

**CITY OF CHICO - PROFESSIONAL SERVICES AGREEMENT**

KNIGHT CONSTRUCTION MANAGEMENT

Architect/Consultant/Engineer

CONSTRUCTION MANAGEMENT, INSPECTION &  
MATERIALS TESTING SERVICES FOR BIKEWAY 99 PHASE 5

Project Title

307-000-8800 /50347-307-4160

Budget Account Number

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**THIS PROFESSIONAL SERVICES AGREEMENT** (Agreement) is entered into on August 1, 2022, between the City of Chico, a municipal corporation under the laws of the State of California, (City) and Knight Construction Management, a California corporation, (Consultant).

**SECTION 1 - DESCRIPTION OF PROJECT**

City desires to undertake that certain project (Project) described in EXHIBIT A, entitled “DESCRIPTION OF PROJECT,” and to engage Consultant to provide the required professional services relating to the Project.

**SECTION 2 - SCOPE OF PROFESSIONAL SERVICES - BASIC; COMPLETION SCHEDULE**

Consultant shall perform those basic professional services in connection with the Project as are set forth more particularly in EXHIBIT B, entitled “SCOPE OF PROFESSIONAL SERVICES - BASIC; COMPLETION SCHEDULE,” and shall complete said professional services in accordance with the completion schedule for professional services as incorporated in EXHIBIT B.

**SECTION 3 - SCOPE OF PROFESSIONAL SERVICES - ADDITIONAL; COMPLETION SCHEDULE**

City and Consultant agree that it may be necessary, in connection with the Project, for Consultant to perform or secure the performance of professional services other than those set forth in EXHIBIT B. In each such instance, Consultant shall advise City, in advance and in writing, of the need for such additional professional services, their cost and the estimated time, if appropriate, required to perform them. Consultant shall not proceed to perform any such required additional professional service until City has determined that such professional service is beyond

the scope of the basic professional service to be provided, is required, and has given its written authorization to perform or obtain it. Each additional professional service so authorized shall constitute an amendment to this Agreement, shall be identified and sequentially numbered as "Amendment No. 1" and so forth, shall be subject to all of the provisions of this Agreement, and shall be incorporated into EXHIBIT B accordingly.

#### **SECTION 4 - COMPENSATION**

Consultant shall be compensated for professional services rendered to City pursuant to this Agreement periodically in the amounts, manner and in accordance with the payment schedule as set forth in EXHIBIT C, entitled "COMPENSATION." Amounts due to Consultant from City for professional service rendered shall be evidenced by the submission to City by Consultant of an invoice, prepared in a form satisfactory to City, setting forth the amount of compensation due for the period covered by it. Each such invoice shall be forwarded to City so as to reach it on or before the 15th day of the month next following the month or months, or other applicable period, for which the professional service invoiced were provided. All such invoices shall be in full accord with any and all applicable provisions of this Agreement. City will make payment on each such invoice within 30 days of receipt of it. However, if Consultant submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement, then City shall not be obligated to process any payment to Consultant until a correct and complying invoice has been submitted.

#### **SECTION 5 - RESPONSIBILITY OF CONSULTANT**

By executing this Agreement, Consultant warrants to City that Consultant possesses, or will arrange to secure from others, all of the necessary professional capabilities, experience, resources and facilities necessary to provide to City the professional services under this Agreement. In procuring the professional services of others to assist Consultant in performing the professional services set forth at EXHIBIT B or additional professional services under SECTION 3 of this Agreement, Consultant shall not employ or otherwise obtain the professional services of any person or entity known to Consultant or City to have, or be likely to develop during the term of this Agreement, an interest that is personally, or professionally, or financially adverse to any interest of City. Consultant will follow the best current, generally accepted professional practices in performing tests and procedures, making findings, rendering opinions, preparing factual presentations and providing professional advice and recommendations regarding professional services rendered under this Agreement.

#### **SECTION 6 - RESPONSIBILITY OF CITY**

To the extent appropriate to the Project contemplated by this Agreement, City shall:

**6.1** Assist Consultant by placing at Consultant's disposal all available information pertinent to the Project, including previous reports and any other data relative to design and construction of the Project.

**6.2** Guarantee access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform Consultant's professional services.

**6.3** Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents prepared and presented by Consultant, and render verbally or in writing as may be

appropriate, decisions pertaining thereto within a reasonable time so as not to delay the progress of the services by Consultant.

**6.4** Designate in writing a person to act as City's representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements and systems pertinent to Consultant's professional services.

**6.5** Give prompt written notice to Consultant whenever City observes or otherwise becomes aware of any defect in the Project.

**6.6** Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

## **SECTION 7 - INDEMNIFICATION**

To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, related to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the services provided under this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Consultant shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Consultant's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its directors, officials, officers, employees, agents, or volunteers. Consultant's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents for claims involving "Professional Liability" claims involving acts, errors or omissions in the rendering of professional services (as defined in Civil Code section 2782.8(2), specifically, architects (Business & Professions Code section 5500), landscape architects (Business & Professions Code section 5615), professional engineers (Business & Professions Code section 6701), and professional land surveyors (Business & Professions Code section 8701)), shall be limited to the extent caused by Consultant's negligent acts, errors or omissions.

## **SECTION 8 - INSURANCE**

Any requirements by City that Consultant carry general liability, errors and omissions, or any other type of insurance in connection with the services to be performed and/or professional services to be rendered by Consultant pursuant to this Agreement shall be as set forth in EXHIBIT

D, entitled "INSURANCE PROVISIONS."

## **SECTION 9 - GENERAL PROVISIONS**

### **9.1 Access to Records**

Consultant shall maintain all books, records, documents, accounting ledgers, and similar materials relating to services performed for City under this Agreement on file for at least four years following the date of final payment to Consultant by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit and copying at reasonable times, during Consultant's usual and customary business hours. Consultant shall provide proper facilities to City's representative(s) for access and inspection. Consultant shall be entitled to reasonable compensation for time and expenses related to such access and inspection activities, which shall be considered to be an additional professional service to City, falling under the provisions of SECTION 3 of this Agreement.

### **9.2 Assignment**

This Agreement is binding on the heirs, successors, and assigns of the parties hereto and shall not be assigned by either City or Consultant without the prior written consent of the other.

### **9.3 Changes to Scope of Services - Basic Professional Services**

City may at any time, upon a minimum of 10 days written notice, modify the scope of basic professional services to be provided under this Agreement. Consultant shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify City in writing. Upon agreement between City and Consultant as to the extent of said impacts to time and compensation, an amendment to this Agreement shall be prepared describing such changes. Execution of the amendment by City and Consultant shall constitute the Consultant's notice to proceed with the changed scope.

### **9.4 Compliance with Laws, Rules, Regulations**

All professional services performed by Consultant pursuant to this Agreement shall be performed in accordance and full compliance with all applicable Federal, State, or City statutes, and any rules or regulations promulgated thereunder.

### **9.5 Conflict of Interest Code Applicability**

If City's City Manager has determined that one or several of Consultant's Principal(s) or Project Manager(s) are subject to the provisions of Section 2R.04.180 of the Chico Municipal Code (the City's Conflict of Interest Code), then each such person will be required to comply with the provisions of said Code in connection with the professional services they render to the City under this Agreement. In such event, City's requirements are set forth in EXHIBIT E, entitled "CONFLICT OF INTEREST PROVISIONS," to this Agreement.

### **9.6 Exhibits Incorporated**

All Exhibits attached to and referred to in this Agreement are hereby incorporated by this reference.

### **9.7 Independent Contractor**

City and Consultant agree that the relationship between them created by this Agreement

is that of an employer-independent contractor. Consultant shall be solely responsible for the conduct and control of the services performed under this Agreement. Consultant shall be free to render professional consulting services to others during the term of this Agreement, so long as such activities do not interfere with or diminish Consultant's ability to fulfill the obligations established herein to City.

**9.8 Integration; Amendment**

This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing signed by both parties.

**9.9 Jurisdiction**

This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that state. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

**9.10 Notice to Proceed; Progress; Completion**

Upon execution of this Agreement by the parties, City shall give Consultant written notice to proceed with the services. Such notice may authorize Consultant to render all of the professional services contemplated herein, or such portions or phases as may be mutually agreed upon. In the latter event, City shall, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the services. Upon receipt of such notices, Consultant shall diligently proceed with the services authorized and complete it within the agreed time period.

**9.11 Ownership of Documents**

Title to all documents, designs, drawings, specifications, and the like with respect to services performed under this Agreement shall vest with City at such time as City has compensated Consultant, as provided herein, for the professional services rendered by Consultant in connection with which they were prepared.

**9.12 Subcontracts**

Consultant shall be entitled, to the extent determined appropriate by Consultant, to subcontract any portion of the services to be performed under this Agreement. Consultant shall be responsible to City for the actions of persons and firms performing subcontract services. The subcontracting of services by Consultant shall not relieve Consultant, in any manner, of the obligations and requirements imposed upon Consultant by this Agreement.

**9.13 Term; Termination**

The term of this Agreement shall commence upon City's issuance to Consultant of a notice to proceed for all or a portion of the services, as hereinabove provided, and shall end upon City's acceptance and payment for all or such portion of the services as was authorized by such notice, including any and all retentions. Notwithstanding the foregoing, City may, in its sole



discretion, terminate this Agreement at any time and for any reason whatsoever by giving at least 10 days prior written notice of such termination to Consultant. In this latter event, Consultant shall be entitled to compensation for all professional service rendered and services performed for City to the date of such termination.

**9.14 Notice**

Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service or, alternatively, by personal delivery or overnight courier service addressed to the parties as follows:

To City:	City Manager	or	City Manager
	City of Chico		City of Chico
	P. O. Box 3420		411 Main Street
	Chico, CA 95927-3420		Chico, CA 95928

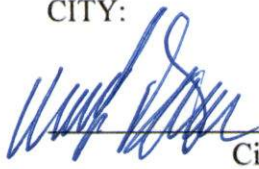
To Consultant: Knight Construction Management  
2377 Gold Meadow Way, Suite 100  
Gold River, CA 95670

**SECTION 10 - SPECIAL PROVISIONS**

This Agreement shall include all special provisions, if any, as are set forth on EXHIBIT F, entitled "SPECIAL PROVISIONS."


IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date first set forth above.

CITY:

  
\_\_\_\_\_  
City Manager\*

**Mark Sorensen**  
City Manager  
City of Chico, CA

CONSULTANT:

  
\_\_\_\_\_  
By: Joselito S. Reyes  
President Title

\*Authorized pursuant to Section 3.08.060 of the Chico Municipal Code

APPROVED AS TO FORM:


  
\_\_\_\_\_  
Vincent C. Ewing, City Attorney\*

\*Pursuant to The Charter of the City of Chico, Section 906(D)

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Leigh Ann Sutton, Public Works Director  
Engineering

REVIEWED AS TO CONTENT:

A handwritten signature in blue ink, appearing to read "Barbara Martin", written over a horizontal line.

Barbara Martin, Interim Administrative Services Director\*

\*Reviewed by Finance and Information Systems



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KNIGHT CONSTRUCTION MANAGEMENT  
Architect/Consultant/Engineer

CONSTRUCTION MANAGEMENT, INSPECTION &  
MATERIALS TESTING SERVICES FOR BIKEWAY 99 PHASE 5  
Project Title

307-000-8800/ 5034 7-307-4160  
Budget Account Number

EXHIBIT A

DESCRIPTION OF PROJECT

Construction Management, Inspection, and Materials Testing Services associated with construction of the City's Bikeway 99 Phase 5 Project (Project). The Project will construct a 0.44-mile Class I bicycle and pedestrian facility adjacent to the east side of State Route 99 (SR99), including an overcrossing at East 20th Street and SR99.

# CITY OF CHICO - PROFESSIONAL SERVICES AGREEMENT

## KNIGHT CONSTRUCTION MANAGEMENT

Architect/Consultant/Engineer

## CONSTRUCTION MANAGEMENT, INSPECTION & MATERIALS TESTING SERVICES FOR BIKEWAY 99 PHASE 5

Project Title

307-000-8800/ 5034 7-307-4160

Budget Account Number

### EXHIBIT B

## SCOPE OF PROFESSIONAL SERVICES - BASIC; COMPLETION SCHEDULE

### Scope of Professional Services - Basic

The Consultant shall provide professional services as follows:

#### **PHASE 1: PRECONSTRUCTION SERVICES**

**Review Contract Plans, Specifications, Permits and Agreements** – Consultant shall review the contract documents including permits and agreements and shall lead a round-table discussion with staff and sub-consultants to make sure all parties understand the requirements, roles, responsibilities, goals and objectives specific to this project. The discussion shall also focus on the job requirements, especially how the team shall handle non-conforming materials, QA records, records of corrective action taken, and audits of QA records. The most important aspect of the implementation plan during the preconstruction phase shall be to ensure that the proposed field staff (from the RE to the inspectors) thoroughly understand the contract documents and anticipate potential problems and/or delays during construction. This is to ensure that the field personnel know the contract documents and can resolve issues and keep the project on track.

**Team (Consultant, City and Designer) Meeting** – One of the first steps in preconstruction services, Consultant shall request to review the Resident Engineer's (RE) pending file which typically contains construction related documents and information assembled by the Design Team through the various project development phases.

**Pre-Construction Condition Documentation** – Documenting the site prior to construction is essential and can often mitigate disputes between the City, contractor, and other project stakeholders. This documentation is also necessary to ensure that areas not modified by the contract shall be restored to their pre-existing conditions upon completion. Consultant's staff shall provide a video and digital photography documentation of the entire site including any affected offsite areas. Special or sensitive areas shall be noted, and extra documentation shall be provided (each photo shall be annotated with date and time). Particular attention shall be given to areas affected by the work and the contractor's lay-down and office trailer areas. These areas

shall be inspected and compared to the pre-construction condition documentation prior to the contractor's demobilization activity. Absent any evidence to the contrary, any new damage shall be assumed the responsibility of the contractor (this shall be discussed with the contractor at the preconstruction meeting). Copies of all documentation, including photographs, notes, and video, shall be available for the City's review at all times.

**Constructability Analysis and Review** – If requested by the City, Consultant shall apply its construction knowledge to the review process and shall provide a comprehensive constructability review of the contract documents. Consultant's review shall be performed from a contractor's perspective and shall focus on interfaces (consistency between the plans and specifications, and Detail vs. General). The continuing "look-ahead" for potential problems, interferences, or omissions during construction, shall allow the team to resolve problems before the contractor begins the specific item of work.

## **PHASE 2: CONSTRUCTION SERVICES**

This task shall include project management, construction administration, scheduling, resident project observation/inspection, reviewing and approving all contractor submittals and materials testing during construction. Contract administration shall be in accordance with the Caltrans Local Program and Construction Manuals. Services shall include the following:

**Communication/Coordination and Correspondence** – Consultant shall serve as the day-to-day focal point for coordination among the City, Contractor, biologist, the design team, and others. This shall ensure that the contractor only receives information from a single source. The Consultant's team shall document all communications with the contractor in correspondence and daily diaries and shall prepare and distribute agendas, minutes, and an issues list. General duties shall include:

- Serve as focal point for coordination among the contractors, material testers, the design engineer, the City, various regulatory agencies and other stakeholders.
- Maintain close contact with City Project Manager and copy on all correspondence.
- Receive all Contractor correspondence and prepare and transmit responses accordingly. Coordinate with applicable parties as required to develop responses.
- Maintain contract files in a systematic and orderly manner consistent with the 63 categories for filing project documents as outlined in Chapter 5 of the Caltrans Construction Manual.

**Preconstruction Meeting** – Once the construction contract is bid and awarded, all appropriate parties shall be invited to a preconstruction meeting, including the contractor and their sub-contractors, the City, utility companies' appropriate regulatory representatives and any other stakeholders as deemed necessary by the City. To establish a successful project for all parties, this meeting shall establish managerial and administrative procedures, working relationships, and outline the level of expectations. Consultant shall customize the agenda for the project and, upon the City's approval, distribute prior to the meeting. Consultant shall chair the meeting and provide minutes documenting all items discussed.

**Weekly Meetings** – In order to facilitate effective communication among all parties associated with the contract, weekly meetings (day and time of the week shall be established in the pre-

construction meeting) shall be held to discuss project progress and pending issues. Consultant shall coordinate and conduct weekly construction meetings with the contractor, the City's representative, and interested parties. In order to facilitate an orderly and efficient meeting, Consultant shall send an agenda to all appropriate attendees, prior to the meetings. Some of the general items discussed shall be safety, schedule, status of RFIs, change orders, submittals, and new and old issues. Special meetings shall be conducted, as necessary to resolve specific issues. The Assistant RE shall prepare minutes of the meeting and distribute to respective attendees. Consultant's team shall make a point of setting up meetings on an "as-needed" basis with the "Owners" team members to discuss project issues. This approach of having a separate meeting with the Owner team prior to meeting with the contractor shall eliminate the potential of open disagreement amongst the team in front of the contractor.

**Maintain Effective Public Outreach Program** – To maintain an effective public outreach program, the Consultant's team shall assist the City in contacting individual stakeholders affected by the project, in advance of construction operations, and regularly during construction. All calls shall be documented, including date, time, name of caller, address, and specific issue or concern. Consultant shall follow up each call and provide documentation of the action taken to address the concern or issue. Consultant shall make every effort to meet, in person, every citizen who has a repeated concern.

**Monitor Construction Schedule** – The Consultant's team shall provide the contractor's monthly schedule to the City and advise of any schedule delay with recommendations for the schedule recovery. Consultant shall work with the contractor to eliminate and/or mitigate the impacts of any delays and as the work progresses, changes and weather shall be evaluated for impact to the contractor's schedule. In addition to reviewing the contractor's schedule, Consultant shall prepare and maintain an "as-built" schedule. This schedule is beneficial in negotiating time extensions due to change orders, weather, and other delays as well as time impact analysis for claims analysis purposes. Consultant's team shall review the baseline and monthly schedule for compliance.

**Document Control** – Consultant shall maintain a tracking system for all documents including correspondence, contract drawings, RFIs, RFCs, CCO logs, utility notices, submittals, and reports. The goal shall be to ensure that the status of all contract documents is known at all time and that current revisions of contract documents are distributed to key and appropriate personnel in a timely manner. The advantage of using this electronic document control system is that, daily, the RE at a glance can review items due today, overdue items, and items due in the next week. In addition to tracking on-going project documents, Consultant shall also utilize the information generated from the electronic document control system to prepare monthly detailed progress reports to the City.

**Submittal Management** – The goal in submittal management shall be to achieve timely responses from all associated parties. If the contractor requires interpretations of the meaning and intent of the drawings or the specifications, Consultant shall assist with the resolution of questions. Consultant shall request that the Contractor provide a list of required submittals for review and shall check these against the expected submittal list developed in the constructability analysis. Consultant shall also require submittals, and the appropriate review times, shall be shown on the Contractor's Baseline Schedule and Schedule Updates. Working with the City, the Consultant's team shall develop a distribution list to identify responsible parties for review and

acceptance of submittals. Consultant shall use a submittal log in the electronic document control system and shall review the status of all submittals during the weekly progress meeting. Consultant shall monitor the log to verify that submittal responses are submitted in a timely manner.

**Request for Information (RFI)/Requests for Changes (RFC)** – Typical RFI and RFC process starts with a request forwarded from the contractor, which Consultant shall review and determine if the Consultant’s team can provide an answer, within guidelines established by the City. If there is no cost and/or schedule impact and no change to the permanent construction, Consultant shall answer and process the RFI and/or RFC and transmit a record of the request to the City. If the RFI or RFC has either cost or schedule impact, or a change in permanent construction, or an answer cannot be made at the project level, Consultant shall take the next step and transmit design related RFI’s to the designer and copy to the City. Upon receipt of an answer from the design team, Consultant shall verify that the question asked has been answered, and if not, obtain additional information to provide a full and complete answer to the contractor. Responses to the RFIs shall be forwarded expeditiously to the contractor. To expedite efficiency, at each step along the way, the transmittal shall be tracked in the electronic document control system. In addition, the review time shall be monitored to avoid delay claims to the contract. Pending RFIs and RFCs shall be a standing agenda item discussed at each weekly jobsite meetings.

**Progress Payments** – Consultant and their lead inspectors shall continuously inspect the progress of the contract item work and perform quantity calculations for monthly partial payments, in order to process the payments for contract items. The quantity of each item shall be field measured, if necessary, to prevent overpayment or underpayment. Each month, Consultant shall provide accurate calculations for all items of work completed and accepted to allow for progress payments. Consultant shall also review the contractor’s progress pay estimate request and schedule of values for reasonableness and ease of monitoring and shall compare this information to the quantity records generated by our team. Upon completion of progress payment verification, Consultant shall provide the monthly progress payment recommendation as well as Budget Report to the City for review, approval, and payment. The budget report shall include the status of any bid items which are materially over- or under- running the original project bid; evaluation of any cost variances or changes in cash flow; a summary of potential impacts not resolved at the time of reporting; and a thorough evaluation of the project cost to complete.

**Change Order Management** – If a change order is unavoidable, the Consultant shall provide estimating and effective cost management by properly monitoring and tracking contract change orders. Consultant shall evaluate all proposed change orders to determine need, merit, and project impact. The team shall provide cost estimates and schedule impacts, and a rationale for approval or denial and with the concurrence from the City, Consultant shall negotiate change orders with contractor and prepare change order documentation for approval and signature by the City.

**Quality Assurance Inspection** – Specific elements of Quality Assurance Inspection shall include:

- Provide continuous inspection to ensure that the contractors’ work is in compliance with the contract documents and the designer’s intent.
- Identifying actual and potential problems associated with the construction and providing

solutions.

- Provide constant communication and timely notification to the City and local agency personnel, as required for relevant inspection elements.
- Maintain daily documentation including photographic documentation of project (special, sensitive, potential claim and milestone work).
- Review contractor prepared Storm Water Pollution Prevention (SWPPP) and inspect and ensure that the work is in compliance with the approved SWPPP plan.
- Certify quantity calculations for progress pay estimates and changes.
- Resolve construction issues by proposing field changes to facilitate construction and avoid delays.
- Coordinate all design changes and change orders with the design team and the City.
- Maintain comprehensive and updated computerized Change Order log, including anticipated changes to avoid construction rework in the field.
- Provide material management to ensure that the materials are in compliance with the Buy America Act (if applicable).
- Review of contractor submittals such as material submittals, mix designs, temporary work design, customized construction equipment design, trenching and shoring design, shop-drawings, certificates of compliance, progress payments, and extra work reports.

### **PHASE 3: POST-CONSTRUCTION SERVICES**

In this phase, the Consultant's team shall perform the following key activities, to ensure that the construction is completed in compliance to the contract documents:

- Develop "punch list" items to be completed.
- If the contractor's work or a designated portion thereof, is incomplete or noncompliant, Consultant shall compile a list of incomplete or unsatisfactory items. Consultant shall conduct final inspections and coordinate the correction and completion of the work.
- Perform final job walk through with the contractor, the City, and the design team.
- Project "Acceptance" and Closeout in accordance with the Locally Agency Procedures and Caltrans Construction Manual.
- Assist the City in reimbursement application for portions of the work from any external funding sources as needed.
- Provide Construction Claims Support Mediation/Litigation (if necessary).

#### Completion Schedule

The Consultant shall complete all services outlined herein by June 30, 2024.



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Budget Account Number

EXHIBIT C

COMPENSATION

Compensation for the services shall be in accordance with the following schedule of hourly rates attached as page C-2. Total maximum compensation for the services outlined herein shall not exceed **\$1,610,584.44**.

Compensation shall be based upon actual invoices received.

## KEY PERSONNEL EFFORT BY HOURS PER MONTH

Classification	Task 1: Pre-Construction	Task 2: Construction												Assumed 13 Months Const Dur	2023 HOURS   BILLING RATE   LABOR \$			2024 HOURS   BILLING RATE   LABOR \$			TOTAL HOURS	TOTAL DOLLARS			
		2023													2023			2024					TOTAL HOURS	TOTAL DOLLARS	
		Year	2023												2024	2023			2024			TOTAL HOURS	TOTAL DOLLARS		
Month	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	TOT 13 months	Hours	Billing Rate	Labor \$	Hours	Billing Rate	Labor \$	Hours	\$			
1 Project Manager/Resident Engineer	80	168	168	168	100	100	100	100	100	100	100	80	80	1444	1364	\$ 261.70	\$ 356,958.80	80	\$ 269.55	\$ 21,564.08	1444	\$ 378,522.88			
2 Structure Representative	168	168	168	168	168	168	168	168	168	168	120	120	120	2040	1920	\$ 231.98	\$ 445,401.60	120	\$ 238.94	\$ 28,672.73	2040	\$ 474,074.33			
3 Structure Material Representative (SMR)						40	40	40	40					160	160	\$ 231.98	\$ 37,116.80		\$ 238.94	\$ -	160	\$ 37,116.80			
4 Structure Inspections/Civil Inspections	168	168	168	168	168	168	168	168	168	168	168	168	168	2184	2016	\$ 191.58	\$ 386,225.28	168	\$ 197.33	\$ 33,151.00	2184	\$ 419,376.28			
5 Office Engineer	40	40	40	40	40	40	40	40	40	40	40	40	40	520	480	\$ 137.58	\$ 66,038.40	40	\$ 141.71	\$ 5,668.30	520	\$ 71,706.70			
6 RMA Group (Material Testing + Source Inspection)	<i>See RMA Cost Proposal</i>																							\$ 229,787.45	
7																									
<b>SUB-TOTAL PERSONNEL</b>	456	544	544	544	476	516	516	516	516	476	428	408	408	6348	5940			408			5828	\$ 1,610,584.44			

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**Notes**

- (1) This Manhours Proposal was based on the assumption that the Contractor will work from January 2023 - January 2024.
- (2) City will be billed only for hours worked.
- (3) KCM will work with the City regarding level of staffing to meet budget requirements.
- (4) Used 168 hours per month. Assumed work level of 5 days/week, 8 hours/day.
- (5) Contract time may be extended by weather or unforeseen delays that arise during construction. Cost proposal may need to be reviewed should this occur.
- (6) Actual staff utilization dependent on the approval of the City Project Manager.
- (7) Travel Budget and Cost have been excluded from this cost proposal

Const Cost	\$ 10,900,000
CM Cost	\$ 1,610,584
% of Const	14.8%
% DBE	86%

**EXHIBIT 10-H2 COST PROPOSAL** Page 1 of 3  
**SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)**  
**(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)**

Note: Mark-ups are Not Allowed

Consultant KCM Engineering, Inc. X Prime Consultant Subconsultant  2nd Tier Subconsultant  
 Project No. ATPCML-5037(027) Contract No. 50347 Participation Amount \$1,380,796.99 Date 7/18/2022

For Combined Rate	Fringe %	+	Overhead %	+	G&A %	=	Combined ICR %
	16.14%		95.11%		29.35%		140.60%

OR

For Home Office Rate	Fringe %	+	Overhead %	+	G&A %	=	Home Office ICR %
							0.00%
For Field Office Rate	Fringe %	+	Overhead %	+	G&A %	=	Field Office ICR %
							0.00%

Fee =							10%
% Increase =							3.0%

**BILLING INFORMATION**

**CALCULATION INFORMATION**

Name/Job Title/Classification <sup>1</sup>	Hourly Billing Rates <sup>2</sup>			Effective Date of Hourly Rate		Actual or Avg. Hourly Rate <sup>4</sup>	% or \$ Increase	Hourly Range - for Classifications Only
	Straight <sup>3</sup>	OT(1.5x)	OT(2x)	From	To			
Mehrdad Varzandeh, PE*	\$254.07	N/A	N/A	1/1/2022	12/31/2022	\$96.00		Not Applicable
Project Manager / Resident Engineer	\$261.70	N/A	N/A	1/1/2023	12/31/2023	\$98.88	3.0%	
	\$269.55	N/A	N/A	1/1/2024	12/31/2024	\$101.85	3.0%	
	Exempt	\$277.63	N/A	N/A	1/1/2025	12/31/2025	\$104.90	3.0%
Joe Reyes, PE*	\$225.23	\$337.84	\$450.45	1/1/2022	12/31/2022	\$85.10		Not Applicable
Structure Representative	\$231.98	\$347.97	\$463.96	1/1/2023	12/31/2023	\$87.65	3.0%	
	\$238.94	\$358.41	\$477.88	1/1/2024	12/31/2024	\$90.28	3.0%	
	Exempt	\$246.11	\$369.17	\$492.22	1/1/2025	12/31/2025	\$92.99	3.0%
Matt Taliaferro, PE*	\$225.23	N/A	N/A	1/1/2022	12/31/2022	\$85.10		Not Applicable
Source Inspection Coordinator	\$231.98	N/A	N/A	1/1/2023	12/31/2023	\$87.65	3.0%	
	\$238.94	N/A	N/A	1/1/2024	12/31/2024	\$90.28	3.0%	
	Exempt	\$246.11	N/A	N/A	1/1/2025	12/31/2025	\$92.99	3.0%
Ryan Henry**	\$186.00	\$279.00	\$372.01	1/1/2022	12/31/2022	\$70.28		Not Applicable
Civil/Structures Inspector	\$191.58	\$287.37	\$383.17	1/1/2023	12/31/2023	\$72.39	3.0%	
	\$197.33	\$296.00	\$394.66	1/1/2024	12/31/2024	\$74.56	3.0%	
	Non-Exempt	\$203.25	\$304.88	\$406.50	1/1/2025	12/31/2025	\$76.80	3.0%
Ryan Henry**	\$203.21	\$304.81	\$406.41	1/1/2022	12/31/2022	\$76.78		Not Applicable
Civil/Structures Inspector Second Shift	\$209.30	\$313.95	\$418.60	1/1/2023	12/31/2023	\$79.08	3.0%	
	\$215.58	\$323.37	\$431.16	1/1/2024	12/31/2024	\$81.46	3.0%	
	Non-Exempt	\$222.05	\$333.07	\$444.10	1/1/2025	12/31/2025	\$83.90	3.0%
Unassigned - As Needed**	\$185.26	\$277.89	\$370.52	1/1/2022	12/31/2022	\$70.00		\$65.00 - \$75.00
Civil/Structures Inspector	\$190.82	\$286.23	\$381.64	1/1/2023	12/31/2023	\$72.10	3.0%	
	\$196.54	\$294.82	\$393.09	1/1/2024	12/31/2024	\$74.26	3.0%	
	Non-Exempt	\$202.44	\$303.66	\$404.88	1/1/2025	12/31/2025	\$76.49	3.0%

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Name/Job Title/Classification <sup>1</sup>	Billing Information			Calculation Information					
	Hourly Billing Rates <sup>2</sup>			Effective Date of Hourly Rate		Actual or Avg. Hourly Rate <sup>4</sup>	% or \$ Increase	Hourly Range - for Classifications Only	
	Straight <sup>3</sup>	OT(1.5x)	OT(2x)	From	To				
Unassigned - As Needed**	\$202.46	\$303.70	\$404.93	1/1/2022	12/31/2022	\$76.50		\$71.50 - \$81.50	
Civil/Structures Inspector	\$208.54	\$312.81	\$417.08	1/1/2023	12/31/2023	\$78.80	3.0%		
<i>Second Shift</i>	\$214.80	\$322.19	\$429.59	1/1/2024	12/31/2024	\$81.16	3.0%		
Non-Exempt	\$221.24	\$331.86	\$442.48	1/1/2025	12/31/2025	\$83.59	3.0%		
Heather Rush	\$133.57	N/A	N/A	1/1/2022	12/31/2022	\$50.47		Not Applicable	
Office Engineer	\$137.58	N/A	N/A	1/1/2023	12/31/2023	\$51.98	3.0%		
	\$141.71	N/A	N/A	1/1/2024	12/31/2024	\$53.54	3.0%		
Exempt	\$145.96	N/A	N/A	1/1/2025	12/31/2025	\$55.15	3.0%		

NOTES:

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

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**EXHIBIT 10-H2 COST PROPOSAL** Page 2 of 3

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

Consultant KCM Engineering, Inc.  Prime Consultant  Subconsultant  2nd Tier Subconsultant  
 Project No. ATPCML-5037(027) Contract No. 50347 Date 7/18/2022

**SCHEDULE OF OTHER DIRECT COST ITEMS**

DESCRIPTION OF ITEM	Quantity	Unit	Unit Cost	Total
Travel: mileage costs (at federal travel rate)				\$ -
Travel: vehicle rental and gas				\$ -
Travel: lodging, meals (at state travel rate)				\$ -
Cultural Resource Record Search				\$ -
Permit Fees				\$ -
Equipment: GPS				\$ -
Printing/Reproduction/Postage				\$ -
				\$ -
				\$ -
Subconsultant 1: RMA Group - Materials Testing				\$229,787.45
Subconsultant 2:				
Subconsultant 3:				

**NOTES:**

- List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
- Proposed ODC items should be consistently billed regardless of client and contract type.
- Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
- Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
- Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
- Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.
- If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
- If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is their standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
- The cost proposal format shall not be amended. All costs must comply with the Federal cost principles
- Add additional pages if necessary.
- Subconsultants must provide their own cost proposals.

EXHIBIT 10-H2 COST PROPOSAL (Page 3 of 3)

**Certification of Direct Costs**

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

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

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

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

**Prime Consultant or Subconsultant Certifying:**

Name: Joe Reyes Title\*: President  
Signature:  Date of Certification (mm/dd/yyyy): 7/18/2022  
Email: [Joe@Knightcmgroup.com](mailto:Joe@Knightcmgroup.com) Phone Number: (916) 870-9070  
Address: 2377 Gold Meadow Way, Suite 100, Gold River, CA 95670

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

List services the consultant is providing under this proposed contract:

Construction Management, Inspection, and Materials Testing Services



**EXHIBIT 10-H COST PROPOSAL (EXAMPLE #3)**  
**COST PER UNIT OF WORK CONTRACTS**  
 (GEOTECHNICAL AND MATERIAL TESTING)

Note: Mark-ups are Not Allowed

Consultant RMA GROUP Contract No. ATPCML-5037(027)

Date 13-Jun-22

Page 1 of 1

**Unit/Item of Work:**

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

DIRECT LABOR	Hours	Hourly Rate	Hourly Billing Rate (\$)	OT x 1.5	Doubletime x 2.0	Total (\$)
<b>Professional (Classification)</b>						
Project Manager	30	\$89.55	\$201.04	\$301.56	\$402.08	\$6,031.20
Project Engineer	40	\$73.50	\$165.01	\$247.52	\$330.02	\$6,600.40
Staff Engineer	60	\$57.91	\$130.01	\$195.02	\$260.02	\$7,800.60
Supervising Technician	40	\$57.91	\$130.01	\$195.02	\$260.02	\$5,200.40
Administrative	95	\$31.18	\$70.00	\$105.00	\$140.00	\$6,650.00
<b>Sub-professional/Technical* (Shift 1)</b>						
Journeyman Group 1	0	\$54.02	\$121.27	\$181.91	\$242.54	\$0.00
Journeyman Group 2 (CWI - Shop Welding)	400	\$52.02	\$116.78	\$175.17	\$233.56	\$46,712.00
Journeyman Group 3 (Field Technician)	302	\$44.81	\$100.60	\$150.90	\$201.20	\$30,381.20
Journeyman Group 4 (Field Technician)	30	\$38.84	\$87.20	\$130.80	\$174.40	\$2,616.00
Apprentice Period 1 (Field Technician)	10	\$28.61	\$64.23	\$96.35	\$128.46	\$642.30
Apprentice Period 2 (Field Technician)	10	\$31.21	\$70.07	\$105.11	\$140.14	\$700.70
Apprentice Period 3 (Field Technician)	130	\$33.81	\$75.90	\$113.85	\$151.80	\$9,867.00
Apprentice Period 4 (Field Technician)	85	\$36.41	\$81.74	\$122.61	\$163.48	\$6,947.90
Apprentice Period 5 (Field Technician)	25	\$44.22	\$99.27	\$148.91	\$198.54	\$2,481.75
<b>Sub-professional/Technical* (Shift 2 - Night)</b>						
Journeyman Group 1 (CWI/NDT - Field Welding)	200	\$60.77	\$136.43	\$204.65	\$272.86	\$27,286.00
Journeyman Group 2	0	\$58.52	\$131.38	\$197.07	\$262.76	\$0.00
Journeyman Group 3	0	\$50.41	\$113.17	\$169.76	\$226.34	\$0.00
Journeyman Group 4	0	\$43.70	\$98.11	\$147.17	\$196.22	\$0.00
Apprentice Period 1	0	\$32.19	\$72.27	\$108.41	\$144.54	\$0.00
Apprentice Period 2	0	\$35.11	\$78.82	\$118.23	\$157.64	\$0.00
Apprentice Period 3	0	\$38.04	\$85.40	\$128.10	\$170.80	\$0.00
Apprentice Period 4	0	\$40.96	\$91.95	\$137.93	\$183.90	\$0.00
Apprentice Period 5	0	\$49.75	\$111.69	\$167.54	\$223.38	\$0.00

Escalation = 3% per year for prevailing wage positions

## OTHER DIRECT COST

Description	Unit(s)	Unit Cost	
<b>EARTHWORK AND AGGREGATE BASE</b>			
CT 202 - Sieve Analysis-Combined Sample	4	\$205.00	\$820.00
CT 217 - Sand Equivalent	4	\$150.00	\$600.00
CT 301 - Resistance R-Value Stabilometer	4	\$330.00	\$1,320.00
CT 216 - Ca. Impact Max Density	50	\$195.00	\$9,750.00
<b>HOT MIX ASPHALT</b>			
CT 202 - Sieve Analysis Fine Aggregate	8	\$195.00	\$1,560.00
CT 202 - Sieve Analysis Coarse Aggregate	8	\$175.00	\$1,400.00
CT 217 - Sand Equivalent	4	\$150.00	\$600.00
CT 309 - Maximum Theoretical Specific Gravity	4	\$230.00	\$920.00
CT 366 - Stabilometer Value	4	\$250.00	\$1,000.00
CT 370 - HMA Moisture Content	4	\$65.00	\$260.00
CT 382 - Asphalt Content by Ignition Oven	4	\$205.00	\$820.00
CT 382 - Ignition Oven Correction Factor	1	\$370.00	\$370.00
CT 308(A) - Core Specific Gravity	12	\$60.00	\$720.00
AASHTO T324 - Hamburg Wheel Track	4	\$650.00	\$2,600.00
<b>PORTLAND CEMENT CONCRETE</b>			
CT 521 - Concrete Compressive Strength	136	\$30.00	\$4,080.00
CT 202 - Sieve Analysis Fine Aggregate	34	\$195.00	\$6,630.00
CT 202 - Sieve Analysis Coarse Aggregate	34	\$175.00	\$5,950.00
CT217 - Sand Equivalent	34	\$125.00	\$4,250.00
CT 227 - Cleanness Value	34	\$245.00	\$8,330.00
Sample Pick-up and Delivery	34	\$75.00	\$2,550.00
<b>SOURCE TESTING</b>			
Elastomeric Bearing Pad Section 51-3.02B(3)	1	\$3,500.00	\$3,500.00
Prestressing Strand ASTM A416/A1061	4	\$330.00	\$1,320.00
Bearing Plate Castings ASTM A536/A370	2	\$265.00	\$530.00
Bolt Assembly ASTM F606/E18/E376	10	\$350.00	\$3,500.00
Anchor bolt Assembly ASTM F1554	5	\$248.00	\$1,240.00
CT 670 - Ultimate Butt Splice Hoops (per lot)	15	\$350.00	\$5,250.00
CT 670 - Mechanical Service Splice (per lot)	0	\$550.00	\$0.00
CT 670 - Mechanical Ultimate Splice (per lot)	0	\$600.00	\$0.00
Supplies/Consumables (Itemize)			\$0.00
Travel/Mileage			\$0.00
Report (if applicable)			\$0.00
<b>TOTAL COST PER UNIT OF WORK</b>			<b>\$229,787.45</b>

## NOTES:

- Denote labor subject to prevailing wage with asterisk (\*)
- Hourly billing rates should include prevailing wage rates and be consistent with publicly advertised rates charged to all clients (Commercial, Private or Public).
- Hourly billing rates include hourly wage rate, net fee/profit, indirect cost rate, and actual direct equipment rate
- Mobilization/De-mobilization is based on site location and number and frequency of tests/items
- ODC items should be based on actual costs and supported by historical data and other documentation
- ODC items that would be considered "tools of the trade" are not reimbursable

EXHIBIT 10-H3 COST PROPOSAL Page 2 of 2

**Certification of Direct Costs:**


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

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

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

**Prime Consultant or Subconsultant Certifying:**

Name: Jim Bishop Title\*: Vice President

Signature :  Date of Certification (mm/dd/yyyy): 06/13/2022

Email: jbishop@rmacompanies.com Phone Number: (916)631-7194

Address: 3150 Fitzgerald Road, Rancho Cordova, CA 95742

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

List services the consultant is providing under the proposed contract:

Materials testing and construction inspection of materials used



**EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT**

1. Local Agency: City of Chico 2. Contract DBE Goal: 11%  
 3. Project Description: Bikeway 99 Phase 5 Construction Management, Inspection, and Materials Testing Services  
 4. Project Location: City of Chico, CA  
 5. Consultant's Name: KCM Engineering, Inc. 6. Prime Certified DBE:  7. Total Contract Award Amount: \$1,668,184.44  
 8. Total Dollar Amount for ALL Subconsultants: \$ 287,387.45 9. Total Number of ALL Subconsultants: 2

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Construction Management and Inspection Services	48645	KCM Engineering, Inc. 2377 Gold Meadow Way Rancho Cordova, CA 95670	\$1,380,796.99
<b>Local Agency to Complete this Section</b>			
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____  Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.		<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>	\$ 1,380,796.99
23. Local Agency Representative's Signature _____ 24. Date _____ 25. Local Agency Representative's Name _____ 26. Phone _____ 27. Local Agency Representative's Title _____			11.00 %
15. Preparer's Signature _____ Joselito S. Reyes 17. Preparer's Name _____ President 19. Preparer's Title _____		16. Date _____ 07-11-2022 18. Phone _____ (916) 870-9070	

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

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

**CITY OF CHICO – PROFESSIONAL SERVICES AGREEMENT**

**KNIGHT CONSTRUCTION MANAGEMENT**

Architect/Consultant/Engineer

**CONSTRUCTION MANAGEMENT, INSPECTION &  
MATERIALS TESTING SERVICES FOR BIKEWAY 99 PHASE 5**

Project Title

307-000-8800/ 50347-307-4160

Budget Account Number

**EXHIBIT D**

**INSURANCE PROVISIONS**

**General Liability Insurance**

Consultant/Contractor shall obtain commercial general liability insurance (occurrence policy form) from one or more U.S. domiciled insurance companies licensed to do business in the State of California with an A.M. Best Company rating of “B” or better or, in the alternative, an unlicensed U.S. domiciled company or companies with an “A” rating, which provides coverage for bodily injury, personal injury and property damage liability in the amount of at least \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, with a maximum policy deductible of \$5,000, or as approved by the City’s Human Resources and Risk Management Office.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specific minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured, whichever is greater.

The insurance coverage required herein shall be evidenced by a certificate of insurance with policy endorsements and shall be executed by an authorized official of the insurer(s). In addition to the limits of coverage described above, the certificate of insurance shall provide that the insurer shall provide to City at least 30 days prior notice of cancellation or material change in coverage, or 10 days prior notice of cancellation for non-payment.

Consultant/Contractor acknowledges and agrees that City of Chico, its officers, boards and commissions, and members thereof, its employees and agents, are covered as additional insureds with respect to any liability arising out of the activities of Consultant/Contractor as the named insured. Such additional insured status shall be evidenced by a policy endorsement executed by an authorized official of the insurer(s). A blanket endorsement which provides additional insured status to any person or organization with whom Consultant/Contractor, as named insured, has entered into a written contract, such as this Agreement, shall satisfy this requirement.

The insurance coverage required herein shall be primary and non-contributory insurance with respect to the City of Chico, its officers, officials and employees. Any insurance or self-insurance maintained by the City of Chico, its officers, officials or employees shall be in excess of the insurance afforded to the named insured by the insurance coverage required herein and shall not contribute to any loss. Such primary insurance status shall be evidenced by a policy endorsement issued by an authorized official of the insurer(s), and shall be at least as broad as CG 20 01 04 13. In the alternative, a letter issued by an authorized official of the insurer(s) and copies of the pertinent page(s) of the policy shall satisfy this requirement.

The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City of Chico (if agreed to in a written contract or agreement) before City of Chico's self-insurance shall be called upon to protect it as a named insured.

All self-insured retentions (SIR) must be disclosed to the City's Human Resources and Risk Management Office for approval and shall not reduce the limits of liability. Policies containing any (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or City of Chico. City of Chico reserves the right to obtain a full certified copy of any Insurance policy or endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

#### Automobile Liability Insurance

Consultant/Contractor shall obtain automobile liability insurance from one or more U.S. domiciled insurance companies licensed to do business in the State of California with an A.M. Best Company rating of "B" or better which provides coverage for bodily injury, personal injury, and property damage liability in the amount of at least \$500,000 combined single limit for each occurrence. Evidence of such coverage shall be maintained by Consultant/Contractor and provided to City upon request.

#### Subconsultant/Subcontractor Insurance

Consultant/Contractor agrees to include with all subconsultants/subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the subconsultant/subcontractor's work. Subconsultant/Subcontractor agrees to be bound to Consultant/Contractor and City of Chico in the same manner and to the same extent as Consultant/Contractor is bound to City of Chico under the agreement. Subconsultant/Subcontractor further agrees to include the same requirements and provisions of this agreement, including the indemnity and Insurance requirements, with any Sub-subconsultant/Sub-subcontractor to the extent they apply to the scope of the Sub-subconsultant/Sub-subcontractor's work.

A copy of the City of Chico Insurance Provisions will be furnished to the subconsultant/subcontractor upon request. Evidence of such coverage shall be maintained by Consultant/Contractor and provided to City upon request.



### Workers' Compensation Insurance

Consultant/Contractor shall, at Consultant/Contractor's expense, purchase and maintain in full force and effect workers' compensation insurance as required by Federal and State of California law. Consultant/Contractor shall also require all of Consultant's subconsultants/subcontractors to maintain this insurance coverage. Proof of workers' compensation insurance or other documentation acceptable to City evidencing such insurance coverage shall be provided by Consultant/Contractor or Consultant/Contractor's subconsultants/subcontractors to City upon request.

### Subrogation

Consultant/Contractor shall agree to waive all rights of subrogation against City for losses arising from Services performed by the Consultant/Contractor or Consultant/Contractor's subconsultants/subcontractors for City under this Agreement.

### Indemnity

Consultant/Contractor/Subconsultant/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

### For All Required Insurance

In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled, at any time and no replacement coverage is provided, the City has the right to, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by the City shall be charged to and promptly paid by Consultant or deducted from sums due the City, at the City's option.

**CITY OF CHICO – PROFESSIONAL SERVICES AGREEMENT**

KNIGHT CONSTRUCTION MANAGEMENT

Architect/Consultant/Engineer

CONSTRUCTION MANAGEMENT, INSPECTION &  
MATERIALS TESTING SERVICES FOR BIKEWAY 99 PHASE 5

Project Title

307-000-8800/ 50347-307-4160

Budget Account Number

EXHIBIT E

CONFLICT OF INTEREST PROVISIONS

Applicable City Conflict of Interest Code Disclosure Categories

Pursuant to the provisions of Chico Municipal Code Section 2R.04.180 (City’s Conflict of Interest Code) as well as the Model Conflict of Interest Code promulgated by the State Fair Political Practices Commission in Section 18730 of Title 2 of the California Code of Regulations which is incorporated by reference into the City’s Conflict of Interest Code, the City Manager has determined that the following natural persons employed by Consultant and identified below, in connection with the Project, will be required to report as provided by the City’s Conflict of Interest Code in the Disclosure Categories indicated below.

Accordingly, each such person shall, within 30 days after the execution of this Agreement, on or before April 1 of each year during the term of this Agreement, and within 30 days after completing performance of all duties and obligations under this Agreement, file a Disclosure Statement with the City Clerk which sets forth all of the information pertaining to the required disclosure categories as identified herein. Such persons further understand and agree that if he/she/they fail to comply with the City’s Conflict of Interest Code and/or fail to file the required Disclosure Statement, he/she/they will be subject to the criminal penalties and civil sanctions provided for in California Government Code Section 81000, et seq.

Identification – Consultant’s Project Manager(s)/Principal(s) who are required to file disclosure statements:

Name	Title
_____	_____
_____	_____
_____	_____
_____	_____

## Required Disclosure Categories

### 1. Investments in Business Entities

- ( )1a. Any direct or indirect investment in a business entity worth more than \$1,000 where the business entity is located or doing business in the City.
- ( )1b. Any direct or indirect investment in a business entity worth more than \$1,000 where the business entity is engaged in contracting with or selling to the City.
- ( )1c. Any direct or indirect investment in a business entity worth more than \$1,000 where the business entity is located or doing business in the City of Chico and is engaged in the building and construction industry.
- ( )1d. Any direct or indirect investment in a business entity worth more than \$1,000 where the business entity is located or doing business at the Chico Municipal Airport.

### 2. Interests in Real Property

- ( )2a. Any direct or indirect interests in real property worth more than \$1,000 where the real property is located within the City of Chico or within two miles of the City of Chico's boundaries.
- ( )2b. Any direct or indirect interests in real property worth more than \$1,000 where the real property is located at the Chico Municipal Airport.

### 3. Sources of Income

- ( )3a. Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating \$250 or more in value, where the source of income is located or doing business in the City.
- ( )3b. Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating \$250 or more in value, where the source of income is engaged in contracting with or selling to the City.

- ( ) 3c. Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating \$250 or more in value, where the source of income is located or doing business in the City of Chico and engaged in the building and construction industry.
- ( ) 3d. Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating \$250 or more in value, where the source of income is located or doing business at the Chico Municipal Airport.
- 4. Business Entities in Which the Architect Project Manager(s)/Principal(s) are Director(s), Officer(s), Partner(s), Trustee(s), Employee(s), or Hold(s) Any Position in Management.
  - ( ) 4a. Any business entity in which such individual(s) is a director, officer, partner, trustee, employee, or holds any position in management where the business entity is located or doing business in the City of Chico.
  - ( ) 4b. Any business entity in which such individual(s) is a director officer, partner, trustee, employee, or holds any position in management where the business entity is engaged in contracting with or selling to the City.
  - ( ) 4c. Any business entity in which such individual(s) is a director, officer, partner, trustee, employee, or holds any position in management where the business entity is located or doing business in the City of Chico and is engaged in the building and construction industry.
  - ( ) 4d. Any business entity in which such individual(s) is a director, officer, partner, trustee, employee, or holds any position in management where the business entity is located or doing business at the Chico Municipal Airport.

**CITY OF CHICO – PROFESSIONAL SERVICES AGREEMENT**

**KNIGHT CONSTRUCTION MANAGEMENT**

Architect/Consultant/Engineer

**CONSTRUCTION MANAGEMENT, INSPECTION &  
MATERIALS TESTING SERVICES FOR BIKEWAY 99 PHASE 5**

Project Title

307-000-8800/ 50347-307-4160

Budget Account Number

**EXHIBIT F**

**SPECIAL PROVISIONS**

This AGREEMENT is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

**ARTICLE I INTRODUCTION**

- A. Refer to Standard Contract for Description of Work.

**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 LOCAL AGENCY’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 LOCAL AGENCY’s Contract Administrator, as needed, to discuss progress on the AGREEMENT.

**ARTICLE III STATEMENT OF WORK**

- A. Refer to the Standard Contract for Statement of Work.

**ARTICLE IV PERFORMANCE PERIOD**

- A. Refer to Standard Contract for Performance Period.

**ARTICLE V ALLOWABLE COSTS AND PAYMENTS**

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.

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

- C. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.
- D. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- E. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

City of Chico/Project Administrator  
P.O. Box 3420  
Chico, CA 95927

#### **ARTICLE VI TERMINATION**

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination,



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

#### **ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. The CONSULTANT agrees that 48 CFR Part 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 Part 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 Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

#### **ARTICLE VIII RETENTION OF RECORD/AUDITS**

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT

including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

#### **ARTICLE IX AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY 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 AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. 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 LOCAL AGENCY 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 AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

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

Accepted rates will be as follows:

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

under this AGREEMENT.

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

#### **ARTICLE X SUBCONTRACTING**

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY 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 LOCAL AGENCY'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 LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to 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 LOCAL AGENCY.
- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY 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**

The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

No retainage will be held by the LOCAL AGENCY from progress payments due to CONSULTANT. Any retainage kept by CONSULTANT or by a subconsultant must be paid in full to the earning subconsultant within 15 days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to 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 LOCAL AGENCY'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 LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT

is subject to the following:

1. 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, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY 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 LOCAL AGENCY procedures; and credit LOCAL AGENCY 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 LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

## **ARTICLE XII STATE PREVAILING WAGE RATES**

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The 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 AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, 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 LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY, 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 LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY 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 AGREEMENT 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 AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the 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 prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the



specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:

- a. The AGREEMENT 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 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, LOCAL AGENCY 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. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the 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 LOCAL AGENCY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT 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 AGREEMENT or the subagreement 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 AGREEMENT 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. Refer to Standard Contract Exhibit E for Conflict of Interest.

### **ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

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

### **ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
  1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
  2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

#### **ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. The 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 AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT'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, sex, gender, gender identity, gender expression, age, sexual orientation, or military and 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 LOCAL AGENCY 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 AGREEMENT 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 LOCAL AGENCY 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 LOCAL AGENCY 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 Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally- assisted programs of the U.S. Department of Transportation (49 CFR Part 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.
- 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 LOCAL AGENCY 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.

#### **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 LOCAL AGENCY. 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 (LOCAL AGENCY), 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 LOCAL AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts 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 or work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies 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. 49CFR26.55 defines "manufacturer" and "regular dealer."

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

- B. The goal for DBE participation for this AGREEMENT is 11%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit 10- O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance

Under 49 CFR 26.13(b):

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 Substitution 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 LOCAL AGENCY's written consent. CONSULTANT shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the LOCAL AGENCY. Unless the LOCAL AGENCY's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid.

The LOCAL AGENCY authorizes a request to use other forces or sources of materials if CONSULTANT shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY'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.
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 LOCAL AGENCY determines other documented good cause.

CONSULTANT shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise CONSULTANT and the LOCAL AGENCY of the reasons why the use of other forces or sources of materials should not occur.

CONSULTANT's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. Notices from the DBEs to CONSULTANT regarding the request.

If a listed DBE is terminated or substituted, CONSULTANT must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

F. Commitment and Utilization

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

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY'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 1<sup>st</sup>-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 LOCAL AGENCY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the LOCAL AGENCY within 30 days of contract acceptance.

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

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

- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement-by-agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to



materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANTS shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10<sup>th</sup> of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the Agency.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

## **ARTICLE XIX INSURANCE**

- A. Refer to Standard Contract for Insurance.

## **ARTICLE XX FUNDING REQUIREMENTS**

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

## **ARTICLE XXI CHANGE IN TERMS**

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY'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 AGREEMENT without prior written approval by LOCAL AGENCY's Contract Administrator.

## **ARTICLE XXII CONTINGENT FEE**

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent 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, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

## **ARTICLE XXIII DISPUTES**

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five

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

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and Director of Public Works - Engineering, 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 AGREEMENT, CONSULTANT may request review by LOCAL AGENCY 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 AGREEMENT.

## **ARTICLE XXIV INSPECTION OF WORK**

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

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

## **ARTICLE XXVI OWNERSHIP OF DATA**

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, 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 AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by 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 City without restriction or limitation upon its use or dissemination by City.
- 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 City for another project or project location shall be at City'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. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

## **ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by LOCAL AGENCY'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 LOCAL AGENCY'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 LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the

same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.

- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

#### **ARTICLE XXVIII CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, 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 AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.
- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

#### **ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code §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 LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

### **ARTICLE XXXI PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT**

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

- (1) Each payment request shall be reviewed by the LOCAL AGENCY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

### **ARTICLE XXXII TITLE VI ASSURANCES**

#### **APPENDICES A - E of the TITLE VI ASSURANCES**

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

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

The clauses set forth in Appendix C and Appendix D of this Assurance shall be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar

instruments entered into by the LOCAL AGENCY with other parties:

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

## APPENDIX A

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

- a. Compliance with Regulations: 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.

## **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 of 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).

#### **ARTICLE XXXIII NOTIFICATION**

- A. Refer to Standard Contract for Notification.

**ARTICLE XXXIV CONTRACT**


- A. Refer to Standard Contract for Contract.

**ARTICLE XXXV SIGNATURES**

- A. Refer to Standard Contract for Signatures.

**EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT**

1. Local Agency: City of Chico 2. Contract DBE Goal: 11%  
 3. Project Description: Bikeway 99 Phase 5 Construction Management, Inspection, and Materials Testing Services  
 4. Project Location: City of Chico, CA  
 5. Consultant's Name: KCM Engineering, Inc. 6. Prime Certified DBE:  7. Total Contract Award Amount: \$1,668,184.44  
 8. Total Dollar Amount for **ALL** Subconsultants: \$ 287,387.45 9. Total Number of **ALL** Subconsultants: 2

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Construction Management and Inspection Services	48645	KCM Engineering, Inc. 2377 Gold Meadow Way Rancho Cordova, CA 95670	\$1,380,796.99
<b>Local Agency to Complete this Section</b>			
20. Local Agency Contract Number: <u>50347</u>		<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>	\$1,380,796.99
21. Federal-Aid Project Number: <u>5037(027)</u>			11.00 %
22. Contract Execution Date: <u>8/1/22</u>			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
<u>Noel Carvalho</u>			<u>07-11-2022</u>
23. Local Agency Representative's Signature	24. Date	15. Preparer's Signature	16. Date
<u>Noel Carvalho</u>	<u>(530)228-1031</u>	<u>Joselito S. Reyes</u>	<u>(916) 870-9070</u>
25. Local Agency Representative's Name	26. Phone	17. Preparer's Name	18. Phone
<u>Project Manager</u>		<u>President</u>	
27. Local Agency Representative's Title		19. Preparer's Title	

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

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