

**Brandley Engineering, Inc.**  
**As-Needed Airport Planning and Environmental Services**

**AGREEMENT FOR SERVICES #6452**

**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 Brandley Engineering, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 6125 King Road, Suite 201, Loomis, California 95650 (hereinafter referred to as "Consultant");

**RECITALS**

**WHEREAS**, County has determined that it is necessary to obtain a consultant to provide as-needed airport planning and environmental services for its Planning and Building Department;

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

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws;

**WHEREAS**, County has determined that the provision of such services provided by Consultant are in the public's best interest and that there are specialty skills, qualifications, and equipment not expressly identified in County classifications involved in the performance of the work in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(b), El Dorado County Charter, Section 210(b)(6), and/or Government Code Section 31000;

**WHEREAS**, on October 12, 2021, Consultant was formally awarded Request for Qualifications (RFQ) 22-918-006 for the provision of Airport Consulting Services;

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

**ARTICLE I**

**Scope of Work:** Consultant is engaged in the business of doing the services and tasks required under this Agreement, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Consultant agrees to furnish, at Consultant's own cost and expense, all personnel, subconsultants, materials, tools, equipment, supplies and services necessary to perform the as-needed airport planning and environmental services and tasks required under this Agreement and any other related services associated with County Airport Facilities (Georgetown and Placerville airports). Consultant shall be responsible for the supervision, administration, and work performed by any subconsultant for services rendered under this Agreement. Services shall include, but not be limited to:

- A. Provide airport and aviation-related planning and environmental services required by County to include, but not be limited to, the following:
1. Airport land use planning.
  2. Airport master planning.
  3. Airport Layout Plan (ALP) development, updates, and narrative reports.
  4. Federal Aviation Administration (FAA) land use planning compliance.
  5. Federal Aviation Regulation (FAR) Part 77 and Terminal Instrument Procedures (TERPS) planning and compliance.
  6. Obstruction analysis and mitigation reports.
  7. Land acquisitions and releases.
  8. Airport Geographic Information Systems (AGIS) surveys.
  9. Aerial and drone photography and surveys.
  10. Property boundary surveys and development of Airport Property Map.
  11. Project scoping and cost estimates.
  12. Development and evaluation of Primary Management Compliance Documents (PMCDs).
  13. Documentation, reports, and studies related to National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) compliance, including but not limited to, agency coordination, biological assessments, surveys, and permits.
  14. Investigation, rehabilitation, and management plans related to habitats of flora, fauna, and other species.
  15. Preparation of environmental reports, risk assessments, remedial action plans, site investigation, rehabilitation, and mitigation efforts.
  16. Stormwater pollution prevention plan (SWPPP) and spill prevention, control, and countermeasure plan (SPCC) compliance.
  17. Wildlife hazard management and mitigation.
  18. Hazardous materials management and plans.
  19. Project feasibility studies.
  20. Public information and community involvement surveys, studies, and activities.
  21. Representing the County in discussions with regulatory agencies
  22. Aviation planning services as described in Section 1.4.1 of FAA Advisory Circular 150/5100-14E.
  23. Preparation, coordination and development of the annual Airport Capital Improvement Program (ACIP) and grant applications, documentation and grant administration including closeout.

24. Other miscellaneous planning and environmental services related to airports as may be required.

The projects on which the above services may be required over the next five (5) year period include construction of runways, taxiways, aprons, fences, roads, parking lots, lighting, hangar buildings, fixed base operator (FBO) buildings, and related facilities as required by County.

All plans and specifications shall be developed in accordance with all current applicable federal standards and requirements, or state standard specifications developed under a federal grant, and no deviation from or modification to standards set forth in the FAA advisory circulars will be allowed without prior approval of County and the FAA.

The specific services for each assignment shall be determined at a meeting or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable standards, required deliverables, specific Consultant staff, subconsultants, if applicable, any necessary permits, and any task-related mileage budget, if applicable, on a task-by-task basis. Following the meeting, Consultant shall provide County's Contract Administrator with a written scope of work, a schedule including a list of tasks with completion dates and a target completion date for the overall scope of work, and a not-to-exceed cost itemization to complete the work (resulting in a Work Order and/or Task Order). Individual work assignments will be authorized through a fully executed Work Order or Task Order issued by County's Contract Administrator. County's Contract Administrator will issue a written Task Order for work assignments if the not-to-exceed cost itemization is greater than \$50,000. County's Contract Administrator will issue a written Work Order for any work assignments if the not-to-exceed cost itemization is \$50,000 or less.

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 Work Order or Task 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.

With the exception of emergency Work Orders or Task Orders, no payment will be made for any work performed prior to approval and full execution of the Work Order or Task Order or beyond the earlier of the expiration date of the Work Order or Task Order or expiration of the underlying Agreement, and no payment will be made for amounts in excess of the not-to-exceed amount of the Work Order or Task Order.

The period of performance for Work Orders or Task Orders shall be in accordance with dates specified in each Work Order or Task Order. No payment will be made for any work performed before or after the period of performance in the Work Order or Task Order, unless County's Contract Administrator and Consultant amend the Work Order

or Task Order. No Work Order or Task Order will be written which extends beyond the expiration date of this Agreement, nor the cumulative total of the not-to-exceed amount of this Agreement.

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 Work Orders or Task Orders issued for those assignments.

Consultant's responsibilities for compliance with Disadvantaged Business Enterprise (DBE) requirements are described in ARTICLE LII, Disadvantaged Business Enterprise (DBE) Considerations, and in ARTICLE LIII, Disadvantaged Business Enterprise (DBE) Participation, herein.

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

If a submittal or Work Order or Task Order deliverable is required to be an electronic file, Consultant shall produce the file using Microsoft (MS) Office 2016 or later versions of the applications (specifically, MS Word, MS Project, and MS Excel) and Auto Computer Aided Design (CAD). 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 Work Orders and/or Task Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in ARTICLE XVII, Default, Termination, and Cancellation, herein.

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

Consultant shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Consultant is responsible for ensuring that its employees, as well as any subconsultant if applicable, perform the services and tasks required under this Agreement accordingly.

## **ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall expire five (5) years thereafter.

## **ARTICLE III**

**Compensation for Services:** For services provided herein, including all of the deliverables described in individual Work Orders and/or Task Orders issued pursuant to this Agreement, and including all of the forms and reports required under the DBE provisions of this Agreement, and including the progress reports required by ARTICLE V, Progress Reports, below, County agrees to pay Consultant in arrears. Payment shall be made within forty-five (45) days following County's receipt and approval of itemized invoices detailing services rendered. Any invoices that include subconsultant services shall be accompanied by backup documentation to substantiate Consultant's costs for the services being billed on those invoices.

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

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 be paid in accordance with ARTICLE XLIX, Cost Principles and Administrative Requirements.

Subconsultant and other outside services, if any are authorized in the individual Work Orders or Task Orders issued pursuant to this Agreement, shall be invoiced at Consultant's cost, with a ten percent (10%) markup, for the services rendered. Any invoices that include subconsultant costs and outside services shall be accompanied by backup documentation to substantiate Consultant's cost for the subconsultant services and outside services being billed.

Other direct costs, materials, printing, copies, shipping charges, and supplies, if any are authorized in the individual Work Orders or Task Orders issued pursuant to this Agreement, shall be invoiced at Consultant's cost, without markup, for the services rendered. All 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.

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

The total amount of this Agreement shall not exceed \$775,000, inclusive of all costs, taxes, expenses, all Work Orders, amended Work Orders, Task Orders, amended Task Orders, and all work of subconsultants. 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 Work Orders and/or Task Orders.

When FAA grant funding is utilized to support the authorized task work, Consultant shall prepare and submit a fully executed, County provided Exhibit B, marked "Disadvantaged Business Enterprise (DBE) Participation Summary," incorporated herein and made by reference a part hereof, with its final invoice for each Work Order or Task Order issued under this Agreement. Twenty-five percent (25%) of the value of the final invoice shall be withheld until County's receipt and approval of the required DBE form. Consultant's responsibilities for compliance with DBE requirements are more fully described in ARTICLE LII, Disadvantaged Business Enterprise (DBE) Considerations, and in ARTICLE LIII, Disadvantaged Business Enterprise (DBE) Participation, herein.

Consultant shall attach a copy of each notification to proceed required under the provisions of ARTICLE I, Scope of Work, and copies of any progress reports required under the provisions of ARTICLE V, Progress Reports, that relate to the services being billed, as backup documentation to any invoices submitted for payment under the terms of this Agreement. Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the assigned Work Order or Task Order number both on their faces. Consultant shall bill County for only one (1) Work Order or Task Order per invoice. Any invoices which include charges for testing services by outside laboratories or for subconsultants shall be accompanied by backup documentation to substantiate Consultant's actual cost for each item billed. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado  
Planning and Building Department  
2850 Fairlane Court  
Placerville, California 95667  
Attn.: Sherrie Busby  
Sr. Administrative Analyst

or to such other location as County directs.

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

#### **ARTICLE IV**

**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 V**

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

#### **ARTICLE VI**

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

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

As required under the provisions of Labor Code Section 1776, Consultant and all subconsultants authorized under this Agreement shall keep accurate payroll records. Certified copies of all payroll records shall be made available for inspection at all reasonable hours at Consultant's principal office.

#### **ARTICLE VII**

**Standards for Work:** Services provided under this Agreement shall be performed in accordance with, and in full compliance with, County, State of California and FAA policies, procedures, advisories, manuals and guidelines. Environmental services shall also be performed in accordance with, and in full compliance with, County, State of California and, as applicable, FAA guidelines including the National Environmental Policy Act (NEPA), Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, §4(b), Sept. 13, 1982, all NEPA guidelines and related regulations, the California Environmental Quality Act (CEQA), Public Resources Code Sections 21000 et. seq., and in full compliance with CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Sections 15000 et. seq., such that the work will result in NEPA and CEQA certifiable environmental documents. Services shall further conform, as applicable, to all federal and state statutes, regulations and procedures relating to federal-aid programs, and all applicable federal laws, regulations and policy and procedural or instructional memoranda and FAA advisory circulars.

Deliverables shall be prepared in conformance with the standards, regulations, policies, procedures, manuals, advisory circulars and guidelines stated herein above. The responsible Engineer shall sign all engineering data furnished by Consultant, and where appropriate, indicate the Engineer's registration number.

Consultant has full responsibility for the accuracy and completeness of the deliverables required under this Agreement including reports and such other documents that may be required for the items of work assigned. Assistance, cooperation and oversight by County, California Department of Transportation (Caltrans), FAA or other regulatory agencies shall 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 VIII**

##### **Consultant's Project Manager:**

Consultant designates Melissa S. Brandley, P.E., Corporate Secretary, 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 work and to prepare the deliverables required by the Agreement; and (2) reviewing, monitoring, training and directing Consultant's personnel and any subconsultants authorized herein.

#### **ARTICLE IX**

**General Federal & State Grant Funding Requirements:** County is relying on federal assistance or grants and state 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 and state grant funds, County is required to comply with certain contracting requirements and to extend those requirements to its third party contracts. Consultant shall comply with all applicable provisions of federal, state and local agency regulations, including those required by FAA grant funding requirements, advisory circulars, regulations and related executive orders regarding the use, expenditure, control, reporting, allowable costs and management of such funds.

Consultant shall further comply with all applicable provisions of the Caltrans Local Assistance Procedures Manual the Local Assistance Program Guidelines and other Caltrans guidelines and requirements as they pertain to aeronautics or the FAA and all applicable state and federal laws, regulations and policy, procedural, advisory or instructional memoranda. 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 are authorized herein.

For the purposes of this Agreement, Consultant shall comply, as applicable, with all Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds including, but not limited to the following:

#### **Federal Legislation:**

- a. 49 U.S.C., subtitle VII, 40101 et seq, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 3141-3147
- c. National Historic Preservation Act of 1966 - Section 106 - 54 U.S.C. 300101, as amended (36 CFR Part 600).
- d. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. 312501-312508.

- e. Native Americans Grave Protection Repatriation Act - 25 U.S.C. Section 3001, et seq.
- h. 49 U.S.C. 303 (formerly known as Section 4(f)).
- j. Civil Rights Act of 1964 - Title VdI - 42 U.S.C. 2000d through d-4.
- k. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et. seq.
- l. Architectural Barriers Act of 1968 – 42 U.S.C. 4151, et seq.
- n. Copeland Antikickback Act - 18 U.S.C. 874.
- o. National Environmental Policy Act of 1969 – 42 U.S.C. 4321 et seq.
- p. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.

**Executive Orders:**

- a. Executive Order 11990 - Protection of Wetlands.
- b. Executive Order 13717 - Establishing a Federal Earthquake Risk Management Standard.

**Federal Regulations:**

- a. 14 CFR Part 150 – Airport noise compatibility planning.
- b. 29 CFR Part 1 – Procedures for predetermination of wage rates.
- c. 29 CFR Part 3 – Consultants and subconsultants on public building or public work financed in whole or part by loans or grants from the United States.
- d. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).
- e. 2 CFR Part 200 – Uniform administrative requirements, cost principles, and audit requirements for federal awards.
- f. 49 CFR Part 20 – New restrictions on lobbying.
- g. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation – effectuation of Title VI of the Civil Rights Act of 1964.
- h. 49 CFR Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.
- i. 49 CFR Part 27 – Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.
- j. 2 CFR 180 (formerly 49 CFR Part 29) – Government wide debarment and suspension (non-procurement) and government wide requirements for drug-free workplace (grants).

- k. 49 CFR Part 41 – Seismic safety of Federal and federally assisted or regulated new building construction.

#### **ARTICLE X**

**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 Work Orders or Task Orders, without prior written approval by County's Contract Administrator.

#### **ARTICLE XI**

**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 XII**

##### **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 Planning and Building or to such person with County's consent for the purpose of, and in the performance of, this Agreement.
- B. Permission granted by County to disclose information on one occasion shall not authorize Consultant or any subconsultants authorized under this Agreement to further disclose such information or disseminate the same on any other occasion.
- C. Consultant and any subconsultants authorized under this Agreement shall not comment publicly to the press or any other media regarding this Agreement or

County's actions on the same, except to County's staff, Consultant's own personnel or authorized subconsultants involved in the performance of this Agreement, at public hearings, or in response to questions from County's Board of Supervisors.

- D. Consultant and any subconsultants authorized under this Agreement shall not issue any news release or public relations item of any nature, whatsoever, regarding services performed or to be performed under this Agreement without prior review of the contents thereof by County and receipt of County's Contract Administrator's written permission.
- E. All information related to any construction estimates prepared or otherwise obtained in the performance of this Agreement is confidential and shall not be disclosed by Consultant to any entity other than to County.
- F. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- G. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

#### **ARTICLE XIII**

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County. Notwithstanding this Article, Consultant is authorized to utilize the specific subconsultants authorized in individual Work Orders or Task Orders issued pursuant to this Agreement, for the particular tasks, work, and deliverables identified therein. An approved Work Order or Task Order shall be obtained by Consultant prior to a subconsultant commencing any work under this Agreement. At no time shall County be obligated to pay separately for subconsultant services. 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 XIV**

**Independent Contractor:** The parties intend that an independent Consultant 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 subconsultants, 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 subconsultant 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 XV**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal 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 any Work Orders or Task Orders issued pursuant to this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

#### **ARTICLE XVI**

**Audit by California State Auditor:** Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

#### **ARTICLE XVII**

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

- A. **Termination by Default:** Any violation or breach of terms of this contract on the part of the Consultant or its subconsultants may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this Agreement. 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 Task Order(s) or Work Order(s) 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.

1. If County terminates this Agreement, in whole or in part, for default: 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 XXIV, Conflict of Interest.
- B. **Bankruptcy:** County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. **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.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement or any Work Orders or Task Orders 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 Agreement or Work Orders or Task Orders issued pursuant to 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.

#### **ARTICLE XVIII**

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

To County:

County of El Dorado  
Planning and Building Department  
2850 Fairlane Court  
Placerville, California 95667

With a copy to:

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

Attn.: Chris Perry  
Assistant Director

Attn.: Michele Weimer  
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Brandley Engineering, Inc.  
6125 King Road, Suite 201  
Loomis, California 95650

Attn.: Melissa S. Brandley, P.E., Corporate Secretary

or to such other location as Consultant directs.

#### **ARTICLE XIX**

**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 XVIII, 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 XX**

**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 subconsultants. 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 XXI**

**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 (CGL) or Airport Premises Liability: Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL or Airport Premises Liability on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence 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 Risk Management 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, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.
- 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 XXII**

**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 XXIII**

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

## **ARTICLE XXIV**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for County and who are considered to be Consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are Consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

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 XVII, Default, Termination, or Cancellation.

#### **ARTICLE XXV**

##### **Nondiscrimination:**

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant and its subconsultants shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees, representatives, and subconsultants shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Consultant and its subconsultants shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.

#### **ARTICLE XXVI**

**California Residency (Form 590):** If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has 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 XXVII**

**County Payee Data Record Form:** All independent Consultants 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 XXVIII**

**Engineering License:** Consultant hereby warrants and represents that Consultant and any subconsultants employed under this Agreement are duly licensed in good standing to provide engineering services as required by the State of California. Consultant agrees to provide professional services that reflect the standards of professional care. Consultant and all subconsultants shall maintain said licenses in good standing throughout the term of this Agreement.

#### **ARTICLE XXIX**

**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 and any of its subconsultants employed under this Agreement 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 XXX**

**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 XXXI**

**Ownership of Data:** Upon completion or earlier termination of all services under this Agreement, or upon completion or earlier termination of each Work Order or Task Order issued pursuant to this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations and any and all other materials or data produced as part of this Agreement will automatically be vested in County and no further agreement will be necessary to transfer ownership to County. Consultant shall furnish County all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process for each assignment.

County and Consultant hereby expressly agree that all plans, details, and calculations produced by Consultant, its agents, representatives, employees, or subconsultants, shall be considered a "work made for hire" within the meaning of 17 USC § 101. County shall have sole ownership of all rights, for all purposes, in each completed work, and unused portions thereof, including any copyrights.

All rights to inventions and materials generated under this Agreement are subject to regulations issued by the FAA and the Sponsor of the Federal grants under which this contract is executed. As used in this Article, term "Sponsor" refers to "County."

#### **ARTICLE XXXII**

**Access to Records and Reports:** The Consultant must maintain an acceptable cost accounting system. The Consultant agrees to provide the County, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

#### **ARTICLE XXXIII**

**General Civil Rights Provisions:** The Consultant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Consultant and subconsultants from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

#### **ARTICLE XXXIV**

**Title VI Solicitation Notice:** The County, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

#### **ARTICLE XXXV**

**Compliance with Nondiscrimination Requirements:** During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

1. **Compliance with Regulations:** The Consultant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by the Consultant of the Consultant's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the County or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Consultant's noncompliance with the non-discrimination provisions of this contract, the County will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Consultant under the contract until the Consultant complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the County or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the

Consultant becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, the Consultant may request the County to enter into any litigation to protect the interests of the County. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

#### **ARTICLE XXXVI**

**Title VI List of Pertinent Nondiscrimination Acts and Authorities:** During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and consultants, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, 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 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 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



nondiscrimination 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 USC 1681 et seq).

#### **ARTICLE XXXVII**

**Clean Air and Water Pollution Control:** Consultant agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 7606) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Consultant agrees to report any violation to the County immediately upon discovery. The County assumes responsibility for notifying the Environmental Protection Agency (EPA) and the FAA.

Consultant must include this requirement in all subcontracts that exceeds \$150,000.

#### **ARTICLE XXXVIII**

**Contract Workhours and Safety Standards Act Requirements:**

##### **1. Overtime Requirements.**

No Consultant or subconsultant contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

##### **2. Violation; Liability for Unpaid Wages; Liquidated Damages.**

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Consultant and any subconsultant responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and subconsultant shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without

payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

### 3. Withholding for Unpaid Wages and Liquidated Damages.

The FAA or the County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

### 4. Subconsultants.

The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subconsultant to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in paragraphs (1) through (4) of this clause.

## ARTICLE XXXIX

**Certification of Lower Tier Consultants Regarding Debarment:** The successful Consultant, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful Consultant will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offerer /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the FAA later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

## ARTICLE XL

### **Disadvantaged Business Enterprises:**

#### Contract Assurance (§ 26.13) –

The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the 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 County deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Consultant from future bidding as non-responsible.

**Prompt Payment (§26.29)** – The prime Consultant agrees to pay each subconsultant under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime Consultant receives from County. The prime Consultant agrees further to return retainage payments to each subconsultant within thirty (30) days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of County. This clause applies to both DBE and non-DBE subconsultants.

#### **ARTICLE XLI**

**Texting When Driving:** In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving", (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, County encourages the Consultant to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Consultant must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

#### **ARTICLE XLII**

**Energy Conservation Requirements:** Consultant and subconsultant, if applicable, agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201 et seq).

#### **ARTICLE XLIII**

**Federal Fair Labor Standards Act:** All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Consultant has full responsibility to monitor compliance to the referenced statute or regulation. The Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

#### **ARTICLE XLIV**

**Certification Regarding Lobbying:** The Consultant certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions which form and instructions are attached hereto as Exhibit E and are incorporated herein and made by reference a part hereof.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **ARTICLE XLV**

**Occupational Safety and Health Act of 1970:** All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Consultant

must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Consultant retains full responsibility to monitor its compliance and their subconsultant's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Consultant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

#### **ARTICLE XLVI**

**Certification of Consultant Regarding Tax Delinquency and Felony Convictions:** The Consultant must complete the following two certification statements. The Consultant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The Consultant agrees that it will incorporate this provision for certification in all lower tier subcontracts.

#### **Certifications**

- 1) The Consultant represents that it is ( ) is not ( ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The Consultant represents that it is ( ) is not ( ) a corporation that was convicted of a criminal violation under any Federal law within the preceding twenty-four (24) months.

#### **Note**

If Consultant responds in the affirmative to either of the above representations, the Consultant is ineligible to receive an award unless the County has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The Consultant therefore must provide information to the County about its tax liability or conviction to the County, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

#### **Term Definitions**

**Felony conviction:** Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

**Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or

have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

#### **ARTICLE XLVII**

**Trade Restriction Certification:** By submission of an offer, the Consultant certifies that with respect to this solicitation and any resultant contract, the Consultant –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the Consultant subject to prosecution under Title 18 USC Section 1001.

The Consultant must provide immediate written notice to the County if the Consultant learns that its certification or that of a subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances. The Consultant must require subconsultants provide immediate written notice to the Consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Consultant or subconsultant:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- 2) whose subconsultants are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Consultant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier

subcontracts. The Consultant may rely on the certification of a prospective subconsultant that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Consultant has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Consultant or subconsultant knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the County cancellation of the contract or subcontract for default at no cost to the County or the FAA.

#### **ARTICLE XLVIII**

**Veteran's Preference:** In the employment of labor (excluding executive, administrative, and supervisory positions), the Consultant and all sub-tier consultants must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

#### **ARTICLE XLIX**

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

- A. Consultant agrees that the cost allowability of individual items shall be determine using the Contract Cost Principles and Procedures, Federal Acquisition Regulations, Part 31 (48 CFR Section 31.000 et seq., including Subpart 31.6).
- 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. Consultant shall repay County for any 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, Part 31 (48 CFR Section 31.000 et seq.).
- D. Notwithstanding any other provision of this Agreement to the contrary, payments to Consultant for travel and subsistence (per diem) and mileage expenses, if applicable, for Consultant's staff or for subconsultants 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. Any reimbursements for travel and subsistence (per diem) and mileage expenses will only be made if such expenses are included in the budget of an approved and fully executed Work Order or Task Order issued pursuant to this Agreement.

- 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 L**

### **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 two (2) percent of the amount due per month for every month that payment is not made.

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

**G. Prompt Payment of Withheld Funds to Subconsultants.**

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

**H. Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County. County may, at its sole discretion, through its Contract Administrator, authorize Consultant to utilize subconsultants for services performed in ARTICLE I, for the particular tasks, work, and deliverables identified therein or as identified in the individual Work Orders and/or Task 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 and/or Task Orders issued pursuant to this Agreement. Consultant shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to Consultant by the terms of this Agreement and to assume toward Consultant all of the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.**

## **ARTICLE LI**

### **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 Planning and Building Department, 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 Orders or Task 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 LII**

**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 or Task 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/Task Order proposal or Consultant's final invoice.

## **ARTICLE LIII**

### **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 this Agreement 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 1%. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in County provided Exhibit C, marked "Consultant Work Order/Task Order Disadvantaged Business Enterprise (DBE) Plan," incorporated herein and made by reference a part hereof, or County provided Exhibit D, marked "Disadvantaged Business Enterprise (DBE) Letter of Intent Form," incorporated herein and made by reference a part hereof. 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 Exhibit D.**

**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 Consultants 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 1<sup>st</sup>-tier subconsultant

- Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
- Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

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

If a DBE is decertified before completing its work, the DBE must notify Consultant in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify Consultant in writing of the certification date. Consultant shall submit the notifications to County. On work completion, Consultant shall complete a Disadvantaged Business Enterprises (DBE) Certification 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 B 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 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 Work Order and/or Task Order, a summary of these records shall be prepared and submitted on Exhibit B, 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 of each Work Order and/or Task Order 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 Exhibit B 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. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

#### **ARTICLE LIV**

**Patent Rights:** Applicable patent rights provisions described in 41 CFR 105-72.406 and 37 CFR Part 401 regarding rights to inventions are hereby included in this Agreement as applicable. Consultant shall incorporate this provision in its subcontracts, if any, in excess of \$25,000.

#### **ARTICLE LV**

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

#### **ARTICLE LVI**

**Environmental Compliance:** Consultant shall comply with all applicable standards, orders, or requirements issued under, Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738; EPA regulations (2 CFR Chapter XV (1500.1 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 (42 USC 6201 et seq).

#### **ARTICLE LVII**

**Quality Control:** Consultant shall have a quality control/quality assurance (QC/QA) plan in effect during the entire time work is being performed under this Agreement. Prior to the start of any work, Consultant shall provide County with its QC/QA plan and an outline of the project-specific quality control/quality procedures. Consultant shall identify quality control reviews to ensure compliance with the major deliverables within the Scope of Work for this Agreement.

#### **ARTICLE LVIII**

**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 LIX**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Chris Perry, Assistant Director, Planning and Building Department, or successor.

#### **ARTICLE LX**

**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 LXI**

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

#### **ARTICLE LXII**

**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 LXIII**

**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 LXIV**

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

**ARTICLE LXV**

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

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

--COUNTY OF EL DORADO--

By: *Roni Perlin*

Dated: 4/5/22

Board of Supervisors  
"County"

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

By: *Kyle Kuperus*  
Deputy Clerk

Dated: 4/5/22

--BRANDLEY ENGINEERING, INC.--

By: ~~R. D. Brandley~~  
R. Damon Brandley (Mar 16, 2022 15:07 PDT)  
Reinard D. Brandley  
Chief Executive Officer  
"Consultant"

Dated: 03/16/2022

By: *Melissa S. Brandley*  
Melissa S. Brandley  
Corporate Secretary

Dated: 3/18/2022

**Brandley Engineering, Inc.**

**Exhibit A**

**Schedule of Charges**

<u>Description</u>	<u>Hourly Rate</u>
<b><u>Personnel – Office</u></b>	
Principal Engineer	\$300
Senior Design Engineer	\$180
Junior Design Engineer	\$120
Senior Drafter	\$120
Junior Drafter	\$100
Intern Drafter	\$40
Project Administrator	\$100
Clerical	\$80
<b><u>Personnel – Field</u></b>	
Resident Project Representative (RPR)	\$190
Senior Inspector	\$120
Junior Inspector	\$95
Testing Technician	\$90
Apprentice	\$95

**Other Direct Costs, Materials, Printing, Copies, Shipping Charges, and Supplies:**

Other direct costs, materials, printing, copies, shipping charges, and supplies, shall be invoiced in accordance with ARTICLE III, Compensation for Services.

**Subconsultant and Other Outside Services:**

Subconsultant and other outside services shall be invoiced in accordance with ARTICLE III, Compensation for Services.

**Travel and Mileage Expenses:**

Travel and mileage expenses shall be invoiced in accordance with ARTICLE L, Cost Principles and Administrative Requirements.

**Brandley Engineering, Inc.**

**Exhibit B**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
PARTICIPATION SUMMARY**  
(Submit one form for each DBE Firm.)

**Airport Name** \_\_\_\_\_

**Consultant Firm Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**DBE Firm Firm Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**DBE Contact Person Name:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Classification**       Prime Consultant       Subconsultant

Item of Work Performed by DBE	Item of Work Description	Amount Paid to DBE	Payment Date to DBE

The Consultant utilized the above-named DBE Firm for the item(s) of work described above. DBE participation is as follows:

Total Amount Paid to DBE Firm: \$ \_\_\_\_\_ Percentage of Consultant's Total Task Order: \_\_\_\_\_ %

**Affirmation:**  
The above-named DBE Firm affirms that it has performed the work item(s) described above and has been paid the amount stated above.

By: \_\_\_\_\_  
(Signature) (Title) (Date)

**Brandley Engineering, Inc.**

**Exhibit C**

**CONSULTANT WORK ORDER/TASK ORDER  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PLAN**  
(Submit this form and attach one DBE Letter of Intent Form for each DBE Subconsultant.)

Airport Name: \_\_\_\_\_

Project Name: \_\_\_\_\_

FAA AIP Project No: \_\_\_\_\_

Total Work Order/Task Order Amount: \$ \_\_\_\_\_

Name of Consultant's Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Printed Name of Signer: \_\_\_\_\_

Printed Title of Signer: \_\_\_\_\_

**DBE UTILIZATION SUMMARY**

**DBE Work Order/Task Order Amount**

**Work Order/Task Order %**

DBE Prime Consultant	\$ _____
DBE Subconsultants	\$ _____
* Total Proposed DBE Participation	\$ _____
Established DBE Goal	\$ _____

\* If the total proposed DBE participation is less than the established DBE goal, Consultant must provide written documentation of the good faith efforts as required by 49 CFR Part 26.

**Affirmation:**

The undersigned hereby assures that the information included herein is true and correct, and that the DBE firm(s) listed on the attached DBE Letter of Intent Forms have agreed to perform the work items noted for each firm. The undersigned further understands that no changes to this plan may be made without prior County approval.

By: \_\_\_\_\_  
(Signature of Consultant's Representative) (Title) (Date)



**Brandley Engineers, Inc.  
Exhibit E**

**DISCLOSURE OF LOBBYING ACTIVITIES**

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

<p><b>1. Type of Federal Action:</b></p> <p><input type="checkbox"/> a. contract  <input type="checkbox"/> b. grant  <input type="checkbox"/> c. cooperative agreement  <input type="checkbox"/> d. loan  <input type="checkbox"/> e. loan guarantee  <input type="checkbox"/> f. loan insurance</p>	<p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application  <input type="checkbox"/> b. initial award  <input type="checkbox"/> c. post-award</p>	<p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial  <input type="checkbox"/> b. material change</p> <p><b>For Material Change Only:</b>          year _____ quarter _____          date of last report _____</p>
<p><b>4. Name and Address of Reporting Entity</b></p> <p><input type="checkbox"/> Prime      <input type="checkbox"/> Subawardee          Tier _____, if known</p> <p>Congressional District, if known _____</p>	<p><b>5. If Reporting Entity in No. 4 as Subawardee, Enter Name and Address of Prime:</b></p> <p>Congressional District, if known _____</p>	
<p><b>6. Federal Department/Agency:</b></p>	<p><b>7. Federal Program Name/Description:</b></p> <p>CFDA Number, if applicable _____</p>	
<p><b>8. Federal Action Number, if known:</b></p>	<p><b>9. Award Amount, if known:</b></p>	
<p><b>10. a. Name and Address of Lobby Entity</b>          (If individual, last name, first name, MI)</p> <p align="center">(attach Continuation Sheet(s) if necessary)</p>	<p><b>b. Individuals Performing Services</b> (including address if different from No. 10a)          (last name, first name, MI)</p> <p align="center">(attach Continuation Sheet(s) if necessary)</p>	
<p><b>11. Amount of Payment (check all that apply)</b></p> <p>\$ _____ <input type="checkbox"/> actual    <input type="checkbox"/> planned</p>	<p><b>13. Type of Payment (check all that apply)</b></p> <p><input type="checkbox"/> a. retainer  <input type="checkbox"/> b. one-time fee  <input type="checkbox"/> c. commission  <input type="checkbox"/> d. contingent fee  <input type="checkbox"/> e. deferred  <input type="checkbox"/> f. other, specify _____</p>	
<p><b>12. Form of Payment (check all that apply):</b></p> <p><input type="checkbox"/> a. cash  <input type="checkbox"/> b. in-kind; specify: nature _____          Value _____</p>	<p><b>14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:</b></p> <p align="center">(attach Continuation Sheet(s) if necessary)</p>	
<p><b>15. Continuation Sheet(s) attached:</b>      Yes <input type="checkbox"/>      No <input type="checkbox"/></p>		
<p><b>16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b></p>		
		<p>Signature: <u>Melissa S. Brandley</u></p> <p>Print Name: <u>Melissa S. Brandley</u></p> <p>Title: <u>Secretary &amp; CFO</u></p> <p>Telephone No.: <u>916-652-4725</u>    Date: <u>3/18/2022</u></p>
<p>Authorized for Local Reproduction</p> <p>Standard Form - LLL</p>		

**Federal Use Only:**

Standard Form LLL Rev. 04-28-06

Distribution: Orig-Local Agency Project Files

## Brandley Engineers, Inc.

### Exhibit E

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

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

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

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