

# ORIGINAL

## Geocon Consultants, Inc.

### On-Call Materials Testing Services

#### AGREEMENT FOR SERVICES #3498

**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 Geocon Consultants, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 6960 Flanders Drive, San Diego, California 92121 and whose local address is 3160 Gold Valley Drive, Suite 800, Rancho Cordova, California 95742 (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 on-call materials testing services;

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

**WHEREAS**, it is the intent of the parties hereto that such services 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 authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code Section 31000;

**NOW, THEREFORE**, COUNTY and CONSULTANT mutually agree as follows:

#### ARTICLE I

**Scope of Services:** CONSULTANT agrees to furnish personnel, subconsultants, materials, equipment, and services necessary to perform various on-call materials testing services. Services shall include, but not be limited to, those tasks as identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof, or as identified in the individual Task Orders or Work Orders, as applicable, to be issued in accordance with this Agreement.

CONSULTANT's services are to be provided specifically in support of projects included in COUNTY's Capital Improvement Program and generally in support of other COUNTY activities as required. Before proceeding with any work under this Agreement, COUNTY's Contract Administrator will identify the specific materials testing services to be provided and will issue a written Task Order or Work Order to CONSULTANT

specifying the constituents to be analyzed, any required deliverables, including reports or other documents to be supplied in connection with the assignment, a specific date by which the work shall be completed, a not-to-exceed cost to complete the work, and any subconsultants, if applicable. CONSULTANT shall not commence work until receiving the written Task Order or Work Order. No payment will be made for any work performed prior to the issuance of the written Task Order or Work Order and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order or Work Order. As applicable, 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.

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, or designee, will issue a written Work Order for work assignments where the not-to-exceed cost itemization is \$10,000 or less. For work assignments where the not-to-exceed cost itemization is \$1,500 or less, the Work Order may consist of an email notification by COUNTY's Contract Administrator, or designee, as authorization to perform the required services.

For services performed on an emergency basis, as determined by COUNTY's Contract Administrator, authorization to perform the required services may occur through verbal or email communication to CONSULTANT. Any verbal or email authorization to perform emergency services under this Agreement will be confirmed to CONSULTANT by a written Task Order or Work Order, as applicable, issued by COUNTY's Contract Administrator. CONSULTANT shall respond to all requests for emergency services within seventy-two (72) hours of the verbal or email service authorization.

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.

When federal grant funding is utilized to support work projects, a Request for Proposal will be issued for a specific project to CONSULTANT and all other consultants with whom COUNTY has on-call agreements for the scope of work covered by the specific project. Through that competitive proposal procedure limited to existing on-call agreements, COUNTY will select the most qualified consultant and negotiate, develop, and execute a Task Order or Work Order.

CONSULTANT's responsibilities for compliance with DBE requirements are described in ARTICLE XLI, Disadvantaged Business Enterprise (DBE) Considerations, and in ARTICLE XLII, Disadvantaged Business Enterprise (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.



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 and Work Orders and Task Order and Work Order Amendments or by providing email Work Order authorizations on CONSULTANT's behalf. CONSULTANT's notification of individuals authorized to execute Task Orders and Work Orders and Task Order and Work Order Amendments on CONSULTANT's behalf shall be communicated to COUNTY in accordance with the provisions of ARTICLE XXVI, Notice to Parties, of this Agreement.

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 2010 applications (specifically, MS Word, MS Project and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in language, format, and design that are compatible with and completely transferable to COUNTY's computer and engineering applications and that are acceptable to COUNTY's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by COUNTY's Contract Administrator. CONSULTANT shall submit all deliverables to COUNTY's Contract Administrator in accordance with completion time schedules identified in the individual Task Orders or Work Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in ARTICLE V, Termination, herein.

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; 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 "Fee 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.

Mileage and 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.

In accordance with ARTICLE XI, 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**

#### **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 three (3) years thereafter, unless extended by contract 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.
- C. The period of performance for each specific project shall be in accordance with the Task Order or Work Order for that project. If work on a Task Order or Work Order is in progress on the expiration date of this Agreement, the terms of the Agreement shall be extended by written contract amendment prior to expiration of the Agreement.

### **ARTICLE IV**

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

- A. The method of payment shall be at the rate specified for each item, as described in Exhibit B. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for equipment shall be as listed in Exhibit B or in CONSULTANT's Cost Proposal of an approved and fully executed Task Order or Work Order, if applicable.



- C. The method of payment for this Agreement, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. COUNTY will reimburse CONSULTANT for actual costs (including equipment-rental costs and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated equipment rental and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for by Task Order or Work Order amendment. In the event, COUNTY determines that changed work from that specified in the approved and fully executed Task Order or Work Order is required; the actual costs reimbursable by COUNTY may be adjusted by Task Order or Work Order amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "P," shall not be exceeded unless authorized by contract amendment.
- D. After a project to be performed under this Agreement is identified by COUNTY, COUNTY will prepare a Task Order or Work Order. The 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 Task Order or Work Order will be delivered to CONSULTANT along with materials for testing.
- E. Task Orders or Work Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, if applicable, both of which must be based on the labor and other rates set forth in CONSULTANT's Cost Proposal of an approved and fully executed Task Order or Work Order.
- F. Reimbursement for transportation and subsistence costs, if applicable, shall not exceed the rates as specified in the approved Cost Proposal of an approved and 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 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, if any, 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 or authorized via email 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 or authorized via email by COUNTY.

- K. CONSULTANT will be reimbursed as promptly as fiscal procedures will permit upon receipt by COUNTY's Contract Administrator of itemized invoices. Separate invoices itemizing all costs are required for all work performed under each Task Order or Work Order. Invoices shall be submitted 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 and shall reference this Agreement number, project title, Task Order or Work Order number, the Work Breakdown Structure (WBS) 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 X, Equipment Purchase, 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  
2441 Headington Road  
Placerville, California 95667  
Attn.: Stephanie Lisius

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 or expenses resulting from this Agreement shall not exceed \$110,000. 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 V

### Termination:

- A. COUNTY reserves the right to terminate this Agreement, or any Task Order or Work Order issued pursuant to this Agreement, upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the Notice of Termination. If such prior termination is effected, COUNTY will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to CONSULTANT, and for such other services which COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the not-to-exceed amount of the Task Order or Work Order or the total amount of this 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.
- B. COUNTY may terminate this Agreement with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If COUNTY terminates this Agreement with CONSULTANT, 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. 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.
- D. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

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

- E. Bankruptcy: This Agreement, at the sole option of COUNTY, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONSULTANT.
- F. Ceasing Performance: COUNTY may terminate this Agreement in the event CONSULTANT ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- G. Termination or Cancellation without Cause: CONSULTANT shall comply with the requirements of this Article, regarding administrative, contractual, or legal remedies in instances of default, termination, or cancellation and with other terms and conditions of COUNTY's grant funding agreements that provide for such sanctions and penalties as may be appropriate in instances where contract terms are violated or breached.
- H. 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 VI**

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

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 C.F.R. Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 2 C.F.R. § 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 2 C.F.R. § 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and 48 C.F.R. Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to COUNTY.
- D. Notwithstanding any other provision of this Agreement to the contrary, payments to CONSULTANT for travel and subsistence (per diem) and mileage expenses, if applicable, for CONSULTANT's staff or for subconsultant's claims 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. No reimbursements for mileage or 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 VII**

**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, 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, Federal Highway Administration (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 VIII**

##### **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.
- 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.

#### **ARTICLE IX**

##### **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 the 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 an approved Cost Proposal.

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

D. All subcontracts entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

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. 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 X**

### **Equipment Purchase:**

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: "The 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 such 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 C.F.R. § 200, requires a credit to Federal funds is required when participating equipment with a fair market value greater than \$5,000 is credited to the project.

#### **ARTICLE XI**

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

- A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

#### **ARTICLE XII**

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

- 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. 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 C, marked "Interest of Consultant Disclosure Statement," incorporated herein and made by reference a part hereof.

B. 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.

### **ARTICLE XIII**

#### **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 XIV**

#### **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 Section 12990 and Title 2, California Administrative Code, Section 8103.
- 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. 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 (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12900 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. 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.



- C. CONSULTANT shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, 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.
- D. CONSULTANT, with regard to the work performed by it during the Agreement, shall act in accordance with Title VI. Specifically, the CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subconsultants, including procurement of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

#### **ARTICLE XV**

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

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

**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 XVII**

**Standards for Work:** Services rendered under this Agreement shall be performed in accordance with the guidelines set forth in the current edition of the *Caltrans Construction Manual*, *Caltrans Foundation Manual*, *Caltrans Bridge Construction Records and Procedures Manual*, *Caltrans Independent Assurance Manual*, *Caltrans Materials Testing Manual*, *Caltrans Local Assistance Procedures Manual and Local Assistance Program Guidelines*, *Caltrans Engineering Services Manuals*, the El Dorado County Department of Transportation's Quality Assurance Program, American Association of State Highway and Transportation Officials, American Society for Testing and Materials' testing procedures, California Building Standards Code, and all other applicable Caltrans, FHWA, federal, state and local laws, COUNTY guidelines and accepted industry standards, and shall be performed in a safe, professional, skillful, and workmanlike manner in accordance with good engineering practices. Where applicable, services shall further conform to all U.S. Code of Federal Regulation Title 23 requirements and all applicable federal laws, regulations and policy and procedural or instructional memoranda.

Material testing and Quality Control/Assurance shall conform to the current edition of the *Caltrans Construction Manual*, the *Caltrans Construction Manual Supplement for Local Agency Resident Engineers*, the *Caltrans Local Agency Structural Representative Guidelines* and Caltrans' California Test Methods and shall be performed by a material-tester certified by the State of California.

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

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

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

#### **ARTICLE XVIII**

**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 XIX**

**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 XX**

**CONSULTANT's Project Manager:** CONSULTANT designates Jeremy Zorne, PE, GE, Vice President, 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, if applicable.

#### **ARTICLE XXI**

**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 XXII**

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

**ARTICLE XXIII**

**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 Department of Transportation, 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. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- F. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.



#### **ARTICLE XXIV**

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

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

#### **ARTICLE XXV**

**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 XXVI**

**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.: Rafael Martinez  
Director

With a copy to:

County of El Dorado  
Chief Administrative Office  
2850 Fairlane Court  
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:

Geocon Consultants, Inc.  
3160 Gold Valley Drive, Suite 800  
Rancho Cordova, California 95742

Attn.: Jeremy Zorne, PE, GE  
Vice President

or to such other location as CONSULTANT directs.

#### **ARTICLE XXVII**

**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 XXVI, 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 XXVIII**

**Indemnity:** CONSULTANT shall defend, indemnify, and hold COUNTY and its officers, agents, employees, and representatives harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to, or death of, any person, including but not limited to workers, COUNTY employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to, or in any way arise out of, or are connected with CONSULTANT's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of COUNTY, CONSULTANT, subcontractor(s), and employee(s) of any of these, except for the sole or active negligence of COUNTY, its officers, agents, employees, and representatives, or as expressly prescribed by statute. This duty of CONSULTANT to indemnify and save COUNTY harmless includes the duties to defend set forth in California Civil Code Section 2778.



## ARTICLE XXIX

**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 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 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 as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by COUNTY. At the option of COUNTY, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects COUNTY, its officers, officials, employees, and volunteers; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to 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 XXX**

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

#### **ARTICLE XXXI**

**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 XXXII**

**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 XXXIII**

**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 XXXIV**

**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 XXXV**

**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 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 C.F.R. § 225, "Cost Principles for State, Local, and Indian Tribal Governments (formerly OMB Circular A-87)"

*Circular A-133*, revised June 26, 2007, "Audits of States, Local Governments, and Non-Profit Organizations"

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

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

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 XXXVI**

**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 3160 Gold Valley Drive, Suite 800, Rancho Cordova, California 95742.

#### **ARTICLE XXXVII**

**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 XXXVIII**

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



#### **ARTICLE XXXIX**

**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 XL**

**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 XLI**

**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. § 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 XLII**

##### **Disadvantaged Business Enterprise (DBE) Participation:**

- A. 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 0 %. 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, 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. § 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 C.F.R. § 26.53(f). Prior to requesting COUNTY's consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 C.F.R. § 26.53(f).
- F. CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials, if any, for which each is listed unless CONSULTANT obtains prior written consent from COUNTY's Contract Administrator. CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE without written approval from COUNTY's Contract Administrator.
- G. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- 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. If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to COUNTY's Contract Administrator within thirty (30) days.

#### **ARTICLE XLIII**

**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 XLIV**

##### **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 Department of Transportation Director, or designee, which may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) days after completion of all work under any individual Task Order or Work Order issued pursuant to this Agreement, 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 XLV**

**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 XLVI**

##### **Safety:**

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by COUNTY's Safety Officer and other COUNTY representatives. CONSULTANT's personnel and any subconsultants authorized herein shall wear hard hats and safety vests at all times while working on construction project sites.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, COUNTY has determined that there are areas that may be within the limits of certain projects that are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.
- D. Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Article.

#### **ARTICLE XLVII**

##### **Claims Filed by COUNTY'S Construction Contractors:**

- A. If claims are filed by COUNTY's construction contractors relating to work performed by CONSULTANT's personnel or subconsultants, and additional information or assistance from CONSULTANT's personnel or subconsultants is required in order to evaluate or defend against such claims, CONSULTANT



agrees to make its personnel and/or subconsultants available for consultation with COUNTY's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- B. CONSULTANT's personnel and subconsultants that COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from COUNTY. 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 XXVIII, 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 XLVIII**

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

#### **ARTICLE XLIX**

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

#### **ARTICLE L**

**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 LI**

**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. 1857(h)); Section 508 of the Clean Water Act (33 U.S.C. § 1368); Executive Order 11738; Environmental Protection Agency regulations (40 C.F.R. § 15); 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 LII**

**Contract Administrator:** The COUNTY Officer or employee with responsibility for administering this Agreement is Rafael Martinez, Director, Department of Transportation, or successor.

#### **ARTICLE LIII**

**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 LIV**

**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 LV**

**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 LVI**

**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 LVII**

**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.

**Requesting Contract Administrator and Department Concurrence:**

By:  Dated: 11/30/18  
Rafael Martinez  
Director  
Department of Transportation

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


-- COUNTY OF EL DORADO --

By: 

Dated: 1/8/2019

Board of Supervisors  
"COUNTY"

Attest:  
James S. Mitrisin  
Clerk of the Board of Supervisors

By:   
Deputy Clerk

Dated: 1/8/2019

-- GEOCON CONSULTANTS, INC. --

By: 

Dated: 11/29/2018

Jeremy Zorne, PE, GE  
Vice President  
"CONSULTANT"



Geocon Consultants, Inc.

Exhibit A

Scope of Work

CONSULTANT shall furnish personnel, subconsultants, materials, equipment, and services necessary to perform various on-call materials testing services.

CONSULTANT shall provide complete materials quality control assurance testing on highway/roadway improvement construction projects, including but not limited to the following:

- Materials testing (ASTM and California Test Methods), including acceptance testing, independent assurance testing, split sampling, and witness testing performed to the required frequencies. These tests may include, but shall not be limited to:
  - Highway structural core sampling and analysis.
  - Concrete core sampling and analysis.
  - Testing of soils for characteristics including, but not limited to, unit weight, moisture content, plasticity, and angle of internal friction.
  - Sampling and testing of water as related to water pollution control regulations.
  - Environmental geotechnics and geosynthetics sampling and testing including site analysis and core sampling, analysis, and logging.
  - Natural occurring asbestos sampling, testing, and air monitoring.

# Geocon Consultants, Inc.

## Exhibit B Fee Schedule

EQUIPMENT & ANALYTICAL TESTS			
Pick-up Truck .....	\$125/day	Level D PPE/Decon Rinse Equipment .....	\$50/day
Equipment Truck .....	200/day	pH/Conductivity/Temperature Meter .....	50/day
Direct-Push Rig/Operator .....	165/190(PW)*/hr	55-gallon drum .....	55/ea.
Direct-Push Sample Liner .....	10/ea.	TPHg/BTEX (EPA 8015M/8021B) .....	70/ea.
Equipment Trailer .....	100/day	TPHg/BTEX/MTBE (EPA 8015M/8260B) .....	100/ea.
Wenner 4-Pin Earth Resistivity Meter .....	150/day	TPHd/TPHmo (EPA 8015M) .....	75/ea.
Coring Machine (concrete, asphalt, masonry).....	175/day	Fuel Oxygenate Compounds (EPA 8260B) .....	110/ea.
Dynamic Cone Penetrometer .....	200/day	Volatile Organic Compounds (EPA 8260B) .....	150/ea.
Dilatometer (DMT) Test Equipment.....	800/day	Semi-Volatile Organic Compounds (EPA 8270) .....	300/ea.
Generator or Air Compressor.....	100/day	CAM 17 Metals (EPA 6010B) .....	170/ea.
GPS Unit.....	160/day	Single Metal (EPA 6010B) .....	20/ea.
Drive-Tube Sampler or Hand-Auger .....	40/day	Pesticides (EPA 8081) .....	125/ea.
Soil Sample Tube (Brass or Stainless) .....	10/ea.	Soil pH (EPA 9045C).....	20/ea.
Water Level Indicator .....	40/day	WET or TCLP Extraction .....	75/ea.
Battery-Powered Pump .....	75/day	Sample Compositing .....	20/composite.
Photo-Ionization Meter .....	125/day		

LABORATORY TESTS			
<b>COMPACTION CURVES</b>		<b>SOIL AND AGGREGATE STABILITY</b>	
4-inch mold (D1557/D698) .....	\$175/ea.	Resistance Value, R-Value (D2844/CAL301) .....	\$275/ea.
6-inch mold (D1557/D698) .....	190/ea.	R-Value, Treated (CAL301).....	300/ea.
California Impact (CAL216).....	200/ea.	California Bearing Ratio (D1883) .....	175/pt.
Check Point .....	85/ea.	Stabilization Ability of Lime (C977).....	180/ea.
<b>SOIL AND AGGREGATE PROPERTIES</b>			
#200 Wash (D1140/C117).....	\$60/ea.	Moisture Determination, tube sample (D2216) .....	\$20/ea.
Wet Sieve Analysis to #200 (D422/CAL202).....	100/ea.	Moisture Determination and Unit Weight (D2937).....	40/ea.
Hydrometer Analysis (D422).....	150/ea.	Atterberg Limits: Plasticity Index (D4318).....	175/ea.
Sieve Analysis with Hydrometer (D422).....	180/ea.	Sand Equivalent (D2419/CAL217) .....	90/ea.
Specific Gravity, Soil (D854) .....	70/ea.	pH and Resistivity (CAL643).....	120/ea.
Specific Gravity Coarse Aggregate (C127) .....	50/ea.	Sulfate Content (CAL417) .....	90/ea.
Specific Gravity Fine Aggregate (C128) .....	68/ea.	Chloride Content (CAL422).....	50/ea.
Cut/Extract Shelby Tube.....	50/ea.	Organic Content (D2974).....	50/ea.
<b>SHEAR STRENGTH</b>		<b>CONCRETE / MASONRY / REINFORCING STEEL</b>	
Unconfined Compression (D2166) .....	\$100/ea.	Compressive Strength, Cast Cylinders (C39).....	\$25/ea.
Direct Shear (D3080) (3pt) .....	300/ea.	Compressive Strength, Cores (C42) .....	40/ea.
Unconsolidated-Undrained Triaxial Shear (D2850) .....	125/pt.	Flexural Strength Beam (C78/C293).....	80/ea.
Unconsolidated-Undrained Triaxial Staged (D2850).....	175/ea.	Splitting Tensile Test (C496) .....	69/ea.
Consolidated-Undrained Triaxial Shear (D4767) .....	300/pt.	Mix Design Review.....	200/ea.
Consolidated-Undrained Triaxial Staged (D4767).....	375/ea.	Trial Batch .....	475/ea.
Consolidated-Drained Triaxial Shear (EM1110) .....	400/pt.	Rebar Tensile / Bend (up to #11/#11 and Larger) .....	175/200/ea.
Consolidated-Drained Triaxial Staged (EM1110) .....	500/ea.	CMU Compressive Strength (C140) .....	\$60/ea.
<b>PERMEABILITY, CONSOLIDATION AND EXPANSION</b>		Compressive Strength, Grout (C1019/UBC 21-19).....	25/ea.
Permeability, Flexible Wall (D5084).....	\$265/ea.	Compressive Strength, Mortar (C109/UBC 21-15,16) .....	25/ea.
Permeability, Rigid Wall (D5856).....	255/ea.	CMU Unit Wt., Dimen., Absorption (C140).....	60/ea.
Consolidation (D2435) .....	50/pt.	Compressive Strength, Masonry Prism (C1314) .....	115/ea.
Expansion Index (D4829/UBC 29-2) .....	175/ea.		



**AGGREGATE QUALITY**

Sieve Analysis to #200 (C136) .....	\$100/ea.
L.A. Rattler Test (500 rev.) (C131) .....	185/ea.
Durability Index (D3744/CAL229) .....	165/ea.
Fine Aggregate Angularity (CAL 234) .....	125/ea.
Flat and Elongated Particles (D4791/CAL 235) .....	150/ea.
Percent Crushed Particles (CAL205).....	150/ea.

**HOT MIX ASPHALT**

Density, Hveem (D2726/CAL308) .....	\$100/pt.
Stabilometer Value (D1560/CAL366).....	175/ea.
Theoretical Max. Specific Gravity (D2041/CAL309) .....	175/ea.
Extraction/Sieve Analysis (C136/CAL202) .....	150/ea.
HMA Core Unit Weight (D1188/CAL308).....	60/ea.
% Asphalt, Ignition Method (D6307/CAL382).....	100/ea.
% Asphalt, Ignition Calibration (D6307/CAL382).....	200/ea.
% Asphalt, Solvent Extraction (D2172/CAL310).....	305/ea.
% Voids (CAL 367).....	275/ea.

Additional services, not listed above, may be provided with a written quote.

Geocon Consultants, Inc.

Exhibit C

INTEREST OF CONSULTANT DISCLOSURE STATEMENT

Disclosure of Conflicts

In accordance with ARTICLE XII, 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.

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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 Disclosure Statement, other than as disclosed above.

  
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Signature

Jeremy Zorne, PE, GE

Name

Vice President

Title

Geocon Consultants, Inc.

Company Name

November 29, 2018

Date