

**Kleinfelder West, Inc.**

**Geotechnical and Geological Engineering Support Services**

**AGREEMENT FOR SERVICES # AGMT 08-52559**

**THIS AGREEMENT**, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Kleinfelder West, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 5015 Shoreham Place, San Diego, California 92122 and whose local office address is 3077 Fite Circle, Sacramento, California 95827 (hereinafter referred to as "Consultant");

**RECITALS**

**WHEREAS**, County has determined that it is necessary to obtain a consultant to assist its Department of Transportation (hereinafter referred to as "DOT") with professional geotechnical and geological engineering services, including materials testing and environmental geotechnics services;

**WHEREAS**, Consultant has represented to County that it is specially trained, experienced, expert, and competent to perform the special services required hereunder, and County has determined to rely upon such representations;

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws and ordinances applicable to the work, including compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775;

**WHEREAS**, County has determined that the provision of such services provided by Consultant are in the public's best interest, and authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code Section 31000;

**NOW, THEREFORE**, County and Consultant mutually agree as follows:

**ARTICLE I**

**Scope of Services:**

A. Consultant shall perform all professional and technical services, work, and tasks required to accomplish the objectives set forth herein for County's DOT, and shall provide and make available Consultant's own personnel, materials, subconsultants, vehicles and equipment necessary to assist DOT with either complete materials quality control assurance testing support or geotechnical and geological engineering support services, including environmental geotechnics. Services shall be as outlined below and generally include, but shall not be limited to:

1. General construction geotechnical and geological services including, but not limited to:

- Complete geotechnical observation, consultation, investigations and sampling, including final reports.
  - Highway structural section core sampling and design recommendations.
  - Foundation analysis, reports and design recommendations.
  - Fugitive and asbestos dust monitoring/mitigation and related summary reports, including air monitoring for naturally occurring asbestos (NOA) in accordance with El Dorado County Air Quality Management District (AQMD) rules.
  - Groundwater investigations and monitoring.
  - Environmental geotechnics and geosynthetics sampling and testing, including site assessment analysis.
  - Specialized inspections for welding, concrete, asphalt and soils.
  - Geophysical methods such as ground penetrating radar, seismic refraction and other methods.
  - Exploration of geological conditions, including slope stability analysis, subsurface exploration, core sampling and logging, geologic field mapping and report preparation.
2. Provide complete materials quality control assurance testing on highway improvement construction projects including, but not limited to the following:
- Resistance “R” Value (CAL 301) tests and analysis.
  - Materials testing (ASTM and California Test Methods), including acceptance testing, independent assurance testing, split sampling and witness testing performed to the required frequencies.
  - Utilization of certified testers (when necessary) and calibrated equipment. Within Caltrans right of way testers shall be Caltrans certified and within County right of way testers shall be certified in accordance with DOT’s Quality Assurance Program.
  - Complete reports and summaries of testing and corroboration of test results.
3. Provide materials testing technicians, field inspectors and geotechnical and environmental geotechnical services for a defined period of time or for a specific constructed item. Duties required may include, but are not limited to, the following:
- Quality assurance materials testing.
  - Specialized inspections such as welding, concrete, soils and paving.
  - Geotechnical, geological or environmental engineering services.

- Complete reports and summaries of testing.
4. Work Schedule, Response and Reporting
- Consultant shall provide staff willing and able to work overtime, weekends and nights as directed by DOT.
  - Consultant shall fulfill a request from DOT for an investigation, observation or a materials test within twenty-four (24) hours of the request. Consultant shall fulfill a request for construction inspection within one (1) week of the request.
  - Reports on services rendered by Consultant shall be submitted to DOT in accordance with the following format and conditions:
    - a. For geotechnical investigations or observations, the results of Consultant's findings shall be summarized in a report that shall be delivered to DOT within ten (10) working days of completion of the investigation and testing, unless special circumstances of urgency dictate that the report be submitted to DOT within a shorter time frame. Consultant will not be entitled to any premium compensation should DOT require a report on an urgency basis.
    - b. For construction observation and materials testing, reports shall be submitted to DOT on a daily basis for any time periods where the Consultant is performing work on DOT's behalf. Weekly summary reports and other supplemental reporting may be required, dependent upon specific assignments. At the conclusion of each project, Consultant shall prepare and provide a detailed final report, which shall include results of all testing and sampling provided for the project.
    - c. For geotechnical, geological or environmental engineering services, Consultant shall provide details, calculations and specifications as directed by DOT. Consultant shall produce these deliverables within a time frame agreed to by DOT and Consultant.
- B. Before proceeding with any work under this Agreement, the parties will identify the specific services to be provided for each assignment in individual Task Orders to be issued in accordance with this Agreement. The specific services for each assignment shall be determined at a meeting or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable standards, required deliverables, specific Consultant staff, subconsultants, if applicable, any necessary permits, and any task-related mileage budget, if applicable, on a task-by-task basis. Following the meeting, Consultant shall provide County's Contract Administrator with a written scope of work, a schedule including a list of tasks with completion dates, a target completion date for the overall scope of work, and a not-to-exceed cost itemization to complete the work (resulting in a Task Order), which shall require written approval, authorization, and written notification to proceed from County's Contract Administrator, prior to commencement of the work. No payment will be made for any work performed prior to approval and full execution of the Task Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order.

Funding from various local, state and federal sources may be utilized to fund certain assignments to be performed under this Agreement and, as a consequence, the requirements (other than those incorporated herein below) of the funding agencies related to those grants will be incorporated into the provisions of the specific Task Orders issued for those assignments.

Consultant shall provide the Contract Administrator with the names and titles of Consultant's representatives that are authorized to bind Consultant by signing Task Orders and Task Order Amendments on Consultant's behalf. Consultant's notification of individuals authorized to execute Task Orders and Task Order Amendments on Consultant's behalf shall be communicated to County in accordance with the provisions of Article XVII, Notice to Parties, of this Agreement.

The period of performance for Task Orders shall be in accordance with dates specified in each Task Order. No payment will be made for any work performed before or after the period of performance in the Task Order, unless County's Contract Administrator and Consultant amend the Task Order. No Task Order will be written which exceeds the cumulative total of the not-to-exceed Contract amount.

County shall review Consultant's progress at key points as specified in each Task Order. Milestone reviews shall be performed for the specific products and deliverables listed in each Task Order. Milestones may only be changed by written agreement between County's Contract Administrator and Consultant's Project Manager.

- C. If a submittal or Task Order deliverable is required to be an electronic file, Consultant shall produce the file using Microsoft Office (MS) 2003 applications (specifically, MS Word, MS Project and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in language, format and design that are compatible with and completely transferable to County's computer and engineering applications and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator. Consultant shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in the individual Task Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in Article XVI, Default, Termination, and Cancellation, herein.

All of the services included in this Article are the responsibility of Consultant, unless specifically described as a task or item of work to be provided by County. Consultant shall be responsible for the supervision, administration and work performed by any subconsultant for services rendered under this Agreement.

## ARTICLE II

**Term:** This Agreement shall become effective when fully executed by both parties hereto and shall expire three (3) years thereafter or upon the completion of all issued Task Orders, whichever is later.

## ARTICLE III

**Compensation for Services:** For services provided herein, including all deliverables described in individual Task Orders issued pursuant to this Agreement, and including the progress reports required by Article V, Progress Reports, below, County agrees to pay Consultant monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoices detailing services rendered.

For the purposes hereof, the billing rates shall be in accordance with Exhibit A, marked "Fee Schedule," incorporated herein and made by reference a part hereof. The hourly rates, exclusive of prevailing wage rates, and the geotechnical/materials testing rates indicated in Exhibit A provide for annual increases of four percent (4%) per year beginning on January 1, 2010. The hourly rates indicated in Exhibit A are inclusive of vehicles (not including mileage), computers and phones.

Reimbursement for mileage expenses for Consultant and subconsultants, if applicable, shall not exceed the lesser of (1) the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred; or (2) the rates authorized to be paid to rank and file state employees under the then current State Department of Personnel Administration (DPA) rules. References to the DPA rates and Consultant's responsibilities for cost differences and any overpayments are more fully described in Article XXIX, Cost Principles herein. Mileage reimbursement rates apply to Consultant and to any subconsultants authorized under this Agreement. There shall be no subconsultant markup on any mileage expenses. Any reimbursements for mileage expenses will only be made if such expenses are included in the budget of an approved and fully executed Task Order issued pursuant to this Agreement.

Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls, and other per diem expenses) will not be reimbursed for any services performed under this Agreement by Consultant or by any authorized subconsultants.

The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless County's Contract Administrator and Consultant amend the Task Order.

The total amount of this Agreement, inclusive of all costs and Task Orders, and inclusive of all work of subconsultants and expenses shall not exceed \$200,000.00.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number, the County-supplied work order number, task code and Task Order number both on their faces and on any enclosures or backup documentation. Consultant shall bill County for only one Task Order per invoice. Consultant shall attach copies of any progress reports required under the provisions of Article V, Progress Reports, that relate to

the services being billed, as backup documentation to every invoice submitted for payment under the terms of this Agreement. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, California 95667  
Attn: Administration Division – Accounts Payable

or to such other location as County directs.

In the event that Consultant fails to deliver, in the format specified, the deliverables and progress reports required by this Agreement, County at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the deliverables or progress reports are received, or proceed as set forth herein below in Article XVI, Default, Termination, and Cancellation.

#### **ARTICLE IV**

**Standards for Work:** Services rendered under this Agreement shall be performed in accordance with the guidelines set forth in the *Caltrans Construction Manual*, *Caltrans Independent Assurance Manual*, *Caltrans Local Assistance Procedures Manual* and *Local Assistance Program Guidelines*, the El Dorado County Department of Transportation's Quality Assurance Program, ASTM testing procedures, and all other applicable Caltrans, Federal Highway Administration (FHWA), federal, state and local laws, County guidelines and accepted industry standards, and shall be performed in a safe, professional, skillful and workmanlike manner. Where applicable, services shall further conform to all U.S. Code of Federal Regulation Title 23 requirements and all applicable federal laws, regulations and policy and procedural or instructional memoranda.

All of Consultant's services and deliverables must adhere to current County, Caltrans and federal requirements for project development and shall be made available to County and Caltrans for review and approval at the appropriate stages specified in the Task Orders issued pursuant to the Agreement or upon request by the Contract Administrator.

Consultant has full responsibility for the accuracy and completeness of the deliverables, reports and such other documents that may be required for the tasks or items of work assigned. Assistance, cooperation and oversight by County, Caltrans, FHWA or other regulatory agencies will not relieve Consultant of this professional responsibility.

All work must be performed and work products prepared in a format and manner customarily anticipated by the appropriate approving agencies.

#### **ARTICLE V**

**Progress Reports:** Consultant shall submit written progress reports to the Contract Administrator at intervals that are commensurate with the requirements of the tasks and items of work being performed and based upon a mutually agreeable schedule. At a

minimum, Consultant shall submit written progress reports once per month. The reports shall be sufficiently detailed for the Contract Administrator to determine if Consultant is performing to expectations and is on schedule, to provide communication of interim findings, and to afford occasions for airing difficulties or special circumstances encountered so that remedies can be developed. County's review of these reports will ensure that Consultant's work meets a level of acceptability as determined by the Contract Administrator, and Consultant shall be required to modify its work as necessary to meet that level of acceptability as defined by the Contract Administrator. Separate detail shall be provided for each ongoing Task Order. Progress reports shall include the total number of hours worked by Consultant and any authorized subconsultants and shall include descriptions of the tasks and work performed, including a description of any deliverables submitted during the reporting period and the anticipated tasks, work and deliverables proposed for the subsequent reporting period. Any invoices submitted by Consultant for payment under the terms of this Agreement shall include copies of the progress reports that relate to the services being billed on those invoices.

#### **ARTICLE VI**

**Licenses:** Consultant represents that it and any and all subconsultants employed under this Agreement are duly certified or licensed in good standing by the State of California to perform the services contemplated under this Agreement, and that Consultant and all subconsultants shall maintain said certificates or licenses in good standing throughout the term of this Agreement.

#### **ARTICLE VII**

**Ownership of Data:** Upon completion or earlier termination of all services under this Agreement, or upon the completion or earlier termination of services provided in accordance with individual Task Orders issued pursuant to this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations, photographs, videos and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in County without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to County. Copies may be made for Consultant's records, but shall not be furnished to others without written authorization from County's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by County. Consultant shall furnish County all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the services provided under this Agreement.

#### **ARTICLE VIII**

**Consultant's Project Manager:** Consultant designates Zia Islam, Principal Engineer, as its Project Manager for this Agreement. Consultant's Project Manager, or County-approved designee, shall be accessible to County's Contract Administrator, or designee, during normal County working hours and shall respond within twenty-four (24) hours to County inquiries or requests. Consultant's Project Manager shall be responsible for all matters related to Consultant's personnel, operations and any subconsultants authorized under this Agreement including, but not limited to (1) assigning qualified personnel to perform the required work and to prepare the deliverables required by the individual Task Orders issued pursuant to this Agreement; (2) reviewing, monitoring, training and directing

Consultant's personnel and any subconsultants authorized herein; and (3) unless otherwise specified in an individual Task Order, providing qualified and appropriate traffic control services for field work.

#### **ARTICLE IX**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Amendments may be made to permit mutually acceptable changes in the scope, character or complexity of the work if such changes become desirable or necessary as the work progresses. Appropriate extensions of time in case of unavoidable delays and for consideration of warranted adjustments in payment may also be accomplished by amendments to the Agreement. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. There shall be no change in Consultant's Project Manager or subconsultants, which shall be established at the issuance of individual Task Orders, without prior written approval by County's Contract Administrator.

#### **ARTICLE X**

**Consultant to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during the term hereof.

#### **ARTICLE XI**

##### **Confidentiality:**

- A. Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, all financial, statistical, personal, technical, or other data and information relative to County's operations together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, including any subconsultants authorized herein, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Department of Transportation for the purpose of, and in the performance of, this Agreement.
- B. Permission to disclose information on one occasion 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 this Agreement or County's actions on the same, except to County's staff, Consultant's own personnel or authorized subconsultants 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 County, and receipt of the Contract Administrator's written permission.
- E. All information related to any construction estimates prepared or otherwise obtained in the performance of this Agreement is confidential, and shall not be disclosed by Consultant to any entity other than to County.
- F. Any non-final or draft administrative reports, studies, materials and documentation, including but not limited to, all environmental documents and any Project Report (PR), relied upon, produced, created or utilized for any items of work performed under this Agreement shall be held in confidence pursuant to Government Code §6254.5(e) until release in accordance with the California Environmental Quality Act (CEQA). County and Consultant agree that such material will not be distributed, released or shared with any other organization, person or group other than County's and Consultant's employees and agents whose work requires that access.
- G. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

## ARTICLE XII

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County. Notwithstanding this Article, County may, through its Contract Administrator, authorize Consultant to utilize subconsultants for services performed in Article I, Scope of Services, for the particular tasks, work and deliverables identified therein. Said authorization and approval shall be sought and obtained by Consultant prior to subconsultants' commencement of any work under this Agreement. Specific subconsultants shall be authorized in individual Task Orders issued pursuant to this Agreement. Consultant shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to Consultant by the terms of this Agreement and to assume toward Consultant all of the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.

Notwithstanding any provision to the contrary, at no time shall County be obligated to pay separately for subconsultant services.

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

## ARTICLE XIII

**Independent Contractor/Liability:** Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner, in accordance with good engineering practices and shall be liable for its own negligence and negligent acts of its employees and subconsultants. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees or subconsultants.

#### **ARTICLE XIV**

**Prevailing Wage:** County requires Consultant's services on public works project(s) involving local, state and/or federal funds to which prevailing wage requirements may apply. As a consequence, Consultant and any subconsultants authorized in the individual Task Orders issued pursuant to this Agreement shall comply with all applicable state and federal prevailing wage rates, statutes, rules and regulations then in effect. In the event of conflict between applicable federal and state provisions, the higher prevailing wage rate will apply. Consultant and its subconsultants shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the offices of the District Director of Transportation for the district in which the work is situated. Changes, if any, to the general prevailing wage rates will be available at the same location. The federal minimum wage rates are determined by the United States Secretary of Labor and may be examined at the office described above. Future effective general prevailing wage rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

Consultant and any authorized subconsultants shall comply with all applicable wage requirements, as set forth in Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810, and 1813. In accordance with the provisions of Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Consultant and any subconsultant authorized under this Contract shall also conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

#### **ARTICLE XV**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE XVI**

### **Default, Termination, and Cancellation:**

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired.

- B. **Bankruptcy:** This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement or any Task Order issued pursuant to this Agreement in whole or in part upon seven (7) calendar days' written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the not-to-exceed amount of the Task Order or the total amount of the contract, as applicable. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

**ARTICLE XVII**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado  
Department of Transportation  
2441 Headington Road  
Placerville, California 95667

With a Copy to:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, California 95667

Attn.: Kris Payne,  
Supervising Civil Engineer

Attn.: Tim C. Prudhel,  
Contract Services Officer

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Kleinfelder West, Inc.  
3077 Fite Circle  
Sacramento, California 95827

Attn.: Patrick Flynn, Vice President and Regional Manager

or to such other location as Consultant directs.

**ARTICLE XVIII**

**Indemnity:** To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of Consultant includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

**ARTICLE XIX**

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.

- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this agreement. In the event said insurance coverage expires at any time or times during the term of this contract, Consultant shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division, and Consultant agrees that no work or services shall be performed prior to the giving of such approval.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without 30-day prior written notice to County; and
  - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies.
- I. Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials,

employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

In addition, Consultant shall ensure that all subconsultants authorized pursuant to this Agreement shall maintain workers' compensation, general liability, automobile liability and professional liability insurance as specified above and shall provide County with proof of same.

## **ARTICLE XX**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

## **ARTICLE XXI**

**Interest of Consultant:** Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire the same in any manner or degree, in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

Consultant hereby certifies that neither Consultant, any subconsultants authorized herein nor any firm affiliated with Consultant will bid on any construction contract or construction

subcontracts for any construction project resulting from work assigned under this Agreement. An affiliated firm is one which is subject to the control of the same persons through joint-ownership, or otherwise. Additionally, Consultant certifies that no person working under this Agreement is also employed by the construction contractor for any Project included within this Agreement.

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

Consultant further certifies that neither Consultant, nor any firm affiliated with Consultant, will bid on any construction subcontracts included within any construction contract associated with this Agreement.

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

#### **ARTICLE XXII**

**California Residency (Form 590):** All independent Consultants providing services to County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

#### **ARTICLE XXIII**

**Taxpayer Identification Number (Form W-9):** All independent contractors or corporations providing services to County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

#### **ARTICLE XXIV**

**Business License:** County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of the County Business License Ordinance prior to beginning work under this Agreement and at all times during the term of this Agreement.

#### **ARTICLE XXV**

**California Forum and Law:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

## **ARTICLE XXVI**

**Year 2000 Compliance:** Consultant agrees that all hardware and software developed, distributed, installed, programmed, or employed as a result of this order will comply with ISO 9000 date format to correctly manipulate and present date-sensitive data.

Upon delivery of product and thereafter, the date and date logic component shall effectively and efficiently operate using a four-digit year.

Upon written notification by County of any hardware or software failure to comply with ISO 9000 date format, Consultant will replace or correct the failing component with compliant hardware or software immediately, at no cost to County.

## **ARTICLE XXVII**

**Compliance with Federal, State and Local Agency Requirements:** County may rely on federal assistance or grants, state funds and on local agency or other grant funds for all or a portion of the funding for the services to be provided herein. As a requirement of County's use of federal, state and local agency grant funds, County is required to comply with certain contracting requirements and to extend those requirements to all third party contracts. Consultant shall comply with all applicable provisions of federal, state and local agency regulations, including those required by FHWA grant funding requirements, regulations, and related executive orders regarding the use, expenditure, control, reporting, allowable costs and management of such funds. Failure of Consultant to comply with any federal, state or local agency provision may be the basis for withholding payments for charges made by Consultant and for such other remedies as may be appropriate including termination of this Agreement. Consultant shall further comply with any flow-down or third-party contracting provisions which may be required under the federal, state or local agency regulations and which may apply to Consultant's subcontracts, if any, associated with this Agreement.

## **ARTICLE XXVIII**

**Working Office:** Consultant shall establish a working office at a place acceptable to County. The parties hereto acknowledge and agree that Consultant's offices located at 3077 Fite Circle, Sacramento, California 95827 are acceptable to County.

## **ARTICLE XXIX**

**Cost Principles:** The Federal Acquisition Regulations in Title 48, CFR, Part 31 et seq. are the governing factors regarding allowable elements of cost for all services to be performed under this Agreement.

- A. Consultant shall comply with 2 CFR Part 225, Cost Principles for State and Local Governments, and with federal administrative procedures pursuant to 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and 49 CFR, Chapter 1, Parts 31 et seq., Federal Acquisition Regulations System, insofar as those regulations may apply to Consultant. This provision shall apply to every sub-recipient receiving funds as a Consultant or subconsultant under this Agreement.
- B. Any expenditures for costs for which Consultant has received payment or credit that



are determined by subsequent audit to be unallowable under 48 CFR, Parts 31 et seq. or 49 CFR, Part 18 are subject to repayment by Consultant to County.

- C. Travel and subsistence (per diem) reimbursements, if applicable, and third-party contract reimbursements to subconsultants will be allowable as Project costs only after those costs are incurred and paid for by Consultant.
- D. Notwithstanding any other provision of this Agreement to the contrary, payments to Consultant for travel and subsistence (per diem) and mileage expenses, if applicable, for Consultant's staff or for subconsultants claimed for reimbursement shall not exceed the lesser of (1) the rates to be paid to County employees under the current Board of Supervisors Travel Policy in effect at the time the expenses are incurred; or (2) the rates authorized to be paid to rank and file state employees under the then current State Department of Personnel Administration (DPA) rules. If the rates invoiced are in excess of these authorized rates, then Consultant is responsible for the cost difference and any overpayments shall be reimbursed to County upon demand. For the purposes of this Agreement, only mileage expenses shall be eligible for reimbursement in accordance with Article III, Compensation for Services, above. No reimbursements for travel and subsistence (per diem) expenses for Consultant or subconsultants shall be allowed.
- E. Consultant and its subconsultants shall establish and maintain accounting systems and records that properly accumulate and segregate funds received under this Agreement by line item. The accounting systems of Consultant and all subconsultants shall conform to Generally Accepted Accounting Principles (GAAP), shall enable the determination of incurred costs at interim points of completion, and shall provide support for reimbursement of payment vouchers or invoices.

## **ARTICLE XXX**

**Audit and Inspection of Records:** Consultant shall maintain and make available to the FHWA, State, the California State Auditor, and County or to any duly authorized representative of the United States Department of Transportation, the State, or County all books, papers, job cost records, detailed cost estimates, claims, and accounts, including payment, property, payroll, personnel, subconsultant records, and financial records related to or which arise out of the work or under terms of this Agreement. Consultant shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and in accordance with the provisions of Article XXVII, Compliance with Federal, State and Local Agency Requirements, and Article XXIX, Cost Principles, above. These books, papers, records, claims and accounts shall be made available for examination during normal business hours and shall be readily available and accessible at Consultant's principal place of business in California, for audit during normal business hours at such place of business. Consultant shall provide office space, photocopies and other assistance to enable audit or inspection representatives to conduct such audits or inspections. This right to audit books and records directly related to this Agreement shall also extend to all subconsultants authorized under this Agreement. Consultant shall incorporate this provision in any subcontract entered into as a result of this Agreement and shall require its subconsultants to agree to cooperate with the listed agencies by making all appropriate and relevant Project records available to those agencies for audit and copying.

#### **ARTICLE XXXI**

**Record Retention:** All of Consultant's books, papers, job cost records, detailed cost estimates, claims, and accounts, including payment, property, payroll, personnel, subconsultant records, and financial records related to or which arise out of the work or under terms of this Agreement shall be retained for access, inspection and/or audit by the FHWA, the State, the California State Auditor and County or their duly authorized representatives for at least four (4) years after County's final payment to Consultant under this Agreement. Consultant shall incorporate this provision in any subcontract entered into as a result of this Agreement.

#### **ARTICLE XXXII**

**Covenant Against Contingent Fees:** By executing this Agreement, Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee. The parties hereto have acknowledged this covenant against contingent fees and Consultant has duly executed Exhibit B, marked "Certification of Consultant," and County has duly executed Exhibit C, marked "Certification of Local Agency," both of which exhibits are incorporated herein and made by reference a part hereof.

#### **ARTICLE XXXIII**

**Design Standards:** Consultant shall perform all services under this Agreement in conformance with applicable federal, state and local design standards or other standards for work performance stipulated in Article IV, Standards for Work, above or in the individual Task Orders issued pursuant to this Agreement.

#### **ARTICLE XXXIV**

**Documentation:** Consultant shall document the results of its work to the satisfaction of County and if applicable, the State and the FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Agreement objectives.

#### **ARTICLE XXXV**

**Patent Rights:** Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions are hereby included in this Agreement as applicable. Consultant shall incorporate this provision in its subcontracts, if any, in excess of \$25,000.

#### **ARTICLE XXXVI**

**Copyrights:** County may permit copyrighting reports or other Agreement products. If copyrights are permitted, the FHWA and State shall have the royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes. Consultant shall incorporate this provision in its subcontracts, if any, in excess of \$25,000.

## ARTICLE XXXVII

**Consultant's Endorsement on PS&E/Other Data:** If applicable, the responsible Consultant/Engineer shall sign all plans, specifications, estimates (PS&E) and all engineering data furnished by it and where appropriate, indicate its registration number.

## ARTICLE XXXVIII

**Disadvantaged Business Enterprise (DBE) Considerations:** Consultant must give consideration to DBE firms as specified in 23 CFR 172.5(b) and in Appendix A to Part 26 of 49 CFR, and in Exhibit D marked, "Notice to Proposers Disadvantaged Business Enterprise (DBE) Information," incorporated herein and made by reference a part hereof. Consultant shall ensure that certified DBE firms have the opportunity to participate in the performance of this Agreement and Consultant shall take all necessary and reasonable steps for such assurance. If this Agreement has an Underutilized DBE (UDBE) goal, Consultant must meet the UDBE goal by using certified UDBEs as subconsultants or document a good faith effort to meet the goal. If a UDBE subconsultant is unable to perform, Consultant must make a good faith effort to replace the subconsultant with another UDBE subconsultant if the goal is not otherwise met. **For the purposes of this Agreement, County has established a UDBE goal of 0%.**

## ARTICLE XXXIX

### **DBE Participation:**

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." It is the policy of County that certified DBE firms shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with federal funds. Consultant shall ensure that certified DBE firms, as defined in the Code of Federal Regulations, have the maximum opportunity to participate in the performance of this Agreement and shall take all necessary and reasonable steps, as set forth in said Part 26, for such assurance. Consultant, if it obtains DBE participation on this Agreement, will assist Caltrans in meeting its federally mandated statewide overall DBE goal. A "Local Agency Proposer DBE Information (Consultant Contracts)" form (included in Exhibit D hereto) shall be completed by Consultant and shall be submitted upon Consultant's execution of this Agreement.
- B. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as County deems appropriate.

- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- D. A sample agreement is attached hereto as Exhibit E, marked "Standard Agreement for Subcontractor/DBE Participation," and is incorporated herein and made by reference a part hereof.

## **ARTICLE XL**

### **Nondiscrimination:**

- A. In connection with its performance under this Agreement, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including, but not limited to the following: Consultant, its employees, subconsultants and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant, its employees, subconsultants and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include the nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. Consultant agrees to comply with the requirements of Exhibit F, marked "Fair Employment Practices Addendum" and the requirements of Exhibit G, marked "Nondiscrimination Assurances," including Appendices A through D to Exhibit G, both of which exhibits and the four Appendices to Exhibit G are incorporated herein and made by reference a part hereof. Consultant further agrees that any agreement entered into by Consultant with a third party for the performance of Project-related work shall incorporate Exhibits F and G and Appendices A through D to Exhibit G as essential parts of such agreement to be enforced by that third party as verified by County.
- D. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws and the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

## **ARTICLE XLI**

**Compliance with Disability Acts:** Consultant shall comply with: (a) Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (b) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (c) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

## **ARTICLE XLII**

### **Debarment and Suspension Certification:**

- A. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that it or any person associated therewith in the capacity of the 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 manner involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency and dates of action.

## **ARTICLE XLIII**

### **Prohibition of Expending County, State or Federal Funds for Lobbying:**

- A. Consultant, by its signature herein, certifies to the best of its knowledge and belief that:
  - 1. No state, federal or County appropriated funds have been paid, or will be paid by-or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
  - 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or

employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Consultant shall complete and submit "Standard Form-LLL, Disclosure Form to Report Lobbying," in accordance with its instructions, which form and instructions are attached hereto as Exhibit H and are incorporated herein and made by reference a part hereof.

- 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, U.S. 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. Consultant also agrees by signing this document that it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

#### **ARTICLE XLIV**

##### **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 County's Contract Administrator and the Director of Transportation, or designee, which may consider written or verbal information submitted by Consultant.
- B. Not later than thirty (30) days after completion of all work under any individual Task Order issued pursuant to this Agreement, Consultant may request review by the Director of Transportation of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Contract.
- D. Consultant's failure to follow this dispute resolution procedure shall constitute a waiver of such claims and a bar to further proceedings.

#### **ARTICLE XLV**

**Inspection of Work:** Consultant and any subconsultants authorized herein shall permit County, the State and the FHWA if federal participating funds are used in this Contract to review and inspect the Project activities and files at all reasonable times during the performance period of this Contract, including review and inspection on a daily basis.

## **ARTICLE XLVI**

### **Safety:**

- A. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County's Safety Officer and other County representatives. Consultant's personnel and any subconsultants authorized herein shall wear hard hats and safety vests at all times while working on construction Project sites.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that there are areas that may be within the limits of certain Projects that 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 California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.
- D. Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Article.

## **ARTICLE XLVII**

### **Claims Filed by County's Construction Contractors:**

- A. If claims are filed by County's construction contractors relating to work performed by Consultant's personnel or subconsultants, and additional information or assistance from Consultant's personnel or subconsultants is required in order to evaluate or defend against such claims, Consultant agrees to make its personnel and/or subconsultants available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. Consultant's personnel and subconsultants 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 rates indicated for "Expert Witness" services in Exhibit A hereto.
- C. Services of Consultant's personnel or subconsultants in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this agreement in order to finally resolve the claims.

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

#### **ARTICLE XLVIII**

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

#### **ARTICLE XLIX**

**Evaluation of Consultant:** Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

#### **ARTICLE L**

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

#### **ARTICLE LI**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Kris Payne, Supervising Civil Engineer, Department of Transportation, or successor.

#### **ARTICLE LII**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

#### **ARTICLE LIII**

**Partial Invalidity:** If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

#### **ARTICLE LIV**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.



**Contract Administrator Concurrence:**

By: \_\_\_\_\_  
Kris Payne  
Supervising Civil Engineer  
Department of Transportation

Dated: \_\_\_\_\_

**Requesting Department Concurrence:**

By: \_\_\_\_\_  
James W. Ware, P.E.  
Director of Transportation

Dated: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

**-- COUNTY OF EL DORADO --**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Board of Supervisors  
"County"

Attest:

Suzanne Allen de Sanchez  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

**-- KLEINFELDER WEST, INC. --**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Patrick Flynn  
Vice President and  
Regional Manager  
"Consultant"

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Corporate Secretary

Kleinfelder West, Inc.

Exhibit A

FEE SCHEDULE
GEOTECHNICAL AND GEOLOGICAL ENGINEERING SUPPORT SERVICES

(Rates shown are for 2009. Yearly escalation rate is four percent [4%] effective January 1 of subsequent years - not applicable to Prevailing Wage Rates - see note below regarding Prevailing Wage Rates.)

PROFESSIONAL STAFF RATES

Table listing Professional Staff Rates with job titles and hourly rates ranging from \$119/hour to \$325/hour.

ADMINISTRATIVE/TECHNICAL STAFF RATES

Table listing Administrative/Technical Staff Rates with job titles and hourly rates ranging from \$98/hour to \$145/hour.

Minimum Charges for Office Time Per Day..... One Hour at Applicable Rate

Hourly Rates include equipment (vehicle, computers, phones).

\*If the California Department of Industrial Relations makes wage determination adjustments to the prevailing wage rates in effect during the term of this Agreement, the fee schedule will be adjusted accordingly and this Agreement will be modified by this adjustment.

## **Kleinfelder West, Inc.**

### **Exhibit A**

#### **BASIS OF CHARGES**

1. Listed on the attached pages are typical prices for services most frequently performed by Consultant. Prices for other services, including special quotes for volume work, will be given upon request, but will be subject to the terms set forth below.
2. A two-hour minimum charge will be made for all field services. A four-hour minimum charge will be made for any field services in excess of two hours. A six-hour minimum charge will be made for field services in excess of four hours per day. An eight-hour minimum charge will be made for field services in excess of six hours per day.
3. A one-hour minimum charge per day will be made for any office service.
4. Time worked in excess of eight (8) hours per day and weekend/holiday work will be charged at 1.5 times the hourly rate. Time worked in excess of twelve (12) hours per day will be charged at 2 times the hourly rate.
5. Authorized subconsultants and outside services will include a 15% markup, unless otherwise noted.
6. Consultant routinely disposes of non-environmental and uncontaminated samples after submission of its final report and reserves the right to return environmental samples to County, at County's request and at its expense, after submission of Consultant's final report.
7. Reimbursement for mileage expenses, if applicable, shall be compensated in accordance with the provisions of Article III, Compensation for Services, of this Agreement.

**Kleinfelder West, Inc.**

**Exhibit A**

**GEOTECHNICAL/MATERIALS TESTING FEE SCHEDULE  
 GEOTECHNICAL AND GEOLOGICAL ENGINEERING SUPPORT SERVICES**

(Rates shown are for 2009. Yearly escalation rate is four percent [4%] effective January 1 of subsequent years.)

**MATERIALS TESTING EQUIPMENT**

Skidmore Wilhelm Bolt Tension Calibrator .....	\$ 55.00/day
Torque Wrench .....	\$ 49.50/day
Schmidt Hammer .....	\$ 55.00/day
R Meter (Pachometer) .....	\$ 77.00/day
Windsor Probe .....	\$ 27.50/shot
Anchor Bolt Testing Device .....	\$154.00/day
Concrete Vapor Transmission Test Kit..... F1869	\$ 33.00/kit
Thin Lift Nuclear Asphalt Gauge .....	\$110.00/day
Nuclear Asphalt Content Gauge .....	\$110.00/day
Coring Machine with Generator .....	\$165.00/day
Floor Flatness Testing Device.....	\$110.00/day

**Diamond Bit Core Barrel Charge**

2" Diameter .....	\$ 2.20/inch
3" Diameter .....	\$ 3.30/inch
4" Diameter .....	\$ 4.40/inch
6" Diameter .....	\$ 6.60/inch
8" Diameter .....	\$ 8.80/inch

Minimum bit charge-6" per job

**SOIL AND AGGREGATE TESTS**

**COMPACTION CURVES**

Standard 4" Mold .....	D-698 Method A	\$198.00/each
Standard 6" Mold .....	D-698 Method B, C	\$215.00/each
Modified, 4" Mold .....	D-1557 Method A	\$198.00/each
Modified, 6" Mold .....	D-1557 Method B, C	\$215.00/each
California Impact, Dry Method.....	CAL-216-F	\$215.00/each
California Impact, Wet Method.....	CAL-216	\$171.00/each
Check Point .....		\$110.00/each
Relative Density (Maximum and Minimum) .....	D-4253 & 4254	\$325.00/set

**SOIL AND AGGREGATE STABILITY**

R-Value, Untreated Material or field Sample .....	D-2844, CAL-301	\$264.00/each
R-Value, Reproportioned or Chemically -Treated.....	D-2844, CAL-301	\$314.00/each
Correction for oversized material in sample .....	D-2844, CAL-301	\$ 71.50/each
C.B.R. 100% Compaction (Includes compaction curve) .....	D-1883	\$583.00/each
C.B.R. Other Compaction Effort (Includes compaction curve).....	D-1883	\$770.00/each
Soil Cement, C.T.B., Mix Design.....		On Request
Lime-Treated Compression Test (Includes Opt. Moist. Determ.) Set of 3 .....	CAL-373	\$935.00/each
Check Point .....	CAL-373	\$330.00/each

**Kleinfelder West, Inc.**

**Exhibit A**  
**SOIL AND AGGREGATE TESTS (Cont.)**

**BASIC SOIL AND AGGREGATE PROPERTIES**

Sieve Analysis, Coarse and Fine Including Wash .....	C-136, D-422, CAL-202	\$138.00/each
Sieve Analysis, Coarse (Retained on No. 4 Sieve) .....	C-136, CAL-202	\$ 83.00/each
Sieve Analysis, Fine Including Wash (Passing No. 4 Sieve) ....	C-136, CAL-202	\$116.00/each
Sieve Analysis, Wash (% Finer than No. 200 Sieve).....	C-117, D-1140	\$ 83.00/each
Hydrometer (Without Sieve Analysis).....	D-422, CAL-203	\$165.00/each
Hydrometer (Including Sieve Analysis) .....	D-422, CAL-203	\$253.00/each
Specific Gravity.....	C-127, C-128, D-854	\$ 94.00/each
Sand Equivalent, Average of 3.....	D-2419, CAL-217	\$105.00/each
Sand Equivalent, One Point Method .....		\$ 77.00/each
Plasticity Index.....	D-4318, CAL-204	\$165.00/each
Liquid Limit .....	D-4318, CAL-204	\$110.00/each
Expansion Index Test .....	D-4829, UBC 18-2	\$165.00/each
Swell Pressure, Per Point .....	D-4546	\$110.00/each
Moisture Determination and Unit Weight.....	D-2216, D-2937, D-4643	\$ 49.50/each
Moisture Determination Only.....	D-2216, D-4643, CAL-226	\$ 22.00/each
pH Test, Lime Treated Soils .....	C-977	\$132.00/each
Organic Content-Soils.....	D-2974	\$ 99.00/each
Pinhole Test for Dispersive Soils .....	D-4647	\$275.00/each

**HYDRAULIC CONDUCTIVITY**

Flexible Wall, Falling Head .....	D-5084, EM 1110-2-1906	\$358.00/each
Rigid Wall Permeability of Undisturbed Sample, up to No. 4 Sieve Size .....		\$181.50/each
Rigid Wall, Constant Head, Gravel.....	D-5856	\$181.50/each

**SAMPLE PREPARATION**

Trimming.....		\$ 54.00/each
Remolding .....		\$ 71.50/each
Splitting.....		\$ 27.50/each
Mixing and Processing.....		\$ 71.50/hour

**SHEAR STRENGTH AND CONSOLIDATION TESTS**

Unconfined Compression, Including Moisture Content & Unit Weight ....	D-2166	\$116.00/each
Triaxial Compression Test		
Quick Per Point.....		\$137.00/point
UU Saturated .....	D-2850	\$237.00/point
CD Saturated .....	EM-1110-2-1906	\$358.00/point
CU Saturated .....	D-4767	\$286.00/point
CU Saturated with Pore Water Pressure .....	D-4767	\$413.00/point
Direct Shear (Quick) Per Point (Dry) .....	D-3080	\$121.00/each
Consolidation, With Two Time Rates .....	D-2435	\$402.00/test
Consolidation, Without Time Rate, Six Load Increments.....	D-2435	\$314.00/test
Collapse Potential.....	D-5333	\$116.00/each

**Kleinfelder West, Inc.**

**Exhibit A**  
**SOIL AND AGGREGATE TESTS (Continued)**

**AGGREGATE QUALITY**

Injurious Organic Matter.....	C-40	\$ 60.00/each
Absorption, Gravel.....	C-127, CAL-206	\$ 60.00/each
Absorption, Sand.....	C-128, CAL-207	\$ 99.00/each
Unit Weight, Average of 3.....	C-29, CAL-212	\$ 71.50/test
Los Angeles Abrasion Test-500 Revolutions.....	C-131, CAL-211	\$171.00/each
Los Angeles Abrasion Test-1,000 Revolutions.....	C-535, CAL-211	\$220.00/each
Sulfate Soundness (5 Cycles) Per Sieve Size.....	C-88, CAL-214	\$ 99.00/each
Mortar Making Properties of Sand.....	C-87, CAL-515	\$550.00/each
Potential Reactivity Test.....	C-289	On Request
Cleanness Test (Referee Test).....	CAL-227	\$149.00/each
Crushed Particles per sieve size.....	D-693, CAL-205	\$110.00/each
Flat and Elongated Particles per sieve size.....	D-4791, CE-119, CE-120	\$110.00/each
Clay Lumps and Friable Particles.....	C-142	\$110.00/each
Lightweight Pieces in Aggregate.....	C-123	\$330.00/each
Durability, Fine.....	D-3744, CAL-229	\$110.00/each
Durability, Coarse.....	D-3744, CAL-229	\$182.00/each
Durability Index, Coarse and Fine.....	D-3744, CAL-229	\$275.00/test

**CONCRETE**

Concrete Mix Design Review.....		\$209.00/each
Laboratory Trial Batch, Including Compression Testing of Six Specimens.....		\$594.00/each
Concrete Cylinder Cured and/or Compression Tested.....	C-39, CAL-521	\$ 26.40/each
Compression Test, Lightweight Insulating Concrete.....	C-495	\$ 55.00/each
Unit Weight of Concrete Cylinders.....	C-138	\$ 55.00/each
Flexural Strength, Concrete Beam.....	C-78, C-293, CAL-523	\$105.00/each
Compression Test, Gunit/Shotcrete Panel, Set of 6 Cores.....	C-1140	\$253.00/set
Compression Test on Cored Specimens (Includes End Preparation).....	C-42	\$ 60.00/each**
Cylinder Molds.....		\$ 3.00/each
Drying Shrinkage Test, set of 3.....	C-157	\$440.00/each
Splitting Tensile Strength.....	C-496	\$ 77.00/each
Cement Content of Hardened Concrete.....	C-85	On Request
Density of Spray Applied Fireproofing.....	E-605	\$ 71.50/each
Unit Weight of Lightweight Concrete.....	C-567	\$ 71.50/each
Mortar Bar Expansion (Short-Term Expansion, 0-14 days).....	C-1260	\$1045.00/each
Mortar Bar Expansion (Long-Term Expansion, more than 14 days).....	C-227	On Request

\*\* Does not include coring

Kleinfelder West, Inc.

Exhibit A

MASONRY

Grout or Mortar Specimen		
Cured and/or Compression Tested		
..... C-109, C-579, C-942, C-1019, UBC 21-16, UBC 21-18		\$ 26.40/each
Compression Test, Masonry Units .....	C140	\$ 60.00/each
Compression Test, 8 x 8 x 16 Prisms or smaller .....	E-447, UBC 21-17	\$ 99.00/each
Compression Test, 10 x 8 x 16 Prisms or smaller .....	E-447, UBC 21-17	\$110.00/each
Compression Test, 12 x 8 x 16 Prisms or smaller .....	E-447, UBC 21-17	\$121.00/each
Absorption and Received Moisture, Masonry Unit.....	C-140	\$ 71.50/each
Lineal Shrinkage, Masonry Units .....	C-426	\$165.00/each
Compression Strength, Brick .....	C-67	\$ 60.00/each
Modulus of Rupture, Brick.....	C-67	\$ 71.50/each
Absorption Test, Brick, 5-Hour with Coefficient .....	C-67	\$110.00/each
Shear Test on Masonry or Brick Cores .....	CAL-644	\$ 55.00/each
Grout or Mortar Mold .....		\$ 3.00/each
Breaking Load, Roof Tile .....	UBC 15-5	\$ 44.00/each
Absorption, Roof Tile .....	UBC 15-5	\$ 71.50/each
Permeability, Roof Tile.....		\$121.00/each

ASPHALT

Centrifuge Kerosene Equivalent .....	CAL-303	\$237.00/each
Extraction, % Bitumen.....	D-1856, D-2172, CAL-310, CAL-362	\$154.00/each
Extraction, % Bitumen, with Gradation.....		\$264.00/each
Film Stripping.....	CAL-302	\$116.00/each
Stabilometer Test and Mixing of Sample.....	D-1560, CAL-366	\$275.00/each
Stabilometer Test on Premixed Sample.....	D-1560, CAL-366	\$154.00/each
Swell.....	CAL-305	\$127.00/each
Complete Design of Wearing Surface for a Given Asphalt and Aggregate, Hveem or Marshall Method.....		On Request
Marshall Stability and Flow-Set of 3 (Without Mixing).....	D-1559	\$352.00/set
Marshall Stability and Flow-Set of 3 (Lab Mixed) .....	D-1559	\$451.00/set
Unit Weight of Core or Compacted Sample .....	D-1188, D-2726, CAL-308	\$ 49.50/each
Maximum Density of Mix by Marshall Method, Set of 3 (Without Mixing).....		\$204.00/set
Maximum Density of Mix by Hveem Method, Set of 5 (Without Mixing) .....	D-1561, CAL-304	\$275.00/set
Maximum Theoretical Specific Gravity (Rice Method).....	D-2041, CAL-309	\$143.00/each
TSR .....	D-4867	\$1,246.00/each



**Kleinfelder West, Inc.**

**Exhibit A**

**METALS**

Tensile, up to 0.5 sq. in. Cross Sectional Area		
..... A-36, A-500, A-570, A-572, A-615, A-706		\$ 71.50/each***
Tensile, 0.5 to 1.8 sq. in. Cross Sectional Area		
..... A-36, A-500, A-570, A-572, A-615, A-706		\$ 83.00/each***
Tensile, > 1.8 sq. in. Cross Sectional Area		
..... A-36, A-500, A-570, A-572, A-615, A-706		\$ 99.00/each***
Bend Test	A-370, A-709	\$ 38.50/each***
Tensile and Bend, up to 0.5 sq. in. Cross Sectional Area		\$ 88.00/each***
Tensile and Bend, 0.5 to 1.8 sq. in.		\$ 99.00/each***
Tensile and Bend, > 1.8 sq. in. Cross Sectional Area		On Request
505 Tensile	A-370, A-709	\$ 88.00/each***
Rebar Coupler, Slippage Test, Including Ultimate Tensile Strength		
..... A-370, CTM-670		\$127.00/each
Rebar Coupler, Ultimate Strength, Tensile Only	A-370, CTM-670	\$ 77.00/each
Rebar Splice Test (Ultimate), Tensile (sample or control bar)	A-370, CTM-670	\$ 77.00/each
P.T. Standard Tensile Strength	A-421	\$143.00/each
High-Strength Rod Tensile, to 2.25" Diameter	A-354, A-615, A-722	\$ 77.00/each
High-Strength Rod Tensile, greater than 2.25" Diameter	A-354, A-615, A-722	\$138.00/each
Charpy V-Notch Impact, Set of 3	A-673	\$176.00/each***
Epoxy-Coated Rebar and Wire, Bend Test	A-775, A-884, A-934	\$ 22.00/each
Epoxy-Coated Rebar and Wire, Holiday Test	A-775, A-884, A-934	\$ 22.00/each
Epoxy-Coated Rebar and Wire, Thickness of Coating	A-775, A-884, A-934	\$ 22.00/each
Rockwell Hardness (Per Piece)	A-307, A-325, A-449, A-563, E-18, F-844	\$ 49.50/each
Rockwell Hardness, Bolt Assembly (Set of 3 Pieces, i.e. 1 Bolt, 1 Nut, 1 Washer)	A-307, A-325, A-449, A-563, E-18, F-844	\$121.00/each
Dimension Verification (Bolt, Nut, Washer, or P.T. Strand)		
..... A-307, A-325, A-449, A-563, F-436, F-844		\$ 49.50/each
Proof Load (Bolt, Nut, or High-Strength Rod)		
..... A-307, A-325, A-449, A-563, F-606		\$ 49.50/each
Bolt Thread Pitch Verification	A-307, A-325, A-449, A-563, F-606	\$ 49.50/each
Bolt Wedge Tensile	A-307, A-325, A-449, A-563, F-606	\$ 49.50/each
Thickness of Coating (Per Piece)	E-376	\$ 49.50/each
Weight of Coating	A-90	\$110.00/each

**WELDING QUALIFICATIONS-STRUCTURAL STEEL**  
(PHYSICAL TEST METHOD-ASME, AWS, API, TITLE 21)

Operator Performance and Procedure Tests	On Request
Machining and Material Costs	At Cost +20%
Guided Bend Test, face or root	\$ 38.50/each***
Side Bend Test	\$ 38.50/each***
Free Bend Test	\$ 38.50/each***
Tensile Test (reduced section)	\$ 71.50/each***
Macroetch Test	\$110.00/each
Fracture Test	\$ 38.50/each***
T Bend Test	\$ 38.50/each***
Notch Test	\$ 38.50/each***
Qualification tests also available by X-ray procedures	On Request

\*\*\* Does not include machining costs, if required.

**Kleinfelder West, Inc.**

**Exhibit A**

**ROOFING TESTS**

Standard Quantitative Analysis (Weight of Bitumen, Ply Structure Diagram) ....	\$220.00/each
Standard Quantitative Analysis With Gravel (Includes Weight of Gravel) .....	\$275.00/each
Quantitative Analysis .....D-2829	\$385.00/each
Quantitative Analysis (New Roofs).....D-3617	\$275.00/each
Unit Weight of Surfacing .....	\$ 99.00/each
Unit Weight of Sample .....	\$ 88.00/each
Diagram of Sample .....	\$110.00/each
Void Analysis .....	\$110.00/each
Ply Type Identification.....	\$ 83.00/each
Mat Type Identification.....	\$ 83.00/each
Bitumen Sample Recovery .....	\$334.00/each
Compliance Report.....	On Request
Roof Moisture Survey .....	On Request
Bitumen Content of Adhered Aggregate .....D-4074	\$110.00/each

**OTHER DIRECT CHARGES**

Facsimile Copies (per page) .....	\$ 2.90
Spiral Bound Report, over 50 pages .....	\$ 11.00/each
Spiral Bound Report, under 50 pages .....	\$ 5.50/each
Mylar Cost for CADD/Sq Ft.....	\$ 3.30
Vellum Cost for CADD/Sq Ft.....	\$ 1.65
Reproduction (11"X17") per page .....	\$ 0.65
Reproduction (per page).....	\$ 0.60
Express Mail .....	\$ 18.15

**Kleinfelder West, Inc.**

**Exhibit B**

**CERTIFICATION OF CONSULTANT**

I HEREBY CERTIFY that I am the Vice President and Regional Manager and duly authorized representative of the firm of Kleinfelder West, Inc. whose address is 3077 Fite Circle, Sacramento, California 95827, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this Agreement; nor

(b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement; nor

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this Agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Patrick Flynn  
Vice President and  
Regional Manager

**Kleinfelder West, Inc.**

**Exhibit C**

**CERTIFICATION OF LOCAL AGENCY**

I HEREBY CERTIFY that I am the Director of Transportation of the County of El Dorado, and that the consulting firm of Kleinfelder West, Inc. or its representative has not been required (except as herein expressly stated), directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- (a) employ, retain, agree to employ or retain, any firm or person; or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
James W. Ware, P.E.  
Director of Transportation

## COUNTY OF EL DORADO

## DEPARTMENT OF TRANSPORTATION

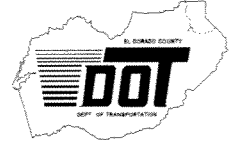


**MAINTENANCE DIVISION**  
2441 Headington Road  
Placerville CA 95667  
Phone: (530) 642-4909  
Fax: (530) 642-9238

**JAMES W. WARE, P.E.**  
Director of Transportation

Internet Web Site:  
<http://co.el-dorado.ca.us/dot>

**MAIN OFFICE**  
2850 Fairlane Court  
Placerville CA 95667  
Phone: (530) 621-5900  
Fax: (530) 626-0387



### NOTICE TO PROPOSERS DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION

County has not established an Underutilized DBE (UDBE) goal for this Agreement. However, proposers are encouraged to obtain DBE participation for this Agreement.

#### 1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this Agreement with the Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

#### 2. AUTHORITY AND RESPONSIBILITY

A. DBEs and other small businesses are strongly encouraged to participate in the performance of agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Consultant should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

#### 3. SUBMISSION OF UDBE AND DBE INFORMATION

If there is a UDBE goal on the agreement, a "Local Agency Proposer-UDBE Commitment (Consultant Contracts)" form shall be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the agreement. If the goal is not met, the proposer must document adequate good faith efforts. Only UDBE participation will be counted towards the agreement goal; however, all DBE participation shall be collected and reported.

A "Local Agency Proposer -DBE -Information (Consultant Contracts)" form shall be completed and submitted with the executed agreement. The purpose of the form is to collect all UDBE and DBE

commitment data required under 49 CFR 26. For agreements with no goals, this form collects information on all DBEs, including UDBEs. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

#### **4. DBE PARTICIPATION GENERAL INFORMATION**

It is the proposer's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A UDBE proposer, not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:

1. The proposer is a UDBE and will meet the goal by performing work with its own forces.
2. The proposer will meet the goal through work performed by UDBE subconsultants, subconsultants, suppliers or trucking companies.
3. The proposer made adequate good faith efforts to meet the goal.

D. A DBE joint venture partner must be responsible for specific agreement items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

F. The proposer (prime consultant) shall list only one subconsultant for each portion of work as defined in its proposal and all DBE subconsultants should be listed in the cost proposal list of subconsultants.

G. A prime consultant who is a certified DBE is eligible to claim all of the work in the agreement toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

#### **5. RESOURCES**

A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP.

B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.

- Click on the link in the left menu titled Find a Certified Firm
- Click on Query Form link, located in the first sentence
- Click on Certified DBE's (UCP) located on the first line in the center of the page
- Click on Click To Access DBE Query Form

- Searches can be performed by one or more criteria
- Follow instructions on the screen
- “Start Search,” “Requery,” “Civil Rights Home,” and “Caltrans Home” links are located at the bottom of the query form

**6. MATERIALS OR SUPPLIES PURCHASED FROM DBEs COUNT TOWARDS DBE CREDIT, AND IF A DBE IS ALSO A UDBE, PURCHASES WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:**

A. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the agreement and of the general character described by the specifications.

B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies toward DBE participation. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers’ own distribution equipment shall be by a long-term lease agreement and not an ad hoc or agreement-by-agreement basis. Packagers, brokers, manufacturers’ representatives, or other persons who arrange or expedite transactions are not UDBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

**7. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBEs WILL COUNT TOWARDS DBE CREDIT, AND IF A DBE IS A UDBE, CREDIT WILL COUNT TOWARDS THE UDBE GOAL, UNDER THE FOLLOWING CONDITIONS:**

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular agreement, and there cannot be a contrived arrangement for the purpose of meeting the UDBE goal.

B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

### **INSTRUCTIONS - LOCAL AGENCY PROPOSER-UDBE COMMITMENT (CONSULTANT CONTRACTS) FORM (Revised 03/09)**

If there is a UDBE goal on the agreement, the proposer shall include a "Local Agency Proposer-UDBE Commitment (Consultant Contracts)" form in its proposal.

It is the proposer's responsibility to verify that the UDBE(s) falls into one of the following groups in order to count towards the UDBE agreement goal: 1) Black American; 2) Asian-Pacific American; 3) Native American; and, 4) Women. This information shall be submitted with the proposer's proposal. Failure to submit the required UDBE commitment will be grounds for finding the proposal nonresponsive.

UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups:

1. Black American
2. Asian-Pacific American
3. Native American
4. Women

The form requires specific information regarding the consultant agreement: Agency, Location, Project Description, Federal Aid Project Number (assigned by Caltrans-Local Assistance), Proposal Date, Proposer's Name, and Contract Goal.

The form has a column for the Work Item Number (or Item No's) and Description or Services to be Subcontracted to UDBEs. The UDBE should provide a certification number to the prime consultant. Notify the consultant in writing with the date of the decertification if their status should change during the course of the agreement. The form has a column for the Name of Certified UDBEs to perform the work (must be certified on the date proposals are received and include UDBE address and phone number). Enter the UDBE prime consultant and subconsultant certification numbers. Prime consultants shall indicate all work to be performed by UDBEs including, if the prime consultant is a UDBE, work performed by its own forces.

There is a column for the total UDBE dollar amount. Enter the Total Claimed UDBE Participation dollars of items of work submitted with the proposal pursuant to the Scope of Work. (If 100% of item is not to be performed or furnished by the UDBE, describe the exact portion of time to be performed or furnished by the UDBE.) See Notice to Proposers Disadvantaged Business Enterprise (DBE)



Information to determine how to count the participation of UDBE firms. Note: If the proposer has not met the agreement goal, the local agency must evaluate the proposer's good faith efforts to meet the goal in order to be considered for award of the agreement.

Local Agency Proposer-UDBE Commitment (Consultant Contracts) form must be signed and dated by the consultant proposing. Also list a phone number in the space provided and print the name of the person to contact.

For the successful proposer only, local agencies should complete the Proposal Award Date and Federal Share fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of award. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

District DBE Coordinator should verify that all information is complete and accurate. Once the information has been verified, the District Local Assistance Engineer signs and dates the form.

**Kleinfelder West, Inc.  
Exhibit D**

**Local Agency Proposer-UDBE Commitment (Consultant Contracts)**

**THIS INFORMATION SHALL BE PROVIDED BY THE PROPOSER WITH ITS PROPOSAL.**

AGENCY: \_\_\_\_\_ LOCATION: \_\_\_\_\_

PROJECT DESCRIPTION: \_\_\_\_\_

CONTRACT GOAL: \$ \_\_\_\_\_

PROPOSAL DATE: \_\_\_\_\_

PROPOSER'S NAME: \_\_\_\_\_

ITEM OF WORK NO.	DESCRIPTION OR SERVICES TO BE SUBCONTRACTED	DBE Cert. No. AND EXPIRATION DATE	NAME OF CERTIFIED UDBES (Must be certified on the date the proposals are opened - include UDBE address and phone number)	DOLLAR AMOUNT OF EACH UDBE

**For Local Agency to Complete:**

Local Agency Contract Number: \_\_\_\_\_

Federal Aid Project Number: \_\_\_\_\_

Federal Share: \_\_\_\_\_

Proposal Award Date: \_\_\_\_\_

Local Agency certifies that the UDBE certification(s) has been verified and all information is complete and accurate.

\_\_\_\_\_

Print Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_  
Local Agency Representative

(Area Code) Telephone Number: \_\_\_\_\_

Total Claimed Participation	\$ _____
Total % of UDBE	_____ %

\_\_\_\_\_  
Signature of Proposer

\_\_\_\_\_  
Date (Area Code) Tel. No.

\_\_\_\_\_  
Person to Contact (Please Type or Print)

**For Caltrans Review:**

\_\_\_\_\_

Print Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_  
Caltrans District Local Assistance Engineer

Local Agency Proposer - UDBE Commitment (Rev. 3/09)

Distribution: (1) Copy - For successful proposer, fax or scan a copy to the Caltrans District Local Assistance Engineer (DLAE) within 15 days of award. Failure to send a copy to the DLAE within 15 days of award may result in deobligation of funds for this project.  
(2) Original - Local agency files

**Kleinfelder West, Inc.  
Exhibit D**

**UDBE Information - Good Faith Efforts**

Federal-aid Project No. \_\_\_\_\_ Proposal Opening Date \_\_\_\_\_

County established an Underutilized Disadvantaged Business Enterprise (UDBE) goal of **0%** for this project. The information provided herein shows that a good faith effort was made.

If there is a UDBE goal for this project, the proposer shall submit the following information with its proposal to document adequate good faith efforts. Proposers should submit the following information even if the "Local Agency Proposer-UDBE Commitment (Consultant Contracts)" form indicates that the proposer has met the UDBE goal. This will protect the proposer's eligibility for award of the agreement if the administering agency determines that the proposer failed to meet the goal for various reasons, e.g., a UDBE firm was not certified at proposal opening, or the proposer made a mathematical error.

Submittal of only the "Local Agency Proposer-UDBE Commitment (Consultant Contracts)" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The proposer shall list the following information:

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

Publications	Dates of Advertisement

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

Names of UDBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates

- C. The items of work which the proposer made available to UDBE firms, including, where appropriate, any breaking down of the items of work (including those items normally performed by the proposer with its own forces) into economically feasible units to facilitate UDBE

**Kleinfelder West, Inc.**  
**Exhibit D**

participation. It is the proposer's responsibility to demonstrate that sufficient work to facilitate UDBE participation was made available to UDBE firms.

Items of Work	Proposer Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Agreement

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

Names, addresses and phone numbers of rejected UDBEs and the reasons for the proposer's rejection of the UDBEs:

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

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E. Efforts made to assist interested UDBEs in obtaining lines of credit or insurance and any technical assistance or information related to the Scope of Work in the proposal which was provided to UDBEs:

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F. Efforts made to assist interested UDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the UDBE subconsultant purchases or leases from the prime consultant or its affiliate:

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**Kleinfelder West, Inc.**  
**Exhibit D**

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

Name of Agency/Organization	Method/Date of Contact	Results

H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

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**NOTE:** USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

**Kleinfelder West, Inc.**  
**Exhibit D**

**INSTRUCTIONS - LOCAL AGENCY PROPOSER DBE INFORMATION**  
**(CONSULTANT CONTRACTS) FORM (Revised 03/09)**

For agreements with no goals, this form collects information on all DBEs, including UDBEs. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

The form requires specific information regarding the consultant agreement: Agency, Location, Project Description, Federal Aid Project Number (assigned by Caltrans-Local Assistance), Proposal Date, and Successful Proposer's Name.

The form has a column for the Description or Services to be Subcontracted by DBEs. The DBE should provide a certification number to the prime consultant. The form has a column for the Name of Certified DBEs to perform the work (must be certified on the date the proposal is received and include DBE address and phone number). Enter the DBE prime consultant and subconsultant certification numbers. The prime consultant shall indicate all work to be performed by DBEs including, if the prime consultant is a DBE, work performed by its own forces.

Enter the Total Claimed DBE Participation dollars of items of work in the total Dollar Amount DBE column. (If 100% of item is not to be performed by the DBE, describe the exact portion of time to be performed by the DBE.) See Notice to Proposers Disadvantaged Business Enterprise (DBE) Information to determine how to count the participation of DBE firms.

Local Agency Proposer DBE Information (Consultant Contracts) form must be signed and dated by the successful proposer at agreement execution. Also list a phone number in the space provided and print the name of the person to contact.

For the successful proposer, local agencies should complete the Contract Award Date and Federal Share fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of agreement execution. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

District DBE Coordinator should verify that all information is complete and accurate. Once the information has been verified, the District Local Assistance Engineer signs and dates the form.







STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**FINAL REPORT - UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES  
 (DBE), FIRST-TIER SUBCONTRACTORS**

CEM-2402F (REV 02/2008)

The form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, Federal Aid Project number, the Administering Agency, the Contract Completion Date and the Estimated Contract Amount. It requires the prime contractor's name and business address. The focus of the form is to describe who did what by contract item numbers and descriptions, asking for specific dollar values of item work completed broken down by subcontractors who performed the work, both DBE and non-DBE work forces. DBE prime contractors are required to show the date of work performed by their own forces along with the corresponding dollar value of work.

The form has a column to enter the Contract Item No. (or Item No's) and description of work performed or materials provided, as well as a column for the subcontractor name and business address. For those firms who are DBE, there is a column to enter their DBE Certification Number. The DBE should provide their Certification Number to the contractor and notify the contractor in writing with the date of the decertification if their status should change during the course of the project.

The form has six columns for the dollar value to be entered for the item work performed by the subcontractor.

The Non-DBE column is used to enter the dollar value of work performed for firms who are not certified DBE.

The decision of which column to be used for entering the DBE dollar value is based on what program(s) status the firm is certified. This program status is determined by the California Unified Certification Program by ethnicity, gender, ownership and control issues at time of certification. To confirm the certification status and program status, access the Department of Transportation Civil Rights website at <http://www.dot.ca.gov/hq/bep> or by calling (916) 324-1700 or the toll free number at (866) 810-6346.

Based on this DBE Program status, the following table depicts which column to use:

<b>DBE Program Status</b>	<b>Column to be used</b>
If program status shows DBE only with no other programs listed	DBE
If program status shows DBE, Black American	BA UDBE
If program status shows DBE, Asian-Pacific Islander	APA UDBE
If program status shows DBE, Native American	NA UDBE
If program status shows DBE, Woman	W UDBE

If a contractor performing work as a DBE on the project becomes decertified and still performs work after their decertification date, enter the total value performed by this contractor under the appropriate DBE identification column.

If a contractor performing work as a non-DBE on the project becomes certified as a DBE, enter the dollar value of all work performed after certification as a DBE under the appropriate identification column.

Enter the total of each of the six columns on Form CEM-2402(F).

Any changes to DBE certification must also be submitted on Form CEM-2403(F).

Enter the Date Work Completed as well as the Date of Final Payment (the date when the prime contractor made the "final payment" to the subcontractor for the portion of work listed as being completed).

The contractor and the resident engineer sign and date the form indicating that the information provided is complete and correct.

**Kleinfelder West, Inc.**

**Exhibit E**

**STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION**

**1. Subcontractors (hereinafter “subconsultants”)**

A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the County of El Dorado (hereinafter “County”) and any subconsultants, and no subcontract shall relieve Kleinfelder West, Inc. (hereinafter “Consultant”) of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultants is an independent obligation from County's obligation to make payments to Consultant.

B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

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

D. Any substitution of subconsultants must be approved in writing by County's Contract Administrator in advance of assigning work to a substitute subconsultant.

**2. Disadvantaged Business Enterprise (DBE) Participation**

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

B. If this Agreement has an Underutilized DBE (UDBE) goal, Consultant must meet the UDBE goal by using UDBEs as subconsultants or document a good faith effort to meet the goal. If a UDBE subconsultant is unable to perform, Consultant must make a good faith effort to replace the subconsultant with another UDBE subconsultant if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR, Part 26 and is one of the following groups:

1. Black American
2. Asian-Pacific American
3. Native American
4. Women

C. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Consultant shall

carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as County deems appropriate.

D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

### **3. Performance of DBE Consultants and other DBE Subconsultants/Suppliers**

A. A DBE performs a commercially useful function 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 commercially useful function, 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 commercially useful function, 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.

B. A DBE does not perform a commercially useful function 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.

C. If a DBE does not perform or exercise responsibility for at least thirty percent 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 commercially useful function.

### **4. Prompt Payment of Funds Withheld to Subconsultants**

A. No retainage will be held by County from progress payments due the prime consultant. Any retainage held by the prime consultants or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within thirty (30) days after the subconsultant's work is satisfactorily completed. Federal law (49CFR26.29) requires that any delay or postponement of payment over the thirty (30) days may take place only for good cause and with County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

## 5. DBE Records

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

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors," CEM-2402F, attached hereto as pages 12 and 13 of Exhibit D hereto, (Exhibit 17-F in Chapter 17 of the LAPM), certified correct by Consultant or Consultant's authorized representative and shall be furnished to County's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to County's Contract Administrator.

1) Prior to the fifteenth of each month, Consultant shall submit documentation to County's Contract Administrator showing the amount paid to DBE trucking companies. Consultant shall also obtain and submit documentation to County's Contract Administrator showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, Consultant may count only the fee or commission the DBE receives as a result of the lease arrangement.

2) Consultant shall also submit to County's Contract Administrator documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans "Monthly DBE Trucking Verification," CEM-2404(F) form provided to Consultant by County's Contract Administrator.

## 6. DBE Certification and De-certification Status

If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify Consultant in writing with the date of de-certification. 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 County's Contract Administrator within thirty (30) days.

**Materials or supplies purchased from DBEs will count towards DBE credit, and if a DBE is also a UDBE, purchases will count towards the UDBE goal under the following conditions:**

A. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent (100%) of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the agreement and of the general character described by the specifications.

B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent (60%) of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or agreement-by-agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

**Kleinfelder West, Inc.**

**Exhibit F**

**FAIR EMPLOYMENT PRACTICES ADDENDUM**

1. In the performance of this Agreement, Kleinfelder West, Inc. will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave or disability leave. Kleinfelder West, Inc. will take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave or disability leave. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Kleinfelder West, Inc. shall post in conspicuous places, available to employees for employment, notices to be provided by State setting forth the provisions of this Fair Employment section.

2. Kleinfelder West, Inc., its consultant(s) and all subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of Kleinfelder West, Inc.'s consultants and all subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. Kleinfelder West, Inc. shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

4. Kleinfelder West, Inc. will permit access to the records of employment, employment advertisements, application forms and other pertinent data and records by County, State, the State Fair Employment and Housing Commission or any other agency of the State of California designated by State, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) County may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which Kleinfelder West, Inc. was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Kleinfelder West, Inc. has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

**Kleinfelder West, Inc.**

**Exhibit F**

(b) For willful violation of this Fair Employment Provision, County shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by County in securing the goods or services thereunder shall be borne and paid for by Kleinfelder West, Inc. and by the surety under the performance bond, if any, and County may deduct from any moneys due or thereafter may become due to Kleinfelder West, Inc. the difference between the price named in the Agreement and the actual cost thereof to County to cure Kleinfelder West, Inc.'s breach of this Agreement.

**Kleinfelder West, Inc.**

**Exhibit G**

**NONDISCRIMINATION ASSURANCES**

Kleinfelder West, Inc. hereby agrees that, as a condition to receiving any federal financial assistance from County or the State, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the Regulations), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which County receives federal financial assistance from the Federal Department of Transportation. Kleinfelder West, Inc. hereby gives assurance that Kleinfelder West, Inc. will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the Regulations.

More specifically, and without limiting the above general assurance, Kleinfelder West, Inc. hereby gives the following specific assurances with respect to its Federal-aid Program:

1. That Kleinfelder West, Inc. agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.

2. Kleinfelder West, Inc. shall insert the following notification in all solicitations for proposals for work or material subject to the Regulations made in connection with the Federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

Kleinfelder West, Inc. hereby notifies all proposers that it will affirmatively ensure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That Kleinfelder West, Inc. shall insert the clauses of Appendix A of this assurance in every agreement subject to the Act and the Regulations.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where Kleinfelder West, Inc. receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.



**Kleinfelder West, Inc.**

**Exhibit G**

6. That where Kleinfelder West, Inc. receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. Kleinfelder West, Inc. shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by Kleinfelder West, Inc. with other parties:

Appendix C;

(a) For the subsequent transfer of real property acquired or improved under the Federal-aid Program; and

Appendix D;

(b) For the construction or use of or access to space on, over, or under real property acquired, or improved under the Federal-aid Program.

8. That this assurance obligates Kleinfelder West, Inc. for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property of interest therein, or structures, or improvements thereon, in which case the assurance obligates Kleinfelder West, Inc. or any transferee for the longer of the following periods:

(a) The period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) The period during which Kleinfelder West, Inc. retains ownership or possession of the property.

9. That Kleinfelder West, Inc. shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that Kleinfelder West, Inc., other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the Act, the Regulations, this Assurance and the Agreement.

10. That Kleinfelder West, Inc. agrees that County, the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this Assurance.

11. Kleinfelder West, Inc. shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any State assisted agreement or in the administration of County's DBE Program or the requirements of 49 CFR Part 26. Kleinfelder West, Inc. shall take all necessary and

**Kleinfelder West, Inc.**

**Exhibit G**

reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of State assisted agreements. County's DBE Program Implementation Agreement is incorporated by reference in this Agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to County of its failure to carry out its approved DBE Program Implementation Agreement, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

These Assurances are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to County by State, acting for the U.S. Department of Transportation, and is binding on Kleinfelder West, Inc., other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the Federal-aid Highway Program.

## Kleinfelder West, Inc.

### Appendix A to Exhibit G

During the performance of this Agreement, Kleinfelder West, Inc., for itself, its assignees and successors in interest (hereinafter collectively referred to as "Consultant") agrees as follows:

(1) **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.

(2) **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.

(3) **Solicitations for Sub-agreements, including procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work 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 Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

(4) **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to Consultant's books, records, accounts, other sources of information, and its facilities as may be determined by County, State 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 County, State or the FHWA as appropriate, and shall set forth what efforts Consultant has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, County shall impose such agreement sanctions as it, the State or the FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to Consultant under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) **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 County, State 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 County or State enter into such litigation to protect the interests of County or State, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

**Kleinfelder West, Inc.**

**Appendix B to Exhibit G**

The following clauses shall be included in any and all deeds effecting or recording the transfer of Project real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that County will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations 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 County 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 County and its successors forever, subject, however, to the covenant, 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 shall be binding on County, its successors and assigns.

County, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, 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 County shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall 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 deed.\*

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

**Kleinfelder West, Inc.**

**Appendix C to Exhibit G**

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by Consultant, pursuant to the provisions of Assurance 7(a) of Exhibit I.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his 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 covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, Consultant shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, Consultant shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of Consultant and its assigns.

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

**Kleinfelder West, Inc.**

**Appendix D to Exhibit G**

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by Consultant, pursuant to the provisions of Assurance 7 (b) of Exhibit I.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his 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, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or 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 furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, Consultant shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, Consultant shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of Consultant, and its assigns.

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

Kleinfelder West, Inc.

Exhibit H

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____	
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known  Congressional District, if known: _____			<b>5. If Reporting Entity in No. 4 is Subawardee. Enter Name and Address of Prime:</b>  Congressional District, if known: _____		
<b>6. Federal Department/Agency:</b> _____			<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable _____		
<b>8. Federal Action Number, if known:</b> _____			<b>9. Award Amount, if known:</b> \$ _____		
<b>10. a. Name and Address of Lobbying Entity</b> (if individual, last name, first name, MI): _____			<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI): _____		
(attach Continuation Sheet(s) if necessary)					
<b>11. Amount of Payment (check all that apply):</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned			<b>13. Type of Payment (check all that apply)</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify: _____		
<b>12. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____					
<b>14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:</b>  (attach Continuation Sheet(s) if necessary)					
<b>15. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>					
<b>16.</b> Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
<b>Federal Use Only:</b>					Authorized for Local Reproduction Standard Form - 111

Standard Form LLL Rev. 09-12-97



# Kleinfelder West, Inc.

## Exhibit H

### INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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