

ORIGINAL

C & S Engineers, Inc.

Airport Consulting Services

AGREEMENT FOR SERVICES #532-S1311

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 C & S Engineers, Inc., a New York corporation duly qualified to conduct business in the State of California, whose principal place of business is 499 Colonel Eileen Collins Boulevard, Syracuse, New York 13212, and whose local office address is 8880 Cal Center Drive, Suite 400, Sacramento, CA 95826, (hereinafter referred to as "Consultant");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Consultant to assist its Community Development Agency, Transportation Division (Transportation Division), with airport planning, design engineering, geotechnical, drainage, cost estimating, construction observation, testing and inspection, project coordination, and related services;

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

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

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

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

ARTICLE I

Scope of Services: Consultant agrees to furnish personnel, subconsultants, materials, equipment, supplies and services necessary to provide planning, environmental, geotechnical, design engineering, construction engineering and related services associated with County Airport Facilities. Services shall include, but not be limited to:

- A. Prepare necessary applications for Federal Aviation Administration (FAA) grant funding and represent County in discussions with the FAA regarding the work program, grant requirements and project documentation.

- B. Provide airport and aviation-related planning services required by County to include, but not be limited to: airport master planning, airport layout plan development, terminal area planning, facilities construction, land acquisition, land use planning, and environmental planning and documentation.
- C. Provide airport and aviation-related design and engineering services as required by County to include, but not be limited to: geotechnical studies, pavement evaluation studies, drainage studies, airport design and engineering, terminal area design and engineering, value engineering, cost estimating, development of plans and specifications, bid documents, construction observation, testing and inspection, and project coordination. The projects on which these engineering services may be required over the next five-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.
- D. Provide miscellaneous airport planning, engineering, operational and management support services as may be required from time to time 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 the 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 Task Order). No payment will be made for any work performed prior to approval and full execution of the Task Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order.

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

Consultant's responsibilities for compliance with Disadvantaged Business Enterprise (DBE) requirements are described in ARTICLE XXXIII, Disadvantaged Business Enterprise (DBE) Considerations and in ARTICLE XXXIV, DBE Participation herein. No Task Order or Work Order shall be issued under this Agreement until the required DBE forms have been received and approved by County's Contract Administrator.

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

The period of performance for Task Orders shall be in accordance with dates specified in each Task Order. No payment will be made for any work performed before or after the period of performance in the Task Order, unless County's Contract Administrator and Consultant amend the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement, nor the cumulative total of the not-to-exceed amount of this Agreement.

If a submittal or Task Order deliverable is required to be an electronic file, Consultant shall produce the file using Microsoft Office 2010 or later versions of the applications (specifically, MS Word, MS Project and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). Electronic AutoCAD 2010 or AutoCAD Civil 3D 2010 format shall be used for submittal of plans or other similar documents as specified by County's Contract Administrator. All deliverables shall be submitted in language, format and design that are compatible with and completely transferable to County's computer and engineering applications and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator. Consultant shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in the individual Task Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in ARTICLE XIII, Default, Termination, and Cancellation herein.

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

ARTICLE II

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

ARTICLE III

Compensation for Services: For services provided herein including all of the deliverables described in individual Task Orders issued pursuant to this Agreement, including all of the forms and reports required under the Disadvantaged Business Enterprise (DBE) provisions of this Agreement, and including the progress reports

required by ARTICLE XXI, Progress Reports below. For all services except environmental services, payment will only be made after FAA and State grants covering Consultant's services have been awarded to County. If the FAA and State grants are not awarded, Consultant shall not be entitled to any payments for services (other than for Environmental Services) rendered in anticipation of the grant awards. If the amounts of the awarded FAA and State grants are insufficient to cover the costs of Consultant's services, County shall only be obligated to pay Consultant for the amounts covered by the awarded grants, inclusive of County's grant match requirement. County shall pay Consultant for eighty percent (80%) of design costs (less the costs for any Environmental Services already paid) upon County's acceptance of complete plans and specifications for each project and the remaining twenty percent (20%) shall be payable upon the completion and County's acceptance of the construction of each project. For Environmental Services only, County will pay Consultant prior to an FAA or State grant being awarded. Payment will be made for Environmental Services monthly in arrears and within thirty (30) days following County receipt and approval of itemized invoices detailing the Environmental Services rendered.

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

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

Subconsultant services, if any are authorized in the individual Task Orders issued pursuant to this Agreement shall be invoiced at Consultant's cost for the services rendered. Any invoices that include subconsultant costs shall be accompanied by backup documentation to substantiate Consultant's cost for the subconsultant services being billed.

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

The total amount of this Agreement shall not exceed \$350,000, inclusive of all costs, Task Orders and all work of subconsultants and expenses.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the assigned Task Order number both on their faces. Consultant shall bill County for only one (1) Task Order per invoice.

When FAA grant funding is utilized to support the authorized task work, Consultant shall prepare and submit a fully executed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" form with its final invoice for each 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 XXXIII, Disadvantaged Business Enterprise (DBE) Considerations and in ARTICLE XXXIV, DBE Participation herein.

Consultant shall attach copies of any progress reports required under the provisions of ARTICLE XX, Progress Reports, that relate to the services being billed, as backup documentation to any invoices submitted for payment under the terms of this Agreement. 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
Community Development Agency
Administration and Finance Division
2850 Fairlane Court
Placerville, California 95667
Attn.: Ruth Young, Chief Fiscal Officer

or to such other location as County directs.

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

ARTICLE IV

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 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 principal office of

County's Transportation Division. 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 V

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

ARTICLE VI

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 XIV, 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 VII

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

outside of this Agreement that would conflict with Consultant's responsibilities to County during the term hereof.

ARTICLE VIII
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 Transportation Division for the purpose of, and in the performance of, this Agreement.
- B. Permission granted by County to disclose information on one occasion relating to this Agreement 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 a Legislative committee.
- D. Consultant and any subconsultants authorized under this Agreement shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by County, and receipt of 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 non-final or draft administrative reports, studies, materials and documentation, including but not limited to, all environmental documents and any Project Report (PR), relied upon, produced, created or utilized for any items of work performed under this Agreement shall be held in confidence pursuant to Government Code §6254.5(e) until release in accordance with the California Environmental Quality Act (CEQA). County and Consultant agree that such material will not be distributed, released or shared with any other organization,

person or group other than County's, and Consultant's employees and agents whose work requires that access.

ARTICLE IX

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.

All of Consultant's services and deliverables must adhere to current County, Caltrans and FAA requirements for project design and development and shall be made available to County, Caltrans and the FAA for review and approval at stages specified in the individual Task Orders issued pursuant to the Agreement and as directed by County's Contract Administrator.

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 plans, specifications, estimates (PS&E) and 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, 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 X

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County. Notwithstanding this

Article, County may, through its Contract Administrator, authorize Consultant to utilize the specific subconsultants that may be authorized in individual Task Orders issued pursuant to this Agreement. Consultant shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to Consultant by the terms of this Agreement and to assume toward Consultant all of the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.

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

ARTICLE XI

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

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

ARTICLE XII

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

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

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this

paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XIII

Default, Termination, and Cancellation:

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

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

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

shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

F. **Federal Termination Provision:** Pursuant to 49 CFR Part 18.36 (i)(2) and FAA Oder 5100.38, the following termination provision is required in all procurement contracts that exceed \$10,000 and that are funded by federal Airport Improvement Program (AIP) funds. As used herein, "Sponsor" refers to County and "contractor" refers to Consultant.

1. The Sponsor may, by written notice, terminate this Contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the Contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Contract, whether completed or in progress, delivered to the Sponsor.
2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the Contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
3. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
4. If, after notice of termination for failure to fulfill Contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.
5. The rights and remedies of the Sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE XIV

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
Community Development Agency
Administration and Finance Division
2850 Fairlane Court
Placerville, California 95667

Attn.: Ruth Young
Chief Fiscal Officer

With a Copy To:
County of El Dorado
Community Development Agency
Administration and Finance Division
2850 Fairlane Court
Placerville, California 95667

Attn.: Sherrie Busby
Administrative Services Officer
Contract Services Unit

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

C & S Engineers, Inc.
8880 Cal Center Drive, Suite 400
Sacramento, CA 95826

Attn.: Jessica L. Mullen, P.E., C.M.
Department Manager

or to such other location as Consultant directs.

ARTICLE XV

Indemnity: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County, State of California, agencies of the federal government, and their 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, State of California, and federal agency employees, and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subconsultants. This duty of Consultant includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other parties immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

ARTICLE XVI

Insurance: Without limiting Consultant's indemnification provided herein, Consultant shall and shall require any of its subconsultants to take out and maintain, throughout the period of this Agreement, the following policies of insurance placed with insurers with a current A.M. Best's rating of no less than A:VII or its equivalent against claims for

injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, his agents, representatives, employees or subconsultants.

A. Coverage shall be at least as broad as:

1. 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.

The certificate of insurance must include the following provisions stating that:

- a. The insurer will not cancel the insured's coverage without prior written notice to County; and
 - b. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies.
2. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
 3. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
 4. In the event Consultant is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.

B. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained. Such insurance shall be issued by an insurance company acceptable to County's Risk Management Division.

C. 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 shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Consultant fails to keep in effect at all times insurance

coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division, and Consultant agrees that no work or services shall be performed prior to the giving of such approval.

- D. Consultant's insurance coverage shall be primary insurance as respects County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- E. Any deductibles or self-insured retentions must be declared to, and approved, by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- F. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- G. 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.
- H. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- I. 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.

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

ARTICLE XVII

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 XVIII

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

ARTICLE XIX

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

ARTICLE XX

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

ARTICLE XXI

Progress Reports: Upon the issuance of a 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 the Contract Administrator. Separate detail shall be provided for each ongoing item of work and 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 XXII

Consultant's Project Manager:

Consultant designates Jessica L. Mullen, P.E., C.M., Department Manager, 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 XXIII

Ownership of Data:

Upon completion or earlier termination of all services under this Agreement, or upon completion or earlier termination of each Task Order issued pursuant to this Agreement and payment in full for satisfactory services rendered, 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 Agreement is executed. As used in this Article, term "Sponsor" refers to "County."

ARTICLE XXIV

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. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.1.
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq. – Not Applicable.
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et. seq. – Not Applicable.
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended – Not Applicable.
- k. Flood Disaster Protection Act of 1973 – Section 102(a) – 42 U.S.C. 4012a.1 – Not Applicable.
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f)).
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
- o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et. seq.

- p. American Indian Religious Freedom Act, P.L. 95-341, as amended – Not Applicable.
- q. Architectural Barriers Act of 1968 – 42 U.S.C. 4151, et seq.
- r. Power Plant and Industrial Fuel Use Act of 1978 – Section 403-2 U.S.C. 8373 – Not Applicable.
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.
- t. Copeland Antikickback Act - 18 U.S.C. 874.
- u. National Environmental Policy Act of 1969 – U.S.C. 4321 et seq.
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended – Not Applicable.
- w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.
- x. Drug-Free Workplace Act of 1988 – 41 U.S.C. 702 through 706 – Not Applicable.

Executive Orders:

- a. Executive Order 11246 – Equal Employment Opportunity – Not Applicable.
- b. Executive Order 11990 - Protection of Wetlands.
- c. Executive Order 11998 – Flood Plain Management – Not Applicable.
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs – Not Applicable.
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction.
- f. Executive Order 12898 – Environmental Justice – Not Applicable.

Federal Regulations:

- a. 14 CFR Part 13 – Investigative and Enforcement Procedures – Not Applicable.
- b. 14 CFR Part 16 – Rules of Practice For Federally Assisted Airport Enforcement Proceedings – Not Applicable.
- c. 14 CFR Part 150 – Airport noise compatibility planning.
- d. 29 CFR Part 1 – Procedures for predetermination of wage rates.
- e. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.
- f. 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).

- g. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – Not Applicable.
- h. 49 CFR Part 18 – Uniform administrative requirements for grants and cooperative agreements to state and local governments.
- i. 49 CFR Part 20 – New restrictions on lobbying.
- j. 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.
- k. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions – Not Applicable.
- l. 49 CFR Part 24 – Uniform relocation assistance and real property acquisition for Federal and federally assisted programs – Not Applicable.
- m. 49 CFR Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.
- n. 49 CFR Part 27 – Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.
- o. 2 CFR 180 (formerly 49 CFR Part 29) – Government wide debarment and suspension (non-procurement) and government wide requirements for drug-free workplace (grants).
- p. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – Not Applicable.
- q. 49 CFR Part 41 – Seismic safety of Federal and federally assisted or regulated new building construction.

Office of Management and Budget Circulars:

- a. 2 CFR 225 (formerly A-87) - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations.

ARTICLE XXV

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

- A. Consultant shall comply with 2 CFR Part 225, Cost Principles for State and Local Governments, and with federal administrative procedures pursuant to 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and 49 CFR, Chapter 1, Parts 31 et seq., Federal Acquisition Regulations System, insofar as those regulations may apply to Consultant. This provision shall apply to every sub-recipient receiving funds as a Consultant or subconsultant under this Agreement.
- B. Any expenditures for costs for which Consultant has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR Part 225, 48 CFR, Parts 31 et seq. or 49 CFR, Part 18 are subject to repayment by Consultant to County.
- C. Travel and subsistence (per diem) reimbursements, if applicable, and third-party contract reimbursements to subconsultants will be allowable as Project costs only after those costs are incurred and paid for by Consultant. For the purposes of this Agreement, travel and per diem costs will not be reimbursed for any services performed by Consultant or any authorized subconsultant.
- D. Notwithstanding any other provision of this Agreement to the contrary, payments to Consultant for travel and subsistence (per diem) and mileage expenses, if applicable, for Consultant's staff or for subconsultants claimed for reimbursement shall not exceed the lesser of (1) the rates to be paid to County employees under the current Board of Supervisors Travel Policy in effect at the time the expenses are incurred; or (2) the rates authorized to be paid to rank and file state employees under the then current State Department of Personnel Administration (DPA) rules. If the rates invoiced are in excess of these authorized rates, then Consultant is responsible for the cost difference and any overpayments shall be reimbursed to County upon demand. For the purposes of this Agreement, only mileage expenses for Consultant and for subconsultants, if applicable, shall be eligible for reimbursement in accordance with ARTICLE III, Compensation for Services above. No reimbursements for travel and subsistence (per diem) expenses for Consultant or subconsultants shall be allowed.
- E. Consultant and its subconsultants, 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 XXVI

Airport and Airway Improvement Act of 1982, Section 520 – General Civil Rights Provisions: Consultant assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from

participating in any activity conducted with or benefiting from federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

ARTICLE XXVII

Lobbying and Influencing Federal Employees:

- A. No Federal appropriated funds shall be paid, by or on behalf of Consultant, 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 the making of any federal grant and the amendment or modification of any federal grant.
- B. 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 any federal grant, Consultant shall complete and submit to County, Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions which form and instructions are attached hereto as Exhibit B and are incorporated herein and made by reference a part hereof.

ARTICLE XXVIII

Access to Records and Reports: Consultant and any subconsultants authorized under this Agreement shall maintain an acceptable cost accounting system. Consultant agrees to provide County, State of California, the State Auditor, the Secretary of the U.S. Department of Transportation, 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 Consultant which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts and transcriptions. Consultant agrees to maintain all books, records and reports required under this Agreement for a period of not less than four (4) years after final payment is made and all pending matters are closed.

Consultant shall incorporate this provision in any subcontract entered into as a result of this Agreement and shall require its subconsultants to agree to cooperate with the listed

agencies by making all appropriate and relevant Project records available to those agencies for audit and copying.

ARTICLE XXIX

Trade Restriction Clause: The terms "Contractor" and "subcontractor" used in this Article refer to "Consultant" and "subconsultant" and the term "Sponsor" refers to "County." Contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

A. 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 published by the Office of the United States Trade Representative (USTR);

B. has not knowingly entered into any contract or subcontract for the projects contemplated under this Agreement with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list; and

C. has not procured any product nor subcontracted for the supply of any product for use on the projects contemplated under this Agreement that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the U.S. Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Contractor or subcontractor who is unable to certify to the above. If Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the projects that are the subject of this Agreement, the Federal Aviation Administration may direct through the Sponsor cancellation of this Agreement at no cost to the Government.

Further, Contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. Contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

Contractor shall provide immediate written notice to the Sponsor if Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may

direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

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 contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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 maker subject to prosecution under Title 18, United States Code, Section 1001.

ARTICLE XXX

Certification Regarding Debarment & Suspension:

- A. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2, Code of Federal Regulations, Part 1200, Debarment and Suspension Certificate, which certifies that it or any person associated therewith in the capacity of the owner, partner, director, officer or manager, is not currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted or had a civil judgment rendered against it by a court of competent jurisdiction in any manner involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency and dates of action.
- C. Consultant agrees to include this Article without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts, if any.

ARTICLE XXXI

Title VI Civil Rights Assurances: During the performance of this Agreement, Consultant, for itself, its assignees and successors in interest agrees as follows:

- A. **Compliance with Regulations:** Consultant shall comply with regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated reference and made part of this Agreement.

- B. **Nondiscrimination:** Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. **Solicitations for Subconsultants, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation, made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. **Information and Reports:** Consultant shall provide all information and reports required by the regulations or directives issued pursuant hereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the sponsor or Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to the sponsor or the FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions for this Agreement the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
1. Withholding of payments to Consultant under the Agreement until the Contractor complies and/or
 2. Cancellation, termination, or suspension of the Agreement in whole or in part.
- F. **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by regulations or directives issued pursuant hereto. Consultant shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a consultant becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, Consultant may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, Consultant may request the

United States to enter into such litigation to protect the interests of the United States. As used in this Article, term "sponsor" refers to "County."

ARTICLE XXXII

Disadvantaged Business Enterprises (DBE) Assurances: As used in this Article, "Contractor" and "prime contractor" refer to "Consultant," "subcontractor" refers to "subconsultant" and "recipient" refers to "County."

- A. **Contract Assurance (§26.13):** Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by Contractor 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 the recipient deems appropriate.
- B. **Prompt Payment (§26.29):** The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime Contractor receives from County. The prime Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor'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 subcontractors.

ARTICLE XXXIII

Disadvantaged Business Enterprise (DBE) Considerations: Consultant must give consideration to DBE firms as specified in Appendix A to Part 26 of 49 CFR and in Exhibit C, marked, "Notice to Proposers DBE Information," incorporated herein and made reference a part hereof. Consultant shall ensure that certified DBE firms have the opportunity to participate in the performance of this Agreement and Consultant shall take all necessary and reasonable steps for such assurance. **For the purposes of this Agreement, County has established a DBE goal of 6.60%.**

If federal funding will be utilized for a specific assignment under this Agreement, Consultant shall prepare and submit with its Task Order proposal a "Local Agency Consultant DBE Commitment" form and a "DBE Information-Good Faith Efforts" form both of which are included in Exhibit D hereto, for each such Task Order issued under this Agreement, unless County's DBE goals have been met for the Federal Fiscal Year in which the Task Order is executed.

ARTICLE XXXIV

DBE Participation:

A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." It is the policy of County that certified DBE firms shall have the maximum opportunity to participate in the performance of Agreements financed in whole or in part with federal funds. Consultant shall ensure that certified DBE firms, as defined in the Code of Federal Regulations, have the maximum opportunity to participate in the performance of this Agreement and shall take all necessary and reasonable steps, as set forth in said Part 26, for such assurance.

Consultant shall prepare and submit a fully-executed "Final Report – Utilization of disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" form with its final invoice for each Task Order or Work Order issued under this Agreement, which is attached hereto as Exhibit E.

- B. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds.
- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- D. A sample agreement is attached hereto as Exhibit F, marked, "Standard Agreement for Subcontractor/DBE Participation," and is incorporated herein and made by reference a part hereof.

ARTICLE XXXV

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 Interim Director of Transportation, or designee, which may consider written or verbal information submitted by Consultant.
- B. Not later than thirty (30) days after completion of all work under any individual Task Order issued pursuant to this Agreement, Consultant may request review by the Interim Director of Transportation of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.

- D. Consultant's failure to follow this dispute resolution procedure shall constitute a waiver of such claims and a bar to further proceedings.

ARTICLE XXXVI

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

ARTICLE XXXVII

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 XXXVIII

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

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

ARTICLE XXXIX

Environmental Compliance: Consultant shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C.

1857(h)); Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738; Environmental Protection Agency regulations (40 CFR Part 15); and mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

ARTICLE XL

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

ARTICLE XLI

Veteran's Preference: When FAA grant funds are used to fund any projects which involve employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans' of the Vietnam era and disabled veterans as defined in Section 47112 of Title 49, United States Code. This preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

ARTICLE XLII

Foreign Market Restrictions: Consultant shall comply with foreign market restrictions when FAA grant funds are used to fund any projects which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the U.S. in procurement and construction.

ARTICLE XLIII

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

ARTICLE XLIV

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

ARTICLE XLV

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 XLVI

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Ruth Young, Chief Fiscal Officer, Administration and Finance Division, Community Development Agency, or successor.

ARTICLE XLVII

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 XLVIII

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

ARTICLE XLIX

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

Requesting Contract Administrator and Division Concurrence:

By: 
Ruth Young
Chief Fiscal Officer
Administration and Finance Division
Community Development Agency

Dated: 6-27-13

Requesting Department Concurrence:

By: 
Kimberly A. Kerr, Acting Director
Community Development Agency

Dated: 6/27/13

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

--COUNTY OF EL DORADO--

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:

James S. Mitrisin
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

--C & S ENGINEERS, INC.--

By:  _____

Dated: 7.1.13

Jessica L. Mullen, P.E., C.M.
Department Manager
"Consultant"



**C & S Engineers, Inc.
Exhibit A
Billing Rate Schedule**

LABOR CATEGORY	BILLING RATE
Managing Engineer	\$ 215.00
Senior Project Engineer	\$ 149.00
Project Engineer	\$ 142.00
Engineer	\$ 126.00
Staff Engineer	\$ 110.00
Senior Designer	\$ 121.00
Designer	\$ 100.00
CADD Operator	\$ 87.00
Managing Planner	\$ 202.00
Senior Project Planner	\$ 147.00
Planner	\$ 120.00
Grants Administrator	\$ 84.00
Staff Planner	\$ 89.00
GIS Analyst	\$ 97.00
Project Environmental Scientist	\$ 116.00
Environmental Scientist	\$ 84.00
Resident Inspector (Prevailing Wage)	\$ 215.00
Resident Inspector OT (Prevailing Wage)	\$ 284.00
Administrative Assistant	\$ 68.00



Other Direct Costs:

Mileage: Reimbursement for mileage expenses for Consultant and for any subconsultants, if applicable, shall be compensated in accordance with the provisions of ARTICLE III, Compensation for Services of this Agreement.

Copies, 8 1/2" x 11":	\$0.05/Each
Copies, Plans (22" x 34"):	\$1.00/Each
Mylars:	\$5.00/Each

Other Direct Costs including but not limited to subconsultants' services, outside services, copies, and shipping charges shall be invoiced at Consultant's cost, without markup, for the services rendered.

Exhibit B

DISCLOSURE OF LOBBYING ACTIVITIES

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

1. Type of Federal Action: <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	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable _____	
8. Federal Action Number, if known:	9. Award Amount, if known:	
10. a. Name and Address of Lobby Entity (If individual, last name, first name, MI)	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)	
(attach Continuation Sheet(s) if necessary)		
11. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply) <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 _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
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: (attach Continuation Sheet(s) if necessary)		
15. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/>		
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.		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		Authorized for Local Reproduction Standard Form - LLL
Federal Use Only:		

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

Exhibit B

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

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

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

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

C & S ENGINEERS, INC.

NOTICE TO PROPOSERS DBE INFORMATION

The County has established a DBE goal for this Agreement of **6.60%**.

1. TERMS AS USED IN THIS DOCUMENT

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

2. AUTHORITY AND RESPONSIBILITY

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

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, a "Local Agency Proposer DBE Commitment (Consultant Contract)" (Exhibit 10-O1) form shall be included in the Consultant's Task Order/Work Order Proposal. In order for a Proposer to be considered responsible and responsive, the Proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the Proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal, and all DBE participation shall be collected and reported.

Consultant shall include with the fully-executed Task Order/Work Order a completed "Local Agency Proposer DBE Information (Consultant Contract)" (Exhibit 10-O2) form. The purpose of the form is to collect data required under 49 CFR 26. This form collects all DBE participation. Even if no DBE participation will be reported, the successful Proposer must execute and return the form with its fully-executed Task Order/Work Order.

4. DBE PARTICIPATION GENERAL INFORMATION

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

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - 1. The Proposer is a DBE and will meet the goal by performing work with its own forces.
 - 2. The Proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
 - 3. The Proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The Proposer shall list only one subcontractor for each portion of work as defined in their proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- G. A prime contractor who is a certified DBE is eligible to claim all of the work in the Task Order or Work Order toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program web site at: <http://www.dot.ca.gov/hq/bep/>.
- Click on the link in the left menu titled Disadvantaged Business Enterprise
 - Click on Search for a DBE Firm link
 - Click on Access to the DBE Query Form located on the first line in the center of the page
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen
- C. How to Obtain a List of Certified DBEs without Internet Access:

DBE Directory - If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered from the Caltrans Publications Unit at (916) 263-0822, 1900 Royal Oaks Drive, Sacramento, CA 95815-3800.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Task Order or Work Order and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Task Order or Work Order are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

7. **FOR DBE TRUCKING COMPANIES: CREDIT FOR DBES WILL COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:**
- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Task Order or Work Order, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
 - B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Task Order or Work Order.
 - C. The DBE receives credit for the total value of the transportation services it provides on the Task Order or Work Order using trucks it owns, insures, and operates using drivers it employs.
 - D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. A DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Task Order or Work Order.
 - E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. A DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. A DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
 - F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

C & S ENGINEERS, INC.

LOCAL AGENCY CONSULTANT DBE COMMITMENT

(Inclusive of all DBEs at time of Task Order proposal)

NOTE: Please refer to instructions on the following page.

Consultant to Complete this Section and Submit with its Task Order Proposal			
1. Local Agency Name: _____			
2. Project Location: _____			
3. Project Description: _____			
4. Consultant Name: _____			
5. Contract DBE Goal %: _____			
DBE Commitment Information			
6. Description of Services to be Provided	7. DBE Firm Contact Information	8. DBE Cert. Number	9. DBE %
Local Agency to Complete this Section		10. Total % Claimed	_____ %
16. Local Agency Contract Number (Consultant AGMT #/TO #): _____			
17. Federal-aid Project Number: _____			
18. Task Order Execution Date: _____			
Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate:		11. Preparer's Signature _____	
19. Local Agency Representative Name (Print) _____		12. Preparer's Name (Print) _____	
20. Local Agency Representative Signature _____		13. Preparer's Title _____	
21. Date _____		14. Date _____	
22. Local Agency Representative Title _____		15. (Area Code) Tel. No. _____	
23. (Area Code) Tel. No. _____			

Distribution: (1) Original – Submit with Award Package

INSTRUCTIONS - LOCAL AGENCY CONSULTANT DBE COMMITMENT

Consultant Section

The Consultant shall:

1. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc)..
4. **Consultant Name** - Enter the consultant's firm name.
5. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I form. See LAPM Chapter 10.
6. **Description of Services to be Provided** - Enter item of work description of services to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
7. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
8. **DBE Cert. Number** - Enter the DBEs Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
9. **DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
10. **Total % Claimed** – Enter the total participation claimed. If the Total % Claimed is less than item "5. Contract DBE Goal", a Good Faith Effort (GFE) is required.
11. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
12. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
13. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
14. **Date** - Enter the date this section of the form is signed by the preparer.
15. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the consultant.

Local Agency Section:

The Local Agency representative shall:

16. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
17. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
18. **Task Order Execution Date** - Enter the date the Task Order was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
19. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
20. **Local Agency Representative Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
21. **Date** - Enter the date the Local Agency Representative signs the form.
22. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
23. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

C & S Engineers, Inc.

DBE INFORMATION —GOOD FAITH EFFORTS

DBE INFORMATION - GOOD FAITH EFFORTS

Federal-aid Project No. _____ Proposal Submittal Date _____

The County of El Dorado established a Disadvantaged Business Enterprise (DBE) goal of 6.6% for this project. The information provided herein shows that a good faith effort was made.

The Consultant shall submit the following information with its Task Order proposal to document adequate good faith efforts. Consultant should submit the following information even if the "Local Agency Consultant DBE Commitment" form indicates that the Consultant has met the DBE goal. This will protect the Consultant's eligibility for award of the contract if the administering agency determines that the Consultant failed to meet the goal for various reasons, e.g., a DBE firm was not certified at proposal submittal, or the Consultant made a mathematical error.

Submittal of only the "Local Agency Consultant DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

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

<u>Publications</u>	<u>Dates of Advertisement</u>
_____	_____
_____	_____
_____	_____

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

<u>Names of DBEs Solicited</u>	<u>Date of Initial Solicitation</u>	<u>Follow Up Methods and Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- C. The items of work which the Consultant made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the Consultant with its own forces) into economically feasible units to facilitate DBE participation. It is the Consultant's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

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

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

Names, addresses and phone numbers of rejected DBEs and the reasons for the Consultant's rejection of the DBEs:

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

- E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

- F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subconsultants purchases or leases from the prime contractor or its affiliate:

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

Name of Agency/Organization	Method/Date of Contact	Results

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

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

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

CEM-2402F (REV 02/2008)

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814

CONTRACT NUMBER		COUNTY	ROUTE	POST MILES	FEDERAL AID PROJECT NO.	ADMINISTERING AGENCY	CONTRACT COMPLETION DATE	
PRIME CONTRACTOR				BUSINESS ADDRESS			ESTIMATED CONTRACT AMOUNT \$	
ITEM NO.	DESCRIPTION OF WORK PERFORMED AND MATERIAL PROVIDED	COMPANY NAME AND BUSINESS ADDRESS	DBE CERT. NUMBER	CONTRACT PAYMENTS			DATE OF FINAL PAYMENT	
				NON-DBE	DBE	DATE WORK COMPLETE		
				\$	\$			
				\$	\$			
				\$	\$			
				\$	\$			
				\$	\$			
				\$	\$			
				\$	\$			
				\$	\$			
				\$	\$			
				\$	\$			
ORIGINAL COMMITMENT \$			TOTAL	\$	\$			
DBE								
List all First-Tier Subconsultants, Disadvantaged Business Enterprises (DBEs) regardless of tier, whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at time of award, provide comments on back of form. List actual amount paid to each entity.								
I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT								
CONSULTANT REPRESENTATIVE'S SIGNATURE					BUSINESS PHONE NUMBER		DATE	
TO THE BEST OF MY INFORMATION AND BELIEF, THE ABOVE INFORMATION IS COMPLETE AND CORRECT								
DOT PROJECT ENGINEER'S SIGNATURE					BUSINESS PHONE NUMBER		DATE	

Copy Distribution-Caltrans contracts:

Original - District Construction

Copy- Business Enterprise Program

Copy- Contractor

Copy Resident Engineer

Copy Distribution-Local Agency contracts:

Original - District Local Assistance Engineer
(submitted with the Report of Expenditure)

Copy- District Local Assistance Engineer

Copy- Local Agency file

The form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, Federal-aid Project No., the Administering Agency, the Contract Completion Date and the Estimated Contract Amount. It requires the prime contractor name and business address. The focus of the form is to describe who did what by contract item number and descriptions, asking for specific dollar values of item work completed broken down by subcontractors who performed the work both DBE and non-DBE work forces. DBE prime contractors are required to show the date of work performed by their own forces along with the corresponding dollar value of work.

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

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

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

The decision of which column to be used for entering the DBE dollar value is based on what program(s) status the firm is certified. This program status is determined by the California Unified Certification Program by ethnicity, gender, ownership, and control issues at time of certification. To confirm the certification status and program status, access the Department of Transportation Civil Rights web site at:
<http://www.dot.ca.gov/hq/bep> or by calling (916) 324-1700 or the toll free number at (888) 810-6346.

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

DBE Program Status	Column to be used
If program status shows DBE only with no other programs listed	DBE

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

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

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

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

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

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

C & S ENGINEERS, INC.

STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION

1. Subcontractors (hereinafter "subconsultants")

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the County of El Dorado (hereinafter "County") and any subconsultants, and no subcontract shall relieve the Proposer (hereinafter "Consultant") of his/her responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultants is an independent obligation from County's obligation to make payments to the Consultant.
- B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.
- C. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.
- D. Any substitution of subconsultants must be approved in writing by County's Contract Administrator in advance of assigning work to a substitute subconsultant.

2. Disadvantaged Business Enterprise (DBE) Participation

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Proposers who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. If the contract has a DBE goal, the Consultant must meet the DBE goal by committing DBE participation or document a good faith effort to meet the goal. 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 CFR, Part 26 are encouraged to participate in the performance of agreements 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 Agreement. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as County deems appropriate.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

3. Performance of DBE Consultant and other DBE Subconsultants/Suppliers

- A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work

subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing; and other relevant factors.

- B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

4. Prompt Payment of Funds Withheld to Subconsultants

- A. No retainage will be withheld by County from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.
- B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

5. DBE Records

- A. Consultant shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants," which form will be provided with the Consultant's Agreement, certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25% of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

6. DBE Certification and Decertification Status

If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify the 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 the Consultant in writing with the date of certification. Any changes should be reported to the County's Contract Administrator within 30 days.