

Burne Engineering Services, Inc.

FIRST AMENDMENT TO AGREEMENT FOR SERVICES #279-S1711

THIS FIRST AMENDMENT to that Agreement for Services #279-S1711 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 Burne Engineering Services, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 5137 Golden Foothill Parkway, Suite 100, El Dorado Hills, California 95762 (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CONSULTANT has been engaged by COUNTY to assist its Department of Transportation with structural design and geotechnical support services for the Oak Hill Road at Squaw Hollow Creek – Bridge Replacement Project pursuant to Agreement for Services #279-S1711, dated February 14, 2017 (hereinafter referred to as "Agreement");

WHEREAS, the parties hereto desire to amend the Agreement to extend the expiration date of February 13, 2022 for two (2) additional years, amending **ARTICLE IV, Performance Period**;

WHEREAS, the parties hereto desire to amend the Agreement to update both parties notice addresses, amending **ARTICLE XXIX, Notice to Parties**;

WHEREAS, the parties hereto desire to amend the Agreement to update CONSULTANT's working office address, amending **ARTICLE XXXIX, Working Office**;

WHEREAS, the parties hereto desire to fully-replace, add, or delete specific Articles to update COUNTY's contract provisions;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, COUNTY and CONSULTANT mutually agree to amend the terms of the Agreement in this First Amendment to Agreement on the following terms and conditions:

- I. All references to Community Development Agency, Transportation Division throughout the Agreement shall read Department of Transportation.
- II. **ARTICLE IV, Performance Period, Section A.**, of the Article is amended to read as follows:
 - A. This Agreement shall go into effect upon execution, contingent upon approval by COUNTY, and CONSULTANT shall commence work after receipt of the fully-executed Agreement from COUNTY. The Agreement shall end on February 13, 2024, unless extended by an amendment to the Agreement.

- III. **ARTICLE XXIX, Notice to Parties**, of the Agreement is amended in its entirety to read as follows:

ARTICLE XXIX

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:

With a copy to:

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

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

Attn.: John Kahling, P.E.
Deputy Director, Engineering
Headington Engineering Unit

Attn.: Michele Weimer
Procurement and Contracts
Manager

or to such other location as COUNTY directs.

Notices to CONSULTANT shall be addressed as follows:

Burne Engineering Services, Inc.
5137 Golden Foothill Parkway, Suite 100
El Dorado Hills, California 95762

Attn.: Lori Burne
President

or to such other location as CONSULTANT directs.

- IV. **ARTICLE XXXIX, Working Office**, of the Agreement is amended in its entirety to read as follows:

ARTICLE XXXIX

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 5137 Golden Foothill Parkway, Suite 100, El Dorado Hills, California 95762.

- V. **The following articles are fully-replaced in their entirety as follows:**

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 Work Order. CONSULTANT shall include in a progress report the total number of hours worked by CONSULTANT and any authorized subconsultants; 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 V

Allowable Costs and Payments:

- A. The method of payment for this Agreement will be based on actual cost plus a fixed fee. COUNTY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs, if applicable) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT's Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event will CONSULTANT be reimbursed for overhead costs at a rate that exceeds COUNTY's approved overhead rate set forth in the Cost Proposal. In the event that COUNTY determines that a change to the work from that specified in the Cost Proposal and Agreement is required, the contract time or actual costs reimbursable by COUNTY shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by an amendment to the Agreement. COUNTY shall reimburse CONSULTANT within forty-five (45) days of receiving itemized invoices in duplicate.

- B. In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee of \$13,726.45. The fixed fee is nonadjustable for the term of the Agreement, except in the event of a significant change in the scope of work and such adjustment is made by an amendment to the Agreement.

- C. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- D. 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 cost estimate.
- E. Progress payments will be made in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Scope of Work, COUNTY shall have the right to delay payment or terminate this Agreement in accordance with the provisions of ARTICLE VI, Termination.
- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.
- G. 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 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 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 or 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
2441 Headington Road Placerville, California 95667
Attn.: Stephanie Lisius
Administrative Analyst

or to such other location as COUNTY directs.

- H. The total amount payable by COUNTY, including the fixed fee, shall not exceed \$176,890.90.

- I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by COUNTY's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

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.

ARTICLE VI

Termination:

- A. 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 that shall state the following:
 1. The alleged default and the applicable Agreement provision.
 2. 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 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.

If COUNTY terminates this Agreement, in whole or in part, for default:

1. 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.
2. 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.

3. COUNTY may require CONSULTANT to transfer title and deliver to COUNTY any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
 2. A representation or warranty made by CONSULTANT in this Agreement proves to have been false or misleading in any respect;
 3. 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.
 4. 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 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 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. For the purposes of this Agreement, only mileage expenses for CONSULTANT and for subconsultants, 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, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. The state, State Auditor, COUNTY, Federal Highway Administration (FHWA), or any duly authorized representative of the Federal Government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of CONSULTANT, subconsultants, and the CONSULTANT's certified public accountants (CPA) 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 without limitation.

ARTICLE IX

Audit Review Procedures:

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by 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 COUNTY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. No retainage will be held by 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 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 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
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the 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 the 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 prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONSULTANT and the subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the subconsultant to the employees by periodic review of the certified payroll records of the subconsultant.
 - c. Upon becoming aware of the subconsultant's failure to pay the specified prevailing rate of wages to the subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the subconsultant that the subconsultant had paid the specified general prevailing rate of per diem wages to the subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL 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 LOCAL AGENCY 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 the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements.

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.
- 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.

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 statutes 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.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 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 XIX

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 Bridge Design Aids, Caltrans Bridge Design Details, Caltrans Bridge Design Practice, Caltrans Bridge Design Specifications, Caltrans Bridge Memo to Designers, Caltrans Bridge Standard Detail Sheets, Caltrans Seismic Design Criteria, Caltrans Highway Design Manual*, in addition to the *AASHTO LRFD Bridge Design Specifications - Ninth Edition with California Amendments*, and all other applicable Caltrans, Federal Highway Administration (FHWA), federal, state, and local laws, COUNTY guidelines and accepted industry standards, and shall be performed in a safe, professional, skillful, and workmanlike manner 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.

Geotechnical testing 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 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 XXV

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 XXVII

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 XXXI

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 XXXII

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 XXXVIII

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 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 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 XLIII

Patent Rights: Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal aid contracts).

CONSULTANT shall incorporate this provision in its subcontracts, if any, in excess of \$25,000

ARTICLE XLIV

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 XLVI

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 Work Order. COUNTY's Contract Administrator will provide CONSULTANT with the necessary DBE forms and information for use and/or submittal with CONSULTANT's Work Order proposal or CONSULTANT's final invoice.

ARTICLE XLVII

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 18%. 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 Substitution of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains COUNTY's written consent. CONSULTANT shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without 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.

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

- 1) Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
- 2) 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.
- 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 shall notify the original DBE of the intent to use other forces or material sources and provided the reasons and provide the DBE with five (5)

days to respond to the notice and advise CONSULTANT and COUNTY of the reasons why the use of other forces or sources of materials should not occur.

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

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

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

F. Commitment and Utilization

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 1st-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 Status 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. DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the 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.
- M. 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 shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the Agency.
- N. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XLIX

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) days after completion of all work under any individual 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 LI

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.

ARTICLE LII

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 LVI

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).

VI. The following articles are added to the Agreement:

ARTICLE LXIII

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 LXIV

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.

Except as herein amended, all other parts and sections of Agreement for Services #279-S1711 shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement for Services #279-S1711 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: 

Dated: 1-25-22

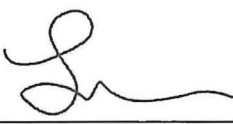
Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 1-25-22

-- BURNE ENGINEERING SERVICES, INC. --

By: 
Lori Burne
President/Secretary
"CONSULTANT"

Dated: 12/07/2021