

## C O N T R A C T

The COUNTY OF SAN BENITO ("COUNTY") and Overland, Pacific & Cutler LLC ("CONTRACTOR") enter into this CONTRACT which shall be effective on the date stated in Paragraph 1.

**1. Duration of Contract.**

This CONTRACT shall commence on 11/21/2018, and end on 6/30/2023, unless sooner terminated as specified herein.

**2. Scope of Services.**

CONTRACTOR, for COUNTY's benefit shall perform the services specified on Attachment A to this CONTRACT. Attachment A is made a part of this CONTRACT.

**3. Compensation for Services.**

In consideration for CONTRACTOR's performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this CONTRACT.

**4. General Terms and Conditions.**

The rights and duties of the parties to this CONTRACT are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this CONTRACT.

**5. Insurance Limits.**

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

(a) Comprehensive general liability insurance: \$1,000,000.00 per occurrence, annual aggregate of \$2,000,000.00

(b) Professional liability insurance: \$1,000,000.00 per occurrence, \$2,000,000.00 annual aggregate

(c) Comprehensive motor vehicle liability insurance: \$250,000.00 per person, \$500,000.00 per accident, combined single limit of \$500,000.00

**6. Termination.**

The number of days of advance written notice required for termination of this CONTRACT is 30.

**7. Specific Terms and Conditions (check one)**

☐ There are no additional provisions to this CONTRACT.

☒ The rights and duties of the parties to this CONTRACT are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this CONTRACT.

- [ ] The rights and duties of the parties to this CONTRACT are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this CONTRACT.

8. **Information about Contract Administrators.**

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective CONTRACT administrators for the parties.

Contract Administrator for COUNTY:

Name: John Guertin

Title: RMA Director

Address: 2301 Technology Pkwy  
Hollister, CA 95023

Telephone No.: (831) 636-4170

Email.: jguertin@cosb.us

Contract Administrator for CONTRACTOR:

Name: Darryl Root, J.D.

Title: Regional Director

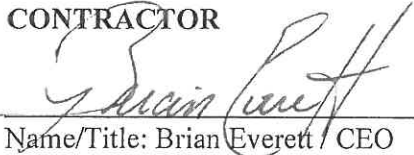
Address: 7901 Oakport Street, Suite 4800  
Oakland, CA 94621

Telephone No.: 559-558-4891

Email.: droot@opcservices.com

**SIGNATURES**

**CONTRACTOR**

  
Name/Title: Brian Everett / CEO

11/14/2018  
Date

**COUNTY**

San Benito County Board of Supervisors

Anthony Botelho, Chair

                      
Date

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel's Office

  
By: Michael Ziman, Deputy County Counsel

November 14, 2018  
Date

## **ATTACHMENT A**

### **Scope of Services**

The CONTRACTOR shall provide the following services related to the COUNTY'S Public Works Infrastructure Projects ("PROJECTS"):

#### **A-1. CONTRACTING OF CONSULTANT**

- A. The COUNTY contracts with the Consultant (hereinafter referred to as "CONTRACTOR") as an independent contractor to provide consultant right-of-way services described in Article A-2 and enumerated in Article A-3 of this Attachment A, on an on-call basis.
- B. A request for proposals (RFP), including a project-specific scope of work (collectively referred to as a "Task Order"), will be issued by the COUNTY to the CONTRACTOR for each PROJECT contemplated under this contract. The CONTRACTOR, at the CONTRACTOR'S option, may submit a proposal to perform the work as defined in the RFP. If said proposal is acceptable to the COUNTY, COUNTY will issue a Notice to Proceed on the Task Order.
- C. Task Orders will be for right of way services that are necessary to obtain right of way clearance for the construction of a public works infrastructure PROJECT.
- D. The CONTRACTOR'S services shall be performed as expeditiously as is consistent with professional skill and the orderly progress of the work, based on the Task Order schedule mutually agreed upon in advance by the COUNTY and the CONTRACTOR and consistent with schedules established in this contract.
- E. The CONTRACTOR'S primary staff for this contract shall be listed in Attachment B-1, attached hereto and incorporated herein by reference. Any substitutions of personnel shall be approved by the COUNTY, which approval shall not be unreasonably withheld. The CONTRACTOR shall include in the proposal for each Task Order submitted by the CONTRACTOR the names and classifications of employees that will be assigned to said Task Order. The CONTRACTOR shall not reassign such employees without notification to and prior approval by the COUNTY.
- F. All subcontractors used by the CONTRACTOR shall be approved in writing by the COUNTY before they are retained by the CONTRACTOR, which approval shall not be unreasonably withheld. Should the CONTRACTOR retain any subcontractors, the maximum amount of compensation to be paid to the CONTRACTOR shall not be increased, and any additional compensation to be paid to the CONTRACTOR for such subcontractors' work shall be limited to a maximum of ten (10%) of the total costs incurred by the CONTRACTOR as a result of the subcontractor's involvement in any

Task Order. Additional fees other than the 10% markup on subcontractor's charges shall not be reimbursed.

**A-2. DESCRIPTION OF THE WORK COVERED BY AGREEMENT**

- A. The work to be performed by the CONTRACTOR under this contract includes right of way services for various COUNTY Public Works PROJECTS, including but not limited to right of way project management, property appraisal, review appraisal, negotiation and acquisition services in accordance to the Federal Uniform Relocation Assistance and Real Property Acquisition Act, Caltrans Local Assistance Procedures Manual and Caltrans Right of Way Manual.
- B. The CONTRACTOR agrees to provide the professional services that are necessary for each PROJECT as described in the Task Order when expressly authorized in writing by the COUNTY. Such work by the CONTRACTOR shall not begin until the CONTRACTOR has received a written Notice to Proceed from the COUNTY authorizing the necessary service, agreed upon fee, and scope of work.
- C. The CONTRACTOR shall submit progress reports on each specific PROJECT in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for the COUNTY: to determine if the CONTRACTOR is performing to expectations, or is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- D. The CONTRACTOR shall meet with the COUNTY, as needed, to discuss progress on the Task Order.



### **A-3 CONTRACTOR'S SERVICES**

The CONTRACTOR shall submit proposals in response to RFPs issued by the COUNTY on a project-by-project basis. The CONTRACTOR'S proposal at a minimum shall include, but not be limited to, qualifications of staff assigned to the Task, proposed method and schedule for completing the Task(s), completed federal forms, and a cost proposal. The CONTRACTOR agrees that each professional or other individual performing work on any such Tasks shall be adequately trained to perform the work and shall possess the proper license, certification or registration as required by law or by accepted standards of the applicable profession. The CONTRACTOR agrees to provide the professional services that are necessary to perform the following when expressly authorized in writing by the COUNTY:

#### **A. Right of Way Project Management Services:**

Coordinate and direct right of way tasks to ensure the work products for the project satisfy all requirements of applicable laws, statutes, regulations, policies, and procedures.

#### **B. Right of Way Appraisal Services:**

Prepare fair market valuation appraisal reports required to establish the basis for just compensation to acquire right of way.

#### **C. Right of Way Appraisal Review Services:**

Prepare a formal review of the appraisal as necessary in order to establish the Fair Market Value for the property.

#### **D. Right of Way Negotiation and Acquisition Services:**

Conduct all acquisition activities necessary to acquire property rights to construct and maintain public works facilities. Initiate and follow the condemnation process when negotiations have reached an impasse.

### **A-4 COUNTY RESPONSIBILITIES**

1. The COUNTY will issue Task Orders on a project-by-project basis. Task Orders will at a minimum include scope of work, location, and schedule for the PROJECT task.
2. The COUNTY will provide the CONTRACTOR with a PROJECT scope and schedule, and will compensate the CONTRACTOR as provided in this contract.

3. The COUNTY will provide a representative of the COUNTY and, as such, will work with the CONTRACTOR in carrying out the provisions of this contract.
4. The COUNTY will examine documents submitted to the COUNTY by the CONTRACTOR and timely render decisions pertaining thereto.
5. The COUNTY will provide all legal descriptions and drawings required for right-of-way acquisition and/or temporary construction permits
6. The COUNTY will give reasonably prompt consideration to all matters submitted by the CONTRACTOR for approval to the end that there will be no substantial delays in the CONTRACTOR'S program of work. An approval, authorization or request to the CONTRACTOR given by the COUNTY will be binding upon COUNTY under the terms of this contract only if it is made in writing and signed on behalf of COUNTY by the COUNTY'S contract administrator.

**END OF ATTACHMENT A.**

**ATTACHMENT B**  
**Payment Schedule**

**B-1. BILLING**

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- ☒ One month in arrears.  
☐ Upon the complete performance of the services specified in Attachment A.  
☐ The basis specified in paragraph B-4.

**B-2. PAYMENT**

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

**B-3. COMPENSATION**

COUNTY shall pay to CONTRACTOR: (check one)

☐ a total lump sum payment of \$ \_\_\_\_\_, or

☒ a total sum not to exceed \$ 200,000.00

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

**B-4. SPECIAL COMPENSATION TERMS: (check one)**

- ☐ There are no additional terms of compensation.  
☒ The following specific terms of compensation shall apply: (Specify)

**ALLOWABLE COSTS AND PAYMENTS**

- A. The CONTRACTOR will be reimbursed for hours worked at the hourly rates specified in CONTRACTOR's Cost Proposal, attached hereto and incorporated herein by reference as Attachment B-1. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this contract.
- B. In addition, the CONTRACTOR will be reimbursed for incurred (actual) direct costs other than salary costs that are identified in the Cost Proposal (Attachment B-1) and in the executed Task Order.
- C. Specific PROJECTS will be assigned to the CONTRACTOR through issuance of Task Orders.

- D. After a PROJECT to be performed under this contract is identified by the COUNTY, the COUNTY will prepare a draft Task Order, identifying the scope of services, expected results, PROJECT deliverables, period of performance, and PROJECT schedule, and it will designate a COUNTY PROJECT Coordinator. The draft Task Order will be delivered to CONTRACTOR for review. The CONTRACTOR shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the scope of work and total cost, the finalized Task Order shall be signed by both the COUNTY and the CONTRACTOR.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for a Not to Exceed amount based on specific rates of compensation, both of which must be based on the labor and other rates set forth in the CONTRACTOR's Cost Proposal (Attachment B-1).
- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal (Attachment B-1).
- G. When milestone cost estimates are included in the approved Cost Proposal (Attachment B-1), the CONTRACTOR shall obtain prior written approval for a revised milestone cost estimate from the COUNTY before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. The CONTRACTOR shall not commence performance of work or services until this contract has been approved by the COUNTY Board of Supervisors, and a notification to proceed has been issued by the COUNTY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this contract.
- J. A Task Order is of no force or effect until returned to the COUNTY and signed by an authorized representative of the COUNTY. No expenditures are authorized on a PROJECT and work shall not commence until a Task Order for that PROJECT has been executed by the COUNTY.
- K. The CONTRACTOR will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the COUNTY'S Contract Administrator of itemized invoices in triplicate. Separate invoices

itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which the CONTRACTOR is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each PROJECT as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal (Attachment B-1) and shall reference this contract, PROJECT title, and Task Order number. Credits due to the COUNTY that include any equipment purchased under the provisions of Equipment Purchase of this contract, must be reimbursed by the CONTRACTOR prior to the expiration or termination of this contract. Invoices shall be mailed to the COUNTY's Contract Administrator.

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this contract.
- M. The total amount payable by the COUNTY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by the COUNTY.
- N. If the CONTRACTOR fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. The total amount payable by the COUNTY for all Task Orders resulting from this contract shall not exceed \$ 200,000.00. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.

#### **RETENTION OF FUNDS**

- A. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- B. The COUNTY may hold retainage from the CONTRACTOR and will make prompt and regular incremental acceptances of portions, as determined by the COUNTY, of the work, and pay retainage to the CONTRACTOR based on these acceptances. The CONTRACTOR, or subcontractor, shall return all monies withheld in retention from a subcontractor within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the work by the COUNTY. Federal law (49 CFR 26.29) requires

that any delay or postponement of payment over thirty (30) days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating CONTRACTOR or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONTRACTOR or subcontractor in the event of a dispute involving late payment or nonpayment by the CONTRACTOR, deficient subcontractor performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE contractors and subcontractors.

**END OF ATTACHMENT B.**



### Attachment B-1

Specific Rate of Compensation (use for on-call or as-needed contracts)

San Benito County

Consultant or Subconsultant: Overland, Pacific & Cutler, LLC

Contract No.: On-Call R/W Services

Date: 10/15/2018

Fringe Benefit 36.1% + Overhead 124.0% + General Administration            = 160.1% Combined Indirect Cost Rate (ICR)  
 (=0% if included in OH) (=0% if included in OH)

FEE = 10.0%

#### STAFF RATES

Name/Job Title/Classification	Hourly Billing Rates			Effective date of hourly rate		Actual or Avg. hourly rate	% or \$ increase	Hourly range - for classifications only	
	Straight	OT (1.5x)	OT (2x)	From	To				
Darryl Root, JD, MBA Program Manager	254.47	n/a	n/a	11/1/2018	10/31/2019	88.94			to
	262.10			11/1/2019	10/31/2020	91.61	3.0%		to
	269.96			11/1/2020	10/31/2021	94.36	3.0%		to
Steve Harris Project Manager	122.43	n/a	n/a	11/1/2018	10/31/2019	42.79			to
	126.10			11/1/2019	10/31/2020	44.07	3.0%		to
	129.88			11/1/2020	10/31/2021	45.40	3.0%		to
Ava Jourdain Project Manager	154.33	n/a	n/a	11/1/2018	10/31/2019	53.94			to
	158.96			11/1/2019	10/31/2020	55.56	3.0%		to
	163.73			11/1/2020	10/31/2021	57.22	3.0%		to
Roy Guinaldo Senior Agent	139.82	n/a	n/a	11/1/2018	10/31/2019	48.87			to
	144.02			11/1/2019	10/31/2020	50.34	3.0%		to
	148.34			11/1/2020	10/31/2021	51.85	3.0%		to
Kelley DeWitt Senior Project Manager	77.99	n/a	n/a	11/1/2018	10/31/2019	27.26			to
	80.33			11/1/2019	10/31/2020	28.08	3.0%		to
	82.74			11/1/2020	10/31/2021	28.92	3.0%		to
Nivrita Chandra Agent	71.53	n/a	n/a	11/1/2018	10/31/2019	25.00			to
	73.67			11/1/2019	10/31/2020	25.75	3.0%		to
	75.88			11/1/2020	10/31/2021	26.52	3.0%		to
Program Manager	224.90	n/a	n/a	11/1/2018	10/31/2019	78.61		56.25	to 100.96
	231.64			11/1/2019	10/31/2020	80.96	3.0%	57.94	to 103.99
	238.59			11/1/2020	10/31/2021	83.39	3.0%	59.68	to 107.11
Senior Project Manager	150.18	n/a	n/a	11/1/2018	10/31/2019	52.49		52.00	to 52.98
	154.68			11/1/2019	10/31/2020	54.06	3.0%	53.56	to 54.57
	159.33			11/1/2020	10/31/2021	55.69	3.0%	55.17	to 56.21
Project Manager / Project Controls Manager	127.38	n/a	n/a	11/1/2018	10/31/2019	44.52		35.10	to 53.94
	131.20			11/1/2019	10/31/2020	45.86	3.0%	36.15	to 55.56
	135.13			11/1/2020	10/31/2021	47.23	3.0%	37.24	to 57.22
Senior Agent / Analyst	98.97	n/a	n/a	11/1/2018	10/31/2019	34.59		27.26	to 41.92
	101.93			11/1/2019	10/31/2020	35.63	3.0%	28.08	to 43.18
	104.99			11/1/2020	10/31/2021	36.70	3.0%	28.92	to 44.47
Agent / Analyst	67.24	n/a	n/a	11/1/2018	10/31/2019	23.50		22.00	to 25.00
	69.25			11/1/2019	10/31/2020	24.21	3.0%	22.66	to 25.75
	71.33			11/1/2020	10/31/2021	24.93	3.0%	23.34	to 26.52
Project Coordinator	77.51	n/a	n/a	11/1/2018	10/31/2019	27.09		24.23	to 29.95
	79.83			11/1/2019	10/31/2020	27.90	3.0%	24.96	to 30.85
	82.23			11/1/2020	10/31/2021	28.74	3.0%	25.71	to 31.77
Project Support Specialist	60.21	90.32	120.42	11/1/2018	10/31/2019	21.05		19.37	to 22.72
	62.02	93.03	124.04	11/1/2019	10/31/2020	21.68	3.0%	19.95	to 23.40
	63.88	95.82	127.76	11/1/2020	10/31/2021	22.33	3.0%	20.55	to 24.10

- Names and classifications of consultant (key staff) team members must be listed. Provide separate sheets for prime and all subconsultant firms.
- Billing rate = actual hourly rate \* (1+ ICR) \* (1+ Fee) Agreed upon billing rates are not adjustable for the term of contract.
- For named employees enter the actual hourly rate. For classifications only, enter the average hourly rate for that classification.

#### Notes:

- Denote all employees subject to prevailing wage with an asterisks (\*)
- For "Other Direct Cost" listing, see page 2 of this Exhibit

## **ATTACHMENT C**

### **General Terms and Conditions**

#### **C-1. INDEMNIFICATION.**

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

#### **C-2. GENERAL INSURANCE REQUIREMENTS.**

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

#### **C-3. INSURANCE COVERAGE REQUIREMENTS.**

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

#### **C-4. CERTIFICATE OF INSURANCE.**

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

#### **C-5. RECORDS TO BE MAINTAINED.**

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

#### **C-6. RETENTION OF RECORDS.**

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

#### **C-7. TITLE TO DOCUMENTS; COPYRIGHT.**

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

#### **C-8. INDEPENDENT CONTRACTOR.**

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

#### **C-9. CONFLICT OF INTEREST.**

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

#### **C-10. COMPLIANCE WITH APPLICABLE LAWS.**

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

#### **C-11. NONDISCRIMINATION.**

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

#### **C-12. BANKRUPTCY.**

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

### **C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.**

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

### **C-14. NEGOTIATED CONTRACT.**

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

### **C-15. SEVERABILITY.**

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

### **C-16. ENTIRE CONTRACT.**

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

### **C-17. TIME IS OF THE ESSENCE.**

Time is of the essence in the performance of this contract.

### **C-18. TERMINATION.**

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

### **C-19. NOTICES.**

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or

- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

#### **C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.**

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

#### **C-21. MATERIALITY.**

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

#### **C-22. WAIVER.**

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

#### **C-23. AUTHORITY AND CAPACITY.**

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

#### **C-24. BINDING ON SUCCESSORS.**

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

#### **C-25. CUMULATION OF REMEDIES.**

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

#### **C-26. INDEPENDENT ADVICE.**

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also



represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

**C-27. NO RELIANCE ON REPRESENTATIONS.**

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

**C-28. REDUCTION OF CONSIDERATION.**

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

**C-29. COUNTERPARTS.**

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

**END OF ATTACHMENT C.**

**ATTACHMENT D**  
**Specific Terms and Conditions**

The rights and duties of the parties to this CONTRACT are additionally governed by the following specific, additional terms and conditions:

**D-1. FEDERAL PROVISIONS.**

**1. PERFORMANCE PERIOD**

The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this contract, the terms of the contract shall be extended by contract amendment.

**2. CHANGE IN TERMS**

- A. This contract may be amended or modified only by mutual written agreement of the parties.
- B. CONTRACTOR shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the COUNTY'S Contract Administrator.
- C. There shall be no change in CONTRACTOR'S Project Manager or members of the project team without prior written approval by the COUNTY'S Contract Administrator.

**3. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Contractors who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this contract is 0%. Participation by DBE contractor or subcontractors shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of this CONTRACT. If a DBE subcontractor is unable to perform, CONTRACTOR must make a good faith effort to replace him/her with another DBE subcontractor, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this CONTRACT. CONTRACTOR shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONTRACTOR to carry out these requirements is a material breach of this CONTRACT, which may result in the termination of this CONTRACT or such other remedy as COUNTY deems appropriate.

- D. Any subcontract entered into as a result of this CONTRACT shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting COUNTY consent for the termination, CONTRACTOR must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, COUNTY shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, COUNTY shall examine similar transactions, particularly those in which DBEs do not participate.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- I. CONTRACTOR shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- J. Upon completion of this CONTRACT or Task Order, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONTRACTOR or CONTRACTOR's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONTRACTOR when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to the Contract Administrator.
- K. If a DBE subcontractor is decertified during the life of this CONTRACT, the decertified subcontractor shall notify CONTRACTOR in writing with the date of

decertification. If a subcontractor becomes a certified DBE during the life of this CONTRACT, the subcontractor shall notify CONTRACTOR in writing with the date of certification. Any changes should be reported to COUNTY's Contract Administrator within 30 days.

#### **4. COST PRINCIPLES**

- A. CONTRACTOR agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONTRACTOR also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONTRACTOR that are determined by subsequent audit to be unallowable under 49 CFR Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONTRACTOR to COUNTY.

#### **5. RETENTION OF RECORDS/AUDIT**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of this CONTRACT pursuant to Government Code 8546.7; CONTRACTOR, subcontractors, and the COUNTY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of this CONTRACT, including but not limited to, the costs of administering the CONTRACT. All parties shall make such materials available at their respective offices at all reasonable times during the CONTRACT period and for three years from the date of final payment under the contract. The State, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONTRACTOR that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

#### **6. CONTINGENT FEE**

CONTRACTOR warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this CONTRACT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, COUNTY has the right to annul this CONTRACT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the CONTRACT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

#### **7. DISPUTES**

- A. Any dispute, other than audit, concerning a question of fact arising under this CONTRACT that is not disposed of by agreement shall be decided by a

committee consisting of the COUNTY'S Contract Administrator and County Administrative Officer, who may consider written or verbal information submitted by CONTRACTOR.

- B. Not later than 30 days after completion of all work under this CONTRACT, CONTRACTOR may request review by the San Benito County Board of Supervisors of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONTRACTOR from full and timely performance in accordance with the terms of this contract.

#### **8. AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this CONTRACT that is not disposed of by agreement, shall be reviewed by the San Benito County Auditor.
- B. Not later than 30 days after issuance of the final audit report, CONTRACTOR may request a review by the San Benito County Auditor of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by the COUNTY will excuse CONTRACTOR from full and timely performance, in accordance with the terms of this contract.
- D. CONTRACTOR and subcontractors' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review it is CONTRACTOR'S responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The contract, cost proposal, and ICR shall be adjusted by CONTRACTOR and approved by the COUNTY'S Contract Administrator to conform to the audit or review recommendations. CONTRACTOR agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by the COUNTY at its sole discretion. Refusal by CONTRACTOR to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of the CONTRACT and disallowance of prior reimbursed costs.

#### **9. SUBCONTRACTING**

- A. CONTRACTOR shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this CONTRACT shall be subcontracted without written authorization by the COUNTY'S Contract Administrator, except that which is expressly identified in the CONTRACT.

- B. Any subcontract in excess of \$25,000 entered into as a result of this CONTRACT, shall contain all the provisions stipulated in this CONTRACT to be applicable to subcontractors.
- C. Any substitution of subcontractors must be approved in writing by the COUNTY's Contract Administrator prior to the start of work by the subcontractor.

#### **10. EQUIPMENT PURCHASE**

- A. Prior authorization in writing, by the COUNTY's Contract Administrator, shall be required before CONTRACTOR enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONTRACTOR services. CONTRACTOR shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONTRACTOR's Cost Proposal and exceeding \$5,000, CONTRACTOR must obtain the prior authorization by the COUNTY's Contract Administrator; and three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this CONTRACT is subject to the following: "CONTRACTOR shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONTRACTOR may either keep the equipment and credit the COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit the COUNTY in an amount equal to the sales price. If CONTRACTOR elects to keep the equipment, fair market value shall be determined at CONTRACTOR's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the COUNTY and CONTRACTOR, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.
- D. All subcontracts in excess \$25,000 shall contain the above provisions.

#### **11. INSPECTION OF WORK**

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

#### **12. SAFETY**

- A. CONTRACTOR shall comply with OSHA regulations applicable to CONTRACTOR regarding necessary safety equipment or procedures. CONTRACTOR shall comply with safety instructions issued by the COUNTY



Safety Officer and other COUNTY representatives. CONTRACTOR personnel shall wear hard hats and safety vests at all times while working on the construction project site.

- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, the COUNTY has determined that such areas are within the limits of the project and are open to public traffic. CONTRACTOR shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONTRACTOR shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this CONTRACT, shall contain all of the provisions of this Article.

### **13. OWNERSHIP OF DATA**

- A. Upon completion of all work under this contract, or termination thereof as provided for in this CONTRACT, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this CONTRACT will automatically be vested in the COUNTY; and no further agreement will be necessary to transfer ownership to the COUNTY. CONTRACTOR shall furnish the COUNTY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. CONTRACTOR is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the COUNTY of the machine-readable information and data provided by CONTRACTOR under this CONTRACT; further, CONTRACTOR is not liable for claims, liabilities, or losses arising out of, or connected with any use by the COUNTY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by CONTRACTOR.
- 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. The COUNTY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.
- F. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

### **14. CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by COUNTY's construction contractor relating to work performed by CONTRACTOR's personnel, and additional information or assistance from CONTRACTOR's personnel is required in order to evaluate or

defend against such claims; CONTRACTOR agrees to make its personnel available for consultation with COUNTY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- B. CONTRACTOR's personnel that COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from COUNTY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONTRACTOR's personnel services under this contract.
- C. Services of CONTRACTOR's personnel in connection with COUNTY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

#### **15. CONFIDENTIALITY OF DATA**

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

#### **16. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code Section 10296, CONTRACTOR hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONTRACTOR within the immediately preceding two-year period, because of CONTRACTOR's failure to

comply with an order of a federal court that orders CONTRACTOR to comply with an order of the National Labor Relations Board.

#### **17. EVALUATION OF CONTRACTOR**

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

#### **18. STATEMENT OF COMPLIANCE**

- A. CONTRACTOR's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONTRACTOR has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Contract, CONTRACTOR and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. CONTRACTOR and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. CONTRACTOR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- C. The CONTRACTOR shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation - Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- D. The CONTRACTOR, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the

discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

#### **19. DEBARMENT AND SUSPENSION CERTIFICATION**

- A. CONTRACTOR's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONTRACTOR has complied with Title 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the COUNTY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONTRACTOR responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

#### **20. STATE PREVAILING WAGE RATES**

- A. CONTRACTOR shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

#### **21. CONFLICT OF INTEREST**

- A. CONTRACTOR shall disclose any financial, business, or other relationship with the COUNTY that may have an impact upon the outcome of this contract, or any ensuing COUNTY construction project. CONTRACTOR shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing COUNTY construction project, which will follow.
- B. CONTRACTOR hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this CONTRACT.
- C. Any subcontract in excess of \$25,000 entered into as a result of this CONTRACT, shall contain all of the provisions of this Article.

- D. CONTRACTOR hereby certifies that neither CONTRACTOR, nor any firm affiliated with CONTRACTOR will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this CONTRACT. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this CONTRACT shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.
- F. CONTRACTOR hereby certifies that neither CONTRACTOR, its employees, nor any firm affiliated with CONTRACTOR providing services on this project prepared the Plans, Specifications, and Estimate for any construction project included within this CONTRACT. An affiliated firm is one, which is subject to the control of the same persons through joint- ownership, or otherwise.
- G. CONTRACTOR further certifies that neither CONTRACTOR, nor any firm affiliated with CONTRACTOR, will bid on any construction subcontracts included within the construction contract. Additionally, CONTRACTOR certifies that no person working under this CONTRACT is also employed by the construction contractor for any project included within this contract.
- H. Except for subcontractors whose services are limited to materials testing, no subcontractor who is providing service on this CONTRACT shall have provided services on the design of any project included within this contract.

## **22. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

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

## **23. PROHIBITION OF EXPENDING COUNTY STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. CONTRACTOR 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 CONTRACTOR to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. CONTRACTOR also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

**D-2. ADDITIONAL SPECIFIC TERMS AND CONDITIONS:** (check one)

☒ There are no additional specific terms and conditions.

☐ The following additional specific terms and conditions shall apply: (Specify)

**D-3. HARMONIZATION OF CONTRACT TERMS.** Where the specific terms and conditions set forth in this Attachment D specifically conflict with the general terms and conditions set forth in Attachment C to this CONTRACT, the more specific terms and conditions shall be deemed to control. However, the general terms and conditions in Attachment C shall remain in full force and effect, to the extent they do not specifically conflict with the specific terms and conditions set forth in this Attachment D.

**END OF ATTACHMENT D.**