

## Kimley-Horn and Associates, Inc.

### Engineering Design Services for the Bass Lake Road and Bridlewood Drive Roundabout Project

#### AGREEMENT FOR SERVICES #9104

**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 Kimley-Horn and Associates, Inc., a North Carolina corporation duly qualified to conduct business in the State of California, whose principal place of business is 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601 and whose local address is 555 Capitol Mall, Suite 300, Sacramento, California 95814 (hereinafter referred to as "CONSULTANT").

#### RECITALS

**WHEREAS**, COUNTY has determined that it is necessary to obtain a consultant to assist its Department of Transportation with engineering design services for the Bass Lake Road and Bridlewood Drive Roundabout Project;

**WHEREAS**, CONSULTANT has represented to COUNTY that it is specially trained, experienced, expert, and competent to perform the special services described in ARTICLE I Scope of Work; that it is an independent and bona fide business operations, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and COUNTY relies upon those representations;

**WHEREAS**, it is the intent of the parties hereto that such services conform 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 that due to the limited timeframes for the project, the ongoing aggregate of work to be performed is not sufficient to warrant the addition of permanent staff in accordance with El Dorado County Ordinance Code, Section 3.13.030(c), 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 Work:

- A. CONSULTANT's services are to be provided specifically in support of the Bass Lake Road at Bridlewood Drive Roundabout Project (herein referred to as "Project").

- B. CONSULTANT is engaged in the business of doing the services and tasks required under this Agreement, including those services and tasks that are identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof, or as identified in individual Task Orders or Work Orders, as applicable, to be issued in accordance with this Agreement, and those services and tasks that reasonably necessary for the completion of the work identified in the Scope of Work or in individual Work Orders.
- C. CONSULTANT shall furnish all personnel, subconsultants, equipment, tools, vehicles, services, and materials necessary to perform the construction support services that are as identified in and tasks required by this Agreement, including those services and tasks identified in the Scope of Work, or in any individual Task Orders or Work Orders, as applicable, and those services and tasks that reasonably necessary for the completion of the work identified in the Scope of Work, or in any individual Task Orders or Work Orders.
- D. CONSULTANT shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. CONSULTANT is responsible for ensuring that its employees, as well as any subcontractor if applicable, perform the services and tasks required under this Agreement accordingly.
- E. COUNTY's Contract Administrator shall issue CONSULTANT an emailed authorization to proceed (or "Notice to Proceed") for each Task item listed in Exhibit A. CONSULTANT shall not commence work on any Item of Work until receiving the Notice to Proceed.
- F. COUNTY may require CONSULTANT to perform Task 9 Optional Tasks, as subsequently identified during the course of work under this Agreement by COUNTY's Contract Administrator, related to the Scope of Work as identified in Exhibit A. The Optional Tasks may supplement or modify the Scope of Work as identified in Exhibit A, hereto.
  - 1. The specific services for each Optional Task or portion thereof shall be determined at a meeting or telephone conference between CONSULTANT and a COUNTY representative to discuss the needs, required deliverables, specific CONSULTANT staff, subconsultants (if required), and any Project-related budget on a task-by- task basis. As applicable, Disadvantaged Business Enterprise (DBE) requirements will be discussed at the meeting or telephone conference and COUNTY's Contract Administrator will provide CONSULTANT with the necessary DBE forms and information for use and/or submittal with CONSULTANT's final invoice.
  - 2. Authorization to perform the Optional Tasks may occur through email communication and Notice to Proceed that includes a schedule, CONSULTANT or subconsultants needed, and a not-to-exceed cost to complete the work from COUNTY's Contract Administrator, or designee, prior

to commencement of the work and will be confirmed to CONSULTANT by a written Task Order or Work Order issued by COUNTY's Contract Administrator.

3. No payment will be made for any work performed before the date of the emailed Notice to Proceed.
  4. COUNTY's Contract Administrator will issue a written Task Order for work assignments where the not-to-exceed cost itemization is greater than \$10,000. COUNTY's Contract Administrator will issue a written Work Order for work assignments where the not-to-exceed cost itemization is \$10,000 or less.
  5. CONSULTANT shall provide COUNTY's Contract Administrator with the names and titles of CONSULTANT's representatives that are authorized to bind CONSULTANT by signing Task Orders or Work Orders and Task Order Amendments or Work Order Amendments on CONSULTANT's behalf. CONSULTANT's notification of individuals authorized to execute Task Orders or Work Orders and Task Order Amendments or Work Order Amendments on CONSULTANT's behalf shall be communicated to COUNTY in accordance with the provisions of ARTICLE XXIX, Notice to Parties, of this Agreement.
- G. COUNTY shall review CONSULTANT's progress at key points as specified in Exhibit A and in each Task Order or Work Order, as applicable. Milestone reviews shall be performed for the specific products and deliverables listed in Exhibit A and in each Task Order or Work Order, as applicable. Milestones may only be changed by written agreement (may consist of an email) between COUNTY's Contract Administrator, or designee and CONSULTANT.
- H. Unless otherwise indicated below, and notwithstanding any other provision of this Agreement to the contrary, deliverables for the specific items of work to be provided under Exhibit A shall be as specified therein, shall be prepared using the software described in this Article and shall be submitted in accordance with the timeframes and formats specified in Exhibit A. Adjustments to the completion times specified in Exhibit A may only be made in accordance with the written approval (may consist of an email) of COUNTY's Contract Administrator or designee.
1. If a submittal or Task Order or Work Order deliverable is required to be an electronic file, CONSULTANT shall produce the file using Microsoft (MS) Office 365 applications (specifically, MS Word, MS Project and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). Electronic Current Civil 3D and PDF format shall be used for submittal of plans or other similar documents as specified by COUNTY's Contract Administrator. 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.

2. CONSULTANT shall submit all deliverables to COUNTY's Contract Administrator in accordance with the completion time schedules identified in this Agreement or in the individual Task Orders or Work Orders that may be issued pursuant to this Agreement. Failure to submit the required deliverables in the format required may be grounds for termination of the Agreement, as provided in ARTICLE VI, Termination, herein.
- I. 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 or Work Orders issued for those assignments.
- J. CONSULTANT's responsibilities for compliance with DBE requirements are described in ARTICLE XLV, Disadvantaged Business Enterprise (DBE) Considerations and in ARTICLE XLVI, Disadvantaged Business Enterprises (DBE) Participation, herein. No Task Order or Work Order shall be issued under this Agreement until the required DBE forms have been received and approved by COUNTY's Contract Administrator.
- K. All of the services included in this Article and Exhibit A 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**

**Compensation for Services:** For services provided herein, including all of the deliverables described in individual Task Orders and Work Orders issued pursuant to this Agreement, and including all of the forms and reports required under the DBE provisions of this Agreement, and including the progress reports required by ARTICLE III, Progress Reports, below, COUNTY agrees to pay CONSULTANT in arrears. Payment shall be made within forty-five (45) days following COUNTY's receipt and approval of itemized invoices detailing services rendered.

For the purposes hereof, the billing rates shall be in accordance with Exhibit B, marked "Rate Schedule," incorporated herein and made by reference a part hereof.

Other direct costs including special reproductions, delivery charges, and other outside services authorized herein, shall be invoiced at CONSULTANT's cost, for the services rendered. Any invoices that include other direct costs shall be accompanied by backup documentation to substantiate CONSULTANT's costs for the services being billed on those invoices.

Reimbursement for mileage for CONSULTANT's staff for reimbursement shall be in accordance with the rates authorized to be paid to rank and file state employees under the then current State of California Department of Human Resources rates. These

rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. The rates found above are maximums and not allowances. In the event of an audit, CONSULTANT must be able to produce receipts substantiating the amount claimed. Mileage reimbursement rates apply to CONSULTANT. There shall be no markups allowed on mileage, rates for CONSULTANT or for any subconsultant. Any reimbursements for mileage will only be made if such expenses are included in Exhibit C, marked "Cost Proposal," incorporated herein and made by reference a part hereof.

Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls, and other per diem expenses) will not be reimbursed as a direct cost 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 or Work Order shall not exceed the amount agreed to in the Task Order or Work Order, unless COUNTY's Contract Administrator and CONSULTANT amend the Task Order or Work Order in writing and prior to the performance of the work.

Cost Proposals shall be submitted for each Task Order and/or Work Order. Cost Proposals are subject to an audit or Certified Public Accountant Indirect Cost Audit Workpaper Review and are more fully described in ARTICLE IX, Audit Review Procedures.

In accordance with ARTICLE XII, State Prevailing Wage Rates, CONSULTANT shall provide COUNTY's Contract Administrator with certified payroll for applicable personnel for the period for which payment is requested and such certified payroll shall accompany each invoice submitted. The certified payroll shall contain information related only to the applicable project. No invoice shall be paid until the certified payroll is submitted. CONSULTANT shall keep payroll records in accordance with California Labor Code Section 1776.

### **ARTICLE III**

**Progress Reports:** CONSULTANT shall submit written progress reports to COUNTY's Contract Administrator at intervals that are commensurate with the requirements of the items of work and tasks being performed and based upon a mutually agreeable schedule. At a minimum, CONSULTANT shall submit progress reports once per month. CONSULTANT shall prepare the reports in a sufficiently detailed manner for COUNTY's Contract Administrator to determine if CONSULTANT is performing to expectations and is on schedule to provide the services and deliverables described in the Scope of Work, to provide communication of interim findings, and to afford occasions for airing difficulties or special circumstances encountered so that remedies can be developed. COUNTY shall review the report to ensure that Consultant's services and deliverables adhere to current COUNTY requirements applicable to the project as determined by COUNTY's Contract Administrator, and CONSULTANT shall modify its work if the COUNTY's Contract Administrator determined it is necessary to meet current COUNTY requirements applicable to the project. Separate detail shall be provided for each ongoing Task Order or Work Order. CONSULTANT shall include in a progress report the total number of hours worked by CONSULTANT and any authorized subconsultants; a 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 IV**

##### **Performance Period:**

- A. This Agreement shall go into effect upon execution, contingent upon approval by COUNTY, and CONSULTANT shall commence work after notification to proceed by COUNTY's Contract Administrator. The Agreement shall end four (4) years thereafter, unless extended by Agreement amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on COUNTY until the Agreement is fully executed and approved by COUNTY.

#### **ARTICLE V**

##### **Allowable Costs and Payments:**

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in Exhibit B. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement. COUNTY shall reimburse CONSULTANT within forty-five (45) days of receiving itemized invoices in duplicate.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the Exhibit C and in a fully executed Task Order or Work Order.
- C. Optional Tasks will be assigned to CONSULTANT through issuance of Task Orders or Work Orders.
- D. After an Optional Task to be performed under this Agreement is identified by COUNTY, COUNTY will prepare a draft Task Order or Work Order, less the cost estimate. A draft Task Order or Work Order will identify the scope of services, expected results, project deliverables, period of performance, and project schedule and will designate a COUNTY Project Coordinator. The draft Task Order or Work Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order or Work Order within ten (10) calendar days along with a cost estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost, the finalized Task Order or Work Order shall be signed by both COUNTY and CONSULTANT.
- E. Task Orders or Work Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other

rates set forth in CONSULTANT's approved Cost Proposal and in a fully executed Task Order or Work Order.

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

- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal and in a fully executed Task Order or Work Order.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an Agreement amendment for a revised milestone cost estimate from COUNTY's Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order or Work Order will be made in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this Agreement has been approved by COUNTY and notification to proceed has been issued by COUNTY's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- J. A Task Order or Work Order is of no force or effect until returned to COUNTY and signed by an authorized representative of COUNTY. No expenditures are authorized on a project and work shall not commence until a Task Order or Work Order for that project has been executed by COUNTY.
- K. CONSULTANT will be reimbursed as promptly as fiscal procedures will permit upon receipt by COUNTY's Contract Administrator of itemized invoices. CONSULTANT shall provide separate invoices itemizing all costs are required for all work performed under each Task Order or Work Order. CONSULTANT shall submit invoices no later than forty-five (45) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order or Work Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title, Task Order or Work Order number, Activity Identification Codes (Activity IDs) applicable for each item of work, and shall include the beginning and ending dates of the overall period of service. Credits due COUNTY that include any equipment purchased under the provisions of ARTICLE XI, Equipment Purchase and Other Capital Expenditures, of this Agreement, must be reimbursed by CONSULTANT prior to the expiration or termination of this Agreement. Invoices shall be mailed to COUNTY at the following address:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, California 95667  
Attn.: Matt Gourley

or to such other location as COUNTY directs.

- L. The period of performance for Task Orders or Work Orders shall be in accordance with dates specified in the Task Order or Work Order. No Task Order or Work Order will be written which extends beyond the expiration date of this Agreement.
- M. The total amount payable by COUNTY for an individual Task Order or Work Order shall not exceed the amount agreed to in the Task Order or Work Order, unless authorized by contract amendment.
- N. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order or Work Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders or Work Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.
- P. The total amount payable by COUNTY for all Task Orders or Work Orders, costs, taxes, or expenses resulting from this Agreement shall not exceed \$509,551.87. Optional Tasks shall not exceed \$80,088.87. For the purposes of budgeting the items of work identified in Exhibit A, the maximum allowable billing amounts for each item of work and subconsultants are described in Exhibit C. The amounts indicated in Exhibit C represent the composition of the total not-to-exceed budget for the various tasks and subconsultants. In the performance of the scope of services to be provided under this Agreement, CONSULTANT may request to reallocate the expenses listed in Exhibit C among the various Scope of Work tasks and items of work, Other Direct Costs, Optional Tasks, Mileage, and Subconsultants identified therein, subject to COUNTY's Contract Administrator's written approval. The total amount payable by COUNTY for all Work Orders, costs, taxes, or expenses resulting from each Task and subconsultants identified in the Scope of Work shall not exceed the amount listed in Exhibit C for that Task and subconsultants.
- Q. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders or Work Orders.

**ARTICLE VI**  
**Termination:**

- A. 1. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default (notice) that shall state the following:



- a. The alleged default and the applicable Agreement provision, and
- b. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement, or any Task Order or Work Order issued under this Agreement, by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. 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.

2. If COUNTY terminates this Agreement, in whole or in part, for default:
    - a. COUNTY reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and CONSULTANT shall be liable to COUNTY for any excess costs for those goods or services. COUNTY may deduct from any payment due, or that may thereafter become due to CONSULTANT, the excess costs to procure from an alternate source.
    - b. COUNTY shall pay CONSULTANT the sum due to CONSULTANT under this Agreement prior to termination, unless the cost of completion to COUNTY exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due CONSULTANT under this Agreement and the balance, if any, shall be paid to CONSULTANT upon demand.
    - c. COUNTY may require CONSULTANT to transfer title and deliver to COUNTY any completed work under the Agreement.
  3. The following shall be events of default under this Agreement:
    - a. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
    - b. A representation or warranty made by CONSULTANT in this Agreement proves to have been false or misleading in any respect;
    - c. CONSULTANT fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless COUNTY agrees, in writing, to an extension of the time to perform before that time period expires.
    - d. A violation of ARTICLE XIII, Conflict of Interest.
- B. The maximum amount for which COUNTY shall be liable if this Agreement is terminated is the not-to-exceed amount of the Task Order or Work Order or the total amount of this Agreement, as applicable.

- C. Bankruptcy: COUNTY may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of CONSULTANT.
- D. Ceasing Performance: COUNTY may terminate this Agreement immediately in the event CONSULTANT ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- E. Termination or Cancellation without Cause: COUNTY may terminate this Agreement or any Work Order issued pursuant to this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, COUNTY will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to CONSULTANT, and for any other services that COUNTY agrees, in writing, to be necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the total amount of the Work Order or the total amount of the Agreement, 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, COUNTY reserves the right to take over and complete the work by contract or by any other means.
- F. Completion of Work: In the event of termination of the Agreement, for default or without cause, COUNTY reserves the right to take over and complete any work, service, or task by contract or by other means.

## **ARTICLE VII**

### **Cost Principles and Administrative Requirements:**

- A. CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the cost allowability of individual terms of cost.
- B. CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by CONSULTANT to COUNTY.
- D. Notwithstanding any other provision of this Agreement to the contrary, payments to CONSULTANT for mileage expenses, if applicable, for CONSULTANT's staff 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 of California Department of Human Resources rates. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. 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 for CONSULTANT, if applicable, shall be eligible for reimbursement in accordance with ARTICLE II, 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, if applicable 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 VIII**

**Retention of Records/Audit:** For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7; CONSULTANT, subconsultants, and COUNTY shall maintain and make available for inspection all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. The state, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the Agreement and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

### **ARTICLE IX**

#### **Audit Review Procedures:**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by COUNTY's Chief Fiscal Officer, Community Development and Finance Administration, Chief Administrative Office.
- B. Not later than thirty (30) days after issuance of the final audit report, CONSULTANT may request a review by COUNTY's Chief Fiscal Officer of unresolved audit issues. The request for review shall be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by COUNTY shall excuse CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

- D. CONSULTANT and subconsultant contracts, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, cost proposal and ICR, and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The Agreement, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by COUNTY's Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by COUNTY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state, or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.
- E. CONSULTANT Cost Proposal may be subject to a CPA ICR Audit Work Paper Review or audit by the Independent Office of Audits and Investigation (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by CONSULTANT and approved by COUNTY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.
1. During a Caltrans' review of the ICR audit work papers created by CONSULTANT's independent CPA, Caltrans will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, COUNTY will reimburse CONSULTANT at a provisional ICR until a FAR compliant ICR {e.g. 48 CFR, part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials Audit Guide; and other applicable procedures and guidelines is received and approved by A&I. Accepted rates will be as follows:
    - a. If the proposed rate is less than 150% - the accepted rate reimbursed will be 90% of the proposed rate.
    - b. If the proposed rate is between 150% and 200% - the accepted rate will be 85% of the proposed rate.

- c. If the proposed rate is greater than 200% - the accepted rate will be 75% of the proposed rate.
2. If Caltrans is unable to issue a cognizant letter per paragraph E.1. above, Caltrans may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans will then have up to six (6) months to review CONSULTANT's and/or the independent CPA's revisions.
3. If CONSULTANT fails to comply with the provisions of this paragraph E, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this provisional ICR will become the actual and final ICR for reimbursement purposes under this Agreement.
4. CONSULTANT may submit to COUNTY final invoice only when all of the following items have occurred: (1) Caltrans approves or rejects the original or revised independent CPA-audited ICR; (2) all work under this Agreement has been completed to the satisfaction of COUNTY; and (3) Caltrans has issued its final ICR review letter. CONSULTANT must submit its final invoice to COUNTY no later than sixty (60) days after occurrence of the last of these items. This accepted ICR will apply to this Agreement and all other agreements executed between COUNTY and CONSULTANT with the same fiscal period ICR.

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

## **ARTICLE X**

### **Subcontracting:**

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between COUNTY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to COUNTY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from COUNTY'S obligation to make payments to CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without prior written authorization by COUNTY's Contract Administrator, except that which is expressly identified in the approved Cost Proposal.
- C. All subcontracts entered into as a result of this Agreement shall contain all the

provisions stipulated in this Agreement to be applicable to subconsultants.

- D. CONSULTANT shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to CONSULTANT by COUNTY.
- E. Any substitution of subconsultant(s) must be approved in writing by COUNTY's Contract Administrator prior to the start of work by the subconsultant(s).
- F. Prompt Progress Payment

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

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

- G. Prompt Payment of Withheld Funds to Subconsultants.

COUNTY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the COUNTY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. No retainage will be held by the COUNTY from progress payments due to CONSULTANT. Any retainage kept by CONSULTANT or by a subconsultant must be paid in full to the earning subconsultant within fifteen (15) days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with COUNTY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

H. 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. COUNTY may, at its sole discretion, through its Contract Administrator, authorize CONSULTANT to utilize subconsultants for services performed in Exhibit A, for the particular tasks, work, and deliverables identified therein or as identified in the individual Task Orders and/or Work Orders issued pursuant to this Agreement. Said written 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 and Work 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.

## **ARTICLE XI**

### **Equipment Purchase and Other Capital Expenditures:**

- A. Prior authorization in writing by COUNTY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000, prior written authorization by COUNTY's Contract Administrator is required; three (3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this Agreement is subject to the following:
  - 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two (2) years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, CONSULTANT may either keep the equipment and credit COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures, and credit COUNTY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of that equipment. Appraisals shall be obtained from an appraiser mutually agreeable to COUNTY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY.

2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

## **ARTICLE XII**

### **State Prevailing Wage Rates:**

- A. No CONSULTANT or Subconsultant may be awarded an Agreement containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this Agreement, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Agreement are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this Agreement by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at COUNTY construction sites, at COUNTY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve COUNTY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.

### **D. Payroll Records**

1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
  - a. The information contained in the payroll record is true and correct.
  - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all



supporting documents shall be made available for inspection and copying by COUNTY representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:

- a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
  - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
  - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the COUNTY Contract Administrator by both email and regular mail on the business day following receipt of the request.
3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
  4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by COUNTY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
  5. The CONSULTANT shall inform COUNTY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
  6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to COUNTY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by COUNTY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.

E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by COUNTY Contract Administrator.

F. Penalty

1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to COUNTY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the Agreement by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the Agreement.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the CONSULTANT of the project is not liable for the penalties described above unless the CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the CONSULTANT fails to comply with all of the following requirements:
  - a. The Agreement executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.

- c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
  - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, COUNTY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
  6. If COUNTY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if COUNTY did not retain sufficient money under the Agreement to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by COUNTY.

#### G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to COUNTY, twenty-five dollars (\$25) for each worker employed in the execution of the Agreement by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

#### H. Employment of Apprentices

1. Where either the prime Agreement or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios

of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the Agreement work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

### **ARTICLE XIII**

#### **Conflict Of Interest:**

- A. During the term of this Agreement, CONSULTANT shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this Agreement or any ensuing COUNTY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing COUNTY construction project that will follow. CONSULTANT has acknowledged this interest of consultant and CONSULTANT has duly executed Exhibit D, marked "Interest of Consultant Disclosure Statement," incorporated herein and made by reference a part hereof.
- B. CONSULTANT certifies that it has disclosed to COUNTY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. CONSULTANT agrees to advise COUNTY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. CONSULTANT further agrees to complete any statements of economic interest if required by either COUNTY ordinance or State law. COUNTY's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and COUNTY's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.
- C. CONSULTANT hereby certifies that it does not now have, nor shall it acquire, any financial or business interest that would conflict with the performance of services under this Agreement.
- D. CONSULTANT hereby certifies that CONSULTANT or subconsultant and any firm affiliated with CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this Agreement, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.
- E. CONSULTANT covenants that during the term of this Agreement neither it, or any officer or employee of CONSULTANT, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of COUNTY that are involved in this Agreement.

If CONSULTANT becomes aware of a conflict of interest related to this Agreement, CONSULTANT shall promptly notify COUNTY of the existence of that conflict, and COUNTY may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE VI, Termination.

Pursuant to Government Code section 84308 (SB 1439, the Levine Act), CONSULTANT shall complete and sign the attached Exhibit E, marked "California Levine Act Statement," incorporated herein and made by reference a part hereof, regarding campaign contributions by CONSULTANT, if any, to any officer of COUNTY.

#### **ARTICLE XIV**

##### **Rebates, Kickbacks, or Other Unlawful Consideration:**

CONSULTANT warrants that this Agreement 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 sole discretion, to terminate the Agreement without liability; to pay only for the value of the work actually performed; to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

#### **ARTICLE XV**

##### **Prohibition of Expending COUNTY, State, or Federal Funds For Lobbying:**

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal, or local agency appropriated funds have been paid or will be paid by or on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement, CONSULTANT shall complete and submit

Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions which form and instructions are attached hereto as Exhibit F 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 he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

## **ARTICLE XVI**

### **Non-Discrimination Clause and Statement of Compliance:**

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Government Code § 12990 and 2 CCR §11102.
- B. During the performance of this Agreement, CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, genetic information, gender, gender identity, gender expression, sexual orientation, or military and veteran status, and denial of family care leave. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12900 [a-f] et seq.) and the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§ 11135-11139.5, and the regulations or standards adopted by COUNTY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12900 (a-f), set forth in Subchapter 5 of Chapter 5 of Division 4.1 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.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and COUNTY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to

such of its books, records, accounts, and all other sources of information and its facilities as said Department or COUNTY shall require to ascertain compliance with this clause.

- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
- G. CONSULTANT with regard to the work performed under this Agreement, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, or disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. CONSULTANT shall comply with regulations relative to non-discrimination in federally assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the COUNTY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.
- J. CONSULTANT agrees to comply with the following non-discrimination statues and authorities; including but not limited to:
  - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601);
  - Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.);
  - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended; and 49 CFR Part 27;
  - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.)
  - Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123),

as amended;

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to -ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## **ARTICLE XVII**

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

- A. CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  3. Does not have a proposed debarment pending; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.



- B. Any exceptions to this certification must be disclosed to COUNTY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

#### **ARTICLE XVIII**

**Taxes:** CONSULTANT certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by CONSULTANT to COUNTY. CONSULTANT agrees that it shall not default on any obligations to COUNTY during the term of this Agreement.

#### **ARTICLE XIX**

**Quality Control:** CONSULTANT shall have a quality control plan in effect during the entire time work is being performed under this Agreement. Upon request, CONSULTANT shall provide COUNTY with a general overview of CONSULTANT's quality control plan in the form of a written outline. CONSULTANT shall also identify critical quality control reviews for the major deliverables within item of work assigned. The plan shall take into account the following:

- A. The plan shall establish a process whereby calculations and plans are independently checked, corrected and back-checked, all draft and final reports are reviewed for accuracy, completeness, and readability before submittal, and all job-related correspondence and memoranda are routed and received by affected persons and then filed in the appropriate item of work project file.
- B. CONSULTANT is responsible for the accuracy and completeness of all data, plans, specifications, and estimates prepared by CONSULTANT under this Agreement and shall check all such material accordingly.
- C. Plans, designs, estimates, calculations, reports, and other documents furnished under this Agreement shall be of a quality acceptable to COUNTY's Contract Administrator.
- D. A design, estimate, calculation, report or other document furnished under each item of work assigned is of acceptable quality when it is neat in appearance, well-organized, technically and grammatically correct, and checked.
- E. The minimum standard of appearance, organization, and the content of any drawings and reports shall be that of similar types utilized by COUNTY. COUNTY will provide examples to CONSULTANT upon request.
- F. The page identifying the preparer of engineering reports, the title sheet for specifications, and each sheet of plans shall bear the professional seal, certificate number, registration classification, expiration date of the certificate, and the signature

of the professional engineers responsible for its preparation.

G. CONSULTANT shall maintain a complete project file for each item of work performed under this Agreement. This file shall be made available to COUNTY's Contract Administrator, or designee, during normal COUNTY working hours and shall be transferred to COUNTY upon completion of work under the Agreement.

COUNTY's Contract Administrator shall decide all questions pertaining to the quality or acceptability of deliverables furnished and work performed under this Agreement.

## **ARTICLE XX**

**Licenses:** CONSULTANT hereby represents and warrants that CONSULTANT and any of its subconsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for CONSULTANT and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. CONSULTANT and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

## **ARTICLE XXI**

**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 and/or Work 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 prior 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 and deliverables provided under this Agreement.

## **ARTICLE XXII**

**CONSULTANT's Project Manager:** CONSULTANT designates Sean Houck, PE, 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 and Work Orders issued pursuant to this Agreement; (2) reviewing, monitoring, training, and directing CONSULTANT's personnel and any subconsultants authorized herein; and (3) providing qualified and appropriate

traffic control services for field work. Project Manager must be a registered engineer in the State of California.

### **ARTICLE XXIII**

**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 and Work Orders, without prior written approval by COUNTY's Contract Administrator.

### **ARTICLE XXIV**

**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 understood that this Agreement does not create an exclusive relationship between COUNTY and CONSULTANT, and CONSULTANT may perform similar work or services for others. However, CONSULTANT shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with CONSULTANT's responsibilities or hinder CONSULTANT's performance of services hereunder, unless COUNTY's Contract Administrator, in writing, authorizes that agreement or sharing of information.

### **ARTICLE XXV**

#### **Confidentiality:**

- A. CONSULTANT and any subconsultants authorized under this Agreement 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 Community Development Agency or to such person with COUNTY's consent for the purpose of, and in the performance of, this Agreement.
- B. Permission granted by COUNTY to disclose information on one occasion shall not authorize CONSULTANT or any subconsultants authorized under this Agreement to further disclose such information or disseminate the same on any other occasion.
- C. CONSULTANT and any subconsultants authorized under this Agreement 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 COUNTY's Board of Supervisors.

- D. CONSULTANT and any subconsultants authorized under this Agreement shall not issue any news release or public relations item of any nature, whatsoever, regarding services performed or to be performed under this Agreement without prior review of the contents thereof by COUNTY and receipt of COUNTY's 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 subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- G. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

**ARTICLE XXVI**

**Independent Contractor:** The parties intend that an independent contractor relationship will be created by this contract. 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, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by CONSULTANT. Those persons will be entirely and exclusively under the direction, supervision, and control of CONSULTANT.

COUNTY may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but COUNTY will not control or direct the manner, means, methods, or sequence in which CONSULTANT performs the work or services for accomplishing the results. CONSULTANT understands and agrees that CONSULTANT lacks the authority to bind COUNTY or incur any obligations on behalf of COUNTY.

CONSULTANT, including any subcontractor or employees of CONSULTANT, shall not receive, nor be eligible for, any benefits COUNTY provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. CONSULTANT shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. COUNTY is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes CONSULTANT. CONSULTANT shall not be subject to the work schedules or vacation

periods that apply to COUNTY employees.

CONSULTANT shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that CONSULTANT provides for its employees.

CONSULTANT acknowledges that it has no authority to bind the COUNTY or incur any obligations on behalf of the COUNTY with regard to any matter, and shall not make any agreements or representations on the COUNTY'S behalf.

#### **ARTICLE XXVII**

**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 and/or any Task Order or Work Order issued pursuant to this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

#### **ARTICLE XXVIII**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing the 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  
2850 Fairlane Court  
Placerville, California 95667

Attn.: John Kahling  
Deputy Director  
Engineering Division

With a copy to:

County of El Dorado  
Chief Administrative Office  
330 Fair Lane  
Placerville, California 95667

Attn.: Michele Weimer  
Procurement and Contracts Manager

or to such other location as COUNTY directs.

Notices to CONSULTANT shall be addressed as follows:

Kimley-Horn and Associates, Inc.  
555 Capitol Mall, Suite 300  
Sacramento, California 95814

Attn.: Matthew D. Weir  
Principal-in-Charge

or to such other location as CONSULTANT directs.

**ARTICLE XXIX**

**Change of Address:** In the event of a change in address for CONSULTANT's principal place of business, CONSULTANT's Agent for Service of Process, or Notices to CONSULTANT, CONSULTANT shall notify COUNTY in writing as provided in ARTICLE XXIX, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by COUNTY's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

**ARTICLE XXX**

**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, officers, or agents, 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 and is subject to any limit provided for in Civil Code Section 2782.8(a) of the cost to defend charged to CONSULTANT. Each party shall notify the other party

immediately in writing of any claim or damage related to activities performed under this Agreement, provided that the COUNTY's failure to immediately or timely notify CONSULTANT does not limit or waive CONSULTANT's defense and indemnity obligations in this Article. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

**ARTICLE XXXI**

**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 and a \$2,000,000 aggregate limit.
- 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 or professional consultant 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 Agreement, CONSULTANT agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the written 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. 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 Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:

1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to COUNTY; and
  2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. CONSULTANT's insurance coverage shall be primary insurance in respect to 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 in respect to 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 COUNTY, its officers, officials, employees, or volunteers.
  - L. The insurance companies shall have no recourse against the County of El Dorado, its officers, employees, and volunteers 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.
  - P. 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 if requested.



## **ARTICLE XXXII**

**Force Majeure:** Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

## **ARTICLE XXXIII**

**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 limited liability company or 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 XXXIV**

**COUNTY Payee Data Record Form:** All independent contractors or corporations providing services to COUNTY who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with COUNTY must file a County Payee Data Record Form with COUNTY.

## **ARTICLE XXXV**

**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 COUNTY's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

## **ARTICLE XXXVI**

**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 XXXVII**

**Compliance with Federal, State, and COUNTY Requirements:** COUNTY is relying on federal assistance or grants, state funds, and 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 the Federal Highway Administration (FHWA) grant funding requirements, regulations, and related executive orders regarding the use, expenditure, control, reporting, allowable costs, and management of such funds. The following Office of Management and Budget (OMB) Circulars, as applicable, and as implemented by various parts of the Code of Federal Regulations (C.F.R.), are incorporated by reference and made a part of this Agreement:

*2 CFR Part 200, Subpart E, "Cost Principles. Special Considerations for States, Local Governments and Indian Tribes (formerly OMB Circular A-87)"*

*2 CFR Part Part 200, Subpart F "Audit Requirements" and the most recent compliance supplement*

Copies of the OMB Circulars are available on the Internet at:

<https://www.whitehouse.gov/omb/information-for-agencies/circulars>

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 XXXVIII**

**Working Office:** CONSULTANT shall establish a working office at a place acceptable to COUNTY. The parties hereto acknowledge and agree that CONSULTANT's office is located at 555 Capitol Mall, Suite 300, Sacramento, California 95814.

## **ARTICLE XXXIX**

**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.

#### **ARTICLE XL**

**Design Standards:** CONSULTANT shall perform all services under this Agreement and as described in Exhibit A, or in individual Task Orders and/or Work Orders, as applicable, in conformance with applicable federal, state, and local design standards or other standards for work performance stipulated in ARTICLE XIX, Standards for Work, or in the individual Task Orders and Work Orders issued pursuant to this Agreement.

#### **ARTICLE XLI**

**Documentation:** CONSULTANT shall document the results of its work to the satisfaction of COUNTY and if applicable, the State of California, 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 XLII**

**Copyrights:** COUNTY may permit copyrighting reports or other Agreement products. If copyrights are permitted, COUNTY, FHWA, and State of California 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 State or Federal Government purposes:

- (a) The copyright in any work developed under this Agreement; and
- (b) Any rights of copyright to which CONSULTANT purchases ownership with grant support.

#### **ARTICLE XLIII**

**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 XLIV**

**Disadvantaged Business Enterprise (DBE) Considerations:** CONSULTANT must give consideration to DBE firms as specified in 23 C.F.R. § 172.5(b) and in Appendix A to 49 C.F.R. Part 26. 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.

As applicable, DBE requirements will be discussed at the meeting or telephone conference held to determine the specific services required in a Task Order or Work Order. COUNTY's Contract Administrator will provide CONSULTANT with the necessary DBE forms and information for use and/or submittal with CONSULTANT's Task Order/Work Order proposal or CONSULTANT's final invoice.

**ARTICLE XLV****Disadvantaged Business Enterprise (DBE) Participation:**

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

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

This Agreement is subject to 49 C.F.R. § 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Consultants who obtain DBE participation on this Agreement shall assist Caltrans in meeting its federally mandated statewide overall DBE goal.

- B. The goal for DBE participation for this Agreement is 6%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1) or in the Consultant Contract DBE Commitment (Exhibit 10-O2). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 C.F.R. § 26.5, are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall

carry out applicable requirements of 49 C.F.R. 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. Contract Assurance

Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidating damages; and/or
- 4) Disqualifying CONSULTANT from future proposing as non-responsible

E. Termination and Replacement of DBE Subconsultants

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

Termination of DBE Subconsultants

After execution of the Agreement, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the COUNTY:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. COUNTY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the COUNTY's bond requirements.

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

CONSULTANT must use the following procedures to request the termination of a DBE or portion of a DBE's work:

1. Send a written notice to the DBE of the CONSULTANT's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the COUNTY. The written notice to the DBE must request they provide any response within five (5) business days to both the CONSULTANT and the COUNTY by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
2. If the DBE does not respond within five (5) business days, CONSULTANT may move forward with the request as if the DBE had agreed to CONSULTANT's written notice.
3. Submit CONSULTANT's DBE termination request by written letter to the COUNTY and include:
  - One or more above listed justifiable reasons along with supporting documentation.
  - CONSULTANT's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of CONSULTANT's written notice
  - The DBE's response to CONSULTANT's written notice, if received. If a written response was not provided, provide a statement to that effect.

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

Replacement of DBE Subconsultants

After receiving the COUNTY's written authorization of DBE termination request, CONSULTANT must obtain the COUNTY's written agreement for DBE replacement. CONSULTANT must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment. The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the COUNTY which must include:

a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.

b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:

- Description of scope of work and cost proposal
- Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
- Revised Exhibit 10-O2: Consultant Contract DBE Commitment

2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT's GFEs to use DBE replacement firms within seven (7) days of COUNTY's authorization to terminate the DBE. CONSULTANT may request the COUNTY's approval to extend this submittal period to a total of fourteen (14) days. Submit documentation of actions taken to find a DBE replacement firm, such as:

- Search results of certified DBEs available to perform the original DBE work identified and or other work CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment
- Solicitations of DBEs for performance of work identified
- Correspondence with interested DBEs that may have included contract details and requirements
- Negotiation efforts with DBEs that reflect why an agreement was not reached
- If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive

- Copies of each DBE's and non-DBE's price quotes for work identified, as the COUNTY may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
- Additional documentation that supports CONSULTANT's GFE The COUNTY shall respond in writing to CONSULTANT's DBE replacement request within five (5) business days

#### F. Commitment and Utilization

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

COUNTY shall request CONSULTANT to:

1. Notify COUNTY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier subconsultant
  - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

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

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

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

If COUNTY reports of DBE participation to Caltrans, the COUNTY must display both commitments and attainments.



## G. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

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

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

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

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

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

CONSULTANT must notify the COUNTY immediately if they believe the DBE may not be performing a CUF.

The COUNTY will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation,

submitted supporting information, field observations, and through any additional COUNTY evaluations. The COUNTY must evaluate DBEs and their CUF performance throughout the duration of a Contract. The COUNTY will provide written notice to the CONSULTANT and the DBE at least two (2) business days prior to any evaluation. The CONSULTANT and the DBE must participate in the evaluation. Upon completing the evaluation, the COUNTY must share the evaluation results with the CONSULTANT and the DBE. An evaluation could include items that must be remedied upon receipt. If the COUNTY determines the DBE is not performing a CUF, the CONSULTANT must suspend performance of the noncompliant work.

CONSULTANT and DBEs must submit any additional CUF related records and documents within five (5) business days of COUNTY's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If CONSULTANT and/or the COUNTY determine that a listed DBE is not performing a CUF in performance of their DBE committed work, CONSULTANT must immediately suspend performance of the noncompliant portion of the work. COUNTY may deny payment for the noncompliant portion of the work. COUNTY will ask the CONSULTANT to submit a corrective action plan (CAP) to the COUNTY within five (5) days of the noncompliant CUF determination. The CAP must identify how the CONSULTANT will correct the noncompliance findings for the remaining portion of the DBE's work. COUNTY has five (5) days to review the CAP in conjunction with the CONSULTANT's review. The CONSULTANT must implement the CAP within five (5) days of the COUNTY's approval. The COUNTY will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a commercially useful function on the Contract, CONSULTANT may have good cause to request termination of the DBE.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. 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 Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to COUNTY's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice shall result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to COUNTY's Contract Administrator.
- L. For projects awarded on or after March 1, 2020, but before September 1, 2023: after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the CONSULTANT must now submit Exhibit 9-P to the COUNTY administering the contract. If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

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

## **ARTICLE XLVI**

**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 XLVII**

### **Disputes:**

- A. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of COUNTY's Contract Administrator and the Community Development Services, Department of Transportation Director, or designee, which may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications, and estimate, CONSULTANT may request review by COUNTY's Board of Supervisors of unresolved claims or disputes, other than audit. The request for review shall be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee, will excuse CONSULTANT from full and timely performance in accordance with the terms of this Agreement.
- D. CONSULTANT's failure to follow this dispute resolution procedure shall constitute a waiver of any and all claims arising out of or related to the dispute and a bar to any further proceedings or legal or equitable remedy.

## **ARTICLE XLVIII**

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

## **ARTICLE XLIX**

### **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.

## **ARTICLE L**

### **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. Any consultation or testimony that may be required by COUNTY will be reimbursed at the same rates that are being paid for CONSULTANT's personnel services under Exhibit B hereto, unless the construction contractor claims are covered in whole or in part by ARTICLE XXXI, Indemnity, in which case no compensation will be paid.
- 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.

## **ARTICLE LI**

**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 LII**

**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 LIII**

### **TITLE VI ASSURANCES**

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

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

Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract.

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

The clauses set forth in Appendix C and Appendix D of this Assurance shall be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by COUNTY with other parties:

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

## **APPENDIX A**

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

- a. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

- d. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

## **APPENDIX B**

### **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

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

NOW THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in

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Inc.

Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

**(HABENDUM CLAUSE)**

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

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

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

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

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:



1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.\*

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

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

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

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest ,and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use

the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

## APPENDIX E

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

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing

- entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).

#### **ARTICLE LIV**

**Contracting with Small and Minority Firms and Women's Business Enterprises:** It is a national policy to award a fair share of contracts to small and minority business firms and women’s business enterprises. COUNTY is strongly committed to the objectives of this policy and encourages all consultants to take affirmative steps to ensure such fairness.

1. CONSULTANT shall take all necessary affirmative steps to assure that minority firms and women's business enterprises are used when possible.
2. Affirmative steps shall include:
  - (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (b) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
  - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women's business enterprises;
  - (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business and women's business enterprises;
  - (e) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce as appropriate; and

(f) Requiring the prime CONSULTANT, if subcontracts are to be let, to take the affirmative steps listed in 2 (a) through (e) above.

#### **ARTICLE LV**

**Environmental Compliance:** CONSULTANT shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606); Section 508 of the Clean Water Act (33 U.S.C. § 1368); Executive Order 11738; Environmental Protection Agency regulations (2 C.F.R. Subtitle B, Chapter XV, Part 1532 (§ 1532.10 et seq.)); and mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

#### **ARTICLE LVI**

**Contract Administrator:** The COUNTY Officer or employee with responsibility for administering this Agreement is John Kahling, Deputy Director, Engineering Division, Department of Transportation, or successor.

#### **ARTICLE LVII**

**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 LVIII**

**Electronic Signatures:** Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Civil Code sections 1633.1 to 1633.17) as amended from time to time.

#### **ARTICLE LIX**

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

#### **ARTICLE LX**

**No Third-Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

**ARTICLE LXI**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

**ARTICLE LXII**

**Waiver:** No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

**ARTICLE LXIII**

**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.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates indicated below.

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

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

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


Board of Supervisors  
"COUNTY"

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

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

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

**-- KIMLEY-HORN AND ASSOCIATES, INC. --**

Signed by:  
By: Matthew D. Weir CA C70216  
1C6B343D36F0443...  
Matthew D. Weir  
Principal-in-Charge  
"CONSULTANT" 

Dated: 2/20/2025

## Kimley-Horn & Associates, Inc.

### Exhibit A

#### Scope of Work

##### **Task 1 – Project Management and Coordination**

CONSULTANT shall direct the Project team and coordinate with COUNTY including at a minimum, meetings, telephone coordination and conferences, monitoring schedule and budget performance, and preparing monthly progress reports, invoices, and schedule updates for COUNTY. CONSULTANT shall attend one (1) Project kickoff meeting with COUNTY to discuss Project objectives, constraints, and the schedule of work and deliverables for the Project. CONSULTANT shall manage the Project by tracking the schedule, budget, and deliverables.

##### Deliverables:

- One (1) Project kickoff meeting
- Progress Reports and invoices

##### Schedule:

- Progress Reports and invoices shall be submitted to COUNTY monthly for the duration of the Agreement.

##### **Task 2 – Thirty Percent (30%) Roundabout/Roadway Design**

CONSULTANT shall coordinate with COUNTY on the preparation of the thirty percent (30%) plan submittal. CONSULTANT shall review the preliminary roadway/roundabout layout prepared by COUNTY, and use the information to prepare the thirty percent (30%) plan, preliminary quantity estimates, and develop a construction cost estimate. The construction cost estimate shall be based upon historic cost data using quantities and associated costs similar to the Project and information available from recent similar projects within COUNTY. In addition, CONSULTANT shall support COUNTY by providing any project specific details required to complete the environmental documents associated with the Project, as requested by COUNTY. Ground topographic map has been completed by the County survey crew.

CA C70216

##### Activities:

- Verify COUNTY provided mapping and provide comments, if applicable.
- Prepare draft roadway/roundabout general plan based on the roundabout design criteria, and site conditions.
- Prepare draft roundabout type selection memorandum.
- Prepare draft preliminary cost estimate.
- Coordinate with COUNTY and the environmental consultant to ensure the proposed roundabout is compatible with the environmental and hydraulics studies completed to date for the Project.
- Attend one (1) initial roundabout type selection meeting with COUNTY and distribute meeting minutes.

- Prepare response document to any roundabout type selection comments or concerns, if any, from the roundabout selection meeting.
- Prepare final roadway/roundabout general plan.
- Prepare final roadway/roundabout type selection memorandum.

Deliverables:

- One (1) draft roadway/roundabout general plan in Civil 3D, PDF, and MS Word format submitted electronically.
- One (1) final roadway/roundabout general plan in Civil 3D and PDF format submitted electronically.
- One (1) draft roundabout selection memorandum in MS Word and PDF format submitted electronically.
- One (1) final roundabout selection memorandum in PDF format submitted electronically.
- One (1) draft preliminary cost estimate in MS Excel format submitted electronically.
- One (1) final preliminary cost estimate in PDF format submitted electronically.
- One (1) initial roundabout typing selection meeting.
- One (1) copy of initial roundabout typing selection meeting minutes in PDF format submitted electronically.
- One (1) response document to any roundabout type selection meeting comments or concerns.

Schedule:

- Comments on mapping shall be submitted to COUNTY within two (2) weeks of receipt of the fully executed Agreement.
- Draft roadway/roundabout general plan, type selection memorandum, and preliminary cost estimate shall be submitted to COUNTY within twelve (8) weeks of receipt of the fully executed Agreement.
- CONSULTANT shall attend the roundabout type selection meeting within fourteen (14) weeks of receipt of the fully executed Agreement.
- Type selection meeting minutes shall be submitted to COUNTY within one (1) week of the type selection meeting.
- Responses to comments or concerns, if any, from the type selection meeting shall be submitted to COUNTY within two (2) weeks after the type selection meeting.
- Final roadway/roundabout general plan, final type selection memorandum, and preliminary cost estimate shall be submitted to COUNTY within twelve (12) weeks of receipt of the fully executed Agreement.

**Task 3 – Sixty-five Percent (65%) Roundabout/Roadway Design**

CONSULTANT shall perform detailed design of the roundabout/roadway and develop construction drawings for the Project. The design shall be completed in accordance with the most current roundabout design standard, with all Caltrans and current industry requirements, as applicable.

The roundabout/roadway design shall meet COUNTY, Caltrans, and FHWA standards in effect as to the date of the effective date of the Agreement.



CONSULTANT shall perform an independent Quality Assurance/Quality Control (QA/QC) review of the sixty-five percent (65%) plans and incorporate appropriate revisions prior to submittal to COUNTY.

Activities:

- Perform sixty-five percent (65%) design calculations.
- Develop sixty-five percent (65%) roundabout/roadway plans, including all plan sheets typically required for project construction.

It is assumed the following sheets shall be prepared for the sixty-five percent (65%) plan submittal:

- Survey and Control Sheets
- Typical Sections Sheets
- Layout Sheets
- Superelevation Diagram Sheets if applicable
- Construction Details Sheets
- Contour Grading Plan if applicable
- Drainage Sheets
- Stage Construction Sheets
- Signing and Pavement Delineation Sheets
- Signing and Pavement Delineation Quantities Sheets
- Erosion Control Sheets

Deliverables:

- One (1) hardcopy set of sixty-five percent (65%) plans (half size 11x17), including one (1) electronic pdf copy.

Schedule:

- Sixty-five percent (65%) plans shall be submitted to COUNTY within ten (10) weeks of COUNTY's type selection approval.

#### **Task 4 – Sixty-five Percent (65%) Roundabout/Roadway Technical Specifications**

CONSULTANT shall identify and compile unedited Caltrans Special Provisions for the Project. CONSULTANT shall use the most recent Caltrans Standard Specifications as the basis of the technical specifications. CONSULTANT shall not be responsible for compiling the entire Project specifications.

CONSULTANT shall prepare the sixty-five percent (65%) technical specifications. Unedited Caltrans Special Provisions shall be provided to COUNTY and edits shall be made prior to the ninety-five percent (95%) submittal, Task 7.

CONSULTANT shall prepare the required technical special provisions for Divisions II-X, and COUNTY will compile with the Division I COUNTY boilerplate specifications. The basis of the specifications shall be the most recent Caltrans Standard Specifications.

Assumptions:

- COUNTY will prepare the boilerplate documents, including the notice to bidders, proposal, bond forms, and agreement.
- COUNTY will assemble the CONSULTANT's technical specifications into the agreement documents.
- COUNTY will include the required mitigation measures and permitting requirements from the environmental permits in the specifications.

Deliverables:

- One (1) hardcopy set of sixty-five percent (65%) technical specifications, including one (1) electronic word version.

Schedule:

- Sixty-five percent (65%) technical specifications shall be submitted to COUNTY within ten (10) weeks of COUNTY's type selection approval.

**Task 5 – Sixty-five Percent (65%) Roundabout/Roadway Engineer's Estimate**

CONSULTANT shall prepare the sixty-five percent (65%) engineer's estimate, including the final quantity calculations and updates to the preliminary construction cost estimate developed during the thirty percent (30%) design, Task 2, to include the final quantities and the most current cost data. The sixty-five percent (65%) engineer's estimate shall be prepared in accordance with Caltrans guidelines for cost estimates.

Deliverables:

- One (1) hardcopy of the sixty-five percent (65%) engineer's estimate, including one (1) electronic MS Excel version.

Schedule:

- The sixty-five percent (65%) engineer's estimate shall be submitted to COUNTY within ten (10) weeks of receipt of the COUNTY's type selection approval.

**Task 6 – Ninety-five Percent (95%) Roundabout/Roadway Plans, Specifications, and Engineer's Estimate**

CONSULTANT shall address any comments from the sixty-five percent (65%) design submittal, prepare the ninety-five percent (95%) plans and technical specifications, and update the engineer's estimate to reflect any changes made.

Prior to the Draft ninety-five percent (95%) Plan, Specification and Estimate (PS&E) Submittal, CONSULTANT shall review the plans and prepare an updated bid items list. CONSULTANT shall compile the technical specifications using the items list to collect and edit the latest Caltrans Standard Special Provisions (SSP's).

CONSULTANT shall submit the ninety-five percent (95%) PS&E Submittal to COUNTY. The submittal shall include the project plans, technical specifications and engineer's estimate for the work. CONSULTANT shall submit one (1) set of special provisions and the engineer's estimate to COUNTY. The project plans shall be submitted in AutoCAD

Civil 3D as well as pdf format. Specifications shall be prepared in MS Word and the engineer's estimate shall be prepared in MS Excel.

Activities:

- Perform an independent QA/QC review of the ninety-five percent (95%) PS&E and incorporate appropriate revisions prior to submittal to COUNTY.
- Review and comment on COUNTY's compiled overall specifications.
- Review the ninety-five percent (95%) special provisions for consistency, estimate, and standard specifications.
- Review the ninety-five (95%) plans for omissions, conflicts, and incompatible details.

Assumptions:

- COUNTY will compile the technical specifications based on technical specifications provided by the CONSULTANT.

Deliverables:

- One (1) hardcopy set of the ninety-five percent (95%) project plans, including one (1) electronic pdf (11x17), and one (1) AutoCAD version.
- One (1) hardcopy set of the ninety-five percent (95%) technical specifications, including one (1) electronic pdf, and one (1) MS Word version.
- One (1) hardcopy of the ninety-five percent (95%) engineer's estimate, including one (1) electronic pdf and one MS Excel version.
- Comments to COUNTY's compiled overall specifications, including one (1) electronic pdf and one (1) MS Word version.

Schedule:

- The ninety-five percent (95%) plans, ninety-five percent (95%) technical specifications, and ninety-five percent (95%) engineer's estimate shall be submitted to COUNTY within eight (8) weeks of receipt of COUNTY's comments on the sixty-five percent (65%) plan, sixty-five percent (65%) technical specifications, and sixty-five percent (65%) engineer's estimate.
- Comments on COUNTY compiled overall specifications shall be submitted to COUNTY within four (4) weeks of receipt of COUNTY's specifications.

**Task 7 – One Hundred Percent (100%) Roundabout/Roadway Plans, Technical Specifications, and Engineer's Estimate**

CONSULTANT shall address any comments received on the ninety-five percent (95%) design submittal, prepare the one hundred percent (100%) plans, technical specifications, and update the engineer's estimate to reflect any changes made.

Activities:

- Prepare Final Revision: Upon receipt of comments from the ninety-five percent (95%) PS&E submittal to COUNTY and other jurisdictional agencies, which will be routed through COUNTY, CONSULTANT shall make any necessary revisions.

CONSULTANT shall incorporate appropriate comments in the one hundred percent (100%) PS&E.

- Prepare Final Submittal: CONSULTANT shall incorporate COUNTY's comments and submit the Final PS&E to COUNTY. CONSULTANT shall perform an independent QA/QC review of the one hundred percent (100%) submittal package and incorporate appropriate revisions prior to submittal to COUNTY.

Deliverables:

- One (1) hardcopy set of the one hundred percent (100%) plans, including one (1) electronic pdf copy (11x17), and one (1) AutoCAD version.
- One (1) hardcopy set of the one hundred percent (100%) technical specifications, including one (1) electronic pdf copy (11x17), and one (1) MS Word version.
- One (1) hardcopy of the one hundred percent (100%) engineer's estimate, including one (1) electronic pdf copy (11x17), and one (1) MS Excel version.

Schedule:

- The one hundred percent (100%) plans, one hundred percent (100%) technical specifications, and one hundred percent (100%) engineer's estimate shall be submitted to COUNTY within six (6) weeks of receipt of COUNTY's comments on the ninety-five percent (95%) plan, ninety-five percent (95%) technical specifications, and ninety-five percent (95%) engineer's estimate.

**Task 8 – Bidding and Award Assistance and Construction Support Assistance**

CONSULTANT shall be available to COUNTY to provide on-going consultation and interpretation of construction documents during the construction of the Project. For this task, CONSULTANT shall coordinate any deliverables to be submitted to COUNTY for services determined necessary by COUNTY.

CONSULTANT's construction services shall include the following:

- Attend one (1) pre-construction meeting, if requested by COUNTY, and prepare meeting minutes.
- Provide ongoing consultation and interpretation of construction contract documents prior to construction including answering and documenting questions from prospective bidders and preparing addenda and bid analysis, as requested by COUNTY.
- Review and approve submittals and shop drawings related to the design, as requested by COUNTY.
- Respond to requests for information and prepare plan and/or specification modification for contract change orders, as requested by COUNTY.
- Attend site visits, as requested by COUNTY.
- Assist COUNTY in preparing and delivering the final as-built plans using marked prints provided by the Construction Resident Engineer, if requested by COUNTY.

Deliverables:

- Pre-construction meeting minutes as needed
- Construction contract addenda, if applicable.
- Bid analysis.
- Comments on drawings.
- Responses to requests for information and/or specification modification for contract change orders.

Assumptions:

COUNTY will provide the following:

- Right-of-way engineering.
- Hydrology and hydraulic report.
- Environmental clearance.
- Environmental permitting.
- Utility coordination.

**Task 9 – Optional Tasks**

COUNTY may require CONSULTANT to perform Optional Tasks. Such Optional Tasks may supplement, expand, or otherwise modify the Scope of Work, but not be limited to, tasks that are deemed critical by COUNTY's Contract Administrator. If CONSULTANT's services are required for Optional Tasks, COUNTY's Contract Administrator will issue separate written Work Orders for CONSULTANT to perform those tasks in accordance with the provisions of this Agreement. CONSULTANT shall not proceed with any Optional Task work prior to receiving the fully executed, written Work Order from COUNTY's Contract Administrator.

**Kimley-Horn & Associates, Inc.**

**Exhibit B**

**Rate Schedule**

<b>Classifications</b>	<b>Fiscal Year 2025</b>	<b>Fiscal Year 2026</b>	<b>Fiscal Year 2027</b>	<b>Fiscal Year 2028</b>
Project Manager	\$320.46	\$336.48	\$353.30	\$370.97
Principal-in-Charge	\$339.73	\$356.71	\$374.55	\$393.28
Senior Professional II	\$320.46	\$336.48	\$353.30	\$370.97
Senior Professional I	\$275.58	\$289.36	\$303.83	\$319.02
Professional II	\$222.14	\$233.24	\$244.91	\$257.15
Professional I	\$178.08	\$186.99	\$196.33	\$206.15
Analyst	\$162.49	\$170.62	\$179.15	\$188.11
Project Support	\$118.86	\$124.81	\$131.05	\$137.60

**Other Direct Costs**

Other direct costs including printing, reproduction, miscellaneous supplies, and delivery charges, authorized herein, shall be invoiced in accordance with ARTICLE II, Compensation for Services.

**Mileage**

Mileage expenses shall be invoiced in accordance with ARTICLE II, Compensation for Services.

## Kimley-Horn & Associates, Inc.

### Exhibit C

### Cost Proposal

Task	Description	Cost
1	Project Management and Coordination	\$ 51,828.20
2	Thirty Percent (30%) Roundabout/Roadway Design	\$ 107,265.37
3	Sixty-five Percent (65%) Roundabout/Roadway Design	\$ 65,132.43
4	Sixty-five Percent (65%) Roundabout/Roadway Technical Specifications	\$ 6,023.70
5	Sixty-five Percent (65%) Roundabout/Roadway Engineer's Estimate	\$ 4,695.18
6	Ninety-five Percent (95%) Roundabout/Roadway Plans, Specifications, and Engineer's Estimate	\$ 63,320.38
1.877	One Hundred Percent (100%) Roundabout/Roadway Plans, Specifications, and Engineer's Estimate	\$ 34,035.34
8	Bidding and Award Assistance and Construction Support Assistance	\$ 31,137.05
<b>Subtotal:</b>		<b>\$ 363,437.65</b>
<b>Subconsultants:</b>		
	UNICO Engineering	\$ 26,360.35
	Shannon & Wilson, Inc.	\$ 37,665.00
<b>Subtotal:</b>		<b>\$ 64,025.35</b>
	Optional Tasks	\$ 80,088.87
	Other Direct Costs	\$ 1,000.00
	Mileage	\$ 1,000.00
<b>Subtotal:</b>		<b>\$ 82,088.87</b>
<b>Total:</b>		<b>\$ 509,551.87</b>

The not-to-exceed amount for this Agreement is \$509,551.87. All expenses and their distribution among tasks and items of work are estimates only. This estimate represents the composition of the total not-to-exceed budget for this Agreement. In the performance of the scope of work to be provided in accordance with this budget, CONSULTANT may request to reallocate the expenses listed herein among the various Scope of Work tasks

and items of work, Other Direct Costs, Optional Tasks, Mileage, and Subconsultants identified therein subject to COUNTY's Contract Administrator's prior written approval. In no event shall the not-to-exceed amount of this Agreement be exceeded.



# Kimley-Horn & Associates, Inc.

## Exhibit C

### INTEREST OF CONSULTANT DISCLOSURE STATEMENT

#### Disclosure of Conflicts

In accordance with ARTICLE XIII, Conflict of Interest, in the space provided below, and on supplemental sheets as necessary, (a) CONSULTANT shall disclose any financial, business or other relationship with COUNTY that may have an impact upon the outcome of this Agreement or any ensuing COUNTY construction project; and (b) CONSULTANT shall disclose current clients who may have a financial interest in the outcome of this Agreement or any ensuing COUNTY construction project.

None/ NA

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#### Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Interest of Consultant Agreement, other than as disclosed above.

Signed by: Matthew D. Weir  
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Signature

Matthew D. Weir, P.E. CA C70216

Name

Vice President

Title

Kimley-Horn and Associates, Inc.

Company Name

2/20/2025

Date

# Kimley-Horn & Associates, Inc.

## Exhibit E

### California Levine Act Statement

#### California Levine Act Statement

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she receives any political contributions totaling more than five hundred dollars (\$500) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclose of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, and any elected official (collectively "Officer"). It is the CONSULTANT's responsibility to confirm the appropriate "officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$500 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

       YES   X   NO

If yes, please identify the person(s) by name:

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$500 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

       YES   X   NO

If yes, please identify the person(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

2/20/2025

Date

Signed by:

Matthew D. Weir

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CA C70216

Signature of authorized individual

Kimley-Horn and Associates, Inc.

Type or write name of company

Matthew D. Weir, P.E.

Type or write name of authorized individual

# Kimley-Horn and Associates, Inc.

None

## Exhibit F

### DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<p><b>1. Type of Federal Action:</b></p> <p><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</p>	<p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application  <input type="checkbox"/> b. initial award  <input type="checkbox"/> c. post-award</p>	<p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial  <input type="checkbox"/> b. material change</p> <p><b>For Material Change Only:</b>  year _____ quarter _____  date of last report _____</p>
<p><b>4. Name and Address of Reporting Entity</b></p> <p><input type="checkbox"/> Prime                      <input type="checkbox"/> Subawardee  Tier _____, if known</p> <p>Congressional District, if known _____</p>	<p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b></p> <p>Congressional District, if known _____</p>	
<p><b>6. Federal Department/Agency:</b></p>	<p><b>7. Federal Program Name/Description:</b></p> <p>CFDA Number, if applicable _____</p>	
<p><b>8. Federal Action Number, if known:</b></p>	<p><b>9. Award Amount, if known:</b></p>	
<p><b>10. a. Name and Address of Lobby Entity</b>  (If individual, last name, first name, MI)</p>	<p><b>b. Individuals Performing Services</b> (including address if different from No. 10a)  (last name, first name, MI)</p>	
<p>(attach Continuation Sheet(s) if necessary)</p>		
<p><b>11. Amount of Payment (check all that apply)</b></p> <p>\$ _____ <input type="checkbox"/> actual    <input type="checkbox"/> planned</p>	<p><b>13. Type of Payment (check all that apply)</b></p> <p><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 _____</p>	
<p><b>12. Form of Payment (check all that apply):</b></p> <p><input type="checkbox"/> a. cash  <input type="checkbox"/> b. in-kind; specify: nature _____  Value _____</p>		
<p><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></p> <p>(attach Continuation Sheet(s) if necessary)</p>		
<p><b>15. Continuation Sheet(s) attached:</b>      Yes <input type="checkbox"/>      No <input type="checkbox"/></p>		
<p><b>16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually 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.</b></p>		
		<p>Signed by: _____  Signature: <u>Matthew D. Weir</u>                      CA C70216  <small>1C6B343D36F0443...</small></p> <p>Print Name: <u>Matthew D. Weir, P.E</u></p> <p>Title: <u>Vice President</u></p> <p>Telephone No.: <u>916-858-5800</u>      Date: <u>2/20/2025</u></p>
<p>Authorized for Local Reproduction</p> <p>Standard Form - LLL</p>		
<p><b>Federal Use Only:</b></p>		

Standard Form LLL Rev. 04-28-06

Distribution: Orig-Local Agency Project Files

## 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. 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.
11. 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).
12. 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.
13. 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.
14. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
15. 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.
16. Check whether or not a continuation sheet(s) is attached.
17. 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.