**XX/XX/20XX**

**$XXX**

**[Yes/No]**

**[Yes/No]**

Contract No.:

Termination Date:

Amount Authorized:

Federal Funding:

State Funding:

**CONSULTING SERVICES AGREEMENT**

for

**Project XXXXXXXX**

between

**County of Riverside • Transportation Department**

and

**Consultant XXXXXX**



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Scope of Services A1

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ARTICLE I INTRODUCTION

A. This Consulting Services Agreement (“Agreement”) is entered into this \_\_\_\_\_\_\_ day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20XX, by and between COUNTY OF RIVERSIDE, a political subdivision of the State of California, hereinafter referred to as “COUNTY”, and XXXX, hereinafter referred to as “CONSULTANT”.

B. Coordination of CONSULTANT and COUNTY activities shall be accomplished through a CONSULTANT Project Manager and a COUNTY Contract Administrator.

The CONSULTANT’s Project Manager for CONSULTANT shall be:

 XXXXX

Located at:

 XXXXX

The COUNTY’s Contract Administrator for COUNTY shall be:

 XXXXX

Located at:

 4080 Lemon St, 8th Floor, Riverside, CA 92502

C. CONSULTANT shall perform:

 The covenants set forth in Article III entitled Statement of Work;

 In accordance with the time frames set forth in Article IV entitled Performance Period;

 For the fees set forth in Article V entitled Allowable Costs and Payments.

D. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of COUNTY.

E. Without the written consent of COUNTY, this contract is not assignable by CONSULTANT either in whole or in part.

F. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

G. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT’s expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

H. COUNTY is designated as the lead agency for PROJECT and is working cooperatively with other agencies in the effort to complete the PROJECT.

I. Other public agencies that may be involved with the PROJECT including, but not limited to cooperative, funding, reviewing, regulatory or operating agencies are listed below and will hereinafter be collectively referred to as the “AGENCIES”.

 XXXXX

ARTICLE II CONSULTANT’S REPORTS OR MEETINGS

A. To ensure understanding and performance of the contract objectives, meetings between COUNTY, AGENCIES, and CONSULTANT shall be held as often as deemed necessary (typically at least monthly). All work objectives, CONSULTANT’s work schedule, the terms of the contract and any other related issues will be discussed and/or resolved. CONSULTANT shall keep minutes of meetings and distribute copies of minutes as appropriate. Progress reporting shall conform with the contract administration requirements of the COUNTY’s Consulting Services Manual including providing updated copies of the following documents at each project coordination meeting.

• Meeting Agendas

• Meeting Sign-in Sheets

• Meeting Minutes (prior meeting)

• Action Items Tracking List

• Deliverables Tracking List

• Schedule Summary

B. CONSULTANT’s Project Manager shall meet with COUNTY’s Contract Administrator, as needed, which could be as often as monthly, to discuss progress on the contract.

ARTICLE III STATEMENT OF WORK

CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision, and expertise to fully and adequately perform and complete the covenants set forth in Attachment A, Scope of Services, which is attached hereto and incorporated herein by reference.

ARTICLE IV PERFORMANCE PERIOD

A. This contract shall go into effect upon the issuance of a notice to proceed from COUNTY’s Contract Administrator after this contract has been approved by the County of Riverside Board of Supervisors, and CONSULTANT shall commence work after written notification to proceed by COUNTY’S Contract Administrator. The contract shall end on XXXX XX, 20XX, unless extended by contract amendment.

B. CONSULTANT is advised that any recommendation for contract award is not binding on COUNTY until the contract is fully executed and approved by COUNTY.

C. Services provided under this contract may be performed in separate Milestones or Phases. The sequencing and scheduling of these Milestones or Phases is set forth in Attachment B, Schedule of Services, which is attached hereto and incorporated herein by reference.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

A. The method of payment for this contract will be based on actual cost plus a fixed fee. COUNTY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in Attachment C, Compensation Plan, which is attached hereto and incorporated herein by reference, unless additional reimbursement is provided for by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds COUNTY’s approved overhead rate set forth in the Compensation Plan. In the event, that COUNTY determines that a change to the work from that specified in the Contract is required, the contract time or actual costs reimbursable by COUNTY shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Article V.H shall not be exceeded, unless authorized by contract amendment.

B. In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee of $XXX. The fixed fee is nonadjustable for the term of the contract, except in the event of a change in the scope of work and such adjustment is made by contract amendment.

C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the Compensation Plan.

D. When milestone or phase cost estimates are included in the Compensation Plan, CONSULTANT shall obtain prior written approval for a revised milestone or phase cost estimate from the COUNTY’s Contract Administrator before exceeding such cost estimate.

E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT’s fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, COUNTY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.

F. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.

G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY’s Contract Administrator of itemized invoices. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each Milestone or Phase and each project as applicable. Invoices shall follow the format stipulated for the Compensation Plan using the Project-specific & Multi-phase Contract Invoice templates provided in the COUNTY Consulting Services Manual and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due COUNTY including any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT’s work. Invoices shall be mailed to COUNTY’s Contract Administrator at the address provided in Article I.B.

H. The total amount payable by COUNTY including the fixed fee shall not exceed $XXXX. An additional 10% contingency will be held in reserve as described in and administered by Attachment C, Article CVI, Cost Proposal.

I. Salary increases will be reimbursable if the new salary is within the salary range identified in the Compensation Plan and is approved by COUNTY’s Contract Administrator.

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.

K. The services included under the terms of this contract are funded in whole or in part as noted below:

 Federal funds: [☐] are included [☒] are not included

 State funds: [☐] are included [☒] are not included

ARTICLE VI TERMINATION

A. COUNTY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.

B. COUNTY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If COUNTY terminates this contract with CONSULTANT, COUNTY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to COUNTY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

B. CONSULTANT also agrees to comply with federal procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR, Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to COUNTY.

ARTICLE VIII RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and COUNTY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and it’s certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

ARTICLE IX AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by COUNTY’S Chief Financial Officer.

B. Not later than 30 days after issuance of the final audit report, CONSULTANT 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 CONSULTANT from full and timely performance, in accordance with the terms of this contract.

D. Audit Terms and Conditions if the amount shown in Article V.H is greater than $150,000 and less than $3,500,000.

CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, 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 CONSULTANT’s responsibility to ensure federal, state, or local government officials are allowed full access to the CPA’s work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by COUNTY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by COUNTY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

E. Audit Terms and Conditions if the amount shown in Article V.H is $3,500,000 or greater and if Article V.K identifies that Federal or State funds are used, in whole or in part, to fund the services performed under this contract then compliance with the auditing provisions as described below is required. If the services are not identified as funded in whole or in part with Federal or State funds then compliance with the auditing provisions of Article IX.D shall apply.

CONSULTANT Cost Proposal is subject to a CPA ICR Audit Work Paper Review by Caltrans’ Audit and Investigation (Caltrans). Caltrans, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT 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 CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

1. During a Caltrans’ review of the ICR audit work papers created by the CONSULTANT’s independent CPA, Caltrans will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, COUNTY will reimburse the CONSULTANT at a provisional ICR until a FAR compliant ICR {e.g. 48 CFR, part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials Audit Guide; and other applicable procedures and guidelines} is received and approved by A&I. Provisional rates will be as follows:

a. If the proposed rate is less than 150% - the provisional rate reimbursed will be 90% of the proposed rate.

b. If the proposed rate is between 150% and 200% - the provisional rate will be 85% of the proposed rate.

c. If the proposed rate is greater than 200% - the provisional rate will be 75% of the proposed rate.

2. If Caltrans is unable to issue a cognizant letter per Article IX.E.1. above, Caltrans may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans will then have up to six (6) months to review the CONSULTANT’s and/or the independent CPA’s revisions.

3. If the CONSULTANT fails to comply with the provisions of this Article IX.E, or if Caltrans 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 provisional ICR that was established upon initial rejection of the ICR and set forth in Article IX.E.1. above for all rendered services. In this event, this provisional ICR will become the actual and final ICR for reimbursement purposes under this contract.

4. CONSULTANT may submit to COUNTY final invoice only when all of the following items have occurred: (1) Caltrans approves or rejects the original or revised independent CPA-audited ICR; (2) all work under this contract has been completed to the satisfaction of LOCAL AGENCY; and, (3) Caltrans has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO COUNTY no later than 60 days after occurrence of the last of these items.

The provisional ICR will apply to this contract and all other contracts executed between COUNTY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

A. Nothing contained in this contract or otherwise, shall create any contractual relation between COUNTY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to COUNTY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT’s obligation to pay its subconsultant(s) is an independent obligation from COUNTY’S obligation to make payments to the CONSULTANT.

B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by COUNTY’s Contract Administrator, except that, which is expressly identified in the Compensation Plan.

C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by COUNTY.

D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

E. Any substitution of subconsultant(s) must be approved in writing by COUNTY’s Contract Administrator prior to the start of work by the subconsultant(s).

ARTICLE XI EQUIPMENT PURCHASE

A. Prior authorization in writing, by COUNTY’s Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding $5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT 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 CONSULTANT’s Compensation Plan and exceeding $5,000 prior authorization by COUNTY’s Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased as a result of this contract is subject to the following: “CONSULTANT 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 $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 contract, or if the contract is terminated, CONSULTANT 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 CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT’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 CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY.” 2 CFR, Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than $5,000 is credited to the project.

ARTICLE XII STATE PREVAILING WAGE RATES

In the event that a portion of the work performed by CONSULTANT are by crafts affected by state labor laws, the following terms and conditions shall apply.

A. CONSULTANT shall comply with the State of California’s General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

B. Any subcontract entered into as a result of this contract, if for more than $25,000 for public works construction or more than $15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See http://www.dir.ca.gov.

When all of the work performed by CONSULTANT is performed by crafts not affected by state labor laws or are not contemplated for use, the State of California’s General Prevailing Wage Rates are not applicable to this contract.

 **Note:** The Federal “Payment of Predetermined Minimum Wage” applies only to federal-aid construction contracts.

ARTICLE XIII CONFLICT OF INTEREST

A. CONSULTANT shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this contract, or any ensuing COUNTY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing COUNTY construction project, which will follow.

B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

C. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

D. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONSULTANT warrants that this contract 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 the contract without liability; to pay only for the value of the work actually performed; to deduct from the contract 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

A. CONSULTANT 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 CONSULTANT to any person for influencing or attempting to influence an officer or employee of any 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 of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative 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 federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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

ARTICLE XVI STATEMENT OF COMPLIANCE

A. CONSULTANT’s signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 11102.

B. During the performance of this Contract, CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious, national origin, ethnic group identification, age, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), genetic information, marital status, or sexual orientation. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

C. The CONSULTANT shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California 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.

D. The CONSULTANT, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT’s Regulations, including employment practices when the Agreement covers a program whose goal is employment.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

A. CONSULTANT’s signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (non procurement)”, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to COUNTY.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the System for Award Management (SAM) maintained by the General Services Administration are to be determined by the Federal Highway Administration.

ARTICLE XVIII FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this contract 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 contract were executed after that determination was made.

B. This contract is valid and enforceable only, if sufficient funds are made available to COUNTY for the purpose of this contract. In addition, this contract 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 contract in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

D. COUNTY has the option to void the contract under the 30-day termination clause pursuant to Article VI, or by mutual agreement to amend the contract to reflect any reduction of funds.

ARTICLE XIX CHANGE IN TERMS

A. This contract may be amended or modified only by mutual written agreement of the parties.

B. All modifications that do not fit within the definition of a minor modification shall be considered a major change and must be approved by amendment.

C. Minor modifications are changes or additions to the services being provided as defined in Article IV Statement of Work but that are consistent with and needed to complete the contracted services and do not require an increase in the total amount payable by COUNTY as provided in Article V.H and does not reduce the budget allowed for any subconsultant classified in this Agreement as a DBE. Minor modifications are approved as follows:

Shifting of budget and/or work between tasks within a single Milestone or Phase is allowable without authorization by COUNTY.

Shifting of budget and/or work between different Milestones or Phases may be approved by execution of a Administrative Budget Modification by both CONSULTANT and COUNTY in accordance with the procedures specified in the COUNTY Consulting Services Manual.

D. CONSULTANT 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.

E. There shall be no change in CONSULTANT’s Project Manager or members of the project team, as listed as Key Personnel in the approved Scope of Services, which is a part of this contract without prior written approval by COUNTY’s Contract Administrator.

ARTICLE XX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

If Article V.K identifies that Federal funds are used, in whole or in part, to fund the services performed under this contract then compliance with the provisions of Article XX as described below is required. If Article V.K identifies that services are not funded in whole or in part with Federal funds than compliance with the requirements of Article XX is not required.

A. This contract is subject to 49 CFR, Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”. Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. The goal for DBE participation for this contract is N/A %. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as COUNTY deems appropriate.

D. Any subcontract entered into as a result of this contract shall contain all of the provisions of Article XX.

E. A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting COUNTY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract 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 contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the, contract is commensurate with the work it is actually performing, and other relevant factors.

G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, 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.

H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract 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.

I. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, “Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants” CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT’s authorized representative and shall be furnished to the COUNTY’s Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory “Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants” is submitted to the COUNTY’s Contract Administrator.

K. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to COUNTY’s Contract Administrator within 30 days.

ARTICLE XXI CONTINGENT FEE

CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract 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 CONSULTANT for the purpose of securing business. For breach or violation of this warranty, COUNTY has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXII DISPUTES

A. In the event CONSULTANT considers any work demanded of him to be outside the requirements of the Agreement, or if he considers any order, instruction, or decision of COUNTY to be unfair, he shall promptly upon receipt of such order, instruction or decision, ask for a written confirmation of the same whereupon he shall proceed without delay to perform the work or to conform to the order, instruction, or decision; but unless CONSULTANT finds such order, instruction, or decision satisfactory, he shall within 20 days after receipt of same, file a written protest with COUNTY stating clearly and in detail his objections and reasons therefore. Except for such protests or objections as are made of record in the manner specified and within the time stated herein, and except for such instances where the basis of a protest could not reasonably have been foreseen by CONSULTANT within the time limit specified for protest, CONSULTANT hereby waives all grounds for protests or objections to the orders, instruction, or decisions of COUNTY and hereby agrees that, as to all matters not included in such protests, the orders, instructions and decisions of COUNTY will be limited to matters properly falling within COUNTY’s authority.

B. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of COUNTY’s Contract Administrator and Director of Transportation or designee, who may consider written or verbal information submitted by CONSULTANT.

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

D. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

ARTICLE XXIII INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit COUNTY, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

ARTICLE XXIV SAFETY

A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by COUNTY Safety Officer and other COUNTY representatives. CONSULTANT 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 Section 591 of the Vehicle Code, COUNTY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT 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.

D. In the event CONSULTANT performs trenching of five feet or deeper in the performance any service provided under this Agreement, CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 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 feet or deeper.

ARTICLE XXV INDEMNIFICATION AND INSURANCE

A. Basic Indemnity

1. To the fullest extent permitted by applicable law, CONSULTANT agrees to defend (through legal counsel reasonably acceptable to COUNTY), indemnify, and hold harmless the County of Riverside, its Agencies, Districts, Departments and Special Districts, Board of Supervisors, elected and appointed officials, and each of their respective directors, members officers, employees, agents, volunteers and representatives ("Indemnitees") and each of them from any and all Losses that arise out of or relate to any act or omission constituting ordinary and not professional negligence (including, without limitation, negligent breach of contract), recklessness, or willful misconduct on the part of CONSULTANT or its subconsultants or their respective employees, agents, representatives, or independent contractors.

2. “Losses” shall mean any and all economic and non-economic losses, costs, liabilities, claims, damages, actions, judgements, settlements and expenses, including, without limitation, full and actual attorney’s fees (including, without limitation, attorney’s fees for trial and on appeal), expert and non-expert witness fees, arbitrator and arbitration fees and mediator and mediation fees.

3. CONSULTANT further agrees to and shall indemnify and hold harmless the Indemnitees from all liability arising from suits, claims, demands, actions, or proceedings made by agents, employees or subcontractors of CONSULTANT for salary, wages, compensation, health benefits, insurance, retirement or any other benefit not explicitly set forth in this contract and arising out of work performed for COUNTY pursuant to this contract. The Indemnitees shall be entitled to the defense and indemnification provided for hereunder regardless of whether the Loss is in part caused or contributed to by the acts or omissions of an Indemnitee or any other person or entity; provided however, that nothing contained herein shall be construed as obligating CONSULTANT to indemnify and hold harmless any Indemnitee to the extent not required under the provisions of Paragraph B. below.

B. Indemnity for Design Professional Services

1. To the fullest extent permitted by Applicable Law, CONSULTANT agrees to defend (through legal counsel reasonably acceptable to COUNTY), indemnify and hold harmless the Indemnitees, and each of them, against any and all Losses that arise out of, pertain to, or relate to, any negligence, recklessness or willful misconduct constituting professional negligence on the part of CONSULTANT or its Subconsultants, or their respective employees, agents, representatives, or independent contractors. The Indemnitees shall be entitled to the defense, and indemnification provided for hereunder regardless of whether the Loss is, in part, caused or contributed to by the acts or omissions of an Indemnitee or any other person or entity; provided, however, that nothing contained herein shall be construed as obligating CONSULTANT to indemnify and hold harmless any Indemnitee to the extent not required under the provisions of this section. CONSULTANT shall defend and pay, all costs and fees, including but not limited to attorney fees, cost of investigation, and defense, in any loss, suits, claims, demands, actions, or proceedings to the extent and in proportion to the percentage, such costs and fees arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT arising out of or from the performance of professional design services under this Agreement. The duty to defend applies to any alleged or actual negligence, recklessness, willful misconduct of CONSULTANT. The cost for defense shall apply whether or not CONSULTANT is a party to the lawsuit and shall apply whether or not CONSULTANT is directly liable to the plaintiffs in the lawsuit. The duty to defend applies even if Indemnitees are alleged or found to be actively negligent, but only in proportion to the percentage of fault or negligence of CONSULTANT.

2. Without affecting the rights of COUNTY under any other provision of this Agreement, CONSULTANT shall not be required to indemnify or hold harmless or provide defense or defense costs to an Indemnitee for a Loss due to that Indemnitee’s negligence, recklessness or willful misconduct; provided, however, that such negligence, recklessness or willful misconduct has been determined by agreement of CONSULTANT and Indemnitee or has been adjudged by the findings of a court of competent jurisdiction.

3. CONSULTANT agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this section from each and every Subconsultant, of every Tier.

4. CONSULTANT’s indemnification obligations under this Agreement shall not be limited by the amount or type of damages, compensation or benefits payable under any policy of insurance, workers’ compensation acts, disability benefit acts or other employee benefit acts.

5. The Indemnitees shall be entitled to recover their attorneys’ fees, costs and expert and consultant costs in pursuing or enforcing their right to defense and/or indemnification under this Agreement.

C. INSURANCE

Without limiting or diminishing the CONSULTANT’S obligation to indemnify or hold the COUNTY harmless, CONSULTANT shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage’s during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

1. Workers’ Compensation:

 If the CONSULTANT has employees as defined by the State of California, the CONSULTANT shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers’ Liability (Coverage B) including Occupational Disease with limits not less than $1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

2. Commercial General Liability:

 Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONSULTANT’S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy’s limit of liability shall not be less than $1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

3. Vehicle Liability:

 If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONSULTANT shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than $1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

4. Professional Liability

 CONSULTANT shall maintain Professional Liability Insurance providing coverage for the CONSULTANT’s performance of work included within this Agreement, with a limit of liability of not less then $1,000,000 per occurrence and $2,000,000 annual aggregate. If CONSULTANT’s Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONSULTANT shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONSULTANT has maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

5. General Insurance Provisions - All lines:

a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County’s Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

b. The CONSULTANT must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds $500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the Country’s Risk Manager, CONSULTANT’S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

c. CONSULTANT shall cause CONSULTANT’S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage’s set forth herein and the insurance required herein is in full force and effect. CONSULTANT shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

d. It is understood and agreed to by the parties hereto that the CONSULTANT’S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention’s or self-insured programs shall not be construed as contributory.

e. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONSULTANT has become inadequate.

f. CONSULTANT shall pass down the insurance obligations contained herein to all tiers of subconsultants working under this Agreement.

g. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

h. CONSULTANT agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

ARTICLE XXVI OWNERSHIP OF DATA

A. Ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this contract will automatically be vested in COUNTY; and no further agreement will be necessary to transfer ownership to COUNTY. CONSULTANT shall furnish COUNTY all necessary copies of data needed to complete the review and approval process.

B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into. CONSULTANT acknowledges that the plans, drawings and/or other work products may be used by COUNTY for the PROJECT regardless of any disputes that may develop between CONSULTANT and COUNTY. All plans, drawings, or other work product shall be deemed the sole and exclusive property of COUNTY to be used as desired by COUNTY, and ownership thereof is irrevocably vested in COUNTY whether the PROJECT is implemented or not.

C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by COUNTY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by COUNTY of the project documentation on other projects, for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by CONSULTANT.

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).

E. COUNTY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA and COUNTY 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 CONSULTANT’s personnel, and additional information or assistance from CONSULTANT’s personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with COUNTY’S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. CONSULTANT’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 CONSULTANT’s personnel services under this contract.

C. Services of CONSULTANT’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 contract 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 CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by COUNTY relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or COUNTY’s actions on the same, except to COUNTY’s staff, CONSULTANT’s own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by COUNTY, and receipt of COUNTY’S written permission.

E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

F. All information related to the construction estimate is confidential and shall not be disclosed by CONSULTANT to any entity other than COUNTY.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

ARTICLE XXX LEGAL COMPLIANCE

CONSULTANT shall comply with all Federal, State and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals currently in effect and in any manner affecting the performance of this Agreement, including, without limitation, workers’ compensation laws and licensing and regulations. Failure to comply with the foregoing by CONSULTANT may be grounds for termination by the COUNTY.

ARTICLE XXXI EVALUATION OF CONSULTANT

CONSULTANT’s performance may be evaluated by COUNTY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

ARTICLE XXXII RETENTION OF FUNDS

A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this Article.

B. COUNTY will withhold the last 10 percent of the budget for preparation of the final PS&E documents. The 10 percent retainage is to be held after 90% of the PS&E phase has been billed and is not to be deducted from each invoice. The amount retained will be paid to CONSULTANT after COUNTY has approved CONSULTANT’s PS&E documents. The CONSULTANT, or subconsultant, shall return all monies withheld in retention from a subconsultant within thirty (30) days after receiving payment. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) days may take place only for good cause and with the COUNTY’s prior written approval. Any violation of this provision shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

ARTICLE XXXIII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this contract and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed to the CONSULTANT’s Project Manager and COUNTY’s Contract Administrator at the respective addresses provided in Article I.B.

ARTICLE XXXIV CONTRACT

1. The two parties to this contract, who are the before named CONSULTANT and the before named COUNTY, hereby agree that this contract constitutes the entire agreement which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this contract as evidenced by the signatures below.
2. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument.  Each party to this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ((“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement.  The parties further agree that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.  Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

SIGNATURES ON NEXT PAGE

ARTICLE XXXV APPROVALS

**COUNTY** Approvals

RECOMMENDED FOR APPROVAL:

 Dated:

MARK LANCASTER

Director of Transportation

APPROVED AS TO FORM:

County Counsel

 Dated:

By Deputy

APPROVAL BY THE BOARD OF SUPERVISORS

 Dated:

**PRINTED NAME**

Chair, Riverside County Board of Supervisors

ATTEST:

 Dated:

KECIA R. HARPER

Clerk of the Board (SEAL)

**CONSULTANT** Approvals

CONSULTANT:

 Dated:

XXXXXXX

Title

CONSULTANT:

 Dated:

 XXXXXXXX

Title