

Quincy Engineering, Incorporated

SECOND AMENDMENT TO AGREEMENT FOR SERVICES #467-S1411

THIS SECOND AMENDMENT to that Agreement for Services #467-S1411 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 Quincy Engineering, Incorporated, a corporation duly qualified to conduct business in the State of California, whose principal place of business is 11017 Cobblersrock Drive, Suite 100, Rancho Cordova, California 95670 (hereinafter referred to as "CONSULTANT");

RECITALS

WHEREAS, CONSULTANT has been engaged by COUNTY to provide project delivery support services, including updating the feasibility study, and providing environmental support services for the Mosquito Road Bridge at the South Fork American River Project for its Community Development Agency pursuant to Agreement for Services #467-S1411, dated July 29, 2014, and First Amendment to Agreement for Services #467-S1411, dated March 7, 2017, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, the parties hereto desire to amend the Agreement to revise the scope of services, amending **ARTICLE I, Scope of Services**, and adding **Amended Exhibit A, Amended Scope of Work**;

WHEREAS, the parties hereto desire to amend the Agreement to increase the not-to-exceed compensation amount of the Agreement by \$2,269,580, amending **ARTICLE V, Allowable Costs and Payments**, previously referenced in **ARTICLE III, Compensation for Services**, and replacing **Amended Exhibit C, Amended Cost Proposal**, with **Amended Exhibit C-1, Amended Cost Proposal**;

WHEREAS, the parties hereto desire to fully-replace **ARTICLE II** through **ARTICLE LVII** to include contract provisions required by the use of federal grant funds;

WHEREAS, the parties hereto desire to update the article reference in **Exhibit D**, referenced by **ARTICLE XIII, Conflict of Interest**, replacing **Exhibit D** with **Amended Exhibit D, Interest of Consultant Disclosure Statement**;

WHEREAS, the parties hereto desire to replace **Exhibit E, Certification of Consultant**, from the Agreement, previously referenced in **ARTICLE XL, Covenant Against Contingent Fees**, with **Exhibit E, Require Contract Provisions, Federal-Aid Construction Contracts**, based on the nature of the services to be provided under this Agreement, as amended;

WHEREAS, the parties hereto desire to remove **Exhibit G, Fair Employment Practices Addendum, Exhibit H, Nondiscrimination Assurances**, and the four (4) Appendices to Exhibit H, previously referenced in **ARTICLE XLIII, Nondiscrimination**;

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

- I. All references to Community Development Agency, Transportation Division and/or Transportation Division throughout the Agreement shall read Community Development Services, Department of Transportation.
- II. **ARTICLE I, Scope of Services**, paragraphs B, C, D, and E of the Agreement are amended in their entirety to read as follows:

- B. CONSULTANT shall perform all professional and technical services, work and tasks required to accomplish the objectives set forth herein, and shall provide and make available CONSULTANT's own personnel, subconsultants, materials, equipment, and vehicles necessary to update the feasibility report, obtain Caltrans' Project approval, and provide environmental support services, and other Project delivery support services including, but not limited to, those tasks identified in Exhibit A, marked "Scope of Work," and Amended Exhibit A, marked "Amended Scope of Work," both exhibits are incorporated herein and made by reference a part hereof.

Unless otherwise indicated below, and notwithstanding any other provision of this Agreement to the contrary, deliverables for the specific items of work to be provided under Exhibit A and Amended Exhibit A shall be as specified therein, shall be prepared using the software described in Section E of this Article and shall be submitted in accordance with the timeframes and formats specified in Exhibit A and Amended Exhibit A. Adjustments to the completion times specified in Exhibit A and Amended Exhibit A may only be made in accordance with the prior written approval (may consist of an email) of COUNTY's Contract Administrator or designee.

COUNTY's Contract Administrator shall issue CONSULTANT a Notice to Proceed for the Tasks and Items of Work identified in Exhibit A and Amended Exhibit A and CONSULTANT shall not commence work on any Task and/or Item of Work until receiving the Notice to Proceed. No payment will be made for any work performed prior to the date specified in the Notice to Proceed.

- C. In addition to the specific services identified in Exhibit A and Amended Exhibit A, hereto, this Agreement may also include Supplemental Item of Work, Task 7 – Traffic Analysis. COUNTY's Contract Administrator will issue a separate written Notice to Proceed to CONSULTANT for Supplemental Item of Work,

Task 7. CONSULTANT shall not commence work on Supplemental Item of Work, Task 7 until receiving the appropriate Notice to Proceed. No payment will be made for any work performed prior to the date specified in the Notice to Proceed.

- D. In addition to the specific services identified in Exhibit A or Amended Exhibit A, or as assigned to CONSULTANT as Supplemental Item of Work, Task 7 hereunder, this Agreement may also include Optional Services. Such Optional Services may supplement, expand, or otherwise modify the Scope of Work or may include, but not be limited to, tasks that are deemed critical by COUNTY's Contract Administrator to the furtherance of the Project.

Before proceeding with any work concerning Optional Services under this Agreement, the parties will identify the specific services to be provided for each assignment in individual Task Orders and/or Work Orders to be issued in accordance with this Agreement.

The specific services for each Optional Services assignment shall be determined at a meeting or telephone conference between CONSULTANT and COUNTY's Contract Administrator, or designee, to discuss the needs, applicable design standards, required deliverables, specific CONSULTANT staff or subconsultants to be used, and any task-related mileage budget, if applicable, on a task-by-task basis. Within an agreed timeframe as determined by COUNTY's Contract Administrator, following the meeting or telephone conference, CONSULTANT shall provide COUNTY's Contract Administrator with a written scope of work for the Optional Services, a schedule including a list of tasks with completion dates, 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 or a Work Order, as applicable), which shall require written approval, authorization, and written notification to proceed from COUNTY's Contract Administrator, prior to commencement of the work. No payment will be made for any Optional Services assignment performed prior to approval and full execution of the Task Order or Work Order, as applicable, and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order or Work Order.

COUNTY's Contract Administrator will issue a written Task Order for work assignments where the not-to-exceed cost itemization is greater than \$50,000. COUNTY's Contract Administrator will issue a written Work Order for any work assignments where the not-to-exceed cost itemization is \$50,000 or less.

CONSULTANT shall provide COUNTY's Contract Administrator with the names and titles of CONSULTANT's representatives that are authorized to bind CONSULTANT by signing Task Orders and Work Orders and Task Order and Work Order Amendments on CONSULTANT's behalf.

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

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

COUNTY shall review CONSULTANT's progress at key points as specified in each Task Order or Work Order. Milestone reviews shall be performed for the specific products and deliverables listed in each Task Order and/or Work Order. Milestones may only be changed by written agreement (may consist of an email) between COUNTY's Contract Administrator, or designee and CONSULTANT.

- E. If a submittal or Task Order or Work Order deliverable is required to be an electronic file, CONSULTANT shall produce the file using Microsoft (MS) Office 2010 applications (specifically, MS Word, MS Project, and MS Excel). Signed reports shall be submitted in Adobe portable document format (pdf). All plans, specifications, and similar documents shall be produced in MicroStation and submitted in both MicroStation and AutoCAD 2010 formats. 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 engineering software used for analytical purposes may be authorized if approved by COUNTY's Contract Administrator. CONSULTANT shall submit all deliverables to COUNTY's Contract Administrator in accordance with the completion time schedules identified in Exhibit A and Amended Exhibit A or in the individual Task Orders or Work Orders that may be issued for Optional Services. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in ARTICLE VI, Termination, herein.

The following articles are fully-replaced in their entirety:

III. ARTICLE II

Compensation for Services: For services provided herein, including all of the deliverables described in Exhibit A and Amended Exhibit A, and in the individual Task Orders and Work Orders issued, if applicable, pursuant to this Agreement, and including all of the forms and reports required under the DBE provisions of

this Agreement; and including the progress reports required by ARTICLE III, Progress Reports, below, COUNTY agrees to pay CONSULTANT in arrears. Payment shall be made within forty-five (45) days following COUNTY's receipt and approval of itemized invoices detailing services rendered.

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

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

Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls, and other per diem expenses) will not be reimbursed as a direct cost for any services performed under this Agreement by CONSULTANT or by any authorized subconsultants.

For the purposes of budgeting the items of work identified in Exhibit A and Amended Exhibit A, the maximum allowable billing amounts for each item of work are described in Amended Exhibit C-1, marked "Amended Cost Proposal," attached hereto and incorporated herein by reference. The amounts indicated in Amended Exhibit C-1 represent the composition of the total not-to-exceed budget for the various tasks. In the performance of the scope of services to be provided under this Agreement, CONSULTANT may request to reallocate the expenses listed in Amended Exhibit C-1 among the various Scope of Work tasks and items of work, Other Direct Costs, and Optional Tasks identified therein, including reallocating such expenses between subconsultants listed in Amended Exhibit C-1, subject to COUNTY's Contract Administrator's prior written approval.

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

IV. ARTICLE III

Progress Reports: CONSULTANT shall submit written progress reports to COUNTY'S Contract Administrator at intervals that are commensurate with the requirements of the items of work and tasks being performed and based upon a mutually agreeable schedule. At a minimum, CONSULTANT shall submit progress reports once per month. The reports shall be sufficiently detailed for

COUNTY's Contract Administrator to determine if CONSULTANT is performing to expectations and is on schedule, to provide communication of interim findings, and to afford occasions for airing difficulties or special circumstances encountered so that remedies can be developed. COUNTY's review of these reports will ensure that CONSULTANT's work meets a level of acceptability as determined by COUNTY's Contract Administrator, and CONSULTANT shall be required to modify its work as necessary to meet that level of acceptability as defined by COUNTY's Contract Administrator. Separate detail shall be provided for each ongoing task or Task Order or Work Order. Progress reports shall include the total number of hours worked by CONSULTANT and any authorized subconsultants and shall include descriptions of the tasks and work performed, including a description of any deliverables submitted during the reporting period and the anticipated tasks, work, and deliverables proposed for the subsequent reporting period, a discussion of any Project issues, recommendations to address the issues, percent of Agreement completed that month, and any necessary updates to the Project. CONSULTANT shall complete Project schedule updates and shall submit them quarterly to COUNTY's Contract Administrator.

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.

V. ARTICLE IV

Performance Period:

- A. This Agreement shall go into effect upon execution, contingent upon approval by COUNTY, and CONSULTANT shall commence work after notification to proceed by COUNTY's Contract Administrator. The Agreement shall expire upon COUNTY's acceptance of the Bridge Type Selection Report and approximately thirty percent (30%) design documents for the Project.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on COUNTY until the Agreement is fully executed and approved by COUNTY.

VI. ARTICLE V

Allowable Costs and Payments:

- A. The method of payment for this contract will be based on actual cost plus a fixed fee. COUNTY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in Exhibit B, unless additional

reimbursement is provided for by contract amendment. In no event will CONSULTANT be reimbursed for overhead costs at a rate that exceeds COUNTY's approved overhead rate set forth in Exhibit B. In the event that COUNTY determines that a change to the work from that specified in Exhibit A or Amended Exhibit A is necessary, the contract time or actual costs reimbursable by COUNTY shall be adjusted by an amendment to this Agreement to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by an amendment to the Agreement prior to exceeding the maximum total cost.

- B. In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee of \$45,363.94. The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in ARTICLE VII, Cost Principles and Administrative Requirements.
- D. When milestone cost estimates are included in Amended Exhibit C-1, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from COUNTY's Contract Administrator before exceeding such estimate.
- E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Scope of Work, COUNTY shall have the right to delay payment or terminate this Agreement in accordance with the provisions of ARTICLE VI, Termination.
- F. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY's Contract Administrator of itemized invoices. Invoices shall be submitted no later than forty-five (45) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Amended Exhibit C-1 and shall reference this Agreement number, Project title, the Work Breakdown Structure (WBS) Activity Identification Codes (Activity IDs) applicable for each item of work, and shall include the beginning and ending dates of the overall period of service. Final invoice must contain the final cost and all credits due COUNTY including any equipment purchased under the provisions of ARTICLE XI, Equipment

Purchase, of this Agreement. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to COUNTY at the following address:

County of El Dorado
Community Development Services
Department of Transportation
2850 Fairlane Court
Placerville, California 95667
Attn.: Shanann Findley
Administrative Technician

or to such other location as COUNTY directs.

- H. The total amount payable by COUNTY, including the fixed fee, shall not exceed \$3,474,414.
- I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by COUNTY's Contract Administrator prior to the increase.

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

VII. ARTICLE VI
Termination:

- A. COUNTY reserves the right to terminate this Agreement or any Task Order or Work Order issued pursuant to this Agreement, upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the Notice of Termination. If such prior termination is effected, COUNTY will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to CONSULTANT, and for such other services which COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the not-to-exceed amount of the Task Order or Work Order or the total amount of this Agreement, as applicable. Upon receipt of a Notice of Termination, CONSULTANT shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.
- B. COUNTY may terminate this Agreement with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by

COUNTY. If COUNTY terminates this Agreement with CONSULTANT, COUNTY shall pay CONSULTANT the sum due to CONSULTANT under this Agreement prior to termination, unless the cost of completion to COUNTY exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due CONSULTANT under this Agreement and the balance, if any, shall be paid to CONSULTANT upon demand.

- C. The maximum amount for which COUNTY shall be liable if this Agreement is terminated is the not-to-exceed amount of the Task Order or Work Order or the total amount of this Agreement, as applicable.
- D. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

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

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

- H. Completion of Work: In the event of termination of the Agreement, for default or without cause, COUNTY reserves the right to take over and complete any work, service, or task by contract or by other means.

VIII. ARTICLE VII

Cost Principles and Administrative Requirements:

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 C.F.R. Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 2 C.F.R. § 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as applicable.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 C.F.R. Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., and 2 C.F.R. § 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, are subject to repayment by CONSULTANT to COUNTY.
- D. Notwithstanding any other provision of this Agreement to the contrary, payments to CONSULTANT for travel and subsistence (per diem) and mileage expenses, if applicable, for CONSULTANT's staff or for subconsultant's claims for reimbursement shall not exceed the lesser of (1) the rates to be paid to COUNTY employees under the current Board of Supervisors Travel Policy in effect at the time the expenses are incurred; or (2) the rates authorized to be paid to rank and file state employees under the then current State of California Department of Human Resources rates. These rates may be found at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. If the rates invoiced are in excess of these authorized rates, then CONSULTANT is responsible for the cost difference and any overpayments shall be reimbursed to COUNTY upon demand. For the purposes of this Agreement, only mileage expenses for CONSULTANT and for subconsultants, if applicable, shall be eligible for reimbursement.
- 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.

IX. ARTICLE VIII

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

X. ARTICLE IX

Audit Review Procedures:

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by COUNTY's Chief Fiscal Officer.
- B. Not later than thirty (30) days after issuance of the final audit report, CONSULTANT may request a review by COUNTY's Chief Fiscal Officer of unresolved audit issues. The request for review shall be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by COUNTY shall excuse CONSULTANT from full and timely performance, in accordance with the terms of this Agreement.
- D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, cost proposal, and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 C.F.R. Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The Agreement, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by COUNTY's Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by COUNTY at

its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state, or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

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

XI. ARTICLE X
Subcontracting:

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between COUNTY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to COUNTY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from COUNTY'S obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without prior written authorization by COUNTY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by COUNTY.
- D. All subcontracts entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by COUNTY's Contract Administrator prior to the start of work by the subconsultant(s).
- F. CONSULTANT is engaged by COUNTY for its unique qualifications and skills as well as those of its personnel. CONSULTANT shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of COUNTY. COUNTY may, at its sole discretion, through its Contract Administrator, authorize CONSULTANT to utilize subconsultants for services performed in Exhibit A and Amended Exhibit A for the particular tasks, work and deliverables

identified therein or as identified in the individual Task Orders and/or Work Orders issued pursuant to this Agreement. Said written authorization and approval shall be sought and obtained by CONSULTANT prior to subconsultants' commencement of any work under this Agreement. Specific subconsultants shall be authorized in individual Task Orders or Work Orders issued pursuant to this Agreement. CONSULTANT shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to CONSULTANT by the terms of this Agreement and to assume toward CONSULTANT all of the obligations and responsibilities that CONSULTANT, by this Agreement, assumes toward COUNTY.

XII. ARTICLE XI
Equipment Purchase:

- A. Prior authorization in writing, by COUNTY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000, prior written authorization by COUNTY's Contract Administrator is required; three (3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this Agreement is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two (2) years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, CONSULTANT may either keep the equipment and credit COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit COUNTY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to COUNTY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY." A credit to Federal funds is required when participating equipment with a fair market value greater than \$5,000.00 is credited to the project.

XIII. ARTICLE XII

Prevailing Wage Requirements:

In accordance with the provisions of California Labor Code Sections 1770 et seq., including but not limited to Sections 1773, 1773.1, 1773.2, 1773.6, and 1773.7, the general prevailing rate of wages in the county in which the work is to be done has been determined by the Director of the California Department of Industrial Relations. Interested parties can obtain the current wage information by submitting their requests to the Department of Industrial Relations, Division of Labor Statistics and Research, PO Box 420603, San Francisco CA 94142-0603, Telephone (415) 703-4708 or by referring to the website at <http://www.dir.ca.gov/OPRL/DWD>. The rates at the time of the bid advertisement date of a project will remain in effect for the life of the project in accordance with the California Code of Regulations, as modified and effective January 27, 1997.

Copies of the general prevailing rate of wages in the county in which the Work is to be done are also on file at the Community Development Services, Department of Transportation's principal office, and are available upon request, and in case of projects involving Federal funds, Federal wage requirements as predetermined by the United States Secretary of Labor have been included in the Contract Documents. Addenda to modify the Federal minimum wage rates, if necessary, will be issued as described in the Project Administration section of this Notice to Bidders.

In accordance with the provisions of Labor Code 1810, eight (8) hours of labor constitutes a legal day's work upon all work done hereunder, and CONSULTANT and any subconsultants employed under this Agreement must conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

This Project is subject to the requirements of Title 8, Chapter 8, Subchapter 4.5 of the California Code of Regulations including the obligation to furnish certified payroll records directly to the Compliance Monitoring Unit under the Labor Commissioner within the Department of Industrial Relations Division of Labor Standards Enforcement in accordance with Section 16461.

As required under the provisions of Labor Code section 1776, CONSULTANT and its subconsultants, if any as authorized herein, shall keep accurate payroll records. A certified copy of all payroll records shall be available for inspection at all reasonable hours at the principal office of CONSULTANT.

In the case of federally funded projects, where Federal and State prevailing wage requirements apply, compliance with both is required. This Project is funded in whole or part by Federal funds. CONSULTANT shall comply with Exhibit E, Required Contract Provisions, Federal-Aid Construction Contracts, of this Agreement and the Copeland Act (18 U.S.C. 874, 40 U.S.C. 3145, and as supplemented by Department of Labor regulations 29 CFR Part 3, "Contractors and Subcontractors on Public Bidding or Public Work Financed in Whole or in

Part by Loans or Grants from the United States”), the Davis-Bacon Act (40 U.S.C. 276a to 276a-7, 40 U.S.C. 3141 – 3144 and 3146 - 3148 and as supplemented by 29 CFR Part 5 “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330, 40 U.S.C. 3701 – 3708, and 29 CFR Part 5).

If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, CONSULTANT and subconsultants must pay not less than the higher wage rate. The Community Development Services, Department of Transportation will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes “helper” (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by CONSULTANT and subconsultants, CONSULTANT and subconsultants must pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

XIV. ARTICLE XIII

Conflict Of Interest:

- A. CONSULTANT shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this Agreement, or any ensuing COUNTY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing COUNTY construction project, that will follow. CONSULTANT has acknowledged this interest of CONSULTANT and CONSULTANT has duly executed Amended Exhibit D, marked “Interest of Consultant Disclosure Statement,” incorporated herein and made by reference a part hereof.
- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.
- C. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT, will bid on any construction contract or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- D. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this Agreement shall be eligible to bid on any

construction contract or on any contract to provide construction inspection for any construction project resulting from this Agreement.

- E. The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. CONSULTANT attests that it has no current business or financial relationship with any COUNTY employee(s) that would constitute a conflict of interest with provision of services under this Agreement and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. COUNTY represents that it is unaware of any financial or economic interest of any public officer or employee of CONSULTANT relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in ARTICLE VI, Termination, herein.

XV. ARTICLE XIV

Rebates, Kickbacks or Other Unlawful Consideration:

CONSULTANT warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its sole discretion, to terminate the Agreement without liability; to pay only for the value of the work actually performed; to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

XVI. ARTICLE XV

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

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
1. No state, federal, or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions which form and instructions are attached hereto as Exhibit I and are incorporated herein and made by reference a part hereof.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

XVII. ARTICLE XVI

Statement of Compliance:

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Agreement, CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, genetic information, gender, gender identity, gender expression, sexual orientation, or military and veteran status, and denial of family care leave. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12900 et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing

Government Code Section 12900, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

XVIII. ARTICLE XVII

Debarment and Suspension Certification:

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

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

XIX. ARTICLE XVIII

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

XX. ARTICLE XIX

Standards for Work: Structural design services rendered under this Agreement shall be performed in accordance with the guidelines set forth in the current edition of the *Caltrans Bridge Design Aids*, *Caltrans Bridge Design Details*, *Caltrans Bridge Design Practice*, *Caltrans Bridge Design Specifications*, *Caltrans Bridge Memo to Designers*, *Caltrans Bridge Standard Detail Sheets*, *Caltrans Seismic Design Criteria*, *Caltrans Highway Design Manual*, in addition to the *AASHTO LRFD Bridge Design Specifications - Sixth Edition with California Amendments*, and all other applicable Caltrans, Federal Highway Administration (FHWA), federal, state, and local laws, COUNTY guidelines and accepted industry standards, and shall be performed in a safe, professional, skillful, and workmanlike manner in accordance with good engineering practices. Where applicable, services shall further conform to all U.S. Code of Federal Regulation Title 23 requirements and all applicable federal laws, regulations and policy and procedural or instructional memoranda.

Geotechnical and geological testing services rendered under this Agreement shall be performed in accordance with the guidelines set forth in the current edition of the *Caltrans Construction Manual*, *Caltrans Foundation Manual*, *Caltrans Bridge Construction Records and Procedures Manual*, *Caltrans Independent Assurance Manual*, *Caltrans Materials Testing Manual*, *Caltrans Local Assistance Procedures Manual and Local Assistance Program Guidelines*, *Caltrans Engineering Services Manuals*, *Caltrans Guidelines for Foundation Report Preparation for Bridges (December 2009)*, the El Dorado COUNTY Department of Transportation's Quality Assurance Program, American Society for Testing and Materials' testing procedures, and all other applicable Caltrans, FHWA, federal, state, and local laws, COUNTY guidelines and accepted industry standards, and shall be performed in a safe, professional, skillful, and workmanlike manner in accordance with good engineering practices. Where applicable, services shall further conform to all U.S. Code of Federal Regulation Title 23 requirements and all applicable federal laws, regulations, and policy and procedural or instructional memoranda.

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

Environmental services rendered under this Agreement shall be performed in accordance with, and in full compliance with, COUNTY, Caltrans, and FHWA guidelines, 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 210000 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 to all State statutes, regulations, and procedures, including those set forth in the Caltrans Local Assistance Procedures Manual (LAPM), the Local Assistance Program Guidelines (LAPG), the Caltrans Environmental Handbooks and the Caltrans Standard Environmental Reference (SER), and all other Caltrans guidance relating to federal-aid programs, all Title 23 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda.

Right of Way services rendered shall be performed in accordance with the guidelines set forth in the Caltrans Right of Way Manual, the Caltrans Local Assistance Procedures Manual, the FHWA Right of Way Project Development Guide, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), 23 Code of Federal Regulations (23 CFR), 49 Code of Federal Regulations (24) (49 CFR 24), Title VI of the 1964 Civil Rights Act, and all other applicable Caltrans, FHWA, state, and local public agency guidelines, federal, state, and local laws, including but not limited to, applicable provisions of the California Business and Professions Code, and accepted industry standards.

All of CONSULTANT's services and deliverables must adhere to current COUNTY, Caltrans and federal requirements for project development and shall be made available to COUNTY and Caltrans for review and approval at the appropriate stages specified in Exhibit A or Amended Exhibit A, or upon request by COUNTY'S Contract Administrator.

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

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

XXI. ARTICLE XX

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

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

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

XXII. ARTICLE XXI

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

XXIII. ARTICLE XXII

Ownership of Data: Upon completion or earlier termination of all services under this Agreement, or upon the completion or earlier termination of services provided in accordance with individual Task Orders and/or Work Orders issued pursuant to this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations, photographs, videos, and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in COUNTY without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to COUNTY. Copies may be made for CONSULTANT's records, but shall not be furnished to others without prior written authorization from COUNTY's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by COUNTY. CONSULTANT shall furnish COUNTY all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the services and deliverables provided under this Agreement.

XXIV. ARTICLE XXIII

CONSULTANT's Project Manager: CONSULTANT designates John S. Quincy, P.E., President, as its Project Manager for this Agreement. CONSULTANT's Project Manager, or COUNTY-approved designee, shall be accessible to COUNTY's Contract Administrator, or designee, during normal COUNTY working hours and shall respond within twenty-four (24) hours to COUNTY inquiries or requests. CONSULTANT's Project Manager shall be responsible for all matters related to CONSULTANT's personnel, operations and any subconsultants authorized under this Agreement including, but not limited to (1) assigning qualified personnel to perform the required work and to prepare the deliverables required by the Agreement; (2) reviewing, monitoring, training and directing CONSULTANT's personnel and any subconsultants authorized herein; and (3) providing qualified and appropriate traffic control services for field work. Project Manager must be a registered engineer in the State of California.

XXV. ARTICLE XXIV

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, without prior written approval by COUNTY's Contract Administrator.

XXVI. ARTICLE XXV

CONSULTANT to COUNTY: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from COUNTY and its staff. It is further 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.

XXVII. ARTICLE XXVI

Confidentiality:

- A. CONSULTANT and any subconsultants authorized under this Agreement shall maintain the confidentiality and privileged nature of all records, including billing records, all financial, statistical, personal, technical, or other data and information relative to COUNTY's operations together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. CONSULTANT, and all CONSULTANT's staff, employees, and representatives, including any subconsultants authorized herein, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to COUNTY's Department of Transportation for the purpose of, and in the performance of, this Agreement.
- B. Permission granted by COUNTY to disclose information on one occasion shall not authorize CONSULTANT or any subconsultants authorized under this Agreement, to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT and any subconsultants authorized under this Agreement shall not comment publicly to the press or any other media regarding this Agreement or COUNTY's actions on the same, except to COUNTY's staff, CONSULTANT's own personnel or authorized subconsultants involved in

the performance of this Agreement, at public hearings or in response to questions from 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 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.
- G. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- H. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

XXVIII. ARTICLE XXVII

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

CONSULTANT shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner 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, agents, associates, representatives, or subconsultants.

XXIX. ARTICLE XXVIII

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

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

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any COUNTY department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of COUNTY, this Agreement and/or any Task Order or Work Order issued pursuant to this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

XXX. ARTICLE XXIX

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 Services
Department of Transportation
2850 Fairlane Court
Placerville, California 95667

Attn.: Matthew D. Smeltzer, P.E.
Deputy Director, Engineering
Fairlane Engineering Unit

With a copy to:

County of El Dorado
Community Development Services
Administration and Finance
2850 Fairlane Court
Placerville, California 95667

Attn.: Michele Weimer
Administrative Services Officer
Contracts & Procurement Unit

or to such other location as COUNTY directs.

Notices to CONSULTANT shall be addressed as follows:

Quincy Engineering, Incorporated
11017 Cobblerock Drive, Suite 100
Rancho Cordova, California 95670

Attn.: John S. Quincy
President

or to such other location as CONSULTANT directs.

XXXI. ARTICLE XXX

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

XXXII. ARTICLE XXXI

Indemnity: To the fullest extent allowed by law, CONSULTANT shall defend, indemnify, and hold harmless the COUNTY and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, COUNTY employees and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of CONSULTANT includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party 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.

Except as otherwise prohibited by law, neither State nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CONSULTANT under or in connection with any work, authority, or jurisdiction conferred upon CONSULTANT and arising under this Agreement. CONSULTANT shall fully defend, indemnify, and save harmless State and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories

or assertions of liability occurring by reason of anything done or omitted to be done by CONSULTANT under this Agreement.

XXXIII. ARTICLE XXXII

Insurance: CONSULTANT shall provide proof of a policy of insurance satisfactory to COUNTY's Risk Management Division and documentation evidencing that CONSULTANT maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of CONSULTANT as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by CONSULTANT in performance of the Agreement.
- D. In the event CONSULTANT is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. CONSULTANT shall furnish a certificate of insurance satisfactory to COUNTY's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to COUNTY's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. CONSULTANT agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, CONSULTANT agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of COUNTY's Risk Management Division and CONSULTANT agrees that no work or services shall be performed prior to the giving of such approval. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided,

COUNTY may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without prior written notice to COUNTY; and
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. CONSULTANT's insurance coverage shall be primary insurance as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved by, COUNTY. At the option of COUNTY, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects COUNTY, its officers, officials, employees, and volunteers; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to COUNTY, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, employees, and volunteers or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. CONSULTANT's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event CONSULTANT cannot provide an occurrence policy, CONSULTANT shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting COUNTY department, either independently or in consultation with COUNTY's Risk Management Division as essential for protection of COUNTY.
- P. CONSULTANT shall ensure that all subconsultants authorized pursuant to this Agreement shall maintain workers' compensation, general liability, automobile liability and professional liability insurance as specified above and shall provide COUNTY with proof of same if requested.

XXXIV. ARTICLE XXXIII

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.

XXXV. ARTICLE XXXIV

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

XXXVI. ARTICLE XXXV

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.

XXXVII. ARTICLE XXXVI

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.

XXXVIII. ARTICLE XXXVII

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.

XXXIX. ARTICLE XXXVIII

Compliance with Federal, State and COUNTY Requirements: COUNTY is relying on federal assistance or grants, state funds, and local agency or other grant funds for all or a portion of the funding for the services to be provided herein. As a requirement of COUNTY's use of federal, state, and local agency grant funds, COUNTY is required to comply with certain contracting requirements and to extend those requirements to all third party contracts. CONSULTANT shall comply with all applicable provisions of federal, state and local agency regulations, including those required by the FHWA grant funding requirements, regulations, and related executive orders regarding the use, expenditure, control, reporting, allowable costs and management of such funds. The following Office of Management and Budget (OMB) Circulars, as applicable, and as implemented by various parts of the Code of Federal Regulations (C.F.R.), are incorporated by reference and made a part of this Agreement:

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

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

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

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

Failure of CONSULTANT to comply with any federal, state, or local agency provision may be the basis for withholding payments for charges made by CONSULTANT and for such other remedies as may be appropriate including termination of this Agreement. CONSULTANT shall further comply with any flow-down or third-party contracting provisions which may be required under the federal, state or local agency regulations and which may apply to CONSULTANT's subcontracts, if any, associated with this Agreement.

XL. ARTICLE XXXIX

Working Office: CONSULTANT shall establish a working office at a place acceptable to COUNTY. The parties hereto acknowledge and agree that CONSULTANT's office is located at 11017 Cobblersrock Drive, Suite 100, Rancho Cordova, California 95670.

XLI. ARTICLE XL

Covenant Against Contingent Fees: By executing this Agreement, CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, COUNTY shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

XLII. ARTICLE XLI

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

XLIII. ARTICLE XLII

Documentation: CONSULTANT shall document the results of its work to the satisfaction of COUNTY and if applicable, the State of California and the FHWA. This may include preparation of progress and final reports, plans, specifications, and estimates, or similar evidence of attainment of the Agreement objectives.

XLIV. ARTICLE XLIII

Patent Rights: Applicable patent rights provisions described in 41 C.F.R. § 1-9.1 regarding rights to inventions are hereby included in this Agreement as applicable.

XLV. ARTICLE XLIV

Copyrights: COUNTY may permit copyrighting reports or other Agreement products. If copyrights are permitted, COUNTY, FHWA, and State of California shall have the royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for state or Federal Government purposes:

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

XLVI. ARTICLE XLV

CONSULTANT's Endorsement on PS&E/Other Data: If applicable, the responsible CONSULTANT/Engineer shall sign all plans, specifications, and estimates (PS&E) and all engineering data furnished by it and where appropriate, indicate its registration number.

XLVII. ARTICLE XLVI

Disadvantaged Business Enterprise (DBE) Considerations: CONSULTANT must give consideration to DBE firms as specified in 23 C.F.R. § 172.5(b) and in Appendix A to 49 C.F.R. § 26. CONSULTANT shall ensure that certified DBE firms have the opportunity to participate in the performance of this Agreement and CONSULTANT shall take all necessary and reasonable steps for such assurance.

XLVIII. ARTICLE XLVII

Disadvantaged Business Enterprise (DBE) Participation:

- A. This Agreement is subject to 49 C.F.R. § 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Consultants who obtain DBE participation on this Agreement shall assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this Agreement is 5.7%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Commitment (Exhibit 10-O2). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 C.F.R. § 26, are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 C.F.R. § 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 C.F.R. § 26.53(f). Prior to

requesting COUNTY's consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 C.F.R. § 26.53(f).

- F. CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials, if any, for which each is listed unless CONSULTANT obtains prior written consent from COUNTY's Contract Administrator. CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE without written approval from COUNTY's Contract Administrator.
- G. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to

COUNTY's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice shall result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to COUNTY's Contract Administrator.

- L. If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to COUNTY's Contract Administrator within thirty (30) days.

XLIX. ARTICLE XLVIII

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.

L. ARTICLE XLIX

Disputes:

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

LI. ARTICLE L

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

LII. ARTICLE LI

Safety:

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

LIII. ARTICLE LII

Claims Filed by COUNTY'S Construction Contractors:

- A. If claims are filed by COUNTY's construction contractors relating to work performed by CONSULTANT's personnel or subconsultants, and additional information or assistance from CONSULTANT's personnel or subconsultants is required in order to evaluate or defend against such claims, CONSULTANT agrees to make its personnel and/or subconsultants available for consultation with COUNTY's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel and subconsultants that COUNTY considers essential to assist in defending against construction contractor claims will

be made available on reasonable notice from COUNTY. Any consultation or testimony that may be required by COUNTY will be reimbursed at the same rates that are being paid for CONSULTANT's personnel services under Exhibit B hereto.

- C. Services of CONSULTANT's personnel or subconsultants in connection with COUNTY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.

LIV. ARTICLE LIII

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

LV. ARTICLE LIV

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

LVI. ARTICLE LV

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

1. CONSULTANT shall take all necessary affirmative steps to assure that minority firms and women's business enterprises are used when possible.
2. Affirmative steps shall include:
 - (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (b) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
 - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women's business enterprises;

- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business and women's business enterprises;
- (e) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce as appropriate; and
- (f) Requiring the prime CONSULTANT, if subcontracts are to be let, to take the affirmative steps listed in 2 (a) through (e) above.

LVII. ARTICLE LVI

Environmental Compliance: CONSULTANT shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)); Section 508 of the Clean Water Act (33 U.S.C. § 1368); Executive Order 11738; Environmental Protection Agency regulations (40 C.F.R. § 15); and mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

LVIII. ARTICLE LVII

Iran Contracting Act Certification: As required by California Public Contract Code Section 2204, for Agreements that are over \$1,000,000, CONSULTANT certifies its status regarding the Iran Contracting Act of 2010 and has duly executed Exhibit J, marked "Iran Contracting Act Certification," incorporated herein and made by reference a part hereof.


Except as herein amended, all other parts and sections of Agreement for Services #467-S1411, as amended, shall remain unchanged and in full force and effect.

Requesting Contract Administrator Concurrence:

By: 
Matthew D. Smeltzer, P.E.
Deputy Director, Engineering
Fairlane Engineering Unit
Community Development Services
Department of Transportation

Dated: 8/15/17

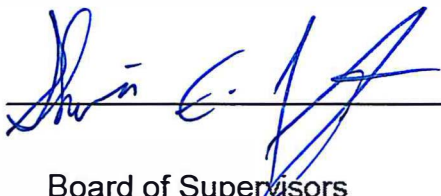
Requesting Department Concurrence:

By: 
Bard R. Lower
Interim Director
Community Development Services
Department of Transportation

Dated: 8/16/17


IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Agreement for Services #467-S1411 on the dates indicated below.

--COUNTY OF EL DORADO--

By: 
Board of Supervisors
"COUNTY"

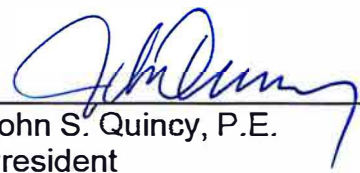
Dated: 8/15/2017

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

By: 
Deputy Clerk

Dated: 8/15/2017

--QUINCY ENGINEERING, INCORPORATED--

By: 
John S. Quincy, P.E.
President
"Consultant"

Dated: 8/9/17

By: 
Steve L. Mellon, P.E.
Corporate Secretary

Dated: 8/9/17

Quincy Engineering, Incorporated

Amended Exhibit A

Amended Scope of Work

In accordance with the Agreement between COUNTY and CONSULTANT, CONSULTANT shall complete the work described below in this Amended Exhibit A in addition to the work described in Exhibit A. CONSULTANT's services are specifically in support of the Mosquito Road Bridge at South Fork American River Project (Project).

PROJECT BACKGROUND

In August of 2016, CONSULTANT prepared a formal Value Analysis (VA) for the Project. CONSULTANT's VA Team reviewed three (3) different alternative alignments developed by CONSULTANT's Project Development Team (PDT). The results of the VA indicate that the upper level alignment (Alternative 1) provided the best value with respect to the mid-level alignment (Alternative 6), and the lower level alignment (Alternative 8).

CONSULTANT's VA Team also assessed the potential for Alternative Bridge Types and bridge foundations that could be considered for the upper level alignment. CONSULTANT's VA Team concurred with the Balanced Cantilever Constructed, Cast-in-Place-Concrete Box Girder as proposed by CONSULTANT's PDT as a viable bridge type. Two (2) Alternative Bridge Types developed by CONSULTANT's VA Team include an arch (concrete or steel) bridge and a variation on the Balanced Cantilever Concrete Box Girder called a Progressive Cantilever Constructed Box Girder Bridge. These three (3) Alternative Bridge Types are depicted in the planning studies in Attachment A to this exhibit.

Based on the results of the preliminary geotechnical investigations already completed, and in order to prepare a final Bridge Type Selection Report for this Project, CONSULTANT's PDT will need to develop additional information beyond the information developed during the preliminary engineering phase of the Project. Specifically, the geological aspects of the site provide significant challenges to the Project with respect to slope stability, both temporary and permanent, in the canyon for construction access and foundation construction. Comprehensive geotechnical exploration, testing, and analysis are needed to determine bridge foundation types including specific parameters necessary to assess temporary construction access roads and permanent earth retaining structures over the gulch and near the piers. In addition, preliminary bridge analysis and design needs to be performed to reasonably estimate abutment and pier loadings in order to establish foundation types and sizes, and volumes of excavation/backfill for a more reliable relative cost estimation of each Alternative Bridge Type.

The geotechnical exploration work items and other supporting Project activities performed onsite shall also comply with the Mosquito Bridge Replacement Environmental Impact Report (EIR) and other related environmental reports, documents, and Project requirements previously completed and/or determined necessary for the Project.

The very steep slopes on both sides of the existing canyon, in addition to recent slope failures and slides caused by storm damage, make constructing a temporary construction access road very difficult and likely very expensive.

Based on the additional information obtained from further geotechnical exploration, more reliable construction schedules and cost estimates can be compiled which, combined with other Project information, would lead to a more comprehensive final Bridge Type Selection Report.

SCHEDULE AND DELIVERABLES

Unless otherwise indicated below, and notwithstanding any other provisions of this AGREEMENT to the contrary, CONSULTANT shall submit all deliverables in accordance with ARTICLE I, Scope of Services, and as described in the Items of Work herein.

Unless otherwise indicated below, CONSULTANT shall submit all draft documents and/or reports to COUNTY's Contract Administrator (CA) for review and comment prior to the preparation of the final documents and/or reports. CONSULTANT shall incorporate COUNTY's CA's comments into final documents and/or reports subject to agreement by CONSULTANT and COUNTY's CA.

Draft deliverables shall be submitted in electronic Word format to COUNTY's CA unless otherwise stated. Final deliverables shall be submitted in Adobe portable document format (PDF) to COUNTY's CA unless otherwise stated. The budgeted cost for the Project includes up to two (2) rounds of review by COUNTY for all deliverables unless otherwise stated.

Due to the fact that the timing of deliverables for a complex Project such as this is dependent upon multiple variables from multiple agencies, completion times are approximate. However, in the event of unforeseen delays, significant adjustments to the completion times specified may only be made upon written approval of COUNTY's CA.

The following scope of work is proposed to result in a more comprehensive final Bridge Type Selection Report and ultimately a final Project Report.

PHASE 2, ITEM OF WORK 2.1: Project Management/Meetings – WBS Activity ID P300P

CONSULTANT shall provide communication and coordination with COUNTY and continue to coordinate with Caltrans as well as other applicable agencies in the Project development process.

CONSULTANT shall be responsible for critical path schedule updates, Quality Assurance/Quality Control (QA/QC), technical management, budget adherence, and monitoring. This Item of Work also involves regular monthly invoicing and progress reports. Progress reports shall be submitted in accordance with ARTICLE III, Progress Reports, of the Agreement to facilitate Project oversight.

CONSULTANT shall provide continued support for the environmental documents, assistance with Project permits, review of the Draft Project Report, support for right-of-way coordination with various property owners, and QA/QC of preliminary engineering design.

Activities:

- Prepare critical path schedule updates, QA/QC, monthly invoices, and monthly progress reports.

Deliverables:

- Critical path schedule updates.
- Progress reports and invoices.

Duration:

- Critical path schedule updates and progress reports shall be submitted monthly for duration of Project.

PDT Meetings

CONSULTANT shall schedule and coordinate PDT meetings either in person, by email, or by telephone at key Project milestones. Bi-monthly PDT meetings shall be scheduled during the Project development phase. CONSULTANT shall lead the PDT meetings that include preparing and distributing approved meeting agendas, arrange attendance of key PDT members, and distributing meeting notes along with a summary of action items.

Activities:

- Facilitate up to eight (8) PDT meetings.
- Prepare up to eight (8) draft PDT meeting agendas. Submit to COUNTY's CA for review and incorporate any comments prior to PDT meetings.
- Prepare up to eight (8) final PDT meeting agendas. Submit to COUNTY's CA.
- Prepare up to eight (8) draft PDT summary meeting notes. Submit to meeting attendees via email.
- Prepare up to eight (8) final PDT summary meeting notes. Submit to meeting attendees via email.

Assumptions:

- Eight (8) PDT meetings are anticipated and shall be held periodically as necessary.

Deliverables:

- Draft PDT meeting agenda.
- Final PDT meeting agenda.
- Draft PDT summary meeting notes.
- Final PDT summary meeting notes.

Duration:

- PDT meetings shall occur as needed throughout Project duration.
- Draft PDT meeting agendas shall be submitted to COUNTY for review within one (1) week of the PDT meeting.
- Final PDT meeting agendas shall be distributed within two (2) days of the PDT meeting.
- Draft summary meeting notes shall be distributed within one (1) week of the PDT meeting.
- Final summary meeting notes shall be distributed within two (2) days of COUNTY's review of the draft summary meeting notes.

PHASE 2, ITEM OF WORK 2.2: Geotechnical Exploration, Sampling, Testing, Analysis, and Recommendations – WBS Activity ID P400P

CONSULTANT shall provide geotechnical exploration, material sampling, laboratory testing, analysis, and recommendations for roadway structural sections, slope stability, retaining walls, temporary access roads, and bridge foundations.

CONSULTANT shall provide bridge and retaining wall foundation recommendations, temporary and permanent slope stability assessments and recommendations, foundation recommendations for the retaining wall over the gulch, and a roadway structural sections and materials report.

CONSULTANT shall provide all necessary drilling equipment, operators for drilling, and sampling the soil and rock at multiple locations as well as vegetation clearing and access for the geotechnical engineers and equipment operators to perform subsurface exploration at each retaining wall, abutment, and pier location.

CONSULTANT shall also provide drilling equipment and operators for drilling and sampling the soil/rock at the more difficult locations near the pier locations. CONSULTANT shall utilize a helicopter to lower temporary work platforms, install the platforms, lower a drilling rig in place, perform the borings, and move to subsequent boring locations.

CONSULTANT shall provide onsite observation and logging of all test borings associated with the bridge foundations, including abutments and piers, and shall provide the same services for borings associated with slope stability, gulch retaining wall, roadway structural section, and temporary access. CONSULTANT shall provide a Log of Test Borings.

CONSULTANT shall provide geotechnical peer reviews of the draft Geotechnical Report and draft Bridge Foundation Report prepared in Item of Work 2.5 below.

Activities:

- Clearing and access for drilling equipment.
- Drilling and logging of test borings.
- Perform laboratory testing on materials.

Assumptions:

- Up to thirteen (13) borings on the south side of the Project and up to eleven (11) borings on the north side of the Project are anticipated to be necessary.

Deliverables:

- Log of Test Borings.
- Draft and final Roadway Structural Sections and Materials Report.
- Draft and final Geotechnical Report.
- Draft and final Bridge Foundation Report.

Duration:

- The Log of Test Borings, draft and final Roadway Structural Sections and Materials Report, draft and final Geotechnical Report, and draft and final Bridge Foundation Report shall be submitted to COUNTY within nine (9) months of receipt of the Notice to Proceed.

PHASE 2, ITEM OF WORK 2.3: Bridge Type Selection Report – WBS Activity ID P415P

CONSULTANT shall work with the bridge construction industry to identify the type of equipment necessary to construct the bridge alternatives and develop parameters on the design of contractor access including, but not limited to, the width of access roads, maximum slope of access roads, and width of working platforms to construct the foundations and piers.

For each of the three (3) Alternative Bridge Types identified in the VA previously completed, CONSULTANT shall develop a preliminary design layout of construction temporary access roads and platforms, and estimate the cost of each alternative to be used in the overall cost estimate for each alternative.

For each of the three (3) Alternative Bridge Types referenced above, CONSULTANT shall perform a preliminary structural design focusing on substructure elements including developing dead load and live load reactions at each pier location as well as at each abutment. Using similar designs for bridges recently constructed, CONSULTANT shall provide design sketches of the proposed foundations for each bridge type including, but not limited to, the approximate length, width, thickness, and pile layouts, as well as calculations for the approximate quantities of concrete, rebar, excavation/backfill, number of piles, and length of piles for use in estimating construction costs. CONSULTANT shall calculate other anticipated construction material quantities for each Alternative Bridge Type and compile all of the aforementioned information in a preliminary construction cost estimate.

In order to provide an independent verification of estimated Project costs, CONSULTANT shall develop a separate preliminary construction cost estimate for each bridge type from the perspective of a construction contractor. These estimates shall break down actual material, equipment, and labor required to construct each portion of the Project including, but not limited to, temporary access roads and slope stability, permanent slope stability, pier and abutment foundations, abutments and retaining walls, piers, and superstructure. In addition, CONSULTANT shall develop a construction working-day schedule showing the duration of each task necessary to construct the Project.

Based on the preliminary bridge engineering, construction cost estimates, construction schedule, right-of-way impacts, and other key project features, CONSULTANT shall compile a draft Bridge Type Selection Report. The Bridge Type Selection Report shall document each Alternative Bridge Type considered, the pros and cons associated with each type, and a final recommendation of the bridge type and configuration to be carried forward into the final design process. CONSULTANT shall discuss the draft Bridge Type Selection Report in person with COUNTY, and all comments and/or recommendations shall be addressed and incorporated as appropriate.

CONSULTANT shall then schedule a Type Selection Meeting with COUNTY, Caltrans District 3 Local Assistance, FHWA, and Caltrans Headquarters/Structure Local Assistance to present the proposed Bridge Type Selection Report and answer any questions that may arise. Upon receipt of comments on the draft Bridge Type Selection Report, CONSULTANT shall address all comments and incorporate changes as appropriate to produce the final Bridge Type Selection Report.

Activities:

- Coordinate with construction industry to identify the type of equipment necessary to construct the bridge alternatives.

- Estimate construction costs and working days.
- Draft Bridge Type meeting with COUNTY.
- Schedule and hold a Type Selection Meeting with COUNTY, Caltrans, and FHWA.

Assumptions:

- Detailed development and estimates on three (3) Alternative Bridge Types are necessary to prepare the Bridge Type Selection Report.

Deliverables:

- Preliminary Design of Temporary Access Roads and Platforms.
- Bridge Planning Studies and Foundation Design Sketches for the three (3) Alternative Bridge Types.
- Preliminary Construction Cost Estimate.
- Preliminary Construction Working-Day Schedule.
- Draft and final Bridge Type Selection Report.

Duration:

- Preliminary Design of Temporary Access Roads and Platforms shall be submitted to COUNTY within one (1) month of receipt of the Notice to Proceed.
- Bridge Planning Studies and Foundation Design Sketches for the three (3) Alternative Bridge Types shall be submitted to COUNTY one (1) month of receipt of the Notice to Proceed.
- Preliminary Construction Cost Estimate shall be submitted to COUNTY two (2) months of receipt of the Notice to Proceed.
- Preliminary Construction Working-Day Schedule shall be submitted to COUNTY one (1) month of receipt of the Notice to Proceed.
- Draft reports shall be submitted to COUNTY within two (2) months of receipt of the Notice to Proceed.
- Final reports shall be submitted to COUNTY within three (3) months of receipt of the Notice to Proceed.

PHASE 2, ITEM OF WORK 2.4: Environmental Support and Agency Permits – WBS Activity ID D235I

CONSULTANT shall provide support to COUNTY in gaining final approval of the CEQA and NEPA Environmental Documents prepared for the Project. CONSULTANT's services shall include participating in conference calls, attending meetings, producing handouts and displays for meetings with stakeholders, investigating, and developing additional technical memorandums, reports, and other necessary information, and other tasks as requested by COUNTY.

Based on the environmental conditions of the Project area and the analysis of potential impacts, Project implementation will require NEPA and CEQA compliance and the issuance of other approvals, as listed below.

Two (2) separate draft and final permit applications shall be necessary for the Project including one (1) for the geotechnical exploration activities and another one (1) for the final Project construction contract. CONSULTANT shall prepare and submit draft and final permit

applications for geotechnical exploration and Project construction for COUNTY review prior to submittal to the applicable approving agencies.

CONSULTANT shall complete the following permitting tasks in coordination with COUNTY:

- 1) Section 404 Permit (U.S. Army Corps of Engineers) Nationwide Permit for Placement of Fill within Waters of the United States;
- 2) California State Water Resources Control Board General Permit for Storm Water Discharges associated with Construction and Land Disturbance Activities; and
- 3) Section 1602 Streambed Alteration Agreement (California Department of Fish and Wildlife).

CONSULTANT shall perform biological surveys in accordance with the Final Environmental Impact Report adopted by COUNTY for the Project for areas to be affected by the geotechnical exploration efforts described in Item of Work 2.3 above. The focus shall be on identifying nesting birds and other potentially sensitive species in the vicinity of the proposed Project area. CONSULTANT shall prepare a biological survey report documenting the findings of the surveys. CONSULTANT shall prepare draft and final permit applications for geotechnical exploration and Project construction.

Activities:

- Provide CEQA and NEPA environmental support services as requested by COUNTY.
- Coordinate with COUNTY and other permitting agencies.
- Perform biological surveys prior to geotechnical exploration.

Assumptions:

- Permit requirements are for the list shown herein.

Deliverables:

- Supplemental technical memorandums and reports.
- Handouts and displays for stakeholder meetings.
- Draft and final permit applications for geotechnical exploration.
- Draft and final permit applications for Project construction.
- Biological survey report.

Duration:

- Supplemental technical memorandums and reports shall be submitted to COUNTY within three (3) weeks of performing the surveys.
- Handouts and displays for stakeholder meetings shall be submitted to COUNTY within two (2) weeks of receipt of the Notice to Proceed.
- Draft permit applications for geotechnical exploration shall be submitted to COUNTY within ten (10) days of receipt of the Notice to Proceed.
- Draft permit applications for Project construction shall be submitted to COUNTY within two (2) months of the completion of the Bridge Type Selection Report and Final Project Report.
- Final permit applications for geotechnical exploration shall be submitted to COUNTY within three (3) weeks of receipt of the Notice to Proceed.
- Final permit applications for Project construction shall be submitted to COUNTY within one (1) month of receipt of the Notice to Proceed.

- Biological survey report shall be submitted to COUNTY within three (3) weeks of flagging of affected areas.

PHASE 2, ITEM OF WORK 2.5: Drainage Report and Storm Water Management Plan and Geotechnical Peer Review – WBS Activity ID P405P

CONSULTANT shall meet with COUNTY to establish and document the design criteria and design basis, and prepare design calculations to assess the capacity of the existing drainage systems. CONSULTANT shall prepare the Drainage Report, which shall include design calculations to assess the need for any drainage improvements. The results and design recommendations shall be summarized in the Drainage Report. The Drainage Report shall include, but not be limited to, the following:

- Evaluation of the existing conditions;
- Unusual and special conditions;
- Drainage mapping;
- Hydraulic analysis; and
- Proposed systems.

CONSULTANT shall prepare a Storm Water Management Plan summarizing the Project impacts to water quality and recommended best management practices (BMPs) for both the permanent and construction impacts. The Storm Water Management Plan shall address only the impacts from the bridge and associated roadway improvements, and CONSULTANT shall utilize guidance from COUNTY and the Regional Water Quality Control Board (RWQCB). CONSULTANT shall also address the need for the Construction General Permit (CGP) and assist CONSULTANT's PDT to comply with the permit.

CONSULTANT shall prepare the 35% submittal and the reports shall cover the design criteria and design concepts, and shall not cover the detailed design calculations. For the 65% and 100% draft drainage submittals, the reports shall include drainage and storm water BMP design calculations for the roadway and bridge designs prepared by CONSULTANT's PDT.

CONSULTANT shall prepare the 35% Drainage Plans and Estimates. The drainage plans shall show the layout of the proposed drainage system improvements and storm water features. Profiles and details sheets shall be prepared in the 65% drainage submittal. The design efforts shall be coordinated with CONSULTANT's PDT.

Based on comments received from COUNTY, CONSULTANT shall review and address any comments on the 35% Drainage Plans and shall prepare the 65% Drainage Plans/Profiles and Details Sheets, Specifications, and Cost Estimate (PS&E). The design efforts shall be coordinated with other design disciplines of CONSULTANT's PDT.

Based on comments received from COUNTY on the 35% Drainage Plans, CONSULTANT shall also review and address any comments on the 65% Drainage Plans. CONSULTANT shall update the 65% Drainage PS&E to the 100% PS&E level. The design efforts shall be coordinated with other design disciplines of CONSULTANT's PDT.

CONSULTANT shall provide geotechnical peer review comments/resolutions of the draft Geotechnical Report and draft Foundation Report developed for the Project under Item of Work 2.2 above. CONSULTANT shall also observe and log two (2) of the bridge foundation test borings.

Activities:

- Establish and document drainage design criteria.
- Visit project site.
- Perform a risk assessment of the existing drainage systems.
- Analyze drainage and storm water demands.
- Perform a risk assessment for the Project.
- Prepare Storm Water Management Plan to document the risk of the Project and recommend the new BMPs to be implemented.
- Prepare cost estimates for additional Inspections/Monitoring/Sampling/Rain Event Action Plan, as applicable, based on the risk assessment of the Project for the PS&E submittal.

Deliverables:

- Drainage Report.
- 35% Drainage Plans and Estimate.
- 65% and 100% Drainage PS&E.
- Draft and final 35%, 65%, and 100% Drainage Report [PDF and two (2) hard copies].
- Draft and final 35%, 65%, and 100% Storm Water Management Plan [PDF and two (2) hard copies].
- Peer review comments/resolutions on the Geotechnical and Foundation Reports.

Duration:

- 35% Drainage Plans and Estimate shall be submitted to COUNTY within one (1) month of receipt of the Notice to Proceed.
- 65% and 100% Drainage PS&E shall be submitted to COUNTY within three (3) months of receipt of the Notice to Proceed.
- Draft Drainage Report shall be submitted to COUNTY within three (3) months of receipt of the Notice to Proceed.
- Draft Storm Water Management Plan shall be submitted to COUNTY within four (4) months of receipt of the Notice to Proceed.
- Peer review comments on the Geotechnical and Foundation Report shall be submitted to COUNTY within two (2) weeks of completing the draft geotechnical reports.
- All final reports and plans shall be submitted to COUNTY within three (3) weeks of receipt of COUNTY's comments on drafts.
- Drainage PS&E shall be submitted to COUNTY within three (3) months of completion of the Final Drainage Report and Storm Water Management Plan.

PHASE 2, ITEM OF WORK 2.6: Preliminary Right-of-Way – WBS Activity ID P420P

CONSULTANT shall assess the permanent right-of-way needs, temporary construction easements, and permanent easements, if required, and shall determine the assessments based on property boundaries and right-of-way information provided by COUNTY and shown on the

topographic mapping. CONSULTANT shall prepare Preliminary Right-of-Way and Easement Exhibits/Sketches based on the information from the assessments.

It is anticipated that right-of-way, or temporary, or permanent easements, shall be required for the new portion of Mosquito Road, the bridge itself, and potentially access for maintenance inspections.

Activities:

- Establish permanent right-of-way needs.
- Establish permanent easement needs.
- Establish temporary construction easement needs.

Assumptions:

- COUNTY will prepare all right-of-way and easement maps and legal descriptions during the final design phase when boundary and easement needs are finalized.

Deliverables:

- Preliminary Right-of-Way and Easement Exhibits/Sketches.

Duration:

- Preliminary Right-of-Way and Easement Exhibits/Sketches shall be submitted to COUNTY within two (2) months of receipt of the Notice to Proceed.

PHASE 2, ITEM OF WORK 2.7: Preliminary Bridge Modeling – WBS Activity ID P415P

In order to develop a more detailed estimate of the main bridge construction schedule and cost, CONSULTANT shall develop a three-dimensional (3-D) computer model for structural analysis purposes. The model shall be used to determine size and weight of concrete segments to build the spans, as well as determine construction materials, equipment, wind, and other temporary loads during the various stages of construction. The resulting loads shall be used to better define the size of the columns, pier footings, and foundation pile loads.

CONSULTANT shall update the Bridge General Plan and provide preliminary drawings (cross sections) for the column and pier footings. This information may be used in developing bridge aesthetic alternatives, under a separate scope of work and not included in this Agreement, as amended.

Activities:

- Develop bridge computer 3-D model for structural analysis to determine the size and weight of concrete segments for span construction, columns, and pier footings.
- Update the Bridge General Plan.

Assumptions:

- A Balanced Cantilever Segmental Concrete Bridge is the type selected for the design.

Deliverables:

- 3-D Computer model.
- Updated Bridge General Plan.
- Preliminary drawings for the columns and pier footings.

Duration:

- 3-D Computer model within two (2) months from receipt of the Draft Type Selection Report.
- Bridge General Plan updates and preliminary column and pier footing sketches shall be submitted to COUNTY within two (2) months of the Draft Type Selection Report completed under Item of Work 2.3 above.

PHASE 2, ITEM OF WORK 2.8: Preliminary Pier Retaining Wall Design – WBS Activity ID P415P

CONSULTANT shall utilize the updated column and pier footing dimensions from Item of Work 2.7 above to lay out the permanent retaining walls adjacent to Pier 2 and Pier 3. CONSULTANT shall prepare Pier Retaining Wall General Plans and shall update construction quantity estimates and construction cost estimates.

Activities:

- Preliminary design and layout of Pier Retaining Walls.
- Estimate Pier Retaining Wall construction quantities and construction costs.

Assumptions:

- Balanced Cantilever Segmental Concrete Bridge is the type selected for design.

Deliverables:

- Pier Retaining Wall General Plans.
- Pier Retaining Wall updated construction quantity and cost estimates.

Duration:

- Pier Retaining Wall General Plans and Pier Retaining Wall construction quantity and construction cost estimates shall be submitted to COUNTY within four (4) weeks of the completion of Item of Work 2.7 above.

PHASE 2, ITEM OF WORK 2.9: Preliminary Design of Temporary Road Realignment – WBS Activity ID P415P

CONSULTANT shall develop a detailed layout of the temporary roadway realignment of Mosquito Road near the north end of the new bridge that shall be used to accommodate public traffic during bridge construction.

CONSULTANT shall also develop a conceptual layout of modifications to the ends of the roadway switchbacks that shall be required to allow construction equipment access to the bridge piers. This work shall include a layout and details of retaining walls that may be required at the Project site.

Activities:

- Develop layout and details of temporary roadway realignment, roadway switchback modifications, and retaining walls.

Deliverables:

- Temporary roadway realignment layout and details.
- Roadway switchback modification layout and details.
- Layout of retaining walls.

Duration:

- Layout of the realignment, switchback modifications, and retaining walls shall be submitted to COUNTY within six (6) weeks of receipt of the Notice to Proceed.
- Details of the realignment, switchback modifications, and retaining walls shall be submitted to COUNTY within ten (10) weeks after receipt of the Notice to Proceed.

Phase 2: OPTIONAL SERVICES

COUNTY may require CONSULTANT to perform Optional Services. Such Optional Services may supplement, expand or otherwise modify the amended Scope of Work and may include, but not be limited to, tasks that are deemed critical by COUNTY's CA. If CONSULTANT's services are required for Optional Services, CONSULTANT shall submit a written scope of work for the specific tasks identified as well as a not-to-exceed budget amount and schedule for the tasks. COUNTY's CA will issue separate written Task Orders and/or Work Orders for CONSULTANT to perform those tasks in accordance with the provisions of this Agreement. CONSULTANT shall not commence any work on Optional Services prior to receiving a fully-executed Task Order or Work Order, as applicable, from COUNTY.

Quincy Engineering, Incorporated

Amended Exhibit A

Attachment A

Figure 1: Alternative 1E – Balanced Cantilever

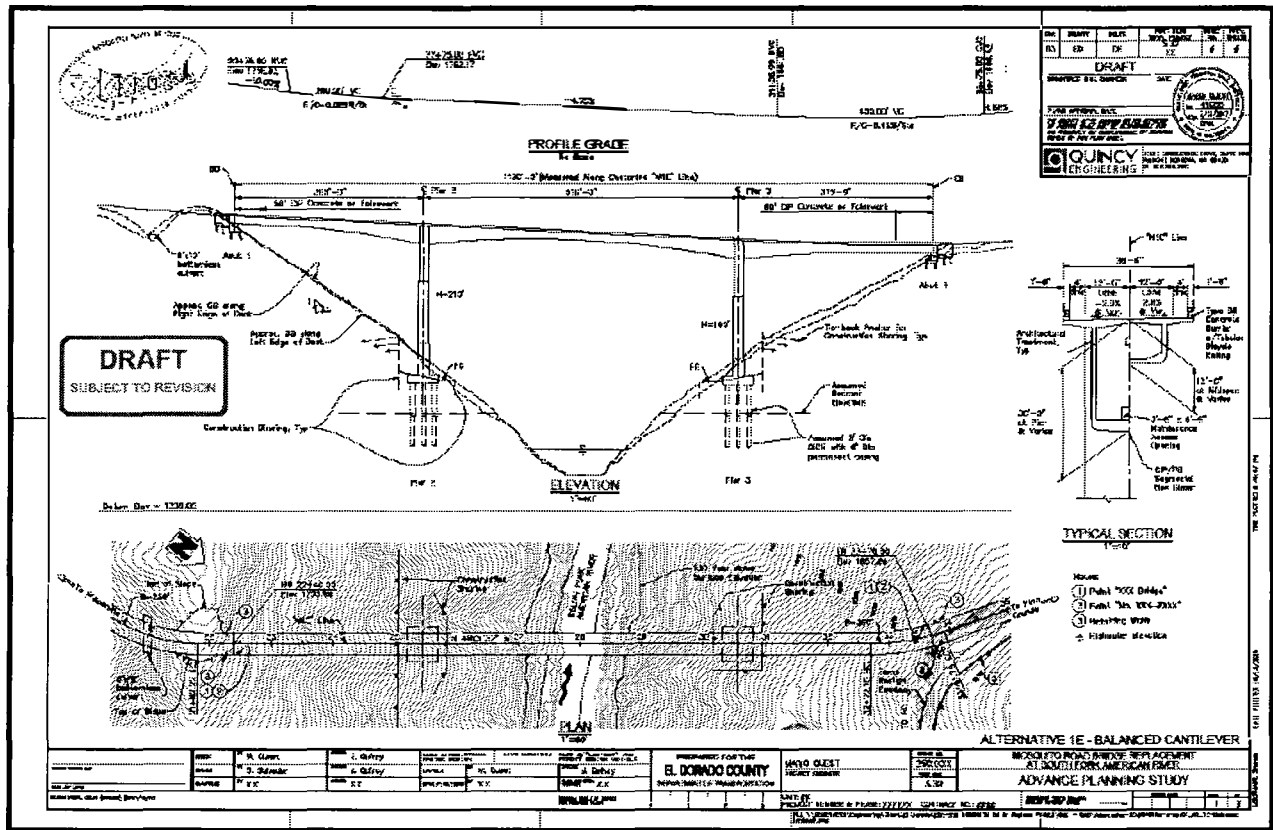
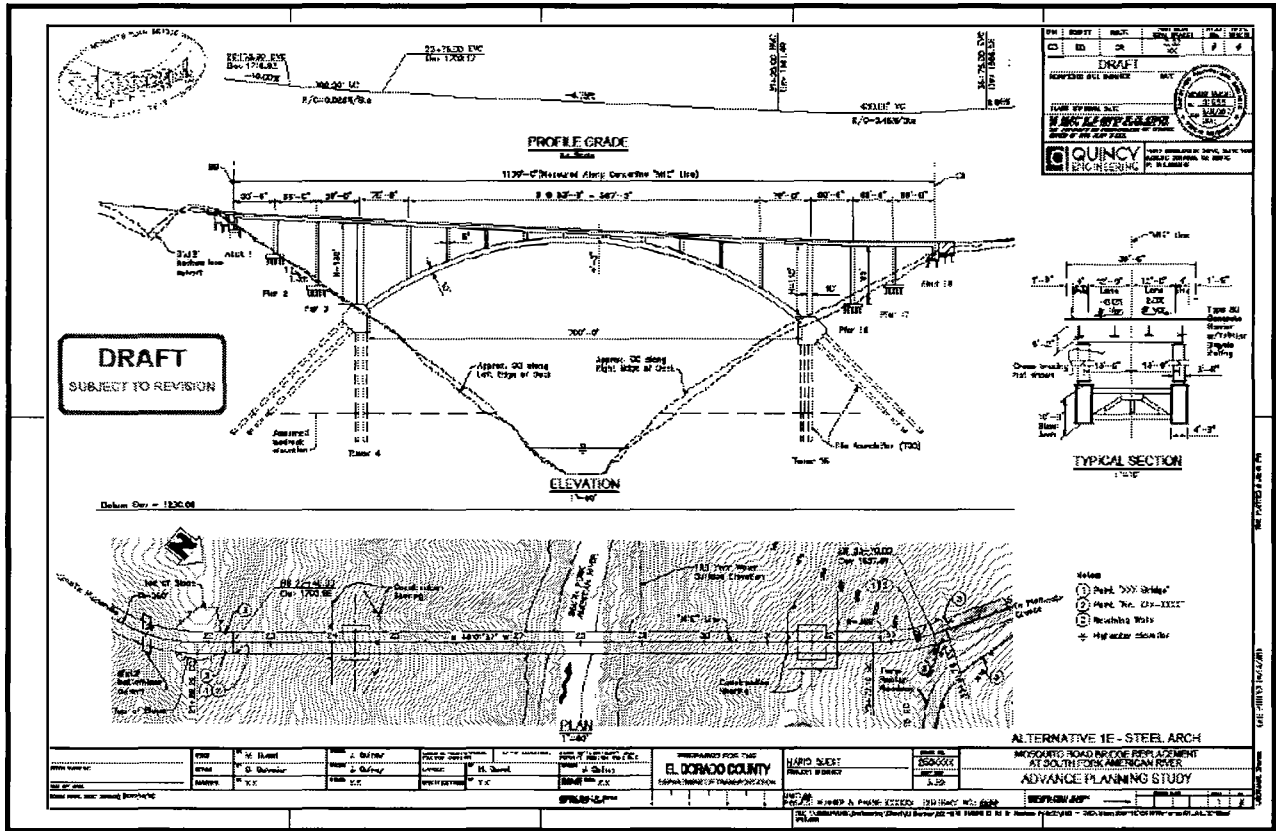
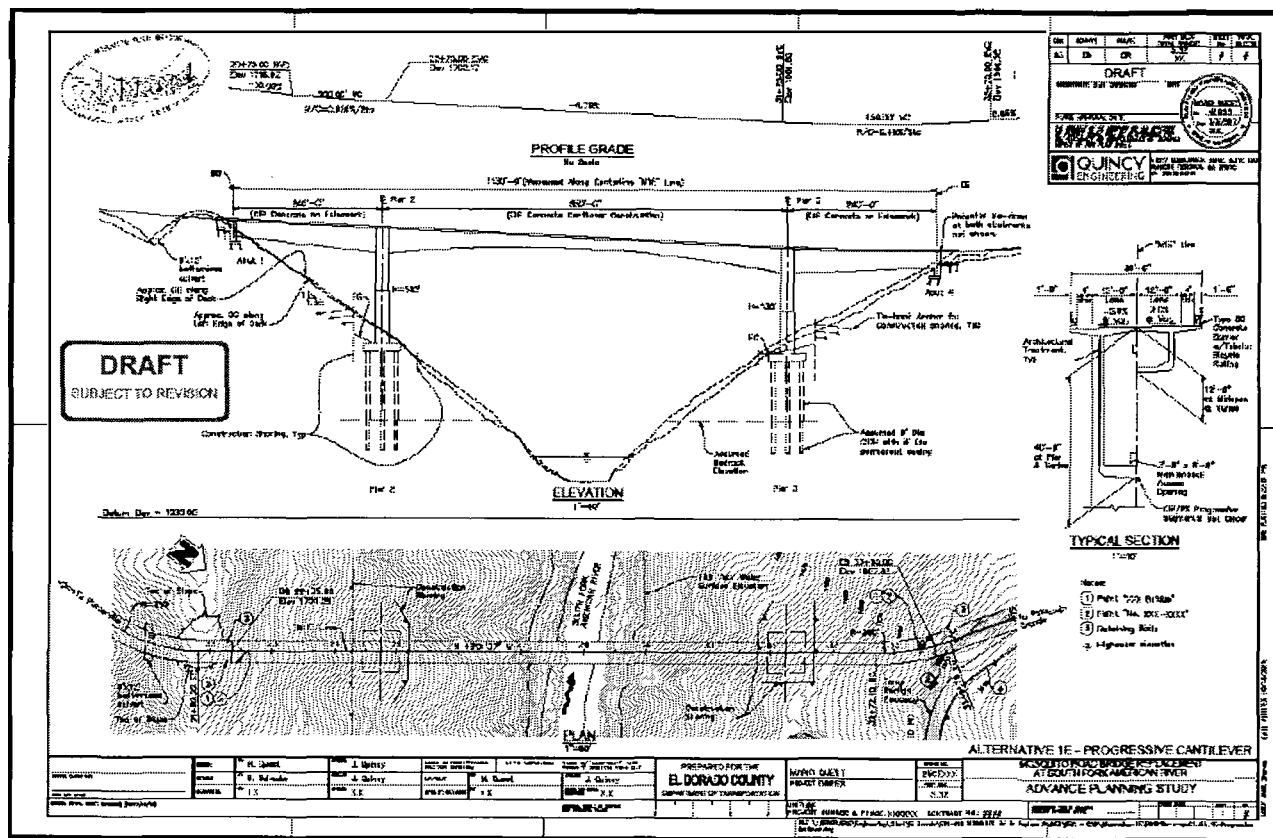


Figure 2: Alternative 1E – Steel Arch



#467-S1411
Second Amendment
Amended Exhibit A
Attachment A



Quincy Engineering, Incorporated

Amended Exhibit C-1

Amended Cost Proposal

Phase 1

<u>Task</u>	<u>Description</u>	<u>Cost</u>
Task 1	Project Management/Meetings	\$ 129,248.00
Task 2	Aesthetic Concepts	\$ 1,084.00
Task 3	Concept Alternatives Studies	\$ 141,304.00
Task 4	Geotechnical Services	\$ -
Task 5	Initial Site Assessment (ISA)	\$ -
Task 6	Hydrology & Hydraulics	\$ -
Task 8	Initial Alternatives Screening	\$ 2,154.00
Task 9	Secondary Bridge & Roadway Alternatives Studies & Estimates (Up to Five [5] Alternatives to 15%)	\$ 98,693.00
Task 10	Secondary Alternative Screening	\$ 27,882.00
Task 11	Draft Bridge & Roadway Alternatives Studies & Estimates (Three [3] Alternatives - Advanced Planning Studies & Geometric Approval Drawings to 30%)	\$ 117,504.00
Task 12	Draft Project Approval Document	\$ 35,941.00
Task 13	Public Outreach	\$ -
Task 14	Establish Environmental and Historical Concerns	\$ -
Task 15	Environmental Analysis	\$ -
Task 16	CEQA/NEPA Documentation	\$ -
Task 17	Final Project Approval Document - Project Report (PA&ED)	\$ 6,979.00
Consultant Subtotal		\$ 560,789.00

Subconsultants:

Mark Thomas & Company, Inc.,

Task 3	Concept Alternatives Studies	\$ 11,663.00
Task 9	Secondary Bridge & Roadway Alternatives Studies & Estimates (Up to Five [5] Alternatives to 15%)	\$ 2,782.00
Task 11	Draft Bridge & Roadway Alternatives Studies & Estimates (Three [3] Alternatives - Advanced Planning Studies & Geometric Approval Drawings to 30%)	\$ 8,084.00
	Other Direct Costs	\$ 112.00
		\$ 22,641.00

International Bridge Technologies, Inc.

Task 3	Concept Alternatives Studies	\$	16,837.00
Task 9	Secondary Bridge & Roadway Alternatives Studies & Estimates (Up to Five [5] Alternatives to 15%)	\$	16,837.00
Task 11	Draft Bridge & Roadway Alternatives Studies & Estimates (Three [3] Alternatives - Advanced Planning Studies & Geometric Approval Drawings to 30%)	\$	16,837.00
	Other Direct Costs	\$	5,000.00
		\$	55,511.00

Crawford & Associates, Incorporated

Task 4	Geotechnical Services	\$	34,520.00
	Other Direct Costs	\$	490.00
		\$	35,010.00

Youngdahl Consulting Group, Inc.

Task 4	Geotechnical Services	\$	44,729.00
Task 5	Initial Site Assessment (ISA)	\$	2,988.00
	Other Direct Costs	\$	2,030.00
		\$	49,747.00

WRECO

Task 6	Hydrology & Hydraulics	\$	16,477.00
	Other Direct Costs	\$	811.00
		\$	17,288.00

Y&C Transportation Consultants, Inc.

Task 11	Draft Bridge & Roadway Alternatives Studies & Estimates (Three [3] Alternatives - Advanced Planning Studies & Geometric Approval Drawings to 30%)	\$	415.00
	Other Direct Costs	\$	84.00
		\$	499.00

AIM Consulting

Task13	Public Outreach	\$	12,980.00
	Other Direct Costs	\$	830.00
		\$	13,810.00

ICF International

Task 14	Establish Environmental and Historical Concerns	\$	20,022.00
Task 15	Environmental Analysis	\$	145,934.00
Task 16	CEQA/NEPA Documentation	\$	92,813.00
	Other Direct Costs	\$	18,931.00
		\$	277,700.00

Design Workshop

Task 2	Aesthetic Concepts	\$	32,342.00
	Other Direct Costs	\$	<u>2,079.00</u>
		\$	34,421.00
	Subconsultant Subtotal - Phase 1	\$	506,627.00
	Consultant - Other Direct Costs - Phase 1	\$	6,201.00
	Supplemental Item of Work Estimate - Task 7 -Traffic Analysis	\$	-
	Consultant - Optional Services - Phase 1	\$	131,217.00
	Total Cost Estimate - Phase 1	\$	1,204,834.00

Quincy Engineering, Incorporated

Amended Exhibit C-1

Amended Cost Proposal

Phase 2

<u>Item of Work</u>	<u>Description</u>	<u>Cost</u>
Item of Work 2.1	Project Management/Meetings	\$ 60,048.00
Item of Work 2.2	Geotechnical Exploration, Sampling, Testing, Analysis, and Recommendations	\$ 30,689.00
Item of Work 2.3	Bridge Type Selection Report	\$ 102,872.00
Item of Work 2.4	Environmental Support and Agency Permits	\$ 33,330.00
Item of Work 2.5	Drainage Report and Storm Water Management Plan and Geotechnical Peer Review	\$ 24,681.00
Item of Work 2.6	Preliminary Right-of-Way	\$ 16,080.00
Item of Work 2.7	Preliminary Bridge Modeling	\$ 46,851.00
Item of Work 2.8	Preliminary Pier Retaining Wall Design	\$ 35,125.00
Item of Work 2.9	Preliminary Design of Temporary Road Realignment	\$ 49,337.00

Consultant Subtotal \$ 399,013.00

Subconsultants:

Crawford & Associates, Incorporated

Item of Work 2.2	Geotechnical Exploration, Sampling, Testing, Analysis, and Recommendations	\$ 1,061,254.00
		<u>\$ 1,061,254.00</u>

Youngdahl Consulting Group, Inc.

Item of Work 2.2	Geotechnical Exploration, Sampling, Testing, Analysis, and Recommendations	\$ 59,328.00
		<u>\$ 59,328.00</u>

Armeni Consulting Services, LLC

Item of Work 2.3	Bridge Type Selection Report	\$ 60,000.00
		<u>\$ 60,000.00</u>

WRECO

Item of Work 2.5	Drainage Report and Storm Water Management Plan and Geotechnical Peer Review	\$ 94,745.00
		<u>\$ 94,745.00</u>

ICF Jones & Stokes, Inc.

Item of Work 2.4	Environmental Support and Agency Permits	\$ 62,861.00
		<u>\$ 62,861.00</u>

Parsons Brinckerhoff, Inc.

Item of Work 2.1	Project Management/Meetings	\$ 29,077.00
		<u>\$ 29,077.00</u>

International Bridge Technologies, Inc.

Item of Work 2.7	Preliminary Bridge Modeling	\$ 96,019.00
		<u>\$ 96,019.00</u>

Subconsultant Subtotal - Phase 2	\$ 1,463,284.00
Consultant - Other Direct Costs - Phase 2	\$ 307,292.00
Consultant - Optional Services - Phase 2	\$ 99,991.00
Total Cost Estimate - Phase 1	\$ 1,204,834.00
Total Cost Estimate - Phase 2	\$ 2,269,580.00
Total Project Cost Estimate - Phase 1 and Phase 2	\$ 3,474,414.00

All expenses and their distribution among Tasks and Items of Work are estimates only. This Exhibit represents the composition of the total not-to-exceed budget for this Agreement. In the performance of the Scope of Work to be provided in accordance with this cost estimate, Consultant may request to reallocate the expenses listed herein among the various Scope of Work tasks and items of work, Other Direct Costs, Supplemental Item of Work Estimate, Optional Services identified herein, including reallocating such expenses between subconsultants identified herein, subject to County's Contract Administrator's prior written approval. In no event shall the total not-to-exceed amount of the Agreement be exceeded.

Quincy Engineering, Incorporated

Amended Exhibit D

AMENDED INTEREST OF CONSULTANT DISCLOSURE STATEMENT

Disclosure of Conflicts

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

None

Certification

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



Signature

John S. Quincy

Name

President

Title

Quincy Engineering Inc.

Company Name

8/15/17

Date

Quincy Engineering, Incorporated

EXHIBIT E

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27, and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000,

subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable

the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27, and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant,

such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the

requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part

hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein. Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed

classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs

anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly

rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this

transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. 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 clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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 Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.