

PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
NEVADA COUNTY TRANSPORTATION COMMISSION
AND

TO DEVELOP

This Agreement by and between the Nevada County Transportation Commission (hereinafter referred to as "NCTC") and _____, (hereinafter referred to as "Consultant"), in consideration of the mutual promises, covenants, and conditions hereinafter set forth, the parties do hereby agree as follows:

1. **Purpose and Scope:** The purpose of this Agreement is to provide a contract for professional services to complete _____.

Consultant will provide services as set forth in Exhibit "A" NCTC's "Request for Proposal"(name of it) and Exhibit "B," Consultant's proposal entitled, "_____". In the event of a conflict between Exhibit "A" and Exhibit "B," Exhibit "A" shall control.

2. **Engagement of Consultant:** NCTC hereby agrees to engage Consultant, and Consultant hereby agrees to perform the services required to complete the project. The services of Consultant are described in Exhibit "A" and Exhibit "B," which are herein incorporated as part of the Agreement.

3. **Scope of Services:** Consultant shall do, perform, and carry out the services as set forth in Exhibit "A" and Exhibit "B" in accordance with this Agreement. No changes to Exhibit "A" and Exhibit "B" or to this Agreement shall be made without the written agreement of NCTC and Consultant. In the event of a conflict between Exhibit "A" and Exhibit "B," Exhibit "A" shall control.

Consultant must provide to NCTC _____ () bound copies and a reproducible original on CD-ROM of the draft report. Format for reproducible originals on CD-ROM will be in Microsoft Word 2010, Excel 2010, and PDF.

Consultant shall deliver _____ () bound copies, one reproducible unbound original copy, and the final on CD-ROM to NCTC.

All published reports using federal funds shall contain a credit reference to appropriate federal funding agency on the cover or title page as follows:

"The preparation of this report has been financed, in part, through a grant from the U.S. Department of Transportation, Federal Transit Administration, under the authority of the 49 USC Chapter 53 §5304 State Planning and Research Grant, Transit Technical Planning Assistance." [This may be modified based on the funding source].

4. **Data to be Furnished to Consultant:** All information, data, reports, records and maps as are existing, available, and necessary for the carrying out of the project shall be furnished to Consultant without charge by NCTC, and NCTC shall cooperate with Consultant in every way possible during all phases of the project. All data, including survey documents, prepared or developed or assembled under this Agreement shall be the property of NCTC.
5. **Personnel:** Consultant represents that it has, or will obtain at its own expense, all personnel and/or subcontractors required in performing the services under this Agreement. Such personnel shall not be employees of NCTC.
6. **Standard of Quality:** All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.
7. **Project Representative:** Consultant and NCTC shall each designate a project representative who shall be responsible for coordinating the efforts of the respective party with regard to the performance of the work as set forth under this Agreement. The project representative for NCTC shall be _____. The project representative for Consultant shall be _____. Consultant's project representative may only be changed upon prior written approval by NCTC.
8. **Subcontracting:** Consultant shall be as fully responsible to NCTC for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as Consultant is for the acts and omissions of persons directly employed.

All of the services required hereunder shall be performed by Consultant and its subcontractors as set forth in Exhibit "A," Exhibit "B," and any amendment thereto. All personnel engaged in the project shall be fully qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this Agreement shall be subcontracted, except as proposed in Exhibit "A," Exhibit "B," or any amendments thereto, without the prior written approval of NCTC prior to the performance of any work.

Consultant shall supervise all personnel or subcontractors selected for this project. Should the services of any personnel or subcontractors be unsatisfactory to NCTC, such personnel or subcontractor shall be removed from the project immediately upon receipt of written notice from NCTC.

9. **Time of Performance:** The services of Consultant are to commence as soon as practical after the execution of this Agreement and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purpose of this contract. All specified elements of the contract and the exhibits attached hereto shall be completed in accordance with the schedule agreed upon by NCTC and Consultant at the time of contract execution.

In the event a delay is incurred through no fault on the part of Consultant, Consultant shall present to NCTC a written request for an extension of time and/or change(s) in the Work Program necessary for the performance of this Agreement. Approval of such time and/or

Work Program change(s) shall not be unreasonably withheld and such additional time as NCTC approves shall be added to the time otherwise specified in this Agreement for completion of this project and made a part of this Agreement by written amendment.

Consultant shall not be responsible for damages or be in default by reason of delays in performance caused by NCTC, governmental acts or failure to act, labor disputes, accidents, acts of God and other delays unavoidable or beyond Consultant's control or due to errors or omissions contained in material, data, or information supplied by NCTC. Within ten (10) business days of experiencing a delay as a result of one of the factors listed in this paragraph, Consultant shall provide a written notice to NCTC of the nature of the delay and specific facts which caused the delay. NCTC reserves the right to terminate the contract in accordance with Section 12 in the event of unavoidable delays.

10. **Compensation:** NCTC shall pay Consultant as compensation in full for all services performed by Consultant pursuant to this Agreement, a total sum not to exceed _____ (**bold**) (spell out the amount). Consultant will not perform work, nor be required to perform work, outside those services specified in this Agreement which would result in billings in excess of \$ _____ without the prior written agreement of both parties. This amount includes all compensation including fees, expenses, travel, and all other costs incurred.
- a. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., (any subcontractors and subrecipients shall refer to Title 2, Code of Federal Regulations, Part 200, *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards*) and Caltrans' *Local Assistance Procedures Manual*, Chapter 5, shall be used to determine the allowability of individual items of cost.
 - b. Consultant also agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
 - c. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.; Title 2, Code of Federal Regulations, Part 200, *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards*; Caltrans' *Local Assistance Procedures Manual*, Chapter 5; or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Consultant to NCTC. Disallowed costs must be reimbursed to NCTC within thirty (30) days unless NCTC approves in writing an alternative repayment plan. NCTC reserves the right to withhold future payments due to Consultant to reimburse NCTC for disallowed costs.
 - d. Travel and subsistence expenses shall not exceed rates authorized to be paid non-state employees under current State Department of Personnel Administration rules, unless written verification is supplied that government hotel rates are not commercially available to Consultant and/or its subcontractors at the time and

location required as specified in the California Department of Transportation's Travel Guide Exception Process.

- e. Consultant and subcontractors shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) which segregates and accumulates the costs of work elements by line item and produces quarterly reports which clearly identify reimbursable costs and other expenditures.
 - f. Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of Sections 10 (a) through (e) above.
11. **Method of Payment:** Consultant shall bill NCTC for time and materials. Man hours by task and all other costs will be itemized in the invoice. Consultant may bill for services performed under this contract on a monthly basis. Payment by NCTC to Consultant shall be made within 30 days after receipt of Consultant's invoice and acceptance of the work to date. However, NCTC, at its own discretion, may withhold up to ten percent (10%) of each invoice until the successful completion of the scope of work and the delivery and acceptance by NCTC of all final products.

NCTC shall hold retainage from Consultant and shall make prompt and regular incremental acceptances of portions, as determined by NCTC, of the contract work and pay retainage to Consultant based on these acceptances. Consultant or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by NCTC. Any delay or postponement of payment may take place only for good cause and with NCTC's prior written approval. Any violation of these provisions shall subject the violating Consultant to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Consultant or subcontractor in the event of: a dispute involving late payment or nonpayment by Consultant; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

12. **Termination of Agreement:** Upon failure of performance by the other party, or at NCTC's convenience, either party may terminate this Agreement upon ten (10) days written notice to the other party. If the Agreement is to be terminated, Consultant shall be paid the amount due for work properly completed and approved by NCTC, up to the date of the notice of termination, based on the actual costs to Consultant attributable to the project, less any compensation to NCTC for damages suffered as a result of Consultant's failure to comply with the terms of this Agreement. If this Agreement is terminated because the work of Consultant does not meet the terms or standards specified in this Agreement, then NCTC shall be obligated to compensate Consultant only for that portion of Consultant's services which is of benefit to NCTC.

Upon receipt of written notice from NCTC that this Agreement is terminated, Consultant will submit an invoice to NCTC for an amount which represents the total cost of services actually and properly performed that are attributable to the project to the date of said notice, for which Consultant has not previously been compensated. Upon approval of this invoice by

NCTC, Consultant shall be paid the sum found due, and the NCTC shall be under no further obligation to Consultant, monetary or otherwise.

Termination and payment pursuant to this Section shall not waive, limit or otherwise affect any cause of action for breach of contract, which NCTC may possess.

In the event of termination by either party, all data shall become the property of NCTC subject to the provisions of Section 32.

13. **Interest of Members of NCTC and Others:** No officer, member, or employee of NCTC and no member of the governing body, and no other public official of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects his or her personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. In addition, Consultant shall notify NCTC of any such direct or indirect personal or pecuniary interest prior to entering into this Agreement, or if discovered after execution of the Agreement, immediately upon learning of such interest.
14. **Assignability:** Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of NCTC thereto; provided, however, that claims for money due or to become due to Consultant from NCTC under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval provided there is no dispute as to the amount of funds due to Consultant. Notice of any such assignment or transfer shall be furnished promptly to NCTC.
15. **Covenant Against Contingent Fees:** 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, NCTC 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.
16. **Findings Confidential:** Any reports, information, data, etc. given to, prepared by, or assembled by Consultant shall be held as confidential, and shall not be made available to any individual or organization by Consultant without the prior written approval of NCTC.
17. **Copyright:** No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of Consultant.
18. **Availability of Records:** Consultant shall document the results of the work to the satisfaction of NCTC, and if applicable, the State and U.S. Department of Transportation (DOT). Such documentation may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of contract objectives.

Consultant and its subcontractors shall maintain all books, documents, papers, accounting records, contracts and/or agreements with third parties, and other evidence pertaining to costs incurred, and make such materials available at their respective offices at all reasonable times during the contract period and for four (4) years from the date of final payment to Consultant, or four (4) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement, whichever is later. Such materials shall be available for inspection by authorized representatives of NCTC, or the copies thereof shall be furnished if requested. Consultant agrees to provide any requested information and shall permit NCTC or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of interviewing employees and inspecting or copying such materials. The U.S. DOT, Caltrans, the Comptroller General of the United States, or any authorized representatives of these agencies, shall have access to any books, documents, papers and records of Consultant which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and/or transcriptions. If selected for audit or review, Consultant's contract, cost proposal and indirect cost rate and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulation. Refusal by Consultant to incorporate audit or review recommendation, or to ensure that authorized officials have access to the certified public accountant's work papers, will be considered a breach of this Agreement and cause for termination and disallowance of prior reimbursed costs.

19. **Compliance with Applicable Laws:** Consultant agrees to conduct and execute the project in compliance with all applicable local, state and federal laws, codes, ordinances, regulations, orders, and decrees. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775. Consultant shall keep itself fully informed of and shall observe and comply with and shall cause any and all persons, firms, or corporations employed by it or under it to observe and comply with all state and national laws and county and municipal ordinances, regulations, orders and decrees which in any manner affect those engaged or employed in the services described by this Agreement or the material used or which in any way affect the conduct of the work.

Consultant warrants and represents to NCTC that Consultant shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession or are necessary and incident to the performance of the services and work Consultant performs under this Agreement. Consultant shall provide written proof of such licenses, permits, insurance and approvals upon request by NCTC. NCTC is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

20. **Insurance:** Consultant shall maintain, at Consultant's own expense during the term hereof, insurance with respect to Consultant's business, the premises and all activities or services in the performance of this Agreement, of the types and in the minimum amounts described generally as follows:
- a. Full Worker's Compensation covering all employees of Consultant as required by law in the State of California, and Employers' Liability Coverage of \$1,000,000. Consultant acknowledges that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code and it certifies that it will comply with such provisions before

commencing the performance of the work of this contract. A copy of the certificates evidencing such insurance shall be provided to NCTC prior to commencement of work.

- b. Comprehensive Public Liability Insurance or Comprehensive Liability Insurance (Bodily Injury and Property Damage) of \$1,000,000.00 combined single limit per occurrence, including, but not limited to, endorsements for the following coverages: personal injury, premises-operations, products and completed operations, blanket contractual, and independent contractor's liability. If Comprehensive Liability Insurance or other form has a general aggregate limit, such limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- c. Comprehensive Automobile Liability Insurance (Bodily Injury and Property Damages) on owned, leased, and non-owned vehicles used in connection with Consultant's business of \$1,000,000.00 combined single limit per occurrence.
- d. Throughout the duration of the project, Consultant shall carry professional liability insurance in a standard form, including Errors and Omission coverage, with a company approved by NCTC. Said insurance shall be written with limits of \$500,000 for each incident and \$1,000,000 in the aggregate. NCTC may waive this Section "d" at its discretion, in the event such insurance is not available for the type of service being provided by Consultant.
- e. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions in excess of \$5,000 must be declared to and approved by NCTC.
- f. Required Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - (1) For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects NCTC, its directors, officers, employees and agents. Any insurance or self-insurance maintained by NCTC, its directors, officers, employees or agents shall be in excess of Consultant's insurance and shall not contribute to it.
 - (2) Any failure by Consultant to comply with reporting or other provisions of the policies including breaches of warrants shall not affect coverage provided to NCTC, its directors, officers, employees or agents.
 - (3) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- g. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by NCTC.
- h. Certificate of Insurance and Additional Insured Requirement: Consultant shall furnish to NCTC an original Certificate of Insurance on a standard ACORD form, or other form acceptable to NCTC, substantiating the required coverages and limits set forth above and also containing the following statement with respect to the General Liability policy: "Nevada County Transportation Commission and its directors,

officers, employees and agents, are made additional insureds, but only insofar as the operations under this Agreement are concerned.”

- i. **Certified Copies of Policies:** Upon request by NCTC, Consultant shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.
 - j. **Consultant’s Responsibility:** Nothing herein shall be construed as limiting in any way the extent to which Consultant may be held responsible for damages resulting from Consultant’s operations, acts, omissions, or negligence. Insurance coverage obtained in the minimum amounts specified above shall not relieve Consultant of liability in excess of such minimum coverage, nor shall it preclude NCTC from taking other actions available to it under this Agreement or by law, including but not limited to, actions pursuant to Consultant’s indemnity obligations.
 - k. **Notice:** Consultant agrees that none of the required coverages set forth in this Section 20 shall be suspended, voided, canceled, terminated, or reduced in coverage or limits, without thirty (30) days’ prior written notice to NCTC by certified mail, return receipt requested.
21. **Indemnification:** Consultant agrees to indemnify, defend, and hold harmless, NCTC, its directors, officers, agents, and employees (the “Indemnitees”) from and against any and all actions, suits, claims, demands, liabilities, damages, costs and expenses, including reasonable attorneys’ fees and costs, arising out of, pertaining to, relating to, or are in any way connected with the performance of this Agreement, however caused, regardless of any negligent act of an Indemnitee, whether active or passive, excepting only such claims as may be caused by the sole active negligence or willful misconduct of an Indemnitee. Consultant shall pay all costs that may be incurred by NCTC in enforcing this indemnity, including reasonable attorneys’ fees. The provisions of this Section shall survive the expiration, termination or assignment of this Agreement.

[For contracts with “Design Professionals,” including architects, landscape architects, professional engineers, or land surveyors, the following language will be used]:

Indemnification: Consultant agrees to indemnify, defend, and hold harmless, NCTC, its directors, officers, agents, and employees (the “Indemnitees”) from and against any and all actions, suits, claims, demands, liabilities, damages, costs and expenses, including reasonable attorneys’ fees and costs, arising out of, pertaining to, relating to, or in any way connected with the negligence, recklessness, or willful misconduct of Consultant. The parties agree that Consultant’s obligation to defend NCTC is limited to reimbursing NCTC for its cost for defending a claim, as those costs are incurred by NCTC. The parties further agree that NCTC will reimburse Consultant for that portion of the reasonable costs incurred by Consultant in the defense of NCTC which is attributable to NCTC’s active negligence, recklessness, or willful misconduct, as determined through settlement, arbitration, or litigation. Consultant shall pay all costs that may be incurred by NCTC in enforcing this indemnity, including reasonable attorneys’ fees. The provisions of this Section shall survive the expiration, termination or assignment of this Agreement.]

22. **Governing Law and Choice of Forum:** This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Nevada County.

23. **Prevailing Party:** Should any dispute arise hereunder, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.
24. **Conflict of Interest:** No consultant, subcontractor, or member of any firm proposed to be employed in the preparation of this project has a past, ongoing, or potential involvement in which could be deemed a conflict of interest under the Fair Political Practices Act or other law. During the term of this Agreement, Consultant shall not accept any employment or engage in any consulting work that would create a conflict of interest with NCTC or in any way compromise the services to be performed under this Agreement. Consultant shall immediately notify NCTC of any and all potential violations of this paragraph upon becoming aware of the potential violation.
25. **Political Reform Act Compliance:** Consultant is aware and acknowledges that certain contractors that perform work for governmental agencies are "consultants" under the Political Reform Act (the "Act") (Government Code § 81000, et seq.) and its implementing regulations (2 California Code of Regulations § 18110, et seq.). Consultant agrees that any of its officers or employees deemed to be "consultants" under the Act by NCTC, as provided for in the Conflict of Interest Code for NCTC, shall promptly file economic disclosure statements for the disclosure categories determined by NCTC, to be relevant to the work to be performed under this Agreement and shall comply with the disclosure and disqualification requirements of the Act, as required by law.
26. **Independent Contractor:** In performing services under this Agreement, Consultant is and shall act as an independent contractor and not an employee, representative, or agent of NCTC. Consultant shall have control of its work and the manner in which it is performed. Consultant expressly warrants that neither Consultant nor any of Consultant's employees or agents shall represent themselves to be employees or agents of NCTC.
27. **National Labor Relations Board Certification:** Consultant, by signing this Agreement, does swear 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 which orders Consultant to comply with an order of the National Labor Relations Board (Public Contract Code § 10296).
28. **Americans with Disabilities Act (ADA) of 1990:** By signing this Agreement, Consultant assures NCTC that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA, including but not limited to, those found within the Code of Federal Regulations, Title 49, Parts 27, 37, and 38.
29. **Equal Employment Opportunity/Title VI Compliance:** Consultant shall comply with Title VI of the Civil Rights Act of 1964, as amended, the provisions contained in 49 CFR Part 21 through Appendix C, 23 CFR Part 200, 23 CFR Part 230, 49 U.S.C. 5332, and the Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794.
 - a. During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS),

mental disability, medical condition, age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave.

- b. Consultant and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- c. Consultant shall comply with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in the Department of Labor Regulation (41 CFR Part 60), and any other applicable federal and state laws and regulations relating to equal employment opportunity, including the provisions of the California Fair Employment and Housing Act (Government Code § 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §§ 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- d. Consultant shall also comply with the Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age, Section 324 of Title 23 U.S.C., prohibiting discrimination based on gender, and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and 49 CFR Part 27 regarding discrimination against individuals with disabilities.
- e. Solicitations for Subcontractors, including procurement of materials and equipment: In all solicitations either by competitive bidding or negotiations made by Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the statutes and regulations relative to nondiscrimination set forth herein.
- f. Information and Reports: Consultant shall provide all information and reports required by applicable federal and state laws and regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the NCTC or the Federal Transit Administration to be pertinent to ascertain compliance with such laws and regulations, orders and instructions, including but not limited to permitting access to all records of employment, employment advertisements, application forms and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency designated to investigate compliance with this section. Where any information is required of Consultant which is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to NCTC or the Federal Transit Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

- g. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, NCTC shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including but not limited to:
 - (1) Withholding of payments to Consultant under the Agreement until Consultant complies, and/or,
 - (2) Cancellation, termination or suspension of the Agreement, in whole or in part.
 - h. **Incorporation of Provisions:** Consultant shall include the provision of this Section 29 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract of procurement as NCTC or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request that NCTC enter into such litigation to protect the interests of NCTC. In addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.
30. **Drug-Free Certification:** By signing this Agreement, Consultant hereby certifies, under penalty of perjury under the laws of the State of California, Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The person's or the organization's policy of maintaining a drug-free workplace;
 - (3) Any available counseling, rehabilitation, and employee assistance programs; and
 - (4) Penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee of Consultant who works under this Agreement shall:
 - (1) Receive a copy of Consultant's Drug-Free Workplace Policy Statement; and
 - (2) Agree to abide by the terms of Consultant's Statement as a condition of employment on this Agreement.

31. **Union Organizing:** By signing this Agreement, Consultant hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.
- a. Consultant will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.
 - b. Consultant will not meet with employees or supervisors on NCTC or state property if the purpose of the meeting is to assist, promote, or deter union organizing, unless the property is equally available to the general public for meetings.

32. **Ownership of Documents:** Original document, methodological explanations, computer programs, drawings, designs and reports generated by this Agreement shall belong to and become the property of NCTC. Consultant is not liable for changes made by others or any use beyond the scope of this Agreement. Any additional copies, not otherwise provided for herein, shall be the responsibility of NCTC.

It is understood that in addition to NCTC, state and federal funding agencies shall have the right to reproduce, publish, or otherwise use, and authorize others to use, the information developed from federally reimbursed projects.

33. **Campaign Contribution Disclosure:** Consultant has complied with the campaign contribution disclosure provisions of the California Levine Act (Government Code § 84308) and has completed the Levine Act Disclosure Statement attached hereto as Exhibit C.
34. **Entire Agreement and Amendment:** This Agreement contains the entire agreement of the parties, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreement arrangements, or understandings, oral or written, between the parties relating to the subject matter contained in this Agreement, which are not fully expressed herein.

The provisions of this Agreement may be waived, altered, amended, or repealed in whole or in part only upon written consent of all parties to this Agreement. Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by NCTC.

35. **Severability:** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.
36. **Headings:** The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.

37. **Authority:** Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.
38. **Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.
39. **Necessary Acts:** Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.
40. **Disadvantaged Business Enterprise:** It is the policy of NCTC that Disadvantaged Business Enterprises (DBE), as defined in Title 49, Part 26 of the Code of Federal Regulations (49 CFR 26) entitled, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

"Notice to Proposers Disadvantaged Business Enterprise Information", Exhibit "10-I" is attached to the Agreement. The purpose of this form is to provide information regarding DBE participation and to reference Exhibit "10-01" and Exhibit "10-02," as necessary forms to collect data required under 49 CFR 26. Even if no DBE participation will be reported, Consultant agrees to complete and sign the forms and return them with the executed Agreement.

- a. **Non-discrimination:** "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 U.S. 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 recipient deems appropriate." Each subcontract signed by the Consultant in the performance of this Agreement must include an assurance that the Consultant and subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement.
- b. **Prompt Payments of Withheld Funds to DBE and Non-DBE Subcontractors:** The Consultant shall pay to subcontractor(s) all moneys withheld in retention from the subcontractor within thirty (30) days from receiving payment from NCTC for work satisfactorily completed. Any delay or postponement of payment over 30-days may take place only for good cause and with NCTC's prior written approval. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subcontractor in the event of a dispute involving late payment or non-payment to the Consultant or deficient subcontract performance or noncompliance by a subcontractor.
- c. **Records:** The Consultant shall maintain records of all subcontracts entered into with certified DBE subcontractors and records of materials purchased from certified DBE suppliers. The records shall show the name and business address of each DBE

subcontractor or vendor and the total dollar amount actually paid each DBE subcontractor or vendor. The records shall show the date of payment and the total dollar figure paid to all firms. Upon completion of the contract, with submittal of the final invoice, the Consultant agrees to complete the attached "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" (Exhibit "17-F") whether or not DBE participation is obtained. A summary of the DBE records shall be prepared, certified correct, and submitted on the form. The Consultant is to show total dollars paid to each DBE subcontractor and supplier.

- d. Termination of a DBE: In conformance with Federal DBE regulation Section 26.53(f)(1) and 26.53(f)(2), Part 26, 49 CFR, the Consultant shall not:
- (1) Terminate for convenience a listed DBE subcontractor and then perform that work with its own forces (personnel), or those of an affiliate, unless the Consultant has received prior written authorization from the project representative of NCTC to perform the work with other forces (other than the Consultant's own personnel) or to obtain materials from other sources; and
 - (2) If a DBE subcontractor is terminated or fails to complete its work for any reason, the Consultant shall be required to make good faith efforts to replace the original DBE subcontractor with another DBE.
 - (3) Noncompliance by the Consultant with the requirements of this paragraph is considered a material breach of this Agreement and may result in termination of the Agreement or other such appropriate remedies for a breach of this Agreement as NCTC deems appropriate.
- e. DBE Certification and Decertification: If a DBE subcontractor is decertified during the life of the contract, the decertified subcontractor shall notify the Consultant in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the contract, the subcontractor shall notify the Consultant in writing with the date of certification. The Consultant shall then provide to the project representative of NCTC written documentation indicating the DBE's existing certification status.

Any subcontract entered into as a result of the Agreement shall contain all of the provisions of this section.

41. **Debarment, Suspension, and Other Responsibilities:** Consultant certifies and warrants that neither Consultant firm nor any owner, partner, director, officer, or principal of Consultant, nor any person in a position with management responsibility or responsibility for the administration of funds:
- a. Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal or state department or agency.
 - b. Has within the three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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; 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.

- c. Is presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commissions of any of the offenses enumerated in paragraph "b" above.
- d. Has within a three-year period preceding this Agreement, had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

Consultant further certifies that is shall not knowingly enter into any transaction with any subconsultant, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

42. **Non-lobbying Certification for Federal-Aid Contracts:** Consultant certifies, to the best of his or her knowledge and belief, that:

- a. No State or 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 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.
- b. If any funds other than State or 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 contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the attached Exhibit "10-Q", "Disclosure of Lobbying Activities," in accordance with its instructions.
- c. This certification is a material representation of fact upon which reliance was placed when this Agreement was entered into. Submission of this certification is a prerequisite for making or entering into this Agreement, 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.

Consultant also agrees by signing this Agreement that it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

43. **Clean Air Act:** Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, including sections 174 and 176, subdivisions (c) and (d) (42 U.S.C. §§ 7504, 7506 (c) and (d)) and 40 CFR Part 93 ("Clean Air requirements"). Consultant agrees to report each Clean Air requirement violation to NCTC and understands and agrees that NCTC will, in turn, report each Clean Air requirement violation as required to assure notification to FTA and the appropriate EPA

Regional Office. Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

44. **Disputes:** Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of NCTC's Executive Director and Chairperson, who may consider written or verbal information submitted by Consultant. Not later than 30 days after completion of all work under the contract, Consultant may request review by NCTC's Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

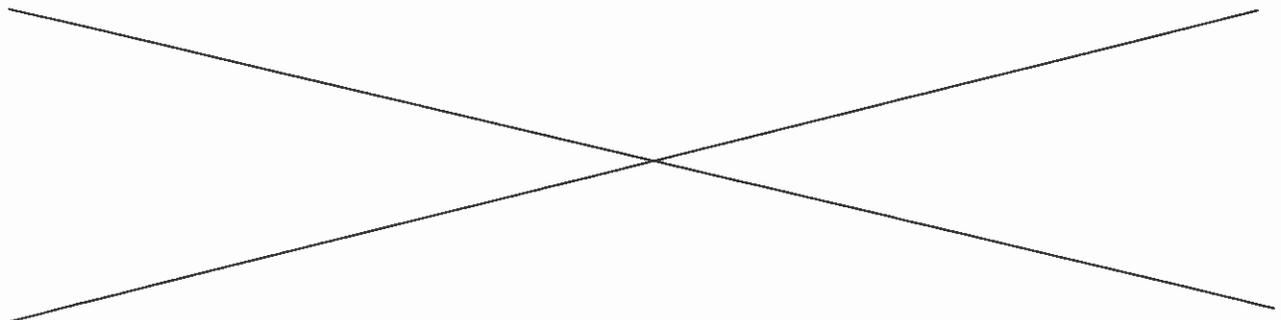
Any dispute concerning a question of fact arising under an audit of this Agreement shall be reviewed by NCTC's Executive Director. Not later than 30 days after issuance of the final audit report, Consultant may submit a written request for review by the Executive Director of unresolved audit issues.

Neither the pendency of a dispute, nor its consideration by the committee or Executive Director, will excuse Consultant from full and timely performance in accordance with this Agreement.

45. **Unbudgeted Purchases:** Consultant shall obtain NCTC's prior written authorization before entering into an unbudgeted purchase order or subcontract exceeding \$5,000 for supplies, equipment or subconsultant services. For such purchase, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this Agreement is subject to the following: Consultant must maintain an inventory of all nonexpendable property having a useful life of at least 2 years, and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement during the term of the contract, and is sold or traded in, NCTC shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Consultant may either keep the equipment and credit NCTC in an amount equal to the fair market value, or sell such equipment at the best price obtainable and credit NCTC, or otherwise comply with 49 CFR, Part 18.

46. **Safety:** Consultant shall comply with any applicable OSHA regulations regarding necessary safety equipment or procedures, and safety instructions issued by NCTC, if any.
47. **Certifications:** Exhibit "10-F", "Certification of Consultant, Commissions & Fees" from Caltrans Local Assistance Procedures Manual, is included as an attachment to the Agreement and is incorporated herein by this reference. Consultant shall complete and sign Exhibit "10-F" and return with the executed Agreement.



IN WITNESS HEREOF, this Agreement between the Nevada County Transportation Commission and _____ for professional services has been executed by the parties hereto the day and year shown below.

By: _____ Date: _____
Chairman
Nevada County Transportation Commission

By: _____ Date: _____
Consultant
(Name of Firm)

Nevada County Transportation Commission Counsel, Approved as to Form

By: _____ Date: _____
Miller & Owen
A Professional Corporation

enclosures

- Exhibit A: NCTC RFP
- Exhibit B: Consultant's Proposal
- Exhibit C: Levine Act Disclosure Statement
- Exhibit 10-F: Certification of Consultant, Commissions & Fees
- Exhibit 10-I: Notice to Proposers Disadvantaged Business Enterprise Information
- Exhibit 10-O1: Local Agency Consultant DBE Commitment
- Exhibit 10-O2: Local Agency Consultant DBE Information
- Exhibit 10-Q: Disclosure of Lobbying Activities
- Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprises

EXHIBIT C
LEVINE ACT DISCLOSURE STATEMENT

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract.

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any NCTC Commissioner(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

YES NO

If yes, please identify the Commissioner(s):

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any NCTC Commissioner(s) in the three months following the award of the contract?

YES NO

If yes, please identify the Commissioner(s):

Answering yes to either of the two questions above does not preclude NCTC from awarding a contract to your firm. It does, however, preclude the identified Commissioner(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

EXHIBIT 10-F CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES

I HEREBY CERTIFY that I am the _____, and duly authorized representative of the firm of _____, whose address is _____, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract; nor
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this contract.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this contract involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

(Date)

(Signature)

Distribution: 1) Local Agency Project File (Original & Contract)
2) DLAE (with contract copy)

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

The Agency has not established a goal for this Contract. However, proposers are encouraged to obtain DBE participation for this contract.

1. TERMS AS USED IN THIS DOCUMENT

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

2. AUTHORITY AND RESPONSIBILITY

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

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-O1 *Consultant Proposal DBE Commitment* must be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included with the Request for Proposal. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

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

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.

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

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity Web site at: <http://www.dot.ca.gov/hq/bep/>.
1. Click on the link in the left menu titled *Disadvantaged Business Enterprise*;
 2. Click on Search for a DBE Firm link;
 3. Click on *Access to the DBE Query Form* located on the first line in the center of the page.

Searches can be performed by one or more criteria. Follow instructions on the screen.

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

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk

items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

INSTRUCTIONS - CONSULTANT PROPOSAL DBE COMMITMENT**Consultant Section**

The Consultant shall:

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

Local Agency Section:

The Local Agency representative shall:

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

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

(Inclusive of all DBEs listed at bid proposal. Refer to instructions on the reverse side of this form)

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

Distribution: (1) Original – Consultant submits to local agency with proposal
 (2) Copy – Local Agency files

INSTRUCTIONS - CONSULTANT CONTRACT AWARD DBE INFORMATION**Consultant Section***The Consultant shall:*

1. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
4. **Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
5. **Consultant Name** - Enter the consultant's firm name.
6. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-1 *Notice to Proposers DBE Information* form. See LAPM Chapter 10.
7. **Total Dollar Amount for all Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
8. **Total number of all subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
9. **Description of Services to be Provided** - Enter item of work description of services to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
10. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
11. **DBE Cert. Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
12. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE, and include DBEs that are not identified as subconsultants on the Exhibit 10-01 *Consultant Proposal DBE Commitment* form. See LAPM Chapter 9 for how to count full/partial participation.
13. **Total Dollars Claimed** – Enter the total dollar amounts for column 13.
14. **Total % Claimed** – Enter the total DBE participation claimed for column 13. SUM = (item "14. Total Participation Dollars Claimed" divided by item "4. Total Contract Award Amount"). If the Total % Claimed is less than item "6. Contract DBE Goal", an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H *DBE Information - Good Faith Efforts* of the LAPM).
15. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
16. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
17. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
18. **Date** - Enter the date this section of the form is signed by the preparer.
19. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the consultant.

Local Agency Section:*The Local Agency representative shall:*

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

Caltrans Section:*Caltrans District Local Assistance Engineer (DLAE) shall:*

28. **DLAE Name (Print)** – Clearly enter the name of the DLAE.
29. **DLAE Signature** – DLAE must sign this section of the form to certify that it has been reviewed for completeness.
30. **Date** - Enter the date that the DLAE signs this section the form.

EXHIBIT 10-02 CONSULTANT CONTRACT DBE INFORMATION

(Inclusive of all DBEs listed at contract award. Refer to instructions on the reverse side of this form)

Consultant to Complete this Section			
1. Local Agency Name: _____			
2. Project Location: _____			
3. Project Description: _____			
4. Total Contract Award Amount: \$ _____			
5. Consultant Name: _____			
6. Contract DBE Goal %: _____			
7. Total Dollar Amount for <u>all</u> Subconsultants: \$ _____			
8. Total Number of <u>all</u> Subconsultants: _____			
Award DBE/DBE Information			
9. Description of Services to be Provided	10. DBE/DBE Firm Contact Information	11. DBE Cert. Number	12. DBE Dollar Amount
Local Agency to Complete this Section		13. Total Dollars Claimed \$ _____	14. Total % Claimed _____ %
20. Local Agency Contract Number: _____			
21. Federal-aid Project Number: _____		15. Preparer's Signature _____	
22. Contract Execution Date: _____			
Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate:		16. Preparer's Name (Print) _____	
23. Local Agency Representative Name (Print) _____			
24. Local Agency Representative Signature _____		17. Preparer's Title _____	
25. Date _____			
26. Local Agency Representative Title _____		18. Date _____	
27. (Area Code) Tel. No. _____			
Caltrans to Complete this Section		19. (Area Code) Tel. No. _____	
Caltrans District Local Assistance Engineer (DLAE) certifies that this form has been reviewed for completeness:			
28. DLAE Name (Print) _____	29. DLAE Signature _____	30. Date _____	

Distribution: (1) Copy – Email a copy to the Caltrans District Local Assistance Engineer (DLAE) within 30 days of contract award. Failure to send a copy to the DLAE within 30 days of contract award may result in delay of payment.
 (2) Copy – Include in award package sent to Caltrans DLAE
 (3) Original – Local agency files

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

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

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

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

FINAL REPORT – UTILIZATION OF DISADVANTAGED BUSINESS
ENTERPRISES (DBE), FIRST-TIER SUBCONTRACTORS
CEM 2402(F) (Rev. 02/2008)

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

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

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

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

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

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

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

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

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

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

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

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

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

