRACTOR and subsequent AGREEMENT award(s) will be based on the criteria contained in this solicitation, as demonstrated in the submitted proposal. CONTRACTOR should submit information sufficient for the County to easily evaluate proposals with respect to the selection criteria. The absence of required information may cause the proposal to be deemed non-responsive and may be cause for rejection.
- 10.2 The selection criteria include the following: **(100 points total)**.

SELECTION CRITERIA	Max Possible Score
Project Understanding and Approach/Work Plan, and demonstrated capacity to fulfill scope of work	35
Experience of Key Project staff assigned to Project	25
Experience in successfully completing similar projects	25
References	15
TOTAL	100

- 10.3 To the extent of personnel and equipment are to be provided under this AGREEMENT, CONTRACTOR, if so requested, shall afford the County an opportunity to inspect CONTRACTOR's equipment prior to award of the AGREEMENT.
- 10.4 The award resulting from this RFP will be made to the CONTRACTOR that submits a response that, in the sole opinion of the County, best serves the overall interest of the County.
- 10.5 The award made from this RFP may be subject to approval by the County Board of Supervisors.

11.0 PRICING

- 11.1 CONTRACTOR will complete ATTACHMENT B - PRICING for the provision of services as outlined within this RFP.

- 11.2 CONTRACTOR prices stated in ATTACHMENT B - PRICING shall be effective from the date the proposal is submitted to the day the AGREEMENT is awarded and through the initial term of the AGREEMENT.
- 11.3 Prior to the start of the Project, the County and CONTRACTOR will mutually agree upon the budget for the Project.
 - 11.3.1 A Cost Proposal shall be submitted with ATTACHMENT B – PRICING in a separate sealed envelope. Cost Proposal shall be based on Cost-Plus fixed Fee Schedule.
- 11.4 Invoicing by CONTRACTOR will clearly itemize but is not limited to the following:
 - 11.4.1 County Department receiving services.
 - 11.4.2 Multi-year Agreement (MYA) number.
 - 11.4.3 Delivery Order (DO) number under which the invoice is to be charged.
 - 11.4.4 Project name and services provided.
 - 11.4.5 Date(s) of services.
- 11.5 Travel/Mileage
 - 11.5.1 Any travel/mileage must be agreed upon and approved by the County in writing prior to services being performed.
 - 11.5.2 Travel/mileage must adhere to the current rate per mile at the time of service as provide by the California Department of Human Resources (CAL HR). Rates are listed at: <https://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>
 - 11.5.3 Travel/mileage fees must be listed as a line-item within the corresponding invoice for associated services.
 - 11.5.3.1 Travel/mileage fees more than the CAL HR rate at the time services are provided will not be processed. CONTRACTOR must correct the invoice containing the incorrect fee to adhere to the current CAL HR rates at the time of service prior to processing of invoice.

12.0 INDEMNIFICATION:

- 12.1 For purposes of the following indemnification provisions ("Indemnification Agreement"), "design professional" has the same meaning as set forth in California Civil Code section 2782.8. If any term, provision or application of this Indemnification Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding

shall not invalidate any other term or provision of this Indemnification Agreement and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of this Indemnification Agreement and the provisions of California Civil Code Sections 2782 or 2782.8, the broadest indemnity protection for County under this Indemnity Agreement that is permitted by law shall be provided by CONTRACTOR.

12.2 Indemnification for Design Professional Services Claims:

CONTRACTOR shall indemnify, defend and hold harmless County, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or willful misconduct of County, or defect in a design furnished by County, but in no event shall the amount of such CONTRACTOR's liability exceed such CONTRACTOR's proportionate percentage of fault as determined by a court, arbitrator or mediator, or as set out in a settlement agreement. In the event one (1) or more defendants to any action involving such claim or claims against County is unable to pay its share of defense cost due to bankruptcy or dissolution of the business, such CONTRACTOR shall meet and confer with the other parties to such action regarding unpaid defense costs.

12.3 Indemnification for All Other Claims or Loss:

For any claim, loss, injury, damage, expense or liability other than claims arising out of CONTRACTOR's performance of design professional services under this Agreement, CONTRACTOR shall indemnify, defend and hold harmless County, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to property, arising from or related to the performance of services under this Agreement by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of County, or defect in a design furnished by County.

13.0 INSURANCE REQUIREMENTS

13.1 Evidence of Coverage:

Prior to commencement of this agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Division, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such,

insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the CONTRACTOR.

13.2 Qualifying Insurers:

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VII, according to the current A.M. Best's Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Agent.

13.3 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance: including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate. *(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

Auto Liability Coverage: must include all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit or Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance: if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services.

If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: Professional liability insurance coverage is required if the contractor is providing a professional service regulated by the state. Examples of service providers regulated by the state are insurance agents, professional architects and engineers, doctors, certified public accountants, lawyers, etc. However, other professional Contractors, such as computer or software designers, technology services, and services providers such as claims administrators, should also have professional liability. If in doubt, consult with your risk or contract manager.)

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

13.4 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Additional Insured Status:

The County of Monterey, its officers, officials, employees, and, volunteers, are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to the CONTRACTOR'S insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

Primary Coverage:

For any claims related to this contract, the CONTRACTOR'S insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance

maintained by the County, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Waiver of Subrogation:

CONTRACTOR hereby grants to County a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the County by virtue of the payment of any loss under such insurance. CONTRACTOR 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 County has received a waiver of subrogation endorsement from the insurer.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect. CONTRACTOR shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

14.0 AGREEMENT AWARD

- 13.1 No Guaranteed Value: County does not guarantee a minimum or maximum dollar value for any AGREEMENT resulting from this solicitation.
- 13.2 Board of Supervisors: The award made from this solicitation may be subject to approval by the County Board of Supervisors.
- 13.3 Interview: County reserves the right to interview selected CONTRACTOR before an AGREEMENT is awarded. The costs of attending any interview are the CONTRACTOR's responsibility.
- 13.4 Incurred Costs: County is not liable for any costs incurred by CONTRACTOR in response to this solicitation.

- 13.5 Notification: All CONTRACTORS who have submitted a proposal or qualifications package will be notified of the final decision as soon as it has been determined.
- 13.6 In County's Best Interest: The award(s) resulting from this solicitation will be made to the CONTRACTOR that submits a response that, in the sole opinion of County, best serves the overall interest of County.

14.0 PREVAILING WAGE

If applicable, CONTRACTOR shall comply with provisions of the Labor Code (sections 1720, et seq.) governing public works, including payment of prevailing wages, payroll records and employment of apprentices. Copies of the determination of the general prevailing rate of per diem wages are available to interested parties at: <http://www.dir.ca.gov/public-works/prevailing-wage.html>.

15.0 SEQUENTIAL AGREEMENT NEGOTIATION

County will pursue AGREEMENT negotiations with the CONTRACTOR who submits the best proposal or is deemed the most qualified in the sole opinion of County, and which is in accordance with the criteria as described within this solicitation. If the AGREEMENT negotiations are unsuccessful, in the opinion of either County or CONTRACTOR, County may pursue AGREEMENT negotiations with the entity that submitted a proposal which County deems to be the next best qualified to provide the services, or County may issue a new solicitation or take any other action which it deems to be in its best interest.

16.0 AGREEMENT TERMS AND CONDITIONS

CONTRACTOR selected through the solicitation process will be expected to execute a formal AGREEMENT with County for the provision of the requested service. The AGREEMENT shall be written by County in a standard format approved by the Office of the County Counsel, that is similar to the AGREEMENT in the SAMPLE AGREEMENT SECTION. Submission of a signed proposal and the **SIGNATURE PAGE** will be interpreted to mean CONTRACTOR HAS AGREED TO ALL THE TERMS AND CONDITIONS set forth in the pages of this solicitation and the standard provisions included in the **SAMPLE AGREEMENT SECTION** herein. County may but is not required to consider including language from the CONTRACTOR's proposed AGREEMENT, and any such submission shall be included in the Exceptions Section of CONTRACTOR's proposal.

17.0 COLLUSION

CONTRACTOR shall not conspire, attempt to conspire, or commit any other act of collusion with any other interested party for the purpose of secretly, or otherwise, establishing an understanding regarding rates or conditions to the solicitation that would bring about any unfair conditions.

18.0 RIGHTS TO PERTINENT MATERIALS

All responses, inquiries, and correspondence related to this solicitation and all reports, charts, displays, schedules, exhibits, and other documentation produced by the CONTRACTOR that are submitted as part of the submittal will become the property of the County when received by the County **and may be considered public information under applicable law.** Any proprietary information in the submittal must be identified as such and marked “CONFIDENTIAL INFORMATION” or “PROPRIETARY INFORMATION”, in conformity with the specific requirements set forth in Section 8.3, above. The County will not disclose proprietary information to the public, unless required by law; however, the County cannot guarantee that such information will be held confidential. **As a California government entity, County is subject to the California Public Records Act (CPRA) and other public transparency laws and, as such, cannot guarantee the confidentiality of information marked confidential or proprietary.** County will respond to requests for disclosure of records related to this solicitation in accord with applicable law on disclosure requirements and exemptions to disclosure.

SAMPLE AGREEMENT SECTION

The COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES WITH SURVEYORS, ARCHITECTS, ENGINEERS & DESIGN PROFESSIONALS (\$100,000 OR MORE) with all terms and conditions (which are hereby incorporated by reference as though set forth entirely herein) may be viewed at: <https://www.countyofmonterey.gov/government/departments-a-h/administrative-office/contracts-purchasing/agreement-templates>

ATTACHMENTS/EXHIBITS AND SIGNATURE PAGE

RFP #10951 Professional Engineering Services for the Chualar Wastewater Consolidation, Project No. C-06-8676-110

SIGNATURE PAGE

COUNTY OF MONTEREY
DEPARTMENT OF PUBLIC WORKS, FACILITIES, & PARKS

RFP #10951
RELEASE DATE: March 27, 2025



RFP TITLE: Professional Engineering Services for Chualar wastewater Consolidation
Project No. C-06-8676-110

PROPOSALS ARE DUE AT THE DEPARTMENT OF PUBLIC WORKS,
FACILITIES, & PARKS BY 3:00 P.M., PSA, ON FRIDAY, April 25, 2025.

MAILING ADDRESS:
COUNTY OF MONTEREY
DEPARTMENT OF PUBLIC WORKS,
FACILITIES, & PARKS
1441 SCHILLING PLACE, SOUTH 2nd
FLOOR
SALINAS, CA 93901-4527

QUESTIONS ABOUT THIS RFP SHOULD BE DIRECTED TO:
Benny J. Young, Management Specialist
Email: youngb@countyofmonterey.gov, Phone: (831) 755-5019

CONTRACTOR MUST INCLUDE THE FOLLOWING IN EACH PROPOSAL:

☐ ALL REQUIRED CONTENT AS DEFINED PER SECTION 8.0 HEREIN

This Signature Page must be included with your submittal to validate your proposal.
Proposals submitted without this page will be deemed non-responsive.

☐ **CHECK HERE IF YOU HAVE ANY EXCEPTIONS TO THIS SOLICITATION.**

CONTRACTOR MUST COMPLETE THE FOLLOWING TO VALIDATE PROPOSAL
I hereby agree to furnish the articles and/or services stipulated in my proposal at the price quoted, subject to the instructions and conditions in the RFP. I further attest that I am an official officer representing my firm and authorized with signatory authority to present this proposal package.

Company Name: _____ Date: _____

Signature: _____ Printed Name/Title: _____

Street Address: _____

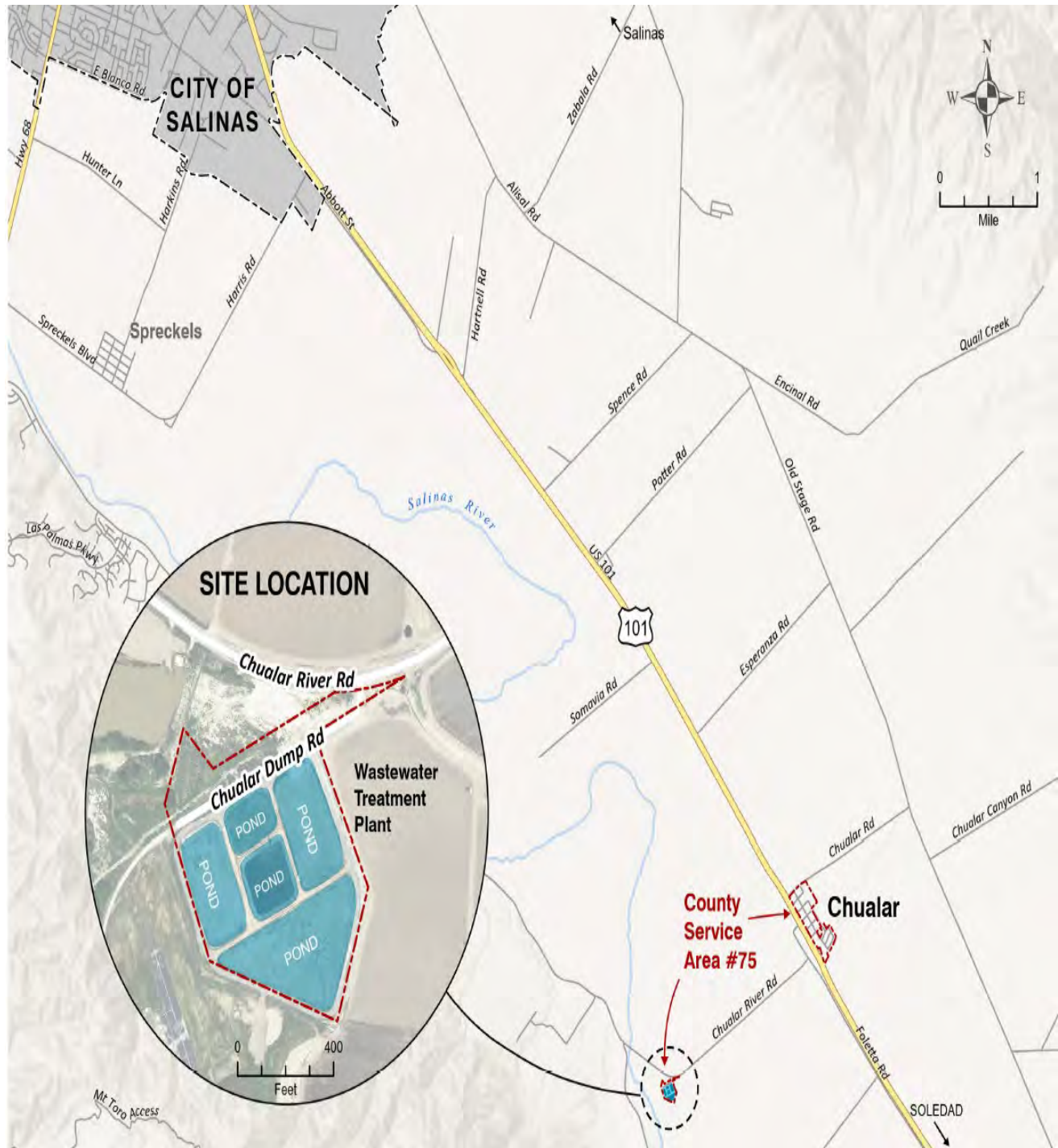
City: _____ State: _____ Zip: _____

Phone: () _____ Email: _____

License No. (If applicable): _____

License Classification (If applicable): _____

ATTACHMENT A – CHUALAR LOCATION MAP



ATTACHMENT B – PRICING

Sample Cost Proposal 1

Cost-Plus-Fixed Fee or lump sum or Firm Fixed Price contracts

(Design, Engineering and Environmental Studies)

Note: Mark-ups are Not Allowed

☐ Prime Consultant ☐ Subconsultant ☐ 2nd Tier Subconsultant

Consultant		Project No.	
Contract No.		Date	

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
(Project Manager)*				\$0.00
(Sr. Civil Engineer)				\$0.00
(Envir. Scientist)				\$0.00
(Inspector)**				\$0.00

LABOR COSTS

a) Subtotal Direct Labor Costs

b) Anticipated Salary Increase (see page 2 for calculation)

c) **TOTAL DIRECT LABOR COSTS** [(a) + (b)] \$0.00

INDIRECT COSTS

d) Fringe Benefits (Rate: %)

e) Total Fringe Benefits [(c) x (d)] \$0.00

f) Overhead (Rate: %)

g) Overhead [(c) x (f)] \$0.00

h) General and Administrative (Rate: %)

i) Gen & Admin [(c) x (h)] \$0.00

j) **Total Indirect Costs** [(e) + (g) + (i)] \$0.00

FIXED FEE

q) Fixed Fee (Rate: %)

k) **TOTAL FIXED FEE** [(c) + (j)] x (q) \$0.00

l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs				\$0.00
Equipment Rental and Supplies				\$0.00
Permit Fees				\$0.00

RFP #10951 Professional Engineering Services for the Chualar Wastewater Consolidation, Project No. C-06-8676-110

Plan Sheets				\$0.00
Test				\$0.00
l) TOTAL OTHER DIRECT COSTS				\$0.00

m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)

	Subconsultant's Name	Cost
Subconsultant 1:		\$0.00
Subconsultant 2:		\$0.00
Subconsultant 3:		\$0.00
Subconsultant 4:		\$0.00
m) TOTAL SUBCONSULTANTS' COSTS		\$0.00

n) Total Other Direct Costs INCLUDING SUBCONSULTANTS [(l)+(m)] \$0.00

TOTAL COST [(c) + (j) + (k) + (n)] \$0.00

NOTES:

1. Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
3. Anticipated salary increases calculation (page 2) must accompany.

– End of Attachment B –

ATTACHMENT C – GRANT APPLICATION

ATTACHMENT D – EXHIBIT B – FEDERAL PROVISIONS



**CLEAN WATER PLANNING
LOAN (PRINCIPAL FORGIVENESS)**

AGREEMENT NO. D2401012

BY AND BETWEEN

COUNTY OF MONTEREY ("Recipient")

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD ("State Water Board")



FOR THE PURPOSE OF THE

CHUALAR WASTEWATER CONSOLIDATION ("Project")

PROJECT NO. C-06-8676-110

-
- Section 13475 et seq. of the Water Code, and Resolution Nos. 2024-0026 and 2019-0064.

PROJECT FUNDING AMOUNT: \$2,500,000.00
PRINCIPAL FORGIVENESS COMPONENT: \$2,500,000.00
ESTIMATED REASONABLE PROJECT COST: \$2,500,000.00

ELIGIBLE WORK START DATE: JULY 14, 2021
WORK COMPLETION DATE: JUNE 30, 2028
FINAL REIMBURSEMENT REQUEST DATE: SEPTEMBER 30, 2028
RECORDS RETENTION END DATE: JUNE 30, 2064

1. The State Water Board and the Recipient mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement, including the following Exhibits, which are attached hereto or are incorporated by reference:
 - EXHIBIT A – SCOPE OF WORK AND SCHEDULE
 - EXHIBIT B – FUNDING PROVISIONS
 - EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV
 - EXHIBIT D – SPECIAL CONDITIONS
2. The following documents are also incorporated by reference, as well as any documents incorporated by reference in Exhibit D:
 - the Waste Discharge Requirement Order No. R1- 01-038 and any amendments thereto
3. Party Contacts during the term of this Agreement are:

State Water Board		County of Monterey	
Section:	Division of Financial Assistance		
Name:	Matt Chambers, Project Manager	Name:	Randell Ishii, Director of Department of Public Works, Facilities, and Parks
Address:	1001 I Street, 16th Floor	Address:	1441 Schilling Place
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Salinas, CA 93901
Phone:	(916) 341-5723	Phone:	(831) 755-4800
Email:	Matthew.Chambers@waterboards. ca.gov	Email:	ishiir@countyofmonterey.gov

Each party may change its contact upon written notice to the other party. While Party Contacts are contacts for day-to-day communications regarding Project work, the Recipient must provide official communications and notices to the Division's Deputy Director in addition to the Party Contacts.

4. Conditions precedent to this Agreement are set forth as follows:
 - (a) The Recipient must deliver to the Division a resolution authorizing this Agreement and identifying its authorized representative by title.
 - (b) The Recipient must deliver an opinion of general counsel satisfactory to the State Water Board's counsel dated on or after the date that the Recipient signs this Agreement.
5. The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement, which shall be at least until the Records Retention End Date:
 - (a) The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.
 - (b) The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

- (c) None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.
 - (d) The Recipient is in compliance with all State Water Board funding agreements to which it is a party.
6. This Agreement, and any amendments hereto, may be executed and delivered in any number of counterparts, each of which when delivered shall be deemed to be an original, but such counterparts shall together constitute one document. The parties may sign this Agreement, and any amendments hereto, either by an electronic signature using a method approved by the State Water Board or by a physical, handwritten signature. The parties mutually agree that an electronic signature using a method approved by the State Water Board is the same as a physical, handwritten signature for the purposes of validity, enforceability, and admissibility.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

COUNTY OF MONTEREY:

By: *Randell Y. Ishii*
Name: Randell Ishii
Title: Director of Public Works, Facilities, and Parks

Date: Dec 23, 2024

STATE WATER RESOURCES CONTROL BOARD:

By: *J. Karkoski*
Name: Joe Karkoski
Title: Deputy Director
Division of Financial Assistance

Date: Jan 23, 2025

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EXHIBIT A – SCOPE OF WORK AND SCHEDULE

A.1 PROJECT PURPOSE AND DESCRIPTION.

The Project is for the benefit of the Recipient. The funding under this Agreement will be used to evaluate options to repair/upgrade the Chualar Wastewater Treatment Plant, construct a new wastewater treatment plant, and to connect the Chualar wastewater collection system with the City of Salinas collection system for treatment at the Monterey One Water Regional Treatment and Recycling Facility. The Project will also evaluate options for connecting additional parcels outside of the existing Chualar wastewater collection system.

The Recipient will complete the necessary preliminary design, environmental documents, and necessary inter-agency agreements for the Selected Construction Project.

A.2 SCOPE OF WORK.

ITEM	DESCRIPTIONS
1	Project Report and Preliminary Design
	1.1 Prepare a Project Report that documents existing system conditions, evaluates project alternatives, and identifies required permits, environmental and design work, schedule, and budget for two possible construction projects. The Project Report will identify possible funding sources and include preliminary rate estimates for each alternative. The Project Report will also evaluate a 20-year life cycle cost as part of the financial analysis. The Project Report will include 10% design plans for the two possible construction projects. The Project Report will identify a Selected Construction Project and will comply with the Project Report requirements for a CWSRF Financial Assistance Application for Construction. Item 1 Submittals: a) Draft Project Report b) Final Project Report
2	Plans and Specifications
	2.1 Complete 30% Plans, Specifications, and Engineer's Opinion of Probable Cost for the Selected Construction Project. Item 2 Submittals: a) 30% Plans and Specifications and Engineer's Opinion of Probable Cost
3	Environmental Documents
	3.1 Complete all necessary environmental documents for the Selected Construction Project, including California Environmental Quality Act (CEQA) and Federal Cross-Cutter Documents, to satisfy the CWSRF Financial Assistance Application for Construction requirements. CEQA Document will include an analysis of environmental alternatives for the Selected Construction Project, unless exempt. Item 3 Submittals: a) Draft Environmental Documents b) Final Environmental Documents

ITEM	DESCRIPTIONS
4	Governance Structure and Agency Agreements (if applicable)
	4.1 Complete the necessary legal work and agency agreements for the Selected Construction Project. Item 4 Submittal: a) Draft Agency Agreements b) Final Agency Agreements
5	Easement Identification
	5.1 Identify the necessary permanent and temporary construction easements needed for the Selected Construction Project. Item 5 Submittal: a) Easement Summary Report
6	Permits and Related Studies
	6.1 Create draft permit applications as identified for the Selected Construction Project in the Project Report. Submit applications as appropriate based on the Project schedule. This line item includes additional studies that may be required to support permit applications. Item 6 Submittal: a) Draft Permit Applications b) Permit Applications as Submitted (If applicable)
7	Financial Assistance Applications
	7.1 Submit a complete CWSRF Financial Assistance Application for Planning or Design. 7.2 Develop a draft Financial Package for the CWSRF Financial Assistance Application for Construction that includes the following: a) CWSRF Potential Flags Worksheet; b) Three years of audited financial statements or tax returns; c) Budget projections for at least the next two fiscal years; d) Rate adoption resolution or a copy of rates; and Schedule of related debt and debt document copies (if applicable), or a letter from the Authorized Representative stating the Recipient has no debt. 7.3 Submit a complete CWSRF Financial Assistance Application for Construction (General, Technical, Environmental, and Financial Packages, including all supporting materials) for the Selected Construction Project. Item 7 Submittal: a) Draft Financial Package for Construction b) Financial Assistance Application for Construction
8	Project Administration
	8.1 Perform necessary project administration duties including communicating with the State Water Board and professional contractors, submitting disbursement requests, submitting progress reports, and record keeping to fulfill the requirements of the Agreement. Item 8 Submittal: N/A

A.3 SCHEDULE.

Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. The Project Manager may adjust the dates in the “Estimated Due Date” column of this table, but Critical Due Date adjustments will require an amendment to this Agreement. The Recipient must complete and submit all work in time to be approved by the Division prior to the Work Completion Date. As applicable for specific submittals, the Recipient must plan adequate time to solicit, receive, and address comments prior to submitting the final submittal. The Recipient must submit the final Reimbursement Request prior to the Final Reimbursement Request Date set forth on the Cover Page.

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
	WORK TO BE PERFORMED BY RECIPIENT		
1	Project Report and Preliminary Design a) Draft Project Report b) Final Project Report	N/A N/A	September 30, 2025 December 31, 2025
2	Plans and Specifications a) 30% Draft, Plans, Specifications, and Engineer’s Opinion of Probable Cost	N/A	May 31, 2026
3	Environmental Documents a) Draft Environmental Documents b) Final Environmental Documents	N/A N/A	July 31, 2026 November 30, 2026
4	Governance Structure and Agency Agreements (if applicable) a) Draft Agency Agreements b) Final Agency Agreements	N/A N/A	April 30, 2026 April 30, 2028
5	Easement Identification a) Easement Summary Report	N/A	August 10, 2026
6	Permits and Related Studies a) Draft Permit Applications b) Permit Applications as Submitted (If applicable)	N/A N/A	February 22, 2027 May 17, 2027
7	Financial Assistance Applications a) Draft Financial Package for Construction b) Financial Assistance Application for Construction	N/A N/A	March 31, 2027 June 31, 2027
8	Project Administration N/A	N/A	N/A
9	Work Completion Date	June 30, 2028	N/A
EXHIBIT B – REIMBURSEMENTS, BUDGET DETAIL, AND REPORTING PROVISIONS			
	REIMBURSEMENTS		
10	Reimbursement Requests	As Needed	
11	Final Reimbursement Request	September 30, 2028	N/A
	REPORTS		
12	Progress Reports	Quarterly	
13	As Needed Reports.	As Needed	

The Recipient must deliver any request for extension of the Work Completion Date no less than 90 days prior to the Work Completion Date.

The Division may require corrective work to be performed prior to Project Completion. Any work occurring after the Work Completion Date will not be reimbursed under this Agreement.

A.4 PROGRESS REPORTS.

The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement. The Recipient must provide a progress report with each Reimbursement Request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds. A progress report must contain the following information:

- 1) A summary of progress to date including a description of progress since the last report, amount budgeted, amount spent, and percent completion for each task;
- 2) Statement indicating if all critical due dates are on track;
- 3) Statement indicating if all deliverable due dates are on track;
- 4) A description of compliance with any special conditions; and
- 5) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

A.5 DISADVANTAGED BUSINESS ENTERPRISE REPORTS.

The Recipient shall comply with the Disadvantaged Business Enterprises (DBE) requirements in 40 CFR § 33.301 for the Project and require its contractors and subcontractors on the Project to comply. 40 CFR § 33.301 requires the use of good faith efforts to utilize DBE's whenever procuring construction, equipment, services, and supplies. The Recipient must report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. The Recipient must submit such reports to the Division annually within ten (10) calendar days following October 1 until such time as the "Notice of Completion" is issued.

EXHIBIT B – FUNDING PROVISIONS

B.1 ESTIMATED REASONABLE COST AND PROJECT FUNDS.

The estimated reasonable cost of the total Project is set forth on the Cover Page of this Agreement, and is greater than or equal to the funding anticipated to be provided by the State Water Board under this Agreement. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

B.2 RECIPIENT CONTRIBUTIONS.

The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient must nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

The loan component of this Agreement is forgiven. The estimated amount of principal that will be due to the State Water Board from the Recipient under this Agreement is Zero dollars and no cents (\$0.00).

B.3 VERIFIABLE DATA.

Upon request by the Division, the Recipient must submit verifiable data to support deliverables specified in the Scope of Work. The Recipient's failure to comply with this requirement may be construed as a material breach of this Agreement.

B.4 BUDGET COSTS

Budget costs are contained in the Summary Project Cost Table below:

DESCRIPTION	PROJECT FUNDING AMOUNT	TOTAL ESTIMATED COSTS
Project Report and Preliminary Design	\$420,000	\$420,000
Plans and Specifications	\$540,000	\$540,000
Environmental Documents	\$380,000	\$380,000
Governance Structure and Agency Agreements	\$310,000	\$310,000
Easement Identification	\$310,000	\$310,000
Permit and Related Studies	\$140,000	\$140,000
Financial Assistance Applications	\$50,000	\$50,000
Project Administration	\$350,000	\$350,000
TOTAL	\$2,500,000	\$2,500,000

The Division's Form 260 and Form 261 will document a more detailed budget of eligible Project Costs and Project funding amounts.

The Recipient is prohibited from requesting disbursement amounts that represent Recipient's mark-ups to costs invoiced or otherwise requested by consultants or contractors.

Project Costs incurred prior to the Eligible Work Start Date on the cover page of this Agreement are not eligible for reimbursement.

Reasonable indirect costs may be allowable upon approval by the Division.

B.5 LINE ITEM ADJUSTMENTS.

Subject to the prior review and approval of the Division, adjustments between existing budget line items may be used to defray allowable direct costs. Budget adjustments deleting a budget line item or adding a new budget line item shall require a formal amendment. The sum of adjusted line items in the budget must not exceed the total budget amount. The Division may propose budget adjustments.

B.6 REIMBURSEMENT PROCEDURE.

Except as may be otherwise provided in this Agreement, reimbursements will be made as follows:

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate reimbursement of any eligible incurred costs through submission to the State Water Board of the Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed. To be eligible for reimbursement, Project Costs, including planning and design allowance costs, must have been incurred in compliance with all applicable requirements, including the cross-cutting requirements listed in Exhibits C and D.
2. The Recipient must submit a Reimbursement Request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late Reimbursement Requests may not be honored.
3. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under this Agreement.
4. The Recipient must not request reimbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of Reimbursement Request. Supporting documentation (e.g., receipts) must be submitted with each Reimbursement Request. The amount requested for Recipient's administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Reimbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Reimbursement Request. Upon request by the Division, supporting documents for professional and administrative services must include the employees' names, classifications, labor rates, hours worked, and descriptions of the tasks performed. Reimbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
5. The Division may withhold disbursements where costs incurred do not reflect actual time spent.
6. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future reimbursements.
7. The Recipient must not request a reimbursement unless that Project Cost is allowable, reasonable, and allocable.
8. The Recipient must submit all draft deliverables prior to reimbursement beyond 70 percent of the Project Funding Amount, and it must submit all final deliverables to the Division prior to reimbursement beyond 90 percent of the Project Funding Amount.
9. Notwithstanding any other provision of this Agreement, no reimbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.

Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the Project Funding Amount until Project Completion. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.

B.7 REVERTING FUNDS AND DISENCUMBRANCE.

In the event the Recipient does not submit Reimbursement Requests for all funds encumbered under this Agreement timely, any remaining funds revert to the State. The State Water Board may notify the Recipient that the project file is closed, and any remaining balance will be disencumbered and unavailable for further use under the Agreement

EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV

GENERAL TERMS AND CONDITIONS 2019-NOV is posted at
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/general_terms.html and replicated below:

1. DEFINITIONS. Unless otherwise specified in this Agreement, each capitalized term used in this Agreement has the following meaning:
 - “Agreement” means this agreement, including all exhibits and attachments hereto.
 - “Cover Page” means the front page of this Agreement.
 - “Days” means calendar days unless otherwise expressly indicated.
 - “Deputy Director” means the Deputy Director of the Division.
 - “Division” means the Division of Financial Assistance of the State Water Board or any other division or unit of the State Water Board authorized to administer this Agreement.
 - “Event of Default” means the occurrence of any of the following events:
 - a) A representation or warranty made by or on behalf of the Recipient in this Agreement or in any document furnished by or on behalf of the Recipient to the State Water Board pursuant to this Agreement shall prove to have been inaccurate, misleading or incomplete in any material respect;
 - b) Failure by the Recipient to observe and perform any covenant, condition, or provision in this Agreement, which failure shall continue for a period of time, to be determined by the Division;
 - c) Initiation of proceedings seeking arrangement, reorganization, or any other relief under any applicable bankruptcy, insolvency, or other similar law; the appointment of or taking possession of the Recipient’s property by a receiver, liquidator, assignee, trustee, custodian, conservator, or similar official; the Recipient’s entering into a general assignment for the benefit of creditors; the initiation of resolutions or proceedings to terminate the Recipient’s existence, or any action in furtherance of any of the foregoing;
 - d) A determination pursuant to Gov. Code section 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code; or
 - e) Loss of the Recipient’s rights, licenses, permits, or privileges necessary for the Project, or the occurrence of any material restraint on the Recipient’s enterprise by a government agency or court order.
 - “Final Reimbursement Request Date” means the date set forth as such on the Cover Page of this Agreement, after which date, no further reimbursements or disbursements may be requested.
 - “Fiscal Year” means the period of twelve (12) months terminating on June 30 of any year.
 - “GAAP” means generally accepted accounting principles, the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public

Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor, or the Uniform System of Accounts, as adopted by the California Public Utilities Commission for water utilities.

- “Material Obligation” means an obligation of the Recipient that is material to this transaction.
- “Party Contact” means, for the Recipient, the Authorized Representative of the Recipient or any designee of the Authorized Representative, and, for the State Water Board, the Division staff set forth in Section 2 of this Agreement.
- “Project” means the Project funded by this Agreement as described in Exhibits A and B and in the documents incorporated by reference herein.
- “Project Completion” means, as determined by the Division, that the Project is complete to the reasonable satisfaction of the Division.
- “Project Costs” means the incurred costs of the Recipient which are eligible for funding under this Agreement, pursuant to applicable statutes, policy, regulations, or guidelines.
- “Project Funding Amount” means the maximum amount payable under this Agreement, as set forth on the Cover Page.
- “Project Funds” means all moneys disbursed to the Recipient by the State Water Board for eligible Project Costs pursuant to this Agreement.
- “Project Manager” means the person designated by the State Water Board to manage performance of this Agreement. The Project Manager is set forth on the Cover Page.
- “Records Retention End Date” means the last date that the Recipient is obligated to maintain records related to this Agreement and is set forth on the Cover Page of this Agreement.
- “Regional Water Quality Control Board” or “Regional Water Board” means the appropriate Regional Water Quality Control Board.
- “Reimbursement Period” means the period during which Project Funds may be disbursed.
- “Reimbursement Request” means the Recipient’s request for Project Funds from the State Water Board as set forth in Exhibit B.
- “State” means State of California.
- “State Water Board” means the State Water Resources Control Board.
- “Work Completion” means the Recipient’s submittal of all work set forth under Exhibit A for review and approval by the Division.
- “Work Completion Date” means the date set forth on the Cover Page of this Agreement and is the last date on which Project Costs may be incurred under this Agreement.
- “Year” means calendar year unless otherwise expressly indicated.

2. **ACCESS, INSPECTION, AND PUBLIC RECORDS.** The Recipient must ensure that the State Water Board, the State Auditor, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times through the Records Retention End Date or useful life of the Project, whichever is longer. The Recipient acknowledges that, except for a subset of information regarding archaeological records and personally identifiable information, the Project records and locations may be public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated into this Agreement by reference, and all reports, Reimbursement Requests, and supporting documentation submitted hereunder.
3. **ACCOUNTING AND AUDITING STANDARDS; FINANCIAL MANAGEMENT SYSTEMS.** The Recipient must maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets. Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:
 - (a) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
 - (b) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all Project Funds received under this Agreement;
 - (c) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to Project Funds disbursed under this Agreement;
 - (d) Establish an accounting system which will accurately depict final total costs of the Project if authorized under this Agreement;
 - (e) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
 - (f) If the Recipient uses its own employees, equipment, or resources for any phase of the Project, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.
4. **AMENDMENT.** No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Recipient and the Deputy Director or designee and approved as required.
5. **ASSIGNABILITY.** This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board. Amendment of the Agreement may be required.
6. **AUDIT.** The Division may call for an audit of financial information relative to the Project if the Division determines that an audit is desirable to assure program integrity or if an audit becomes necessary because of State or federal requirements. If an audit is called for, the audit must be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit must be in the form required by the Division. The Recipient must return, or ensure the return of, any audit disallowances within 30 days.
7. **BONDING.** Where construction contractors are used, the Recipient must not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and

materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.

8. **COMPETITIVE BIDDING.** Recipient must adhere to any applicable State law or local ordinance for competitive bidding and applicable labor laws. If Recipient is a private entity, any construction contracts related in any way to the Project must be let by competitive bid procedures which assure award of such contracts to the lowest responsive and responsible bidders. Recipient must not award a construction contract until a summary of bids and identification of the selected lowest responsible bidder is submitted to and approved in writing by the Division. Recipient must provide a full explanation if Recipient is proposing to award a construction contract to anyone other than the lowest responsible bidder.
9. **COMPLIANCE WITH APPLICABLE LAWS, RULES, AND REQUIREMENTS.** The Recipient must, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and State laws, rules, guidelines, regulations, and requirements and with provisions of the adopted environmental mitigation plan, if any, for the useful life of the Project.
10. **COMPUTER SOFTWARE.** The Recipient certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
11. **CONFLICT OF INTEREST.** The Recipient certifies that it, its owners, officers, directors, agents, representatives, and employees are in compliance with applicable State and federal conflict of interest laws and will remain in compliance for the useful life of the Project. Any service provider or contractor with which the Recipient contracts must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances. Public entities are required to have adopted conflict of interest codes and may be required to provide documentation of those codes to the Division.
12. **DATA MANAGEMENT.** The Recipient will undertake appropriate data management activities so that Project data can be incorporated into statewide data systems.
13. **DEBARRED, DISQUALIFIED, OR EXCLUDED CONTRACTORS.** The Recipient must not contract or allow subcontracting with excluded parties. The Recipient must not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, the Recipient must not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml
14. **DRUG-FREE WORKPLACE.** The Recipient certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act (Gov. Code. §§ 8350-8357). The Recipient shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Recipient's workplace and specifying the actions to be taken against employees for violations of the prohibition. The Recipient shall establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the Recipient's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and penalties that may be imposed upon employees for drug abuse violations. The Recipient shall provide that

every employee who works on the Project receives a copy of the Recipient's drug-free workplace policy statement and agrees to abide by the terms of the statement as a condition of employment on the Project.

15. **ENVIRONMENTAL CLEARANCE.** No work that is subject to California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA) may proceed under this Agreement until the State Water Board has provided approval to proceed. Upon receipt and review of the Recipient's environmental documents, the State Water Board shall make the appropriate environmental findings before determining whether to approve construction or implementation funding for the Project under this Agreement. Providing approval for such construction or implementation funding is fully discretionary. The State Water Board may require changes in the scope of work or additional mitigation as a condition to providing construction or implementation funding under this Agreement. Recipient shall not perform any work subject to CEQA and/or NEPA before the State Water Board completes its environmental review and specifies any changes in scope or additional mitigation that may be required. Proceeding with work subject to CEQA and/or NEPA without approval by the State Water Board shall constitute a breach of a material provision of this Agreement. If this Project includes modification of a river or stream channel, the Recipient must fully mitigate environmental impacts resulting from the modification. The Recipient must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.
16. **FINAL REIMBURSEMENT REQUEST.** The Recipient agrees to ensure that its final Reimbursement Request is received by the Division no later than the Final Reimbursement Request Date, unless prior approval has been granted by the Division. If the final Reimbursement Request is not received timely, the undisbursed balance of this Agreement may be deobligated.
17. **FRAUD AND MISUSE OF PUBLIC FUNDS.** All requests for disbursement must be accurate and signed by the Recipient or its Authorized Representative under penalty of perjury. All costs submitted pursuant to this Agreement must only be for the work or tasks set forth in this Agreement. The Recipient must not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other cost is improper and will not be compensated. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements and, notwithstanding any other section in this Agreement, the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.
18. **FUNDING CONTINGENCY.** The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement. The State Water Board's obligation to disburse funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. If this Agreement's funding for any fiscal year expires due to reversion or is reduced, substantially delayed, or deleted by the Budget Act, by Executive Order, or by order or action of the Department of Finance, the State Water Board

has the option to either cancel this Agreement with no liability accruing to the State Water Board, or offer an amendment to the Recipient to reflect the reduced amount. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other entity. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

19. **GOVERNING LAW.** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
20. **RECIPIENT'S SHARE.** The Recipient agrees that it will provide for the payment of its full share, if any share is required, of Project Costs and that all costs connected with the Project will be timely paid by the Recipient.
21. **INDEMNIFICATION AND STATE REVIEWS.** The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the Project; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement, except those arising from the gross negligence or willful misconduct of the Indemnified Persons. The Recipient must also provide for the defense and indemnification of the Indemnified Persons in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and must cause the Indemnified Persons to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section survive the term of this Agreement.

22. **INDEPENDENT ACTOR.** The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State Water Board.
23. **INSPECTION.** Throughout the useful life of the Project, the State Water Board shall have the right to inspect the Project area to ascertain compliance with this Agreement.
24. **INTEGRATION.** This Agreement constitutes the complete and final agreement between the parties. No oral or written understanding or agreement not incorporated in this Agreement shall be binding on either party.
25. **LIENS.** The Recipient must not make any pledge of or place any lien on the Project or Project assets except upon consent of the Division.
26. **NO DISCRIMINATION.** The Recipient must comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project. If Project Funds are used to acquire or improve real property, the Recipient must include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property. The Recipient must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b). The Recipient's obligations under this section shall survive the term of this Agreement. During the performance of this Agreement, Recipient and its contractors and subcontractors must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status. The Recipient, its contractors, and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Recipient, its contractors, and subcontractors must comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Recipient, its contractors, and subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Recipient must include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
27. **NO THIRD-PARTY RIGHTS.** This Agreement creates no rights in and grants no remedies to any third party as a beneficiary of this Agreement.
28. **NO OBLIGATION OF THE STATE.** Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement.
29. **NON-WAIVER.** Nothing in this Agreement shall affect or impair the Recipient's obligation to undertake work under this Agreement or shall affect or impair the right of the State Water Board to bring suit to enforce such work. No delay or omission of the State Water Board in the exercise of any right arising upon an Event of Default shall impair any such right or be construed to be a

waiver of any such Event of Default. The State Water Board may exercise from time to time and as often as shall be deemed expedient by the State Water Board, any remedy or right provided by law or pursuant to this Agreement. Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

30. **OTHER FUNDING SOURCES; INCOME RESTRICTIONS.** If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient must notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's contribution to Project costs. To the extent allowed by requirements of other funding sources, excess funding must be remitted to the State Water Board. The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient as related to this Agreement must be paid by the Recipient to the State Water Board, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State Water Board under this Agreement.
31. **PERMITS AND AUTHORIZATIONS.** Recipient must procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses must be submitted to the Division before any construction or implementation begins.
- Any contractors, outside associates, or consultants required by the Recipient in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, or as are specifically authorized by the State Water Board's Project Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Project Manager.
32. **PREVAILING WAGES.** If applicable, the Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. If applicable, the Recipient must monitor all agreements subject to reimbursement from this Agreement to ensure that the applicable prevailing wage provisions of the State Labor Code are being met. Division of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's Public Works Manual at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>.
33. **PRIOR COSTS.** No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement.
34. **PROFESSIONALS.** The Recipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architectural, or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 5536.1, 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
35. **RECORDS, INSPECTION, AUDITS, AND INTERVIEWS; RECORDS RETENTION.** The Recipient must maintain separate books, records and other material relative to the Project and retain such books, records, subcontracts, and other material until at least the Records Retention End Date set forth on the Cover Page of this Agreement. The Recipient must require that such

books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Department of Finance, the California State Auditor, the Bureau of State Audits, or any authorized representatives of the aforementioned, including federal funding agencies and their auditors, if any. The Recipient must allow and must require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the term of this Agreement.

36. **RELATED LITIGATION.** Under no circumstances may the Recipient use funds from any reimbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to complete the Project funded by this Agreement or to repay all of the disbursed funds plus interest.
37. **REMEDIES.** The State Water Board may enforce its rights under this Agreement by any judicial proceeding, whether at law or in equity. None of the remedies available to the State Water Board shall be exclusive of any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. The State Water Board may exercise any remedy, now or hereafter existing, without exhausting and without regard to any other remedy. Any dispute of the Recipient is limited to the rights and remedies provided to the Recipient under this Agreement and is subject to the procedures provided to the Recipient under this Agreement.
38. **REPORTS - AS NEEDED.** The Recipient must provide expeditiously any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the State or federal government.
39. **RESPONSIBILITY FOR WORK.** The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for responding to any and all disputes arising out of its contracts for work on the Project, including, but not limited to, payment disputes with contractors and subcontractors. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.
40. **RIGHTS IN DATA.** The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the Recipient upon request. The Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement, subject to appropriate acknowledgement of credit to the State Water Board for financial support. The Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.

41. **STATE WATER BOARD ACTION; COSTS AND ATTORNEY FEES.** In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own costs and attorney fees.
42. **STATUS QUO.** If any action to enforce any right or exercise any remedy shall be brought and either discontinued or determined adversely to the State Water Board, then the State Water Board shall be restored to its former position, rights, and remedies as if no such action had been brought.
43. **TERMINATION, IMMEDIATE REPAYMENT, AND INTEREST:** This Agreement may be terminated by written notice at any time, at the option of the State Water Board, if:
- a. the Recipient has received funds as a result of a material misrepresentation in the funding application or other submitted document; or
 - b. upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board.

In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to the amount of Project Funds disbursed to the Recipient prior to such termination. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date of full repayment by the Recipient.

44. **TIMING.** Time is of the essence. The Recipient must expeditiously proceed with and complete the Project. Failure to proceed according to the timelines set forth in this Agreement may require the Recipient to repay to the State Water Board all disbursed Project Funds.
45. **TRAVEL AND PER DIEM.** No work or travel outside the State of California is permitted under this Agreement unless the Division provides prior written authorization. No work or travel outside the United States of America is authorized. Failure to comply with this restriction may constitute an Event of Default and result in termination of this Agreement. Any reimbursement for necessary travel and per diem shall be set pursuant to and at rates not to exceed those set by the California Department of Human Resources at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. as of the date costs are incurred by the Recipient.
46. **UNDISBURSED FUNDS.** The Recipient is not entitled to interest earned on undisbursed funds.
47. **UNENFORCEABLE PROVISION; SEVERABILITY.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
48. **UNION ACTIVITIES:** The Recipient hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Agreement. The Recipient certifies that none of the Project Funds will be used to assist, promote, or deter union organizing. If the Recipient incurs costs or makes expenditures to assist, promote, or deter union organizing, the Recipient will maintain records sufficient to show that no reimbursement from Project Funds has been sought for these costs and the Recipient shall provide those records to the Attorney General upon request.
49. **VENUE.** Any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.

50. **WAIVER AND RIGHTS OF THE STATE WATER BOARD.** Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.
51. **WATER CONSERVATION AND EFFICIENCY PROGRAMS:** The Recipient acknowledges that it has appropriate water conservation and efficiency programs in place, and that this provision constitutes a condition of this Agreement. A web link with examples of water conservation and efficiency programs is available at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation.shtml.
52. **WATER DIVERSION AND USE:** To the extent applicable, the Recipient has complied with, and shall continue to comply with, the requirements of Water Code, division 2, part 5.1, section 5100 et seq. for filing statements of water diversion and use.
53. **WITHHOLDING OF DISBURSEMENTS AND REIMBURSEMENTS.** Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the Project Funds upon the occurrence of any of the following events:
- a) Failure of the Recipient to maintain reasonable progress on the Project as determined by the Division;
 - b) Commencement of litigation or a judicial or administrative proceeding related to the Project, or Recipient that the State Water Board determines may impair the timely satisfaction of Recipient's obligations under this Agreement;
 - c) Any investigation by State, local, or federal investigators or auditors, or a grand jury, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
 - d) A material adverse change in the condition of the Recipient, or the Project, that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement;
 - e) The Recipient's material violation of, or threat to materially violate, any provision of this Agreement;
 - f) Suspicion of fraud, forgery, embezzlement, theft, or any other misuse of public funds by the Recipient or its employees, or by its contractors or agents directly or indirectly regarding the Project;
 - g) An event requiring notice under this Agreement; or
 - h) An Event of Default or an event that the Division determines may become an Event of Default.

EXHIBIT D – SPECIAL CONDITIONS

D.1 DEFINITIONS.

Each capitalized term used in this Agreement has the following meaning:

- “Authorized Representative” means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient’s authorizing resolution that designates the authorized representative by title.
- “Eligible Work Start Date” means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any costs may be incurred and eligible for reimbursement hereunder.
- “Enterprise Fund” means the enterprise fund of the Recipient in which Revenues are deposited.
- “Event of Default” means, in addition to the meanings set forth in Exhibit C, the occurrence of any of the following events:
 - a) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient’s ability to satisfy its obligations under this Agreement.
 - b) The occurrence of a material breach or event of default under any Recipient obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption, or that the Division determines would materially impair the Recipient’s ability to satisfy its obligations under this Agreement.
- “Indirect Costs” means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.
- “Net Revenues” means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.
- “Operations and Maintenance Costs” means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.
- “Policy” means the State Water Board’s “Policy for Implementing the Clean Water State Revolving Fund,” as amended from time to time, including the Intended Use Plan in effect as of the execution date of this Agreement.
- “Revenues” means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever

derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

- "System" means all wastewater collection, pumping, transport, treatment, storage, and disposal facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.

D.2 ADDITIONAL REPRESENTATIONS AND WARRANTIES.

The Recipient represents, warrants, and covenants each of the following:

- a) The Recipient has not made any untrue statement of a material fact in its application for this financial assistance or omitted to state in its application a material fact that makes the statements in its application not misleading.
- b) The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.
- c) The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date of execution of this Agreement by the Recipient, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date of execution of this Agreement by the Recipient.
- d) There are, as of the date of execution of this Agreement by the Recipient, no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency that materially affect the financial condition or operations of the Recipient, the Revenues, and/or the Project.
- e) There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain any of the real or personal property related to or necessary for the Project.
- f) The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.
- g) Any financial statements or other financial documentation of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements or other financial documentation: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements or other financial documentation, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements or other financial documentation been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.

- h) The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.
- i) The Recipient has no conflicting or Material Obligations.
- j) The Recipient has sufficient real or personal property rights necessary for the purposes of this Agreement, not subject to third party revocation, which rights extend at least to the Records Retention End Date of this Agreement, except as disclosed to the State Water Board. The Recipient has disclosed to the State Water Board all proceedings, actions, or offers of which the Recipient has knowledge or belief that may in any way affect the Recipient's ability to access or legally possess all of the property necessary for the purpose of this Agreement, including any proceedings, actions, or offers to lease, purchase, or acquire by eminent domain any of the real or personal property related to or necessary for the Project.
- k) The Recipient and its principals, contractors, and subcontractors, to the best of the Recipient's knowledge and belief, are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized; nor have they engaged or permitted the performance of services covered by this Agreement from parties that are debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized.

D.3 ACKNOWLEDGEMENTS.

The Recipient must include the following acknowledgement in any document, written report, or brochure to be shared with the general public prepared in whole or in part pursuant to this Agreement:

- "Funding for this project has been provided in full or in part under the Clean Water State Revolving Fund, which may include capitalization funding from the United States Environmental Protection Agency through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

D.4 RATES, FEES, AND CHARGES.

The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are in an amount necessary to meet its obligations under this Agreement. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.

D.5 ENVIRONMENTAL AND TECHNICAL SPECIAL CONDITIONS.

The Recipient agrees to the following environmental conditions:

- The Recipient shall submit all final California Environmental Quality Act (CEQA) documents and notices for the construction project to the Governor's Office of Planning and Research, State

Clearinghouse or coordinate with the CEQA lead agency to do so. A copy of all such CEQA documents and notices shall be submitted to the Division via the Financial Assistance Application Submittal Tool (FAAST).

- The Recipient shall submit to the Division a Biological Assessment Report or an updated previously prepared Biological Assessment Report for the construction project that meets the requirements of Section 7 of the Endangered Species Act (ESA) for the purposes of initiating consultation with the United States Fish and Wildlife Service and/or the National Marine Fisheries Service. This condition applies to all projects that receive Clean Water State Revolving Fund funding and other projects at the discretion of the Division. For applicability of this condition and further guidance on Section 7, ESA requirements contact Division's Environmental Review Staff and/or the Project Manager.
- The Recipient shall submit to the Division a Historic Properties Identification Report (HPIR) for the construction project or an updated previously prepared HPIR, authored by a qualified archaeologist that meets the requirements of Section 106 of the National Historic Preservation Act (NHPA) for the purposes of initiating consultation with the Office of Historic Preservation. This condition applies to all projects that receive Clean Water State Revolving Fund funding and other projects at the discretion of the Division. For applicability of this condition and further guidance on Section 106, NHPA requirements contact Division's Environmental Review Staff and/or the Project Manager.
- During the term of this planning Agreement, the Recipient shall request approval of any change(s) to the Scope of Work of the construction project before making those changes. Thereafter, the Division shall notify the Recipient whether additional environmental review is necessary as a result of the change(s).
- The Recipient shall not initiate any ground disturbing/construction activities unless and until the environmental review process is complete and all applicable notices are filed by the Recipient in its capacity as the CEQA Lead Agency.

The Recipient agrees to the following technical condition:

- The Recipient shall not begin work on engineering design (beyond the 10% level), environmental documents, governance structure and agency agreements, easement identification, or permits and related studies until written authorization is given by the Division's Project Manager for each specific task. A selected construction project receiving such written authorization is referred to herein as the "Selected Construction Project". Authorization can be withheld at the discretion of the Division.

D.6 RETURN OF FUNDS.

Notwithstanding any other provision of this Agreement, if the Division determines that an Event of Default has occurred, the Recipient may be required, upon demand, to immediately return to the State Water Board any grant or principal forgiveness amounts received pursuant to this Agreement and pay interest at the highest legal rate on all of the foregoing.

D.7 INSURANCE.

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same must be completed and the System must be free and clear of all claims and liens.

D.8 NOTICE.

Upon the occurrence of any of the following events, the Recipient must notify the Division's Deputy Director and Party Contacts promptly by phone and email:

- i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
- ii. Change of ownership of the Project (no change of ownership may occur without written consent of the Division);
- iii. Loss, theft, damage, or impairment to Project;
- iv. Events of Default, except as otherwise set forth in this section;
- v. A proceeding or action by a public entity to acquire the Project by power of eminent domain.
- vi. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity or the Recipient's continued existence, or any judgment or court order relating to such litigation that has a material effect on the Project or the System;
- vii. Consideration of dissolution, or disincorporation;
- viii. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
- ix. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this funding, or in any certification, report, or request for reimbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
- x. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the

proposed change has been provided to the Division and the Division has given written approval for the change;

- xi. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Work Completion for a period of ninety (90) days or more;
- xii. The Recipient must promptly notify the Division and Party Contacts of the discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during implementation of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- xiii. Any Project monitoring, demonstration, or other implementation activities required in this Agreement;
- xiv. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
- xv. Any event requiring notice to the Division pursuant to any other provision of this Agreement;
- xvi. Work Completion, and Project Completion.

D.9 FRAUD, WASTE, AND ABUSE.

The Recipient shall prevent fraud, waste, and the abuse of Project Funds, and shall cooperate in any investigation of such activities that are suspected in connection with this Agreement. The Recipient understands that discovery of any evidence of misrepresentation or fraud related to Reimbursement Requests, invoices, proof of payment of invoices, or other supporting information, including but not limited to double or multiple billing for time, services, or any other eligible cost, may result in an administrative action by the State Water Board and/or referral to the Attorney General's Office or the applicable District Attorney's Office for appropriate action. The Recipient further understands that any suspected occurrences of false claims, misrepresentation, fraud, forgery, theft or any other misuse of Project Funds may result in withholding of reimbursements and/or the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder. A person who knowingly makes or causes to be made any false statement, material misrepresentation, or false certification in any submittal may be subject to a civil penalty, criminal fine, or imprisonment. (Wat. Code, § 13490 et seq.)

D.10 DISPUTES.

The Recipient must continue with the responsibilities under this Agreement during any dispute. The Recipient may, in writing, appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute. This provision does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final

the decision of the State Water Board, or any official or representative thereof, on any question of law. This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

D.11 EXECUTIVE ORDER N-6-22 — RUSSIAN SANCTIONS.

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State Water Board determine Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. The State Water Board shall provide Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State Water Board.

The Recipient represents that the Recipient is not a target of economic sanctions imposed in response to Russia’s actions in Ukraine imposed by the United States government or the State of California. The Recipient is required to comply with the economic sanctions imposed in response to Russia’s actions in Ukraine, including with respect to, but not limited to, the federal executive orders identified in California Executive Order N-6-22, located at <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf> and the sanctions identified on the United States Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>). The Recipient is required to comply with all applicable reporting requirements regarding compliance with the economic sanctions, including, but not limited to, those reporting requirements set forth in California Executive Order N-6-22 for all Recipients with one or more agreements with the State of California with an aggregated value of Five Million Dollars (\$5,000,000) or more. Notwithstanding any other provision in this Agreement, failure to comply with the economic sanctions and all applicable reporting requirements may result in termination of this Agreement.

For Recipients with an aggregated agreement value of Five Million Dollars (\$5,000,000) or more with the State of California, reporting requirements include, but are not limited to, information related to steps taken in response to Russia’s actions in Ukraine, including but not limited to:

1. Desisting from making any new investments or engaging in financial transactions with Russian institutions or companies that are headquartered or have their principal place of business in Russia;
2. Not transferring technology to Russia or companies that are headquartered or have their principal place of business in Russia; and
3. Direct support to the government and people of Ukraine.

D.12 STATE CROSS-CUTTERS.

Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following with respect to all Project Costs for the term of this Agreement:

- The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.

- Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
- Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
- Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
- Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
- Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
- Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.
- The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with directives or orders issued pursuant to Division 7 of the Water Code.
- Regulations in Division 4 of Title 22 of the California Code of Regulations, including but not limited to California Waterworks Standards in Chapter 16, and Lead and Copper regulations in Chapter 17.5.

D.13 DAMAGES FOR BREACH OF FEDERAL CONDITIONS

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

D.14 ACCESS AND INSPECTION.

In addition to the obligations set forth in section 2 of the General Terms and Conditions incorporated in Exhibit C of this Agreement, the Recipient must ensure that the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during the term of the Agreement.

D.15 FINANCIAL MANAGEMENT SYSTEMS.

The Recipient must comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient is bound by, and must comply with, the provisions and requirements of the federal Single Audit Act (SAA) of 1984, 2 CFR part 200, subpart F, and 2 CFR section 200.302, and updates or revisions, thereto, including but not limited to:

- Maintain an annual (Fiscal Year) accounting system and identify all expenditures of federal financial assistance;
- Conduct a SAA audit using an independent auditor in those Fiscal Years when expenditures of total federal financial assistance equal or exceed \$750,000, and submit the SAA audit to the Federal Audit Clearinghouse within the earlier of thirty (30) calendar days after receipt of the auditor's report(s) or nine (9) months of the end of the audit period;
- Notify the Division when a SAA audit has been conducted and submitted to the Federal Audit Clearinghouse;
- Notify and provide the Division with a copy of the SAA audit within thirty (30) days of completion of the audit;
- Inform the Division of findings and recommendations pertaining to federal financial assistance provided through the State Water Board contained in SAA audits conducted by the Recipient;
- Initiate corrective actions for audit reports with findings and recommendations that impact federal financial assistance provided through the State Water Board and notify the Division when corrective actions are complete.

D.16 FEDERAL CROSS-CUTTERS.

The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions with respect to all Project Costs for the term of this Agreement:

- i. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- ii. The Recipient does not anticipate any construction is necessary to complete the Project, and no construction activities may occur without the Division's approval. If the Project does include construction, the Recipient agrees to comply with the Davis-Bacon provisions, and must include in full the Wage Rate Requirements (Davis-Bacon) language provided by the Division in all construction contracts and subcontracts.

- iii. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- iv. The Recipient shall comply with applicable USEPA general terms and conditions found at <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2022-or-later>.
- v. No Recipient may receive funding under this Agreement unless it has provided its Unique Entity Identifier, assigned by the System for Award management, to the State Water Board.
- vi. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
- vii. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- viii. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- ix. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://Edison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.
- x. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Acknowledgment statement set forth in Exhibit D.
- xi. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- xii. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of

its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing.

- xiii. The Recipient certifies to the best of its knowledge and belief that:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.

The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks reimbursement under this Agreement.

- xiv. The Recipient must comply with the following federal non-discrimination requirements:
- a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
 - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
 - c. The Age Discrimination Act of 1975, which prohibits age discrimination.
 - d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
 - e. 40 CFR Part 7, as it relates to the foregoing.
 - f. Executive Order 13798, including, to the greatest extent practicable and to the extent permitted by law, the requirement to respect and protect the freedom of persons and organizations to engage in political and religious speech.
 - g. All applicable federal civil rights regulations, including statutory and national policy requirements (2 CFR section 200.300).
- xv. If the Project relates to construction of a publicly owned treatment works, where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
- xvi. Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

"During the performance of this contract, the contractor agrees as follows: (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(d) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(g) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

- xvii. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises.
- xviii. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the

violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: sam.gov

- xix. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- xx. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- xxi. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at www.fgdc.gov.
- xxii. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- xxiii. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
- xxiv. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with USEPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
- xxv. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, USEPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.

The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the USEPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in USEPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.

- xxvi. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.

xxvii. The Recipient certifies that no Project Funds will be used on:

- a. Video surveillance or telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- b. Telecommunications or video surveillance services produced by such entities;
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country; or
- d. Other telecommunications or video surveillance services or equipment in violation of [2 CFR 200.216](#).

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

In compliance with this RFQ # **10951**, which uses Federal Highway Administration (FHWA) funds, the CONTRACTOR (also referred to as “Consultant”) will be required to comply with Federal Provisions. Federal Provisions, Exhibit A, attached hereto, shall be completed by CONTRACTOR (Consultant) and submitted to COUNTY (also referred to as “Local Agency”) for approval prior to COUNTY (Local Agency) issuing a Notice to Proceed for the Project to CONTRACTOR (Consultant).

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

Table of Contents

Article I - Introduction	3
Article II Contractor's Reports or Meetings	4
Article III Statement of Work.....	5
Article IV Performance Period.....	6
Article V Allowable Costs and Payments	6
Article VI Termination	11
Article VII Cost Principles and Administrative Requirements	12
Article VIII Retention of Records/Audit	12
Article IX Audit Review Procedures	12
Article X Subcontracting.....	14
Article XI Equipment Purchase and Other Capital Expenditures	16
Article XII State Prevailing Wage Rates.....	17
Article XIII Conflict of Interest	20
Article XIV Rebates, Kickbacks or Other Unlawful Consideration.....	21
Article XV Prohibition of Expending County, State, or Federal Funds for Lobbying.....	21
Article XVII Debarment and Suspension Certification	23
Article XVIII Disadvantaged Business Enterprises (DBE) Participation.....	23
Article XIX Insurance	29
Article XX Funding Requirements	30
Article XXI Change in Terms.....	30
Article XXI Contingent Fee	31
Article XXII Disputes.....	31
Article XXIV Inspection of Work.....	31
Article XXVI Ownership of Data	32
Article XXVII Claims Filed by County's Construction Contractor	33
Article XXVIII Confidentiality of Data	33
Article XXIX National Labor Relations Board Certification	34
Article XXX Evaluation of Contractor.....	34
Article XXXI Prompt Payment	34
ARTICLE XXXII TITLE VI ASSURANCES	34
ARTICLE XXXIII NOTIFICATION.....	39
ARTICLE XXXIII AGREEMENT.....	39
ARTICLE XXXIV SIGNATURES	39
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL FORMS	41

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

Article I - Introduction

- A. This AGREEMENT is between the following named, hereinafter referred to as, CONTRACTOR and the following named, hereinafter referred to as, COUNTY:

The name of the "CONTRACTOR" is as follows:

Incorporated in the State of California

The Project Manager for the "CONTRACTOR" will be:

The name of the COUNTY is as follows:

County of Monterey
Department of Public Works, Facilities and Parks
1441 Schilling Place, South 2nd Floor
Salinas, CA 93901-4527

The Project Manager for COUNTY will be:

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONTRACTOR's Cost Proposal dated (month, date, year). The approved CONTRACTOR's Cost Proposal is attached hereto **(Exhibit A- Payment Provisions)** and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONTRACTOR agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless COUNTY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONTRACTOR, except such loss or damage which was caused by the sole negligence, or willful misconduct of COUNTY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONTRACTOR in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor, and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR's assigned personnel shall not be entitled to any benefits payable to employees of COUNTY.

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

- E. COUNTY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONTRACTOR's assigned personnel. CONTRACTOR, in the performance of its obligation hereunder, is only subject to the control or direction of the COUNTY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third-party person(s) employed by CONTRACTOR shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. CONTRACTOR hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.
- G. Except as expressly authorized herein, CONTRACTOR 's obligations under this AGREEMENT are not assignable or transferable, and CONTRACTOR shall not subcontract any work, without the prior written approval of the COUNTY. However, claims for money due or which become due to CONTRACTOR from COUNTY 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 COUNTY.
- H. CONTRACTOR shall be as fully responsible to the COUNTY for the negligent acts and omissions of its contractors and subconsultants or subcontractors, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONTRACTOR.
- I. 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.
- J. The consideration to be paid to CONTRACTOR as provided herein, shall be in compensation for all of CONTRACTOR's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

Article II Contractor's Reports or Meetings
(Choose either Option 1 or Option 2)

☒ (Option 1 – Use Paragraphs A & B below for standard AGREEMENT)

- A. CONTRACTOR shall submit progress reports at least once a month. The report should be sufficiently detailed for the COUNTY's Contract Administrator to determine, if CONTRACTOR 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.
- B. CONTRACTOR's Project Manager shall meet with COUNTY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

☐ (Option 2 – Use Paragraphs A & B below for ON-CALL AGREEMENTS)

- A. CONTRACTOR shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

COUNTY's Contract Administrator or Project Coordinator to determine, if CONTRACTOR 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.

- B. CONTRACTOR's Project Manager shall meet with COUNTY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

Article III Statement of Work

(Insert Appropriate Statement of Work including a Description of the Deliverables) *in the following sections. If a section does not apply to the AGREEMENT, state "Not Applicable to this AGREEMENT."*)

- A. CONTRACTOR Services ☐ Not Applicable to this Agreement
Detail based on the services to be furnished should be provided by CONTRACTOR. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in CONTRACTOR AGREEMENT should be included. Describe acceptance criteria, and if the responsible CONTRACTOR/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the AGREEMENT including registration number.

Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the Finding of No Significant Impact (FONSI), or the Caltrans District Director signs the Record of Decision (see LAPM Chapter 6: Environmental Procedures, and the Standard Environmental Reference).
- B. Right of Way ☐ Not Applicable to this Agreement
State whether Right of Way requirements to be determined and shown by CONTRACTOR, whether land surveys and computations with metes and bounds descriptions are to be made, and whether Right of Way parcel maps are to be furnished.
- C. Surveys ☐ Not Applicable to this Agreement
State whether or not the CONTRACTOR has the responsibility for performing preliminary or construction surveys.
- D. Subsurface Investigations ☐ Not Applicable to this Agreement
State specifically whether or not CONTRACTOR has the responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of CONTRACTOR, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in the Standard Environmental Reference.
- E. COUNTY (LOCAL AGENCY) Obligations ☐ Not Applicable to this Agreement
All data applicable to the project and in possession of COUNTY (local agency), another agency, or government agency that are to be made available to CONTRACTOR are referred to in the AGREEMENT. Any other assistance or services to be furnished to CONTRACTOR are to be stated clearly.
- F. Conferences, Site Visits, Inspection of Work ☐ Not Applicable to this Agreement
This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

representatives of the COUNTY, State, and/or FHWA. Costs incurred by CONTRACTOR for meetings, subsequent to the initial meeting shall be included in the fee.

- G. Checking Shop Drawings ☐ Not Applicable to this Agreement
For AGREEMENTS requiring the preparation of construction drawings, and make provision for checking shop drawings. Payment for checking shop drawings by CONTRACTOR is included in the AGREEMENT fee, or provision may be made for separate payment.
- H. CONTRACTOR Services During Construction ☐ Not Applicable to this Agreement
The extent, if any of CONTRACTOR's services during the course of construction as material testing, construction surveys, etc., are specified in the AGREEMENT together with the method of payment for such services.
- I. Documentation and Schedules ☐ Not Applicable to this Agreement
AGREEMENTS where appropriate, shall provide that CONTRACTOR document the results of the work to the satisfaction of COUNTY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the AGREEMENT objectives.
- J. Deliverables and Number of Copies ☐ Not Applicable to this Agreement
The number of copies or documents to be furnished such as reports, brochures, sets of plans, specifications, or Right of Way parcel maps *shall be specified*. Provision may be made for payment for additional copies.

Article IV Performance Period

A time must be set for beginning and ending the work under the AGREEMENT. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the AGREEMENT. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by CONTRACTOR, they should be identified and incorporated into the AGREEMENT.

- A. This AGREEMENT shall go into effect on (month, date, year), contingent upon approval by COUNTY, and CONTRACTOR shall commence work after notification to proceed by COUNTY Contract Administrator. The AGREEMENT shall end on (month, date, year), unless extended by AGREEMENT amendment.
- B. CONTRACTOR is advised that any recommendation for AGREEMENT award is not binding on COUNTY until the AGREEMENT is fully executed and approved by COUNTY.

Use paragraph C below in addition to paragraphs A & B above for on-call AGREEMENTS. On-call AGREEMENTS shall be five (5) years maximum.

- C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the AGREEMENT to cover the time needed to complete the task order in progress only. The maximum term shall not exceed five (5) years.

Article V Allowable Costs and Payments

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

(Choose either Option 1, 2, 3, or 4)

☒ *(Option 1 - Use paragraphs A through K below for Cost-Plus-Fixed Fee AGREEMENTS. Use Exhibit10-H1: Cost Proposal Format)*

- A. The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. COUNTY will reimburse CONTRACTOR for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONTRACTOR in performance of the work. CONTRACTOR will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONTRACTOR's Cost Proposal, unless additional reimbursement is provided for by AGREEMENT amendment. In no event, will CONTRACTOR be reimbursed for overhead costs at a rate that exceeds COUNTY's approved overhead rate set forth in the Cost Proposal. In the event, that COUNTY determines that a change to the work from that specified in the Cost Proposal and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by COUNTY shall be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I" of this Article shall not be exceeded, unless authorized by AGREEMENT amendment.
- B. The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT. CONTRACTOR's agreement to the extension of the one (1)-year applicable period shall not be a condition or qualification to be considered for the work or AGREEMENT award.
- C. In addition to the allowable incurred costs, COUNTY will pay CONTRACTOR a fixed fee of \$_____. 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.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- E. When milestone cost estimates are included in the approved Cost Proposal, CONTRACTOR shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONTRACTOR's fixed fee will be included in the monthly progress payments. If CONTRACTOR fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, COUNTY shall have the right to delay payment or terminate this AGREEMENT.
- G. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- H. CONTRACTOR will be reimbursed, promptly according to California Regulations upon receipt by COUNTY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONTRACTOR is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title.

Caltrans Released May 2023
MJW Approved 9/8/23

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

Final invoice must contain the final cost and all credits due COUNTY including any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of CONTRACTOR's work. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:

County of Monterey
Department of Public Works, Facilities and Parks
1441 Schilling Place, South 2nd Floor
Salinas, CA 93901-4527
Attn: Finance Division

I. The total amount payable by COUNTY including the fixed fee shall not exceed \$_____.

J. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

☐ *(Option 2 - For Cost per Unit of Work AGREEMENTS, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and re-letter the remaining paragraphs. Adjust as necessary for workspecific to your project. Use Exhibit 10-H3: Cost Proposal Format).*

A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONTRACTOR for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed, therefore.

B. The specified rate to be paid for vehicle expense for CONTRACTOR's field personnel shall be \$_____ per approved Cost Proposal. This rate shall be for a fully equipped vehicle(s) specified in Article III Statement of Work, as applicable the specified rate to be paid for equipment shall be, as listed in the approved Cost Proposal.

C. The method of payment for this AGREEMENT, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. COUNTY will reimburse CONTRACTOR for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONTRACTOR in performance of the work. CONTRACTOR will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by AGREEMENT amendment. In no event, will CONTRACTOR be reimbursed for overhead costs at a rate that exceeds COUNTY approved overhead rate set forth in the approved Cost Proposal. In the event, COUNTY determines that changed work from that specified in the approved Cost Proposal and AGREEMENT is required; the actual costs reimbursable by COUNTY may be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I," of this article shall not be exceeded unless authorized by AGREEMENT amendment.

☐ ***(Option 3 - Use paragraphs A through P for Specific Rates of Compensation Agreements [such as on-call Agreements]. This payment method shall only be used when it is not possible at the time of procurement to***

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. The specific rates of compensation payment method should be limited to AGREEMENTS or components of AGREEMENTS for specialized or support type services where the CONTRACTOR is not in direct control of the number of hours worked, such as construction engineering and inspection. Use Exhibit 10-H2: Cost Proposal Format).

- A. CONTRACTOR will be reimbursed for hours worked at the hourly rates specified in CONTRACTOR's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONTRACTOR will be reimbursed within thirty (30) calendar days upon receipt by COUNTY's Contract Administrator of itemized invoices in duplicate.
- B. In addition, CONTRACTOR will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved cost proposal and in the executed Task Order.
- C. Specific projects will be assigned to CONTRACTOR through issuance of Task Orders.
- D. After a project to be performed under this AGREEMENT is identified by COUNTY, COUNTY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a COUNTY Project Coordinator. The draft Task Order will be delivered to CONTRACTOR for review. CONTRACTOR shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both COUNTY and CONTRACTOR.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONTRACTOR's approved Cost Proposal.

CONTRACTOR shall be responsible for any future adjustments to prevailing wage rates including but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONTRACTOR is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.

- F. *(COUNTY to include either (a) or (b) below; delete the other one (1))*
 - (a) Reimbursement for transportation and subsistence costs shall not exceed State rates.
 - (b) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONTRACTOR will be responsible for transportation and subsistence costs in excess of State rates.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONTRACTOR shall obtain

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONTRACTOR shall not commence performance of work or services until this AGREEMENT has been approved by COUNTY, and notification to proceed has been issued by COUNTY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- J. A Task Order is of no force or effect until returned to COUNTY and signed by an authorized representative of COUNTY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by COUNTY.
- K. CONTRACTOR will be reimbursed, within thirty (30) days upon receipt by COUNTY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONTRACTOR is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, project title and Task Order number. Credits due COUNTY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONTRACTOR prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:

County of Monterey
Department of Public Works, Facilities and Parks
1441 Schilling Place, South 2nd Floor
Salinas, CA 93901-4527
Attn: Finance Division
- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.
- M. The total amount payable by COUNTY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- N. If CONTRACTOR fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend the language (or terms) of this AGREEMENT nor to exceed the scope of work under this AGREEMENT.
- P. The total amount payable by COUNTY for all Task Orders resulting from this AGREEMENT shall not exceed \$ It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

☐ (Option 4 - Use paragraphs A through E below for lump sum AGREEMENTS. Use Exhibit 10-H1: CostProposal Format)

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to CONTRACTOR will include compensation for all work and deliverables, including travel and equipment described in Article III Statement of Work. No additional compensation will be paid to CONTRACTOR, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONTRACTOR and COUNTY. Adjustment in the total lump sum compensation will not be effective until authorized by contract amendment and approved by COUNTY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONTRACTOR. If CONTRACTOR fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, COUNTY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONTRACTOR shall not commence performance of work or services until this AGREEMENT has been approved by COUNTY and notification to proceed has been issued by COUNTY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- D. CONTRACTOR will be reimbursed within thirty (30) days upon receipt by County's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONTRACTOR is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due COUNTY that include any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of CONTRACTOR's work unless a later date is approved by County. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:

County of Monterey
Department of Public Works, Facilities and Parks
1441 Schilling Place, South 2nd Floor
Salinas, CA 93901-4527
Attn: Finance Division

- E. The total amount payable by COUNTY shall not exceed \$_____.

Article VI Termination

- A. This AGREEMENT may be terminated by COUNTY, provided that COUNTY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, COUNTY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings, and data estimates performed to that date, whether completed or not.

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

- B. COUNTY may temporarily suspend this AGREEMENT, at no additional cost to COUNTY, provided that CONTRACTOR is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If COUNTY gives such notice of temporary suspension, CONTRACTOR 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, CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this AGREEMENT by CONTRACTOR, and COUNTY may withhold any payments due to CONTRACTOR until such time as exact amount of damages, if any, due COUNTY from CONTRACTOR is determined.
- D. In the event of termination, CONTRACTOR shall be compensated as provided for in this AGREEMENT. Upon termination, COUNTY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings, and data estimates performed to that date, whether completed or not.

Article VII Cost Principles and Administrative Requirements

- A. CONTRACTOR agrees that 48 CFR Part 31, Contract Cost Principles and Procedures shall be used to determine the allowability of individual terms of cost.
- B. CONTRACTOR 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 CONTRACTOR that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by CONTRACTOR to COUNTY.
- D. When a CONTRACTOR or subcontractor 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.

Article VIII Retention of Records/Audit

For the purpose of determining compliance with Government Code §8546.7, the CONTRACTOR, subcontractors, and COUNTY shall maintain 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 CONTRACTOR's Independent CPA, shall make such workpapers and 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. COUNTY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal Government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of CONTRACTOR, subcontractor and the CONTRACTOR's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

Article IX Audit Review Procedures

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

is not disposed of by AGREEMENT, shall be reviewed by COUNTY’S Chief Financial Officer.

- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONTRACTOR may request a review by COUNTY’S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by COUNTY will excuse CONTRACTOR from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONTRACTOR and subcontractor AGREEMENTS, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal 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 work paper review, it is CONTRACTOR’S responsibility to ensure federal, state, COUNTY or local government officials are allowed full access to the CPA’s work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONTRACTOR and approved by COUNTY Contract Administrator to conform to the audit or review recommendations. CONTRACTOR agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by COUNTY at its sole discretion. Refusal by CONTRACTOR to incorporate audit or review recommendations, or to ensure that the federal, COUNTY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONTRACTOR’S Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONTRACTOR and approved by the COUNTY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONTRACTOR 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 CONTRACTOR’S independent CPA, IOAI will work with the CPA and/or CONTRACTOR 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, COUNTY will reimburse the CONTRACTOR at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR, Part 31; GAGAS (Generally Accepted Government 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.

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

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 CONTRACTOR 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 CONTRACTOR's and/or the independent CPA's revisions.
 3. If the CONTRACTOR 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. CONTRACTOR may submit to COUNTY 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 COUNTY; and, (3) IOAI has issued its final ICR review letter. The CONTRACTOR MUST SUBMIT ITS FINAL INVOICE TO COUNTY 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 COUNTY and the CONTRACTOR, either as a prime or subcontractor, with the same fiscal period ICR.

Article X Subcontracting

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the COUNTY and any subcontractor(s), and no subagreement shall relieve the CONTRACTOR of its responsibilities and obligations hereunder. The CONTRACTOR agrees to be as fully responsible to the COUNTY for the acts and omissions of its subcontractor(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 the CONTRACTOR. The CONTRACTOR's obligation to pay its subcontractor(s) is an independent obligation from the COUNTY's obligation to make payments to the CONTRACTOR.
- B. CONTRACTOR shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by COUNTY's Contract Administrator, except that, which is expressly identified in the CONTRACTOR's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to subcontractors unless otherwise noted.
- D. CONTRACTOR shall pay its subcontractors within fifteen (15) calendar days from receipt of each payment

Caltrans Released May 2023
MJW Approved 9/8/23

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

made to the CONTRACTOR by the COUNTY.

- E. Any substitution of subcontractor(s) must be approved in writing by COUNTY's Contract Administrator in advance of assigning work to a substitute subcontractor(s).

F. Prompt Progress Payment

CONTRACTOR or subcontractor shall pay to any subcontractor, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONTRACTOR on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONTRACTOR or subcontractor to a subcontractor, CONTRACTOR or subcontractor may withhold no more than one hundred fifty percent (150%) of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of two percent (2%) percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subcontractors.

G. Prompt Payment of Withheld Funds to subcontractors

The COUNTY may hold retainage from CONTRACTOR and shall make prompt and regular incremental acceptances of portions, as determined by the COUNTY, of the contract work, and pay retainage to CONTRACTOR based on these acceptances. The COUNTY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONTRACTOR or subcontractor to a subcontractor. (Choose either Method 1, Method 2, or Method 3 below and delete the other two (2).)

☐ **Method 1:** No retainage will be held by the COUNTY from progress payments due to CONTRACTOR. CONTRACTORS and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the COUNTY's prior written approval. Any violation of these provisions shall subject the violating CONTRACTOR or subcontractor to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONTRACTOR or subcontractor in the event of a dispute involving late payment or nonpayment by CONTRACTOR, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

☐ **Method 2:** No retainage will be held by the COUNTY from progress payments due to CONTRACTOR. Any retainage kept by CONTRACTOR or by a subcontractor must be paid in full to the earning subcontractor within fifteen (15) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the COUNTY's prior written approval. Any violation of these provisions shall subject the violating CONTRACTOR or subcontractor to the penalties, sanctions, and remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONTRACTOR or subcontractor in the event of a dispute involving late payment or

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

nonpayment by CONTRACTOR, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

☐ **Method 3:** The COUNTY shall hold retainage from CONTRACTOR and shall make prompt and regular incremental acceptances of portions, as determined by the COUNTY of the contract work and pay retainage to CONTRACTOR based on these acceptances. CONTRACTOR or subcontractor shall return all monies withheld in retention from all subcontractors within fifteen (15) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the COUNTY. Any delay or postponement of payment may take place only for good cause and with the COUNTY's prior written approval. Any violation of these provisions shall subject the violating CONTRACTOR or subcontractor to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to CONTRACTOR or subcontractor in the event of a dispute involving late payment or nonpayment by CONTRACTOR; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors. Any violation of these provisions shall subject the violating CONTRACTOR or subcontractor to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONTRACTOR or subcontractor in the event of a dispute involving late payment or nonpayment by CONTRACTOR, deficient subcontract performance, or noncompliance by a subcontractor.

Article XI Equipment Purchase and Other Capital Expenditures

- A. Prior authorization in writing, by COUNTY's Contract Administrator shall be required before CONTRACTOR enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONTRACTOR services. CONTRACTOR shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONTRACTOR's approved Cost Proposal and exceeding five thousand dollars (\$5,000) with prior authorization by COUNTY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
 - 1. CONTRACTOR shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONTRACTOR may either keep the equipment and credit COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit COUNTY in an amount equal to the sales price. If CONTRACTOR elects to keep the equipment, fair market value shall be determined at CONTRACTOR's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by COUNTY and CONTRACTOR, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY.

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

Article XII State Prevailing Wage Rates

- A. No CONTRACTOR or subcontractor may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONTRACTOR shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at COUNTY construction sites, at COUNTY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve COUNTY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
 1. Each CONTRACTOR and subcontractor shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONTRACTOR or subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONTRACTOR under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by COUNTY representatives at all reasonable hours at the principal office of the CONTRACTOR. The CONTRACTOR shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

- b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONTRACTOR.
 - c. The public shall not be given access to certified payroll records by the CONTRACTOR. The CONTRACTOR is required to forward any requests for certified payrolls to the COUNTY Contract Administrator by both email and regular mail on the business day following receipt of the request.
- 3. Each CONTRACTOR shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
- 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by COUNTY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONTRACTOR or subcontractor performing the work shall not be marked or obliterated.
- 5. The CONTRACTOR shall inform COUNTY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
- 6. The CONTRACTOR or subcontractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONTRACTOR or subcontractor fails to comply within the ten (10) day period, he or she shall, as a penalty to COUNTY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by COUNTY from payments then due. CONTRACTOR is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
- E. When prevailing wage rates apply, the CONTRACTOR is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the COUNTY Contract Administrator.
- F. Penalty
 - 1. The CONTRACTOR and any of its subcontractor shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONTRACTOR and any Subcontractor shall forfeit to the COUNTY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the contract by the CONTRACTOR or by its subcontractor in violation of the requirements of the Labor Code

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

and in particular, Labor Code §§1770 to 1780, inclusive.

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONTRACTOR or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the CONTRACTOR or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by the CONTRACTOR or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONTRACTOR or subcontractor had knowledge of the obligations under the Labor Code. The CONTRACTOR is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONTRACTOR or subcontractor.
4. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime CONTRACTOR of the project is not liable for the penalties described above unless the prime CONTRACTOR had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime CONTRACTOR fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONTRACTOR and the subcontractor for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONTRACTOR shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees by periodic review of the certified payroll records of the subcontractor.
 - c. Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, the CONTRACTOR shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.
 - d. Prior to making final payment to the subcontractor for work performed on the public works project, the CONTRACTOR shall obtain an affidavit signed under penalty of perjury from the Subcontractor that the subcontractor had paid the specified general prevailing rate of per diem wages to the subcontractor's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, COUNTY shall notify the CONTRACTOR on a public works project within fifteen (15) calendar days of receipt of a complaint that a subcontractor has failed to pay workers the general prevailing rate of per diem wages.
6. If COUNTY determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if COUNTY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONTRACTOR shall withhold an amount of moneys due the subcontractor sufficient

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

to pay those employees the general prevailing rate of per diem wages if requested by COUNTY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONTRACTOR shall forfeit, as a penalty to the COUNTY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONTRACTOR or any of its subcontractors for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subcontract exceeds thirty thousand dollars (\$30,000), the CONTRACTOR and any subcontractors under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONTRACTORS and subcontractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONTRACTOR and subcontractors are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das> for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONTRACTOR is responsible for all subcontractors' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

Article XIII Conflict of Interest

- A. During the term of this AGREEMENT, the CONTRACTOR shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this AGREEMENT, or any ensuing COUNTY construction project. The CONTRACTOR shall also list current clients who may have a financial interest in the outcome of this AGREEMENT, or any ensuing COUNTY construction project, which will follow.
- B. CONTRACTOR certifies that it has disclosed to COUNTY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONTRACTOR agrees to advise COUNTY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT.

CONTRACTOR further agrees to complete any statements of economic interest if required by either COUNTY ordinance or State law.

- C. The CONTRACTOR 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. CONTRACTOR hereby certifies that the CONTRACTOR or subcontractor, and any firm affiliated with CONTRACTOR or subcontractor that bids on any construction contract, or on any AGREEMENT to provide construction inspection for any construction project resulting from this AGREEMENT. An affiliated firm is

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

one, which is subject to the control of the same persons through joint-ownership, 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.

Article XIV Rebates, Kickbacks or Other Unlawful Consideration

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

Article XV Prohibition of Expending County, State, or Federal Funds for Lobbying

(Include this article in all AGREEMENTS where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the AGREEMENT; delete this article and re-number subsequent articles.)

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

1. No State, Federal, or County appropriated funds have been paid or will be paid, by-or-on behalf of CONTRACTOR, 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 United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
2. If any funds other than Federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this AGREEMENT, the CONTRACTOR 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 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000), for each such failure.

C. The CONTRACTOR also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subagreements, which exceed one hundred thousand dollars (\$100,000) and that all such subrecipients shall certify and disclose accordingly.

Article XVI Non-Discrimination Clause and Statement of Compliance

- A. The CONTRACTOR's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONTRACTOR has, unless exempt, complied with, the nondiscrimination program requirements of Government Code § 12990 and 2 CCR §8103.
- B. During the performance of this AGREEMENT, Contractor and its subcontractors shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin,

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §11135-11139.5, and the regulations or standards adopted by COUNTY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONTRACTOR shall permit access by representatives of the Department of Fair Employment and Housing and the COUNTY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or COUNTY shall require to ascertain compliance with this clause.
- E. CONTRACTOR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONTRACTOR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONTRACTOR, 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. The CONTRACTOR, shall comply with regulations relative to non-discrimination in federally-assisted programs of the United States Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of subcontractors.
- I. CONTRACTOR, subrecipient or subcontractor 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 COUNTY components of the DBE Program Plan, CONTRACTOR, subrecipient or subcontractor 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.

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

Article XVII Debarment and Suspension Certification

- A. The CONTRACTOR's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONTRACTOR or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 3. Does not have a proposed debarment pending; and
 4. 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 COUNTY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System (<https://sam.gov/content/home>) maintained by the United States General Services Administration are to be determined by FHWA.

Article XVIII Disadvantaged Business Enterprises (DBE) Participation

- A. CONTRACTOR, subrecipient (COUNTY), or subcontractor 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 COUNTY shows a contract goal for DBEs. CONTRACTOR shall make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

CONTRACTOR 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 CONTRACTOR's responsibility to verify at the date of proposal opening that the DBE firm is certified as 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 Agreement. Additionally, the CONTRACTOR is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONTRACTOR purchases from DBEs counts towards the goal in the following manner:

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

- One hundred percent (100 %) counts if the materials or supplies are obtained from a DBE manufacturer.
- Sixty percent (60%) counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

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

- B. The goal for DBE participation for this AGREEMENT is ___0__%. Participation by DBE contractor or subcontractors 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 subcontractor is unable to perform, CONTRACTOR must make a good faith effort to replace him/her with another DBE subcontractor, if the goal is not otherwise met.
- C. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance

Under 49 CFR 26.13(b)

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

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

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the CONTRACTOR from future proposing as non-responsible

E. Termination and Replacement of DBE Subcontractors

CONTRACTOR shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONTRACTOR or DBE Subcontractor obtains the COUNTY's written consent. CONTRACTOR 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 COUNTY. Unless the COUNTY's consent is provided, the CONTRACTOR shall not be entitled to any payment for work or

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

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 COUNTY:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The COUNTY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the COUNTY's bond requirements.
3. Work requires a contractor'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 AGREEMENT.
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 AGREEMENT.
11. The COUNTY determines other documented good cause.

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

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

The COUNTY shall respond in writing to CONTRACTOR's DBE termination request within five (5) business days.

Replacement of DBE Subcontractors

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

After receiving the COUNTY'S written authorization of DBE termination request, CONTRACTOR must obtain the COUNTY'S written agreement for DBE replacement. CONTRACTOR 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 COUNTY 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-O2: Consultant Contract DBE Commitment
2. If CONTRACTOR has not identified a DBE replacement firm, submits documentation of CONTRACTOR'S GFEs to use DBE replacement firms within seven (7) days of COUNTY's authorization to terminate the DBE. CONTRACTOR may request the COUNTY'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 CONTRACTOR 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 COUNTY may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
 - Additional documentation that supports CONTRACTOR'S GFE

The COUNTY shall respond in writing to CONTRACTOR'S DBE replacement request within five (5) business days.

F. Commitment and Utilization

The COUNTY'S DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization. The COUNTY shall request CONTRACTOR to:

1. Notify the COUNTY'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 subcontractor

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

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

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

In the COUNTY's reports of DBE participation to Caltrans, the COUNTY 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.

CONTRACTOR 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.

CONTRACTOR must provide written notification to the COUNTY at least 15 days in advance of each DBE's initial performance of work or supplying materials for the AGREEMENT. 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 AGREEMENT, CONTRACTOR 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

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

- Bills of lading
- Invoices
- Proof of payment

CONTRACTOR must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the AGREEMENT t using the LAPM 9-J: DBE Commercially Useful Function Evaluation. CONTRACTOR must submit to the COUNTY these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

CONTRACTOR must notify the COUNTY immediately if they believe the DBE may not be performing a CUF.

The COUNTY 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 COUNTY evaluations. The COUNTY must evaluate DBEs and their CUF performance throughout the duration of the AGREEMENT. The COUNTY will provide written notice to the CONTRACTOR and the DBE at least two (2) business days prior to any evaluation. The CONTRACTOR and the DBE must participate in the evaluation. Upon completing the evaluation, the COUNTY must share the evaluation results with the CONTRACTOR and the DBE. An evaluation could include items that must be remedied upon receipt. If the COUNTY determines the DBE is not performing a CUF, the CONTRACTOR must suspend performance of the noncompliant work.

CONTRACTOR and DBEs must submit any additional CUF related records and documents within five (5) business days of COUNTY'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 CONTRACTOR and/or the COUNTY determine that a listed DBE is not performing a CUF in performance of their DBE committed work, CONTRACTOR must immediately suspend performance of the noncompliant portion of the work. COUNTY may deny payment for the noncompliant portion of the work. COUNTY will ask the CONTRACTOR to submit a Corrective Action Plan (CAP) to the COUNTY within five (5) days of the noncompliant CUF determination. The CAP must identify how the CONTRACTOR will correct the noncompliance findings for the remaining portion of the DBE's work. COUNTY has five (5) days to review the CAP in conjunction with the CONTRACTOR's review. The CONTRACTOR must implement the CAP within five (5) days of the COUNTY's approval. The COUNTY 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 AGREEMENT, CONTRACTOR 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.

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

- 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. CONTRACTOR 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 contractors 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 subcontractor is decertified during the life of the AGREEMENT, the decertified subcontractor shall notify CONTRACTOR in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the AGREEMENT, the subcontractor shall notify CONTRACTOR in writing with the date of certification. Any changes should be reported to COUNTY's Contract Administrator within thirty (30) calendar days.
- L. For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the CONTRACTOR must now submit Exhibit 9-P to the COUNTY administering the contract. If the CONTRACTOR does not make any payments to subcontractors, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

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

Article XIX Insurance

(Choose either Option 1 or Option 2)

☐ (Option 1 – For AGREEMENT with a scope of services that may require the CONTRACTOR or subcontractor to work within the operating state or County Highway Right of Way; where there would be exposure to public traffic or construction operations.)

- A. Prior to commencement of the work described herein, CONTRACTOR shall furnish COUNTY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONTRACTOR with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
 - 1. That the insurer will not cancel the insured's coverage without thirty (30) calendar days prior

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

written notice to COUNTY.

2. That COUNTY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
 3. That COUNTY will not be responsible for any premiums or assessments on the policy.
- C. CONTRACTOR agrees that the bodily injury liability 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, CONTRACTOR agrees to provide at least thirty (30) calendar 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 COUNTY. In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, COUNTY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

☐ (Option 2 – For AGREEMENTS with a scope of services that will not require the Contractor or subcontractor to work within the operating State or County Highway Right of Way where there would be exposure to public traffic or construction Contractor operations.)

CONTRACTOR is not required to show evidence of general comprehensive liability insurance.

Article XX Funding Requirements

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

Article XXI Change in Terms

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONTRACTOR shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by COUNTY's Contract Administrator.

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

- C. There shall be no change in CONTRACTOR'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 COUNTY's Contract Administrator.

Article XXI Contingent Fee

CONTRACTOR 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 fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, COUNTY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

Article XXII Disputes

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 forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

(Choose either Option 1 or Option 2)

☐ (Option 1- Use paragraphs A through C below for all AGREEMENTs without PS&E submittal)

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of COUNTY's Contract Administrator and _____, who may consider written or verbal information submitted by CONTRACTOR.
- B. Not later than thirty (30) calendar days after completion of all work under the contract, CONTRACTOR may request review by COUNTY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONTRACTOR from full and timely performance in accordance with the terms of this AGREEMENT.

☒ (Option 2 – Replace Paragraph B, above, with the following for AGREEMENTS requiring the submission of PS&E)

- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONTRACTOR may request review by COUNTY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

Article XXIV Inspection of Work

CONTRACTOR and any subcontractor shall permit COUNTY, the state, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

Article XXV Safety

- A. CONTRACTOR shall comply with OSHA regulations applicable to CONTRACTOR regarding necessary safety equipment or procedures. CONTRACTOR shall comply with safety instructions issued by COUNTY Safety Officer and other COUNTY representatives. CONTRACTOR personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, COUNTY has determined that such areas are within the limits of the project and are open to public traffic. CONTRACTOR shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONTRACTOR shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

(Add the following paragraph to all AGREEMENTS which may require trenching of five (5) feet or deeper)

- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

Article XXVI Ownership of Data

- A. It is mutually agreed that all materials prepared by CONTRACTOR under this AGREEMENT shall become the property of COUNTY, and CONTRACTOR shall have no property right therein whatsoever. Immediately upon termination, COUNTY shall be entitled to, and CONTRACTOR shall deliver to COUNTY, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONTRACTOR in performing this AGREEMENT which is not CONTRACTOR's privileged information, as defined by law, or CONTRACTOR's personnel information, along with all other property belonging exclusively to COUNTY which is in CONTRACTOR'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 COUNTY.
- B. 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 CONTRACTOR hereunder to be work made for hire. CONTRACTOR 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 COUNTY without restriction or limitation upon its use or dissemination by COUNTY.
- C. Nothing herein shall constitute or be construed to be any representation by CONTRACTOR that the work product is suitable in any way for any other project except the one detailed in this AGREEMENT. Any reuse by COUNTY for another project or project location shall be at COUNTY's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 -Patent Rights under Government Contracts for federal-aid contracts).

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

- E. COUNTY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA 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.

Article XXVII Claims Filed by County's Construction Contractor

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

Article XXVIII Confidentiality of Data

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

(For PS&E contracts, add paragraph F below, to paragraphs A through E above)

- F. All information related to the construction estimate is confidential, and shall not be disclosed by CONTRACTOR to any entity other than COUNTY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONTRACTOR pursuant to performance of this AGREEMENT are confidential and

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

CONTRACTOR agrees that they shall not be made available to any individual or organization without the prior written approval of COUNTY or except by court order. If CONTRACTOR or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this AGREEMENT, COUNTY has the right to reimbursement and indemnity from CONTRACTOR for any damages caused by CONTRACTOR releasing the information, including, but not limited to, COUNTY's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

Article XXIX National Labor Relations Board Certification

In accordance with Public Contract Code Section 10296, CONTRACTOR 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 CONTRACTOR within the immediately preceding two (2)-year period, because of CONTRACTOR's failure to comply with an order of a federal court that orders CONTRACTOR to comply with an order of the National Labor Relations Board.

Article XXX Evaluation of Contractor

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

Article XXXI Prompt Payment

A. PROMPT PAYMENT FROM LOCAL AGENCY TO CONTRACTOR

The COUNTY shall make all project progress payments within 30 days after receipt of an undisputed and properly submitted payment request from CONTRACTOR. If COUNTY fails to pay promptly, the COUNTY shall pay interest to the CONTRACTOR, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied and pro-rated as necessary. Upon receipt of the payment request, the COUNTY shall act in accordance with both of the following:

- (1) The COUNTY shall review each payment request as soon as feasible after receipt to verify it is a proper payment request.
- (2) The COUNTY must return any payment request deemed improper by the COUNTY to the CONTRACTOR as soon as feasible, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall include documentation setting forth in writing the reasons why it is an improper payment request.

B. PROMPT PAYMENT CERTIFICATION

For projects awarded on or after September 1, 2023: the CONTRACTOR must now submit Exhibit 9-P to the COUNTY administering the AGREEMENT by the 15th of the month following the month of any payment(s). If the CONTRACTOR 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 COUNTY 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 COUNTY 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 CONTRACTOR

ARTICLE XXXII TITLE VI ASSURANCES

APPENDICES A-E of the TITLE VI ASSURANCES

The U.S. Department of Transportation Order No.1050.2A requires all federal-aid Department of Transportation contracts between an agency and a consultant to contain Appendices A and E of the Title VI Assurances. Include Appendices B, C, and D if applicable as shown below. In addition, the consultant must

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the AGREEMENT.

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

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

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
- b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.]

APPENDIX A

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

- a. Compliance with Regulations: CONTRACTOR 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: CONTRACTOR, 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. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR of the CONTRACTOR's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONTRACTOR 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 CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONTRACTOR has made to obtain the information.

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

- e. Sanctions for Noncompliance: In the event of CONTRACTOR'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:
 - i. withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONTRACTOR 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 CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B
CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal

Caltrans Released May 2023
MJW Approved 9/8/23

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

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

APPENDIX C

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

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

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

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

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THEACTIVITY, FACILITY OR PROGRAM

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

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

APPENDIX E

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the “CONSULTANT”) agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:

Pertinent Non-Discrimination Authorities:

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

Caltrans Released May 2023
MJW Approved 9/8/23

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;

- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).

ARTICLE XXXIII 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 as follows:

CONTRACTOR: _____

COUNTY: _____

ARTICLE XXXIII AGREEMENT

The two (2) parties to this AGREEMENT, who are the before named CONTRACTOR and the COUNTY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two (2) 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.

ARTICLE XXXIV SIGNATURES

(Name of Signer)

(Name of Signer)

EXHIBIT B – FEDERAL PROVISIONS
CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL

Date

Date

CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL FORMS

The following forms can be viewed and downloaded in fillable format at:
<https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>

EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

☐ Prime Consultant ☐ Subconsultant ☐ 2nd Tier Subconsultant

Consultant _____

Project No. _____ Contract No. _____ Date _____

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
(Project Manager)*	_____	_____	\$ _____	\$ _____
(Sr. Civil Engineer)	_____	_____	\$ _____	\$ _____
(Envir. Scientist)	_____	_____	\$ _____	\$ _____
(Inspector)**	_____	_____	\$ _____	\$ _____

LABOR COSTS

a) Subtotal Direct Labor Costs \$ _____

b) Anticipated Salary Increases (see page 2 for calculation) \$ _____

c) **TOTAL DIRECT LABOR COSTS** [(a) + (b)] \$ _____**INDIRECT COSTS**

d) Fringe Benefits (Rate: _____%) e) Total Fringe Benefits [(c) x (d)] \$ _____

f) Overhead (Rate: _____%) g) Overhead [(c) x (f)] \$ _____

h) General and Administrative (Rate: _____%) i) Gen & Admin [(c) x (h)] \$ _____

j) **TOTAL INDIRECT COSTS** [(e) + (g) + (i)] \$ _____**FIXED FEE**k) **TOTAL FIXED FEE** [(c) + (j)] x fixed fee _____% \$ _____**l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)**

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs			\$	\$
Equipment Rental and Supplies			\$	\$
Permit Fees			\$	\$
Plan Sheets			\$	\$
Test			\$	\$

l) **TOTAL OTHER DIRECT COSTS** \$ _____**m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

Subconsultant 1:	\$ _____
Subconsultant 2:	\$ _____
Subconsultant 3:	\$ _____
Subconsultant 4:	\$ _____

m) **TOTAL SUBCONSULTANTS' COSTS** \$ _____n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS** [(l)+(m)] \$ _____**TOTAL COST** [(c) + (j) + (k) + (n)] \$ _____**NOTES:**

- Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**

(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal		Avg Hourly Rate	5 Year Contract Duration
\$250,000.00	5000	=	\$50.00	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$50.00	+	2%	=	\$51.00	Year 2 Avg Hourly Rate
Year 2	\$51.00	+	2%	=	\$52.02	Year 3 Avg Hourly Rate
Year 3	\$52.02	+	2%	=	\$53.06	Year 4 Avg Hourly Rate
Year 4	\$53.06	+	2%	=	\$54.12	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	20.0%	*	5000	=	1000	Estimated Hours Year 1
Year 2	40.0%	*	5000	=	2000	Estimated Hours Year 2
Year 3	15.0%	*	5000	=	750	Estimated Hours Year 3
Year 4	15.0%	*	5000	=	750	Estimated Hours Year 4
Year 5	10.0%	*	5000	=	500	Estimated Hours Year 5
Total	100%		Total	=	5000	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$50.00	*	1000	=	\$50,000.00	Estimated Hours Year 1
Year 2	\$51.00	*	2000	=	\$102,000.00	Estimated Hours Year 2
Year 3	\$52.02	*	750	=	\$39,015.00	Estimated Hours Year 3
Year 4	\$53.06	*	750	=	\$39,795.30	Estimated Hours Year 4
Year 5	\$54.12	*	500	=	\$27,060.80	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$257,871.10	
Direct Labor Subtotal before Escalation				=	\$250,000.00	
Estimated total of Direct Labor Salary Increase				=	\$7,871.10	Transfer to Page 1

NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. Title 23 United States Code Section 112 - Letting of Contracts
4. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
5. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
6. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: _____ Title *: _____

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

Email: _____ Phone Number: _____

Address: _____

*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

EXHIBIT 10-H2 COST PROPOSAL Page 1 of 3

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

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant _____ ☐ Prime Consultant ☐ Subconsultant ☐ 2nd Tier Subconsultant

Project No. _____ Contract No. _____ Participation Amount \$ _____ Date _____

For Combined Rate	Fringe Benefit % + General & Administrative %	=	Combined ICR%
OR			
For Home Office Rate	Fringe Benefit % + General & Administrative %	=	Home Office ICR%
For Field Office Rate	Fringe Benefit % + General & Administrative %	=	Field Office ICR%

Fee	=	%
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BILLING INFORMATION

CALCULATION INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²			Effective Date of Hourly Rate		Actual or Avg. Hourly Rate ⁴	% or \$ Increase	Hourly Range - for Classifications Only
	Straight ³	OT(1.5x)	OT(2x)	From	To			
John Doe – Project Manager * Civil Engineer II	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	
Sue Jones – Construction Engineer/Inspector Engineer I	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	
Buddy Black – Claims Engineer Engineer III	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		Not Applicable
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	
Land Surveyor **	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	\$00 - \$00
Technician	\$0.00	\$0.00	\$0.00	01/01/2016	12/31/2016	\$0.00		\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2017	12/31/2017	\$0.00	0.0%	\$00 - \$00
	\$0.00	\$0.00	\$0.00	01/01/2018	12/31/2018	\$0.00	0.0%	\$00 - \$00

(Add pages as necessary)

NOTES:

1. Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

EXHIBIT 10-H2 COST PROPOSAL Page 2 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Consultant _____ ☐ Prime Consultant ☐ Subconsultant

Project No. _____ Contract No. _____ Date _____

SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)				
Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs			\$	\$
Equipment Rental and Supplies			\$	\$
Permit Fees			\$	\$
Plan Sheets			\$	\$
Test			\$	\$
Vehicle			\$	\$
Subconsultant 1:				\$
Subconsultant 2:				\$
Subconsultant 3:				\$
Subconsultant 4:				\$
Subconsultant 5:				\$

Note: Add additional pages if necessary.

NOTES:

1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.

7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

EXHIBIT 10-H2 COST PROPOSAL Page 3 of 3**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

7. Generally Accepted Accounting Principles (GAAP)
8. Terms and conditions of the contract
9. Title 23 United States Code Section 112 - Letting of Contracts
10. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
11. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
12. 48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: _____ Title *: _____

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

Email: _____ Phone Number: _____

Address: _____

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

January 2020

EXHIBIT 10-H3 COST PROPOSAL Page 1 of 2COST PER UNIT OF WORK CONTRACTS
(GEOTECHNICAL AND MATERIAL TESTING)

Note: Mark-ups are Not Allowed

☐ Prime Consultant ☐ Subconsultant ☐ 2nd Tier Subconsultant

Consultant _____

Project No. _____ Contract No. _____ Date _____

Unit/Item of Work:**(Example: Log of Test Boring for Soils Report, or ADL Testing for Hazardous Waste Material Study)****Include as many Items as necessary.**

DIRECT LABOR	Hours	Billing Hourly Rate (\$)	Total (\$)
Professional (Classification)*	_____	_____	_____
Sub-professional/Technical**	_____	_____	_____
EQUIPMENT 1 (with Operator)	_____	_____	_____
EQUIPMENT 2 (with Operator)	_____	_____	_____

Consultant's Other Direct Costs (ODC) – Itemize:

Description of Item	Quantity	Unit	Unit Cost	Total
ODC Example: Travel/Mileage Costs			\$	\$
ODC Example: Mobilization/De-mobilization			\$	\$
ODC Example: Supplies/Consumables			\$	\$
ODC Example: Report			\$	\$
ODC (List more ODCs as applicable)			\$	\$
Subconsultant 1:				\$
Subconsultant 2:				\$
Subconsultant 3:				\$
Subconsultant 4:				\$
Subconsultant 5:				\$

Note: Attach additional pages if necessary.

TOTAL COST PER UNIT OF WORK

\$ _____

NOTES:

- Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals. The cost proposal format shall not be amended.
- Hourly billing rates should include prevailing wage rates and be consistent with publicly advertised rates charged to all clients (Commercial, Private or Public).
- Mobilization/De-mobilization is based on site location and number and frequency of tests/items.
- ODC items shall be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.
- Billing Hourly Rates must be actual, allowable, and reasonable.

January 2020

EXHIBIT 10-H3 COST PROPOSAL Page 2 of 2

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

13. Generally Accepted Accounting Principles (GAAP)
14. Terms and conditions of the contract
15. Title 23 United States Code Section 112 - Letting of Contracts
16. 48 Code of Federal Regulations Part 31 - Contract Cost Principles and Procedures
17. 23 Code of Federal Regulations Part 172 - Procurement, Management, and Administration of Engineering and Design Related Service
18. 48 Code of Federal Regulation Part 9904 - Cost Accounting Standards Board (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: _____ Title*: _____

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

Email: _____ Phone Number: _____

Address: _____

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

[illegible]

January 2020

**EXHIBIT 10-K CONSULTANT ANNUAL CERTIFICATION OF
INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM***(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required.)*

Consultant's Full Legal Name: _____

Important: Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

Indirect Cost Rate:

Combined Rate _____ % OR

Home Office Rate _____ % and Field Office Rate (if applicable) _____ %

Facilities Capital Cost of Money _____ % (if applicable)

Fiscal period * _____

* Fiscal period is annual one year applicable accounting period that the Indirect Cost Rate was developed (not the contract period). The Indirect Cost Rate is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an Indirect Cost Rate(s) for the fiscal period as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the indirect cost rate(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31);
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31;
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on Exhibit 10-A.

Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\); 48 CFR Part 31.201-2\(d\); 23 CFR, Chapter 1, Part 172.11\(a\)\(2\);](#) and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost

Local Assistance Procedures Manual

Exhibit 10-K
Consultant Annual Certification of Indirect Costs and Financial Management System

accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirement

Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

All A&E Contract Information:

- Total participation amount \$ _____ on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is _____.
- Years of consultant's experience with 48 CFR Part 31 is _____.
- Audit history of the consultant's current and prior years (if applicable)

☐ Cognizant ICR Audit	☐ Local Gov't ICR Audit	☐ Caltrans ICR Audit
☐ CPA ICR Audit	☐ Federal Gov't ICR Audit	

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the Indirect Cost Rate Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name**: _____ Title**: _____
 Signature:  _____ Date of Certification (mm/dd/yyyy): _____
 Email**: _____ Phone Number**: _____

****An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.**

Note: Both prime and subconsultants as parties of a contract must complete their own Exhibit 10-K forms. Caltrans will not process local agency's invoices until a complete Exhibit 10-K form is accepted and approved by Caltrans Audits and Investigations.

Distribution: 1) Original - Local Agency Project File
 2) Copy - Consultant
 3) Copy - Caltrans Audits and Investigations

Local Assistance Procedures Manual

Exhibit 10-01
Consultant Proposal DBE Commitment

Reset Form

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
3. Project Description: _____
4. Project Location: _____
5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Local Agency to Complete this Section 17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____ 20. Consultant's Ranking after Evaluation: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. _____ _____ _____		11. TOTAL CLAIMED DBE PARTICIPATION % IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 12. Preparer's Signature _____ 13. Date _____ 14. Preparer's Name _____ 15. Phone _____ 16. Preparer's Title _____	

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

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

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT**CONSULTANT SECTION**

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

LOCAL AGENCY SECTION

17. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
18. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
19. **Proposed Contract Execution Date** - Enter the proposed contract execution date.
20. **Consultant's Ranking after Evaluation** - Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
21. **Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
22. **Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
23. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
24. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
25. **Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

Local Assistance Procedures Manual

Exhibit 10-02
Consultant Contract DBE Commitment

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

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

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

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

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

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT

CONSULTANT SECTION

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

LOCAL AGENCY SECTION

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

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

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

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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

EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Federal-aid Project No(s). _____ Cost Proposal Due Date _____ PE/CE
 Bid Opening Date _____ CON

The _____ (Agency Name) established a Disadvantaged Business Enterprise (DBE) goal of _____% for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) calendar days from cost proposal due date or bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer's or bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions, **please attach additional sheets as needed**:

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

[illegible]

- C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation in order to meet or exceed the DBE contract goal.

Items of Work	Proposer or Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage of Contract
				0.00%
				0.00%
				0.00%
				0.00%

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

- E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

H. Any additional data to support a demonstration of good faith efforts:
