

SAMPLE CONTRACT
PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
NEVADA COUNTY TRANSPORTATION COMMISSION
AND

TO PROVIDE

This Agreement by and between the Nevada County Transportation Commission (hereinafter referred to as "NCTC") and _____, (hereinafter referred to as the "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 _____.

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

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

3. **Scope of Services:** The 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 the Consultant. In the event of a conflict between Exhibit "A" and Exhibit "B," Exhibit "A" shall control.

The Consultant shall provide one (1) electronic copy of the draft report to the NCTC and shall provide ten (10) bound hardcopies of the final report.

A reproducible original of the final report shall be provided on CD-ROM. Format for the CD-ROM will be in Microsoft Word 2010 and Excel 2010 for Windows.

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."

4. **Data to be Furnished to the 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 the Consultant without charge by NCTC, and NCTC shall cooperate with the 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:** The 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. **Project Representative:** The 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 Mike Woodman. The project representative for the Consultant shall be _____. The project representative may be changed upon mutual agreement by NCTC and the Consultant.
7. **Subcontracting:** The 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 the Consultant is for the acts and omissions of persons directly employed.

All of the services required hereunder shall be performed by the 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.

The 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.

8. **Time of Performance:** The services of the 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 the Consultant at the time of contract execution.

In the event a delay is incurred through no fault on the part of the Consultant, the 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.

The 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 the 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, the 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 11 in the event of unavoidable delays.

9. **Compensation:** NCTC shall pay the Consultant as compensation in full for all services performed by the Consultant pursuant to this Agreement, a total sum not to exceed _____. The 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. The 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 the *Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments*) shall be used to determine the allowability of individual items of cost.
 - b. The 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 the Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.; *Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments*; or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by the Consultant to NCTC. Disallowed costs must be reimbursed to NCTC within sixty (60) days unless NCTC approves in writing an alternative repayment plan.
 - d. The 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.
 - e. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of Sections 9 (a) through (c) above.
10. **Method of Payment:** The Consultant shall bill NCTC for time and materials. Man hours by task and all other costs will be itemized in the invoice. The Consultant may bill for services performed under this contract on a monthly basis. Payment by NCTC to the Consultant shall be made within 30 days after receipt of the 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.

The NCTC shall hold retainage from the Consultant and shall make prompt and regular incremental acceptances of portions, as determined by the NCTC of the contract work and pay retainage to the Consultant based on these acceptances. The 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 the Consultant or subcontractor in the event of: a dispute involving late payment or nonpayment by the Consultant; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

11. **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, the Consultant shall be paid the amount due for work properly completed and approved by NCTC based on the actual costs to the Consultant attributable to the project.

Upon receipt of written notice from NCTC that this Agreement is terminated, the 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 the Consultant has not previously been compensated. Upon approval of this invoice by NCTC, the Consultant shall be paid the sum found due, and the NCTC shall be under no further obligation to the Consultant, monetary or otherwise.

In the event of the failure of the Consultant and NCTC to agree, in whole or in part, as to the amount due hereunder to be paid to the Consultant in connection with the termination of work pursuant to this cause, both parties shall submit the issue for arbitration. 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.

12. **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, the 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.

13. **Assignability:** The 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 the 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 the Consultant. Notice of any such assignment or transfer shall be furnished promptly to NCTC.
14. **Interest of the Consultant:** The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed.
15. **Covenant Against Contingent Fees:** The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the 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, the 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 the Consultant shall be held as confidential, and shall not be made available to any individual or organization by the 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 the Consultant.
18. **Availability of Records:** The 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.

The Consultant and its subcontractors shall maintain all books, documents, papers, accounting records, 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 the Consultant. Such materials shall be available for inspection by authorized representatives of NCTC, or the copies thereof shall be furnished if requested. 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 the Consultant which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and/or transcriptions.

19. **Applicable Laws:** The Consultant agrees to conduct and execute the project in compliance with all applicable local, state and federal laws. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775. The

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.

20. **Insurance:** The Consultant shall maintain, at the Consultant's own expense during the term hereof, insurance with respect to the 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 and Employer's Liability Insurance covering all employees of the Consultant as required by law in the State of California. The 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.
 - c. Comprehensive Automobile Liability Insurance (Bodily Injury and Property Damages) on owned, leased, and non-owned vehicles used in connection with the Consultant's business of \$1,000,000.00 combined single limit per occurrence.
 - d. Throughout the duration of the project, the Consultant shall carry professional liability insurance in a standard form, including Errors and Omission coverage, with a company admitted to do insurance business in the State of California and 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 the Consultant.

The Consultant shall not modify or cancel insurance without the prior written consent of NCTC.

21. **Indemnification:** The Consultant will indemnify, defend, and hold harmless, NCTC, its agents, officials, and employees against any and all suits, claims, demands, liability, costs and expenses that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.
22. **Dispute Resolution:** If possible, any dispute concerning terms and conditions shall first be settled by the parties herein. If the parties herein are unable to settle a dispute, it may be settled by arbitration in accordance with the Rules of the American Arbitration Association,

and if the parties select arbitration, the judgment upon the award, rendered in such arbitration shall be final and may be entered in any court having jurisdiction thereof. All of the provisions of Section 1283.05 of the California Code of Civil Procedure are hereby expressly made applicable to any such arbitration. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

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, the 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. The 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:** The 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.). The 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, the Consultant is and shall act as an independent contractor and not an employee, representative, or agent of NCTC. The Consultant shall have control of its work and the manner in which it is performed. The Consultant expressly warrants that neither the Consultant nor any of the Consultant's employees or agents shall represent themselves to be employees or agents of NCTC.
27. **National Labor Relations Board Certification:** The 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 the Consultant within the immediately preceding two-year period because of the Consultant's failure to comply with an order of a federal court which orders the 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, the 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.

29. **Equal Employment Opportunity/Title VI Compliance:** The Consultant shall comply with Title VI of the Civil Rights Act of 1964, as amended, and with the provisions contained in 49 CFR Part 21 through Appendix C and 23 CFR 710.405 (b).
- a. During the performance of this Agreement, the 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, religion, national origin, physical disability, mental disability, medical condition, age or marital status.
 - b. The 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. The 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), the California Fair Employment and Housing Act, and any other applicable federal and state laws and regulations relating to equal employment opportunity, including the provisions of the 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. The 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. **Solicitations for Subcontractors, including procurement of materials and equipment:** In all solicitations either by competitive bidding or negotiations made by the 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 the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.
 - e. **Information and Reports:** The Consultant shall provide all information and reports required by the 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 Regulations, orders and instructions. Where any information is required of the Consultant which is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the NCTC or the Federal Transit Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
 - f. **Sanctions for Noncompliance:** In the event of the 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:

- i. Withholding of payments to the Consultant under the Agreement until the Consultant complies, and/or,
 - ii. Cancellation, termination or suspension of the Agreement, in whole or in part.

 - g. **Incorporation of Provisions:** The 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. The Consultant shall take such action with respect to any subcontract of procurement as the 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, the Consultant may request that the NCTC enter into such litigation to protect the interests of NCTC. In addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

 - h. **Subcontracts:** All subcontracts awarded shall contain provisions requiring compliance with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR Part 21 through Appendix C and 23 CFR 710.405 (b) shall be made applicable by reference in all subcontracts.
30. **Drug-Free Certification:** By signing this Agreement, the Consultant hereby certifies, under penalty of perjury under the laws of the State of California, the 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 the 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 the Consultant's Statement as a condition of employment on this Agreement.

31. **Union Organizing:** By signing this Agreement, the Consultant hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.
 - a. The 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. The 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 the NCTC. The 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 the 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:** The 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. **Governing Law:** The construction of this Agreement, and the rights and liabilities of the parties, shall be governed by the laws of the State of California.

35. **Entire Agreement:** 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.

36. **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.

37. **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.

38. **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.
39. **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.
40. **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.
41. **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" (provided in NCTC's Request for Proposal), as necessary forms to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the 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 DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract, or such other remedy as 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, even if other work is not completed and has not been accepted in conformance with the terms of the contract. 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.

42. **Debarment, Suspension, and Other Responsibilities:** The Consultant certifies and warrants that neither the Consultant firm nor any owner, partner, director, officer, or principal of the 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.

The 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.

43. **Non-lobbying Certification for Federal-Aid Contracts:** The 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 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 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.

The 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.

44. **Certifications:** Exhibits "10-F", "Certification of Consultant, Commissions & Fees" and "10-G", "Certification of Local Agency," both from Caltrans Local Assistance Procedures Manual, are included as attachments to the Agreement and are incorporated herein by this reference. The 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

Nevada County Transportation Commission Counsel, Approved as to Form

By: _____ Date: _____
Nancy C. Miller, President
Miller and 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-G: Certification of Local Agency
- Exhibit 10-I: Notice to Proposers Disadvantaged Business Enterprise 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

CERTIFICATION OF CONSULTANT

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 agreement; 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 agreement; 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 agreement.

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

(Date)

(Signature)

Exhibit 10-G Certification of Local Agency

CERTIFICATION OF LOCAL AGENCY

I HEREBY CERTIFY that I am the _____ of the

(local agency) _____, and that the consulting firm of
_____, or its representative has not been required (except
as herein expressly stated), directly or indirectly, as an express or implied condition in connection
with obtaining or carrying out this Agreement to:

- (a) employ, retain, agree to employ or retain, any firm or person, or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation, or
consideration of any kind.

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

(Date)

(Signature)



NEVADA COUNTY TRANSPORTATION COMMISSION

Grass Valley · Nevada City · Nevada County · Truckee

EXHIBIT 10-1

NOTICE TO PROPOSERS DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION

The Nevada County Transportation Commission (NCTC) has not established an Underutilized goal for this Agreement. However, proposers are encouraged to obtain DBE participation for this Agreement.

1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "Underutilized Disadvantaged Business Enterprise" or "UDBE." DBE classes that have been determined in the 2007 Caltrans Disparity Study to have a statistically significant disparity in their utilization in previously awarded transportation contracts. UDBEs include: African Americans, Native Americans, Asian-Pacific Americans, and Women.
- 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 Agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF UDBE AND DBE INFORMATION

If there is a UDBE goal on the contract, a "Local Agency Proposer UDBE Commitment (Consultant Contract)" (Exhibit 10-01) form shall 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. Only UDBE participation will be counted towards the contract goal; however, all DBE participation shall be collected and reported.

A "Local Agency Proposer DBE Information (Consultant Contract)" (Exhibit 10-O2) form shall be included with the Request for Proposal. The purpose of the form is to collect data required under 49 CFR 26. For contracts with UDBE goals, this form collects DBE participation by DBEs owned by Hispanic American and Subcontinent Asian Americans males (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka). For contracts with no goals, this form collects information on all DBEs, including UDBEs. 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 contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A UDBE 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 UDBE and will meet the goal by performing work with its own forces.
 2. The proposer will meet the goal through work performed by UDBE subcontractors, suppliers or trucking companies.
 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function, pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subcontractor for each portion of work as defined in their proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.

- G. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Proposer may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.
- Click on the link in the left menu titled *Disadvantaged Business Enterprise*
 - Click on *Search for a DBE Firm* link.
 - Click on *Access to the DBE Query Form* located on the first line in the center of the page.
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen
- C. How to Obtain a List of Certified DBEs without Internet Access
- D. DBE Directory: If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered at: <http://caltrans-opac.ca.gov/publicat.htm>.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS DBE CREDIT, AND IF A DBE IS ALSO A UDBE, PURCHASES WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, 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 Agreement 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 Agreement 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 UDBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

7. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBEs WILL COUNT TOWARDS DBE CREDIT, AND IF A DBE IS A UDBE, CREDIT WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:

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

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

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

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

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

SF-LLL-Instructions Rev 06-04-90-ENDIFs

Exhibit 10-Q Disclosure of Lobbying Activities

DISCLOSURE OF LOBBYING ACTIVITIES

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

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

Standard Form LLL Rev. 04-28-06

**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 program status shows DBE, Black American | BA UDBE |
| If program status shows DBE, Asian-Pacific Islander | APA UDBE |
| If program status shows DBE, Native American | NA UDBE |
| If program status shows DBE, Woman | W UDBE |

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.

