

**ARCHITECTURE AND ENGINEERING (A&E)
CONTRACT AGREEMENT
FOR LOCAL ASSISTANCE FEDERAL AID PROJECTS**

Contents

ARTICLE I INTRODUCTION.....	4
ARTICLE II CONSULTANT’S REPORTS OR MEETINGS.....	5
ARTICLE III STATEMENT OF WORK	5
ARTICLE IV PERFORMANCE PERIOD.....	6
ARTICLE V ALLOWABLE COSTS AND PAYMENTS.....	6
ARTICLE VI TERMINATION	7
ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS	8
ARTICLE VIII RETENTION OF RECORD/AUDITS	8
ARTICLE IX AUDIT REVIEW PROCEDURES	8
ARTICLE X SUBCONTRACTING	10
ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES.....	11
ARTICLE XII STATE PREVAILING WAGE RATES.....	11
ARTICLE XIII CONFLICT OF INTEREST	14
ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION.....	15
ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE	15
ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION	17
ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION	17
ARTICLE XIX INSURANCE	23
ARTICLE XX FUNDING REQUIREMENTS.....	25
ARTICLE XXI CHANGE IN TERMS	25
ARTICLE XXII CONTINGENT FEE.....	26
ARTICLE XXIII DISPUTES	26
ARTICLE XXIV INSPECTION OF WORK	26
ARTICLE XXV SAFETY.....	26
ARTICLE XXVI OWNERSHIP OF DATA	27
ARTICLE XXVII CLAIMS FILED BY COUNTY’S CONSTRUCTION CONTRACTOR	27
ARTICLE XXVIII CONFIDENTIALITY OF DATA.....	28
ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION	28
ARTICLE XXX EVALUATION OF CONSULTANT	28
ARTICLE XXXI PROMPT PAYMENT	28
ARTICLE XXXII PRESENTATION OF CLAIMS	29
ARTICLE XXXIII MISCELLANEOUS	29

ARTICLE XXXIV ADDITIONAL REQUIREMENTS FOR FEDERAL FUNDED PROJECTS	29
ARTICLE XXXIII NOTIFICATION	30
ARTICLE XXXIV CONTRACT	30
APPENDICES A - E of the TITLE VI ASSURANCES	31
APPENDIX A	32
APPENDIX B	34
APPENDIX C	35
APPENDIX D	36
APPENDIX E	37
ATTACHMENT A - SCOPE OF SERVICES AND COST PROPOSAL	38
ATTACHMENT B - RATE SHEET	39

ARTICLE I INTRODUCTION

- A. This CONTRACT agreement is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, COUNTY:

The name of the "CONSULTANT" is as follows: CONSULTING FIRM

Incorporated in the State of CALIFORNIA

The Project Manager for the "CONSULTANT" will be PROJECT CONTACT

The name of the "COUNTY" is as follows:

COUNTY OF SANTA CRUZ
COMMUNITY INFRASTRUCTURE AND DEVELOPMENT
PUBLIC WORKS DEPARTMENT

The Contract Administrator for COUNTY will be Rosa Ortiz-Rocha

- B. The work to be performed under this CONTRACT is described in the approved CONSULTANT's Scope of Services and Cost Proposal detailed in (Attachment A) and dated DATE. The approved CONSULTANT's Rate Sheet is attached hereto (Attachment B) and incorporated by reference. If there is any conflict between the approved Scope of Services, Cost Proposal and Rate Sheet and this CONTRACT, this CONTRACT shall take precedence.
- C. CONSULTANT 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 CONTRACT on the part of CONSULTANT, 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. This provision includes, but is not limited to, failure by CONSULTANT to pay any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid by CONSULTANT in regard to CONSULTANT'S officers, employees and agents engaged in the performance of this CONTRACT (including, without limitation, unemployment insurance, social security and payroll tax withholding). The provisions of this section shall survive termination or suspension of this CONTRACT.
- D. CONSULTANT in the performance of this CONTRACT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. This CONTRACT is by and between the COUNTY and the CONSULTANT and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the COUNTY and the CONSULTANT. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever. The CONSULTANT understands and agrees that all persons performing work pursuant to this CONTRACT are, for purposes of Workers' Compensation liability, solely employees of the CONSULTANT and not employees of the COUNTY. The CONSULTANT shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the CONSULTANT pursuant to this

CONTRACT.

- E. COUNTY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the CONTRACT and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the COUNTY as to the designation of tasks to be performed and the results to be accomplished. The CONSULTANT shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this CONTRACT all compensation and benefits. The COUNTY shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the CONSULTANT.
- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds 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 CONTRACT.
- G. Except as expressly authorized herein, CONSULTANT's obligations under this CONTRACT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the COUNTY. However, claims for money due or which become due to CONSULTANT from COUNTY under this CONTRACT 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. CONSULTANT shall be as fully responsible to the COUNTY for the negligent acts and omissions of its consultants and subconsultants or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this CONTRACT 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 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.

ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the COUNTY's Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with COUNTY's Contract Administrator, as needed, to discuss progress on the CONTRACT.

ARTICLE III STATEMENT OF WORK

The statement of work as detailed in the Attachment A: Scope of Services and Cost Proposal, dated **DATE**.

ARTICLE IV PERFORMANCE PERIOD

- A. This CONTRACT shall go into effect on «Beg Date», contingent upon approval by COUNTY, and CONSULTANT shall commence work after notification to proceed by COUNTY'S Contract Administrator. The CONTRACT shall end on «End Date», unless extended by AGREEMENT 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.

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 the approved CONSULTANT'S Cost Proposal, 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 Cost Proposal. In the event, that COUNTY determines that a change to the work from that specified in the Cost Proposal and 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 Paragraph "I" of this Article shall not be exceeded, unless authorized by CONTRACT amendment.
- B. The indirect cost rate established for this CONTRACT is extended through the duration of this specific CONTRACT.
- C. In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee of X% Rate. The fixed fee is nonadjustable for the term of the CONTRACT, except in the event of a significant change in the scope of work and such adjustment is made by CONTRACT amendment.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- 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 Article III Statement of Work, COUNTY shall have the right to delay payment or terminate this CONTRACT.
- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this CONTRACT.
- G. CONSULTANT will be reimbursed promptly as fiscal procedures will permit upon receipt by COUNTY's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than (30) calendar days after the performance of work for which CONSULTANT 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 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. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's

County of Santa Cruz
Department of Community Development and Infrastructure

work. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:

Santa Cruz County
Department of Community Development and Infrastructure
Attn: **Rosa Ortiz-Rocha**
701 Ocean Street, Room 410
Santa Cruz, CA 95060

- H. If the COUNTY fails to pay promptly, the COUNTY shall pay interest to the CONSULTANT, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied 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 CONSULTANT 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.
- I. The total amount payable by COUNTY including the fixed fee shall not exceed **\$XX,XXX**.
- 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.

ARTICLE VI TERMINATION

- A. This CONTRACT 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.
- B. COUNTY may temporarily suspend this CONTRACT, at no additional cost to COUNTY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If COUNTY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this CONTRACT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this CONTRACT, CONSULTANT shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this CONTRACT by CONSULTANT, and COUNTY may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due COUNTY from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this CONTRACT. 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.
- E. In the event of termination, CONSULTANT shall be entitled to compensation for work actually performed and not yet paid for at the rates set forth in Attachment B, so long as the dollar value of that work does not exceed the amounts set forth in Attachment A. The maximum amount for which the COUNTY shall be liable if this CONTRACT is terminated is the total amount as identified in the Attachment A Cost Proposal.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR 31 or 2 CFR 200 are subject to repayment by the CONSULTANT to COUNTY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VIII RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, 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 CONTRACT including, but not limited to, the costs of administering the CONTRACT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the CONTRACT period and for three (3) years from the date of final payment under the CONTRACT and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. COUNTY, Caltrans Auditor, FHWA, FEMA, 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 the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the CONTRACT 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 CONTRACT that is not disposed of by CONTRACT, shall be reviewed by COUNTY'S County Administrative Officer or designee.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by COUNTY'S County Administrative Officer or designee 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. CONSULTANT and subconsultant CONTRACTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an 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 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,

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

Accepted rates will be as follows:

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

4. CONSULTANT 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 CONTRACT has been completed to the satisfaction of COUNTY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT 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 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 the COUNTY and any Subconsultants, and no subcontract shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the COUNTY for the acts and omissions of its Subconsultants 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 CONSULTANT. The CONSULTANT'S obligation to pay its Subconsultants is an independent obligation from the COUNTY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT 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 the COUNTY Contract Administrator, except that which is expressly identified in the CONSULTANT'S approved Cost Proposal.
- C. Any subcontract entered into as a result of this CONTRACT, shall contain all the provisions stipulated in this entire CONTRACT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the COUNTY.
- E. Any substitution of Subconsultants must be approved in writing by the COUNTY Contract Administrator in advance of assigning work to a substitute Subconsultant.
- F. Prompt Progress Payment

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

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

- G. Prompt Payment of Withheld Funds to Subconsultants

No retainage will be held by the COUNTY from progress payments due to CONSULTANT.

CONSULTANTS and subconsultants are prohibited from holding retainage from subconsultants. 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 CONSULTANT or subconsultant 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 CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by COUNTY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$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 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 CONTRACT is subject to the following:
 - 1. 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 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 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. Regulation 2 CFR 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 CONSULTANT or Subconsultant may be awarded an CONTRACT 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 CONTRACT, including any subsequent amendments.
- B. The CONSULTANT 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 CONTRACT 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 CONTRACT 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 subconsultants 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 CONSULTANT and Subconsultant 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 CONSULTANT or Subconsultant 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 CONSULTANT 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 CONSULTANT. The CONSULTANT 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.
 - 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 CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT 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 CONSULTANT 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 CONSULTANT or Subconsultant performing the work shall not be marked

or obliterated.

5. The CONSULTANT 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 CONSULTANT or Subconsultant 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 CONSULTANT or Subconsultant 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. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT 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 CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant 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 CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code 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 CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant 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 CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the CONTRACT.
 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 CONSULTANT or Subconsultant.
 4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the CONSULTANT of the project is not liable for the penalties described above unless the CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the CONSULTANT fails to comply with all of the following requirements:
 - a. The CONTRACT executed between the CONSULTANT and the Subconsultant 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 CONSULTANT shall monitor the payment of the specified general prevailing rate of

County of Santa Cruz
Department of Community Development and Infrastructure

per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.

- c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant'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 CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
 6. If COUNTY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if COUNTY did not retain sufficient money under the CONTRACT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient 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 CONSULTANT shall forfeit, as a penalty to the COUNTY, twenty-five dollars (\$25) for each worker employed in the execution of the CONTRACT by the CONSULTANT or any of its Subconsultants 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 CONTRACT or the subcontract exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants 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. CONSULTANTS and subconsultants 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, CONSULTANT and subconsultants 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 CONTRACT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this CONTRACT, the 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. The 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 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 CONTRACT. CONSULTANT agrees to advise COUNTY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this CONTRACT. CONSULTANT further agrees to complete any statements of economic interest if required by either COUNTY ordinance or State law.
- C. The 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.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any CONTRACT to provide construction inspection for any construction project resulting from this CONTRACT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one that is subject to the control of the same persons, through joint ownership or otherwise.
- E. 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.
- F. Except for subconsultants whose services are limited to materials testing, no subconsultant who is providing service on this CONTRACT shall have provided services on the design of any project included within this CONTRACT.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this CONTRACT, CONSULTANT and its subconsultants shall not deny the CONTRACT'S benefits to any person on the basis 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, 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, denial of family care leave, sex, gender, gender identity, gender expression, age, sexual orientation, or military and

County of Santa Cruz
Department of Community Development and Infrastructure

veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. CONSULTANT and subconsultants 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 Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this CONTRACT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT 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. 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 CONTRACT.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this CONTRACT.
- G. The CONSULTANT, with regard to the work performed under this CONTRACT, 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 CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT 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 Subconsultants, including procurement of materials and leases of equipment.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the COUNTY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.
- J. CONSULTANT and subconsultants shall comply with applicable provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the 5 applicable regulations promulgated there under (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 CONTRACT. The CONSULTANT shall cause the foregoing provisions to be inserted in all subcontracts for any work covered under this CONTRACT by a subconsultant compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to CONTRACTS or subcontracts for standard commercial supplies or raw materials.

- K. 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 CONTRACT covers a program whose goal is employment.
- L. In the event of the CONSULTANT'S non-compliance with the non-discrimination clauses of this or with any of the said rules, regulations, or orders said CONSULTANT may be declared ineligible for further CONTRACTS with the COUNTY.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT'S signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT 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 (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

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

CONSULTANT shall meet the DBE goal shown elsewhere in the CONTRACT or demonstrate that they made adequate Good Faith Efforts (GFE) to meet this goal. It is CONSULTANT'S responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the CONTRACT. Additionally, the CONSULTANT is responsible to

County of Santa Cruz
Department of Community Development and Infrastructure

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 CONSULTANT purchases from DBEs counts towards the goal in the following manner:

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

This CONTRACT is subject to 49 CFR 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTs who enter into a federally-funded CONTRACT 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 CONTRACT is «DBE Percentage»%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 10-02: Consultant Contract DBE Commitment attached hereto and incorporated as part of the 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. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the CONTRACT goal, or by documenting adequate good faith efforts to meet the CONTRACT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- D. Contract Assurance
- Under 49 CFR 26.13(b):
- CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this CONTRACT. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.
- Failure by the CONSULTANT to carry out these requirements is a material breach of this CONTRACT, which may result in the termination of this CONTRACT or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
- (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying CONSULTANT from future proposing as non-responsible
- E. Termination and Replacement of DBE Subconsultants
- CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for

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

Termination of DBE Subconsultants

After execution of the CONTRACT, 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 consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
8. Listed DBE voluntarily withdraws with written notice from the Contract.
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The COUNTY determines other documented good cause.

CONSULTANT 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 CONSULTANT's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the COUNTY. The written notice to the DBE must request they provide any response within five (5) business days to both the CONSULTANT and the COUNTY by either acknowledging their CONTRACT 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, CONSULTANT may move forward with the request as if the DBE had agreed to CONSULTANT's written notice.
3. Submit CONSULTANT's DBE termination request by written letter to the COUNTY and include:
 - One or more above listed justifiable reasons along with supporting documentation.
 - CONSULTANT'S written notice to the DBE regarding the request, including proof of transmission and tracking documentation of CONSULTANT'S written notice

County of Santa Cruz
Department of Community Development and Infrastructure

- The DBE's response to CONSULTANT'S written notice, if received. If a written response was not provided, provide a statement to that effect.

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

Replacement of DBE Subconsultants

After receiving the COUNTY'S written authorization of DBE termination request, CONSULTANT must obtain the COUNTY's written CONTRACT for DBE replacement. CONSULTANT must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

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

1. Submit a request to replace a DBE with other forces or material sources in writing to the 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 CONTRACT and written confirmation of CONTRACT to perform on the Contract
 - Revised Exhibit 10-O2: Consultant Contract DBE Commitment
2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT'S GFEs to use DBE replacement firms within seven (7) days of COUNTY'S authorization to terminate the DBE. CONSULTANT 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 CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment
 - Solicitations of DBEs for performance of work identified
 - Correspondence with interested DBEs that may have included contract details and requirements
 - Negotiation efforts with DBEs that reflect why an agreement was not reached
 - If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
 - Copies of each DBE's and non-DBE's price quotes for work identified, as the COUNTY may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
 - Additional documentation that supports CONSULTANT's GFE

The COUNTY shall respond in writing to CONSULTANT'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 CONSULTANT 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 1st-tier subconsultant
 - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

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

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

Upon work completion, CONSULTANT shall complete Exhibit 17-F: Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants and submit it to the COUNTY within 90 days of CONTRACT acceptance. The COUNTY will withhold \$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 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.

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

to monitor the performance of CUF for the duration of the project.

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

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

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

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

CONSULTANT 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 a CONTRACT. The COUNTY will provide written notice to the CONSULTANT and the DBE at least two (2) business days prior to any evaluation. The CONSULTANT and the DBE must participate in the evaluation. Upon completing the evaluation, the COUNTY must share the evaluation results with the CONSULTANT 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 CONSULTANT must suspend performance of the noncompliant work.

CONSULTANT and DBEs must submit any additional CUF related records and documents within five (5) business days of 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 CONSULTANT and/or the COUNTY determine that a listed DBE is not performing a CUF in

performance of their DBE committed work, CONSULTANT must immediately suspend performance of the noncompliant portion of the work. COUNTY may deny payment for the noncompliant portion of the work. COUNTY will ask the CONSULTANT to submit a corrective action plan (CAP) to the LOCAL AGENCY within five (5) days of the noncompliant CUF determination. The CAP must identify how the CONSULTANT will correct the noncompliance findings for the remaining portion of the DBE's work. COUNTY has five (5) days to review the CAP in conjunction with the CONSULTANT'S review. The CONSULTANT must implement the CAP within five (5) days of the 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 CONTRACT, CONSULTANT may have good cause to request termination of the DBE.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, 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.
- I. 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.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the 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 thirty (30) calendar days.
- L. Any subcontract entered into as a result of this CONTRACT shall contain all of the provisions of this section.

ARTICLE XIX INSURANCE

CONSULTANT, at its sole cost and expense, for the full term of this CONTRACT (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be considered in excess of CONSULTANT'S insurance coverage and shall not contribute to it. If CONSULTANT normally carries insurance in an amount greater than the minimum amount required by the COUNTY for this CONTRACT, that greater amount shall become the minimum required amount of insurance for purposes of this CONTRACT. Therefore, CONSULTANT hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this CONTRACT. Insurance is to be placed with insurers reasonably acceptable to the COUNTY.

If CONSULTANT utilizes one or more subconsultants in the performance of this CONTRACT,

County of Santa Cruz
Department of Community Development and Infrastructure

CONSULTANT shall obtain and maintain CONSULTANT'S Protective Liability insurance as to each subconsultant or otherwise provide evidence of insurance coverage from each subconsultant equivalent to that required of CONSULTANT in this CONTRACT, unless CONSULTANT and COUNTY both initial here ____ / ____.

A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall be required unless the CONSULTANT has no employees and certifies to this fact by initialing here ____.

(2) Automobile Liability Insurance for each of CONSULTANT'S vehicles used in the performance of this CONTRACT, including owned, non-owned (e.g. owned by CONSULTANT'S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage is required unless the CONSULTANT does not drive a vehicle in conjunction with any part of the performance of this CONTRACT and CONSULTANT and COUNTY both certify to this fact by initialing here ____ / ____.

(3) Comprehensive or Commercial General Liability Insurance coverage at least as broad as ISO Form CG 00 01 with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate, including coverage for: (a) products and completed operations; (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$1,000,000 combined single limit, if, and only if, this Subparagraph is initialed by CONSULTANT and COUNTY ____ / ____.

B. Other Insurance Provisions

(1) If any insurance coverage required in this CONTRACT is provided on a "Claims Made" rather than "Occurrence" form, CONSULTANT agrees that the retroactive date thereof shall be no later than the date first written above, and that it shall maintain the required coverage for a period of three (3) years after the expiration of this CONTRACT (hereinafter "post contract coverage") and any extensions thereof. CONSULTANT may maintain the required post contract coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post contract coverage being both available and reasonably affordable in relation to the coverage provided during the term of this CONTRACT. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this CONTRACT in order to purchase prior acts or tail coverage for post contract coverage shall be deemed to be reasonable.

(2) All policies of Comprehensive or Commercial General Liability Insurance shall be endorsed to cover the County of Santa Cruz, its officials, employees, agents and volunteers as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of CONSULTANT, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85 or both 20 10 10 01 and 20 37 10 01.

(3) All required insurance policies shall be endorsed to contain the following clause:

"This insurance shall not be canceled until after thirty (30) days (10 days for nonpayment of premium) prior written notice has been given to:

County of Santa Cruz
Department of Community Development and Infrastructure

Santa Cruz County
Department of Community Development and Infrastructure
Attn: Rosa Ortiz-Rocha
701 Ocean Street, Room 410
Santa Cruz, CA 95060

Should CONSULTANT fail to obtain such an endorsement to any policy required hereunder, CONSULTANT shall be responsible to provide at least thirty (30) days' notice (10 days for non-payment of premium) of cancellation of such policy to the COUNTY as a material term of this CONTRACT.

(4) CONSULTANT agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this CONTRACT with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT'S obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:

Santa Cruz County
Department of Community Development and Infrastructure
Attn: Rosa Ortiz-Rocha
701 Ocean Street, Room 410
Santa Cruz, CA 95060

(5) CONSULTANT hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.

ARTICLE XX 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 terminate the CONTRACT pursuant to Article VI Termination, or by mutual agreement to amend the CONTRACT to reflect any reduction of funds.

ARTICLE XXI CHANGE IN TERMS

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

- C. There shall be no change in CONSULTANT'S Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this CONTRACT without prior written approval by COUNTY'S Contract Administrator.

ARTICLE XXII 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 CONTRACT 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 XXIII DISPUTES

Prior to either party commencing any legal action under this CONTRACT, 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.

- A. 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 Community Development and Infrastructure, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all work under the CONTRACT, 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.
- C. 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 XXIV 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.

ARTICLE XXV 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 Vehicle Code §591, 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.

ARTICLE XXVI OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this CONTRACT shall become the property of COUNTY, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, COUNTY shall be entitled to, and CONSULTANT 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 CONSULTANT in performing this CONTRACT which is not CONSULTANT'S privileged information, as defined by law, or CONSULTANT'S personnel information, along with all other property belonging exclusively to COUNTY which is in CONSULTANT'S possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this CONTRACT must be approved in writing by COUNTY.
- B. Additionally, it is agreed that the Parties intend this to be an CONTRACT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of 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 CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this CONTRACT. 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).
- E. COUNTY may permit copyrighting reports or other CONTRACT products. If copyrights are permitted; the CONTRACT 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.
- F. Any subcontract in excess of \$25,000 entered into as a result of this CONTRACT, shall contain all of the provisions of this Article.

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.

- D. Any subcontract in excess of \$25,000 entered into as a result of this CONTRACT, shall contain all of the provisions of this Article.

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.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §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 EVALUATION OF CONSULTANT

CONSULTANT'S performance will 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 XXXI PROMPT PAYMENT

A. PROMPT PAYMENT FROM COUNTY TO CONSULTANT

The COUNTY shall make all project progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the COUNTY fails to pay promptly, the COUNTY shall pay interest to the CONSULTANT, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied 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 CONSULTANT 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

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 CONSULTANT.

ARTICLE XXXII PRESENTATION OF CLAIMS

Presentation and processing of any or all claims arising out of or related to this CONTRACT shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

ARTICLE XXXIII MISCELLANEOUS

This written CONTRACT, along with any attachments, is the full and complete integration of the parties' agreement forming the basis for this CONTRACT. The parties agree that this written CONTRACT supersedes any previous written or oral agreements between the parties, and any modifications to this CONTRACT must be made in a written document signed by all parties. Any arbitration, mediation, or litigation arising out of this CONTRACT shall occur only in the County of Santa Cruz, notwithstanding the fact that one of the contracting parties may reside outside of the County of Santa Cruz.

ARTICLE XXXIV ADDITIONAL REQUIREMENTS FOR FEDERAL FUNDED PROJECTS

1. The CONSULTANT shall not use the DOT seal(s), logos, crests, or reproductions of flags or likenesses of DOT agency officials without specific FHWA pre- approval.
2. The CONSULTANT acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT'S actions pertaining to this CONTRACT.

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 below.

ARTICLE XXXIV CONTRACT

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 CONTRACT 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. CONSULTING FIRM

By: _____
SIGNED

CONSULTING FIRM
PRINTED

Address: STREET
CITY, STATE, ZIP CODE
Telephone: XXX-XXX-XXXX
Fax:
Email:

3. APPROVED AS TO INSURANCE:

Risk Management

DISTRIBUTION:
Community Development and Infrastructure
Consultant

4. COUNTY OF SANTA CRUZ

By: _____
SIGNED

Matt Machado
PRINTED

1. APPROVED AS TO FORM:

Office of County Counsel

APPENDICES A - E of the TITLE VI ASSURANCES

DRAFT

APPENDIX A

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

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - i. withholding of payments to CONSULTANT 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: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

DRAFT

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

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

APPENDIX C

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

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

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

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

APPENDIX D

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

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

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

APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).

ATTACHMENT A - SCOPE OF SERVICES AND COST PROPOSAL

DRAFT

ATTACHMENT B - RATE SHEET