

Attachment Part A-2

Administering Agency: Nevada County Department of Public Works

Contract No. _____

Contract Description: On-Call Engineering Design Services

DESIGN/ENGINEERING PROFESSIONAL SERVICES CONTRACT

THIS DESIGN/ENGINEERING PROFESSIONAL SERVICES CONTRACT ("Contract") is made at Nevada City, California, as of **April xx, 2021** by and between the County of Nevada, ("County"), and **INSERT NAME OF COMAPNY** ("Consultant"), who agree as follows:

1. **Services** Subject to the terms and conditions set forth in this Contract, Consultant shall provide the services described in Exhibit A. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A.
2. **Payment** The total amount payable by County for the Construction Management and Inspection Services Task Order Contracts shall not exceed a cumulative maximum total value of **xxxxxxxxxxxxxxxxxxxxxx dollars (\$xx,xxx)** ("NTE Sum"). It is understood and agreed there is no guarantee, either expressed or implied, that this dollar amount will be authorized under the Construction Management and Inspection Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the Construction Management and Inspection Services Task Order Contracts, the Agency shall send written notification to Consultant. County shall pay Consultant for services rendered pursuant to this contract at the time and in the amount set forth in Exhibit B

Consultant will be reimbursed for hours worked at the hourly rates specified in the consultant's approved cost proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead and fee. These rates are not adjustable for the performance period set forth in this agreement. Consultant will be reimbursed within thirty (30) days upon receipt by County of itemized invoices.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.

Specific Tasks will be assigned to Consultant through issuance of Task Orders.

After a project to be performed under this agreement is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County Project Coordinator. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.

Consultant shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. Consultant is responsible for paying the appropriate rate, including escalations that take place during the term of the agreement. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this agreement.

The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.

If Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

Task Orders may not be used to amend the language (or the terms) of this agreement not to exceed the scope of work under this agreement.

Consultant shall not commence performance of work or services until this agreement has been approved by County and notification to proceed has been issued by County's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this agreement.

A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.

It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the agreement were executed after that determination was made.

This agreement is valid and enforceable only if sufficient funds are made available to County for the purpose of this agreement. In addition, this agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County governing board that may affect the provisions, terms, or funding of this agreement in any manner.

It is mutually agreed that if sufficient funds are not appropriated, this agreement may be amended to reflect any reduction in funds.

County has the option to terminate the agreement pursuant to Article VI Termination, or by mutual agreement to amend the agreement to reflect any reduction of funds.

- 3. Term** This Contract shall commence on, **April xx, 2021**. All services required to be provided by this Contract shall be completed and ready for acceptance no later than the **Contract Termination Date** of: **April xx, 2026**.

No alteration or variation of terms of the agreement shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding of agreement not incorporated herein, shall be binding on any of the parties hereto.

This agreement may be amended or modified only by mutual written agreement of the parties.

Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by County's Contract Administrator.

There shall be no change in Consultant's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this agreement ,without prior written approval by County's Contract Administrator.

4. **Time of Completion** The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this contract, terms of the contract shall be extended by contract amendment contract, the terms of the contract shall be extended by contract amendment prior to the expiration of the contract to cover the time needed to complete the task order in progress only. The maximum term shall not exceed five years. .
5. **Facilities, Equipment and Other Materials** Consultant shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Contract.
6. **Exhibits** All exhibits referred to herein and attached hereto are incorporated herein by this reference.
7. **Electronic Signatures** The parties acknowledge and agree that this Contract may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.
8. **Time for Performance** Time is of the essence. Failure of Consultant to perform any services within the time limits set forth in assigned Task Orders, or elsewhere in this Contract, shall constitute material breach of this contract. Consultant shall devote such time to the performance of services pursuant to this Contract as may be reasonably necessary for the satisfactory performance of Consultant's obligations pursuant to this Contract. Neither party shall be considered in default of this Contract to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.
9. **Liquidated Damages**
Liquidated Damages are presented as an estimate of an intangible loss to the County. It is a provision that allows for the payment of a specified sum should Consultant be in breach of contract. Liquidated Damages shall apply shall not apply to this contract. Liquidated Damages applicable to this contract are incorporated in Exhibit E, attached hereto.
10. **Relationship of Parties**
 - 10.1 **Independent Consultant**
In providing services herein, Consultant, and the agents and employees thereof, shall work in an independent capacity and as an independent contractor and not as agents or employees of County. It is understood and agreed that Consultant

(including Consultant's employees) is an independent contractor and that no relationship of employer-employee between the parties hereto. Consultant's assigned personnel shall not be entitled to any benefits payable to employees of County. Consultant acknowledges that it customarily engages independently in the trade, occupation, or business as that involved in the work required herein. Further, the Parties agree that Consultant shall perform the work required herein free from the control and direction of County, and that the nature of the work is outside the usual course of the County's business. In performing the work required herein, Consultant shall not be entitled to any employment benefits, Workers' Compensation, or other programs afforded to County employees. Consultant shall hold County harmless and indemnify County against such claim by Consultants agents or employees. County makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and Consultant specifically assumes the responsibility for making such determination. Consultant shall be responsible for all reports and obligations including but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation and other applicable federal and state taxes.

10.2 **No Agent Authority** Consultant shall have no power to incur any debt, obligation, or liability on behalf of County or otherwise to act on behalf of County as an agent. Neither County nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Contract. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of the County.

10.3 **Indemnification of CalPERS Determination** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing service under this Contract or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the County, Consultant shall indemnify, defend, and hold harmless County for all payments on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

11. **Assignment and Subcontracting** Except as specifically provided herein, the rights, responsibilities, duties and Services to be performed under this Contract are personal to the Consultant and may not be transferred, subcontracted, or assigned without the prior written consent of County. Consultant shall not substitute or replace any personnel for those specifically named herein or in its proposal without the prior written consent of County.

Consultant shall cause and require each transferee, subcontractor, and assignee to comply with the insurance provisions set forth herein, to the extent such insurance provisions are required of Consultant under this Contract. Failure of Consultant to so cause and require such compliance by each transferee, subcontractor, and assignee shall constitute a Material Breach of this Contract, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both.

The County will establish a DBE Contract goal for each project as informal RFPs are issued for each individual project. Consultants must give consideration to DBE firms as specified in 23 CFR 172.5(b), 49 CFR, Part 26.

Nothing contained in this agreement or otherwise, shall create any contractual relation between the County and any Subconsultants, and no sub-agreement shall relieve the Consultant of its responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the County for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. The Consultant's obligation to pay its Subconsultants is an independent obligation from the County's obligation to make payments to the Consultant.

The Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the County Contract Administrator, except that which is expressly identified in the Consultant's approved Cost Proposal.

Any sub-agreement entered into as a result of this agreement, shall contain all the provisions stipulated in this entire agreement to be applicable to Subconsultants unless otherwise noted.

Consultant shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the Consultant by the County.

Any substitution of Subconsultants must be approved in writing by the County Contract Administrator in advance of assigning work to a substitute Subconsultant

Consultant or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed Consultant on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Consultant or subconsultant to a subconsultant, Consultant or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

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

No retainage will be held by the County from progress payments due to Consultant. Consultants and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the County prior written approval. Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

12. **Licenses, Permits, Etc.** Consultant represents and warrants to County that Consultant shall, at its sole cost and expense, obtain or keep in effect at all times during the term of

this Contract, any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

13. Hold Harmless and Indemnification Contract

13.1 **Definitions.** For purposes of this Section, "Consultant" shall include Consultant, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this agreement. "County" shall include County, its officials, officers, agents, employees and volunteers.

13.2 **Consultant to Indemnify County.** With respect to the performance of professional services by Consultant under this agreement, Consultant agrees to indemnify, defend and hold harmless, the County, its officers, officials, employees and volunteers from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant and its agents in the negligent performance of services under this contract, but this indemnity does not apply to liability for damages for bodily injury, property damage or other loss, arising from the sole negligence, active negligence or willful misconduct by the County, its officers, official employees, and volunteers. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of the County, then Consultant's indemnification and defense obligations shall be reduced in proportion to the established comparative liability of the County and shall not exceed the Consultant's proportionate percentage of fault.

As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, and to the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the County, its officers, officials, agents, employees, and volunteers from and against any claims, demands, losses, liability of any kind or nature (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are in connection with, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant, excepting those which arise out of the active negligence, sole negligence or willful misconduct of the County, its officers, officials, employees and volunteers.

Any third-party persons(s) employed by Consultant shall be entirely and exclusively under the direction, supervision and control of Consultant. Consultant hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.

13.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, or otherwise, Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify County for such loss or damage as is caused by the sole negligence, active negligence or willful misconduct of the County. If it is finally

adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.

13.4 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to County.

13.5 **Indemnification by Subcontractors.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from each and every subcontractor or any other person or entity involved in the performance of this agreement on Consultant's behalf.

13.6 **Insurance Not a Substitute.** County does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this agreement. Consultant's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

14. **Standard of Performance** Consultant shall perform all services required pursuant to this Contract in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. All products of whatsoever nature which Consultant delivers to County pursuant to this Contract shall be prepared in a professional manner and conform to the standards or quality normally observed by a person practicing in Consultant's profession.

Consultant's personnel, when on the County's premises and when accessing the County network remotely, shall comply with the County's regulations regarding security, remote access, safety and professional conduct, including but not limited to Nevada County Security Policy NCSP-102 Nevada County External User Policy and Account Application regarding data and access security. Consultant personnel will solely utilize the County's privileged access management platform for all remote access support functions, unless other methods are granted in writing by the County's Chief Information Officer or his/her designee.

Consultant's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. Consultant shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. Consultant shall not be responsible for the acts or omissions of the contractor or other parties on the project.

15. **Prevailing Wage and Apprentices**

To the extent made applicable by law, performance of this Contract shall be in conformity with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, commencing with section 1720 relating to prevailing wages which must be paid to workers employed on a public work as defined in Labor Code section 1720, et seq., and shall be in conformity with Title 8 of the California Code of Regulations section 200 et seq., relating to apprenticeship. Where applicable:

- Consultant shall comply with the provisions thereof at the commencement of Services to be provided herein, and thereafter during the term of this Contract. A breach of the requirements of this section shall be deemed a material breach of this contract. Applicable prevailing wage determinations are available on the California Department of Industrial Relations website at <http://www.dir.ca.gov/OPRL/PWD>.
- Consultant and all subcontractors must comply with the requirements of Labor Code section 1771.1(a) pertaining to registration of Consultants pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
- Contracts to which prevailing wage requirements apply are subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each Consultant and subcontractor must furnish certified payroll records to the Labor Commissioner at least monthly.
- The County is required to provide notice to the Department of Industrial Relations of any public work contract subject to prevailing wages within five (5) days of award.
- No Consultant or Subconsultant may be awarded an agreement containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this agreement, including any subsequent amendments.

The Consultant shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this agreement are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this agreement by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at County construction sites, at County facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve County projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.

15.1 Payroll Records

a. Each Consultant and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Consultant or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.

2. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 - b. The payroll records enumerated under paragraph (1) above shall be certified as correct by the Consultant under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by County representatives at all reasonable hours at the principal office of the Consultant. The Consultant shall provide copies of certified payrolls or permit inspection of its records as follows:
 1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 2. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the Consultant.
 3. The public shall not be given access to certified payroll records by the Consultant. The Consultant is required to forward any requests for certified payrolls to the County Contract Administrator by both email and regular mail on the business day following receipt of the request.
 - c. Each Consultant shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 - d. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by County shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the Consultant or Subconsultant performing the work shall not be marked or obliterated.
 - e. The Consultant shall inform County of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 - f. The Consultant or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the Consultant or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to County, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by County from payments then due. Consultant is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
 - g. When prevailing wage rates apply, the Consultant is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the County Contract Administrator.

15.2 **Penalty**

a. The Consultant and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the Consultant and any Subconsultant shall forfeit to the County a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the agreement by the Consultant or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

b. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the Consultant or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the Consultant or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the Consultant or Subconsultant had knowledge of the obligations under the Labor Code. The Consultant is responsible for paying the appropriate rate, including any escalations that take place during the term of the agreement.

c. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant or Subconsultant.

d. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime Consultant of the project is not liable for the penalties described above unless the prime Consultant had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime Consultant fails to comply with all of the following requirements:

1. The agreement executed between the Consultant and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.

2. The Consultant shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.

3. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the Consultant shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.

4. Prior to making final payment to the Subconsultant for work performed on the public works project, the Consultant shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.

e. Pursuant to Labor Code §1775, County shall notify the Consultant on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.

f. If County determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if County did not retain sufficient money under the agreement to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Consultant shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by County.

15.3 Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty to the County, twenty-five dollars (\$25) for each worker employed in the execution of the agreement by the Consultant or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

a. Employment of Apprentices

1. Where either the prime agreement or the sub-agreement exceeds thirty thousand dollars (\$30,000), the Consultant and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

2. Consultants and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Consultant and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the agreement work. The Consultant is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

16. **Accessibility** It is the policy of the County of Nevada that all County services, programs, meetings, activities and facilities shall be accessible to all persons, and shall comply with the provisions of the Americans With Disabilities Act and Title 24, California Code of Regulations. To the extent this Contract shall call for Consultant to provide County contracted services directly to the public, Consultant shall certify that said direct Services are and shall be accessible to all persons.

17. **Nondiscriminatory Employment** Consultant shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or sexual orientation in contravention of the California Fair Employment and Housing Act, Government Code section 12900 et seq.

The Consultant's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

During the performance of this agreement, Consultant and its subconsultants shall not deny the agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by County to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this agreement by reference and made a part hereof as if set forth in full.

Consultant shall permit access by representatives of the Department of Fair Employment and Housing and the County upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or County shall require to ascertain compliance with this clause.

Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this agreement.

The Consultant, with regard to the work performed under this agreement, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

The Consultant shall comply with regulations relative to non-discrimination in federally assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

Consultant, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection

with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the County components of the DBE Program Plan, Consultant, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

18. **Pertinent Non-Discrimination Authorities** During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
19. **Drug-Free Workplace** Senate Bill 1120, (Chapter 1170, Statutes of 1990), requires recipients of state grants to maintain a "drug-free workplace". Every person or organization awarded a contract for the procurement of any property or services shall certify as required under Government Code Section 8355-8357 that it will provide a drug-free workplace.
 20. **Political Activities** Consultant shall in no instance expend funds or use resources derived from this Contract on any political activities.
 21. **Financial, Statistical and Contract-Related Records:**
 - 21.1 **Books and Records** Consultant shall maintain statistical records and submit reports as required by County. Consultant shall also maintain accounting and administrative books and records, program procedures and documentation relating to licensure and accreditation as they pertain to this Contract. All such financial, statistical and contract-related records shall be retained for five (5) years or until program review findings and/or audit findings are resolved, whichever is later. Such records shall include but not be limited to bids and all supporting documents, original entry books, canceled checks, receipts, invoices, payroll records, including subsistence, travel and field expenses, together with a general ledger itemizing all debits and credits.
 - 21.2 **Inspection** Upon reasonable advance notice and during normal business hours or at such other times as may be agreed upon, Consultant shall make all of its books and records available for inspection, examination or copying, to County, or to the State Department of Health Care Services, the Federal Department of Health and Human Services, the Controller General of the United States and to all other authorized federal and state agencies, or their duly authorized representatives.
 - 21.3 **Audit** Consultant shall permit the aforesaid agencies or their duly authorized representatives to audit all books, accounts or records relating to this Contract, and all books, accounts or records of any business entities controlled by Consultant who participated in this Contract in any way. All such records shall be available for inspection by auditors designated by County or State, at reasonable times during normal business hours. Any audit may be conducted on Consultant's premises or, at County's option, Consultant shall provide all books and records within fifteen (15) days upon delivery of written notice from County. Consultant shall promptly refund any moneys erroneously charged and shall be liable for the costs of audit if the audit establishes an over-charge of five percent (5%) or more of the Maximum Contract Price.

Not later than thirty (30) calendar days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this agreement.

Consultant and subconsultant agreements, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to,

an agreement audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, County, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The agreement's cost proposal, and ICR shall be adjusted by Consultant and approved by County Contract Administrator to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the agreement by this reference if directed by County at its sole discretion. Refusal by County to incorporate audit or review recommendations, or to ensure that the federal, County or local governments have access to CPA work papers, will be considered a breach of agreement terms and cause for termination of the agreement and disallowance of prior reimbursed costs.

Consultant's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the Consultant and approved by the County Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the Consultant to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the agreement terms and cause for termination of the agreement and disallowance of prior reimbursed costs.

a. During IOAI's review of the ICR audit work papers created by the Consultant's independent CPA, IOAI will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, County will reimburse the County at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

1. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
2. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
3. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

b. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

c. If the Consultant fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this agreement.

e. Consultant may submit to County final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this agreement has been completed to the satisfaction of County; and, (3) IOAI has issued its final ICR review letter. The Consultant **MUST SUBMIT ITS FINAL INVOICE TO** County no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this agreement and all other agreements executed between County and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

21.4 Retention of records/audits

For the purpose of determining compliance with Gov. Code § 8546.7, the Consultant, Subconsultants, and County shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the agreement including, but not limited to, the costs of administering the agreement. All parties, including the Consultant's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the agreement period and for three (3) years from the date of final payment under the agreement. County, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Consultant, Subconsultants, and the Consultant's Independent CPA, that are pertinent to the agreement for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

22. Termination

- A. A Material Breach, as defined pursuant to the terms of this Contract or otherwise, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to immediately suspend payments hereunder, or terminate this Contract, or both, without notice.
- B. If Consultant fails to timely provide in any manner the services materials and products required under this Contract, or otherwise fails to promptly comply with the terms of this Contract, or violates any ordinance, regulation or other law which applies to its performance herein, County may terminate this Contract by giving **five (5) calendar days written notice to Contractor.**

- C. Either party may terminate this Contract for any reason, or without cause, by giving **thirty (30) calendar days written notice** to the other, which notice shall be sent by registered mail in conformity with the notice provisions, below. In the event of termination not the fault of the Consultant, the Consultant shall be paid for services performed to the date of termination in accordance with the terms of this Contract. Consultant shall be excused for failure to perform services herein if such performance is prevented by acts of God, strikes, labor disputes or other forces over which the Consultant has no control.
- D. County, upon giving **thirty (30) calendar days written notice** to Consultant, shall have the right to terminate its obligations under this Contract at the end of any fiscal year if the County or the State of California, as the case may be, does not appropriate funds sufficient to discharge County's obligations coming due under this contract.
- E. County may temporarily suspend this agreement, at no additional cost to County, provided that Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If County gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this agreement. A temporary suspension may be issued concurrent with the notice of termination.
- F. Notwithstanding any provisions of this agreement, Consultant shall not be relieved of liability to County for damages sustained by County by virtue of any breach of this agreement by Consultant, and County may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due County from Consultant is determined.
- G. In the event of termination, Consultant shall be compensated as provided for in this agreement upon termination, County shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

In the event this Contract is terminated:

- 1) Consultant shall deliver copies of all writings prepared by it pursuant to this Contract. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
- 2) County shall have full ownership and control of all such writings delivered by Consultant pursuant to this Contract.
- 3) County shall pay Consultant the reasonable value of services rendered by Consultant to the date of termination pursuant to this Contract not to exceed the amount documented by Consultant and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the Contract specified in Exhibit B, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Contract. In this regard, Consultant shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by Consultant. The foregoing is

cumulative and does not affect any right or remedy, which County may have in law or equity.

23. **Intellectual Property** To the extent County provides any of its own original photographs, diagrams, plans, documents, information, reports, computer code and all recordable media together with all copyright interests thereto, not the property of Consultant (herein "Intellectual Property"), which concern or relate to this Contract and which have been prepared by, for or submitted to Consultant by County, shall be the property of County, and upon fifteen (15) days demand therefor, shall be promptly delivered to County without exception.
24. **Waiver** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Contract shall not operate as a waiver of any subsequent breach or default by the other party.
25. **Conflict of Interest** Consultant certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this Contract. In addition, Consultant agrees that no such person will be employed in the performance of this Contract unless first agreed to in writing by County. This includes prior Nevada County employment in accordance with County Personnel Code.
26. **Entirety of Contract** This Contract contains the entire Contract of County and Consultant with respect to the subject matter hereof, and no other Contract, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Contract, shall be binding or valid.
27. **Alteration** No waiver, alteration, modification, or termination of this Contract shall be valid unless made in writing and signed by all parties, except as expressly provided in Section 22, Termination.
28. **Governing Law and Venue** This Contract is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. The venue for any legal proceedings regarding this Contract shall be the County of Nevada, State of California. Each party waives any Federal court removal and/or original jurisdiction rights it may have.
29. **Compliance with Applicable Laws** Consultant shall comply with any and all federal, state and local laws, codes, ordinances, rules and regulations which relate to, concern or affect the Services to be provided by this Contract.
30. **Subrecipient** This Subrecipient Contract is subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 et al (commonly referred to as the "OMB Super Circular" or "Uniform Guidance"). A copy of these regulations is available at the link provided herein for the Code of Federal Regulations.
https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
31. **Additional Consultant Responsibilities**
 - A. Consultant will immediately notify County of any active complaints, lawsuits, licensing or regulatory investigations, reports of fraud or malfeasance, or criminal investigations regarding its operations under this Contract. Consultant agrees to work cooperatively with County in response to any investigation commenced by

County with regard to this Contract or the clients served herein, including providing any/all records requested by County related thereto.

- B. Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County to determine if Consultant is performing to expectations or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered so remedies can be developed.
- C. Consultants Project Manager shall meet with County Contract Administrator or Project Coordinator as needed to discuss progress on the project(s).

32. Cost Principles and Administrative Requirements

- A. The Consultant agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The Consultant also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Consultant to County.
- D. When a Consultant or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply

33. Equipment Purchase and other Capital Expenditures

- A. Prior authorization in writing by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in Consultant's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by County's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this agreement is subject to the following:
 - 1. Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the agreement, or if the

agreement is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County.

2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

34. Conflict of Interest

During the term of this agreement, the Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this agreement or any ensuing County construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this agreement or any ensuing County construction project which will follow.

Consultant certifies that it has disclosed to County any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this agreement. Consultant agrees to advise County of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this agreement. Consultant further agrees to complete any statements of economic interest if required by either County ordinance or State law.

The Consultant hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

The Consultant hereby certifies that the Consultant or subconsultant and any firm affiliated with the Consultant or subconsultant that bids on any construction contract or on any agreement to provide construction inspection for any construction project resulting from this agreement, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

35. Rebates, Kickbacks or other Unlawful Considerations

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

36. Prohibition of Expending County, State, or Federal Funds for Lobbying

The Consultant certifies, to the best of his or her knowledge and belief, that:

No State, Federal, or County appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this agreement, or with the extension, continuation, renewal, amendment, or modification of this agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier sub agreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

37. Debarment and Suspension Certification

The consultant's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant or any person associated therewith in the capacity of owner, partner, director, officer or manager:

Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;

Does not have a proposed debarment pending; and

Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Any exceptions to this certification must be disclosed to County. Exceptions will not necessarily result in denial of recommendation for award but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

38. Contingent Fee

Consultant warrants, by execution of this agreement that no person or selling agency has been employed, or retained, to solicit or secure this agreement upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this agreement without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee

39. Disputes

Prior to either party commencing any legal action under this agreement, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this agreement that is not disposed of by agreement shall be decided by a committee consisting of County's Contract Administrator and the County Director of Public Works who may consider written or verbal information submitted by Consultant.
- B. Not later than thirty (30) calendar days after completion of all work under the agreement, Consultant may request review by County Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this agreement.

40. Inspection of Work

Consultant and any subconsultant shall permit County, the State, and the FHWA if federal participating funds are used in this agreement; to review and inspect the project activities and files at all reasonable times during the performance period of this agreement.

41. Safety

- A. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- C. Pursuant to the authority contained in Vehicle Code §591, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12,

13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

- D. Consultant must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

42. Ownership Data

- A. It is mutually agreed that all materials prepared by Consultant under this agreement shall become the property of County, and Consultant shall have no property right therein whatsoever. Immediately upon termination, County shall be entitled to, and Consultant shall deliver to County, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by Consultant in performing this agreement which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to County which is in Consultant's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this agreement must be approved in writing by County.
- B. Additionally, it is agreed that the Parties intend this to be an agreement for services and each considers the products and results of the services to be rendered by Consultant hereunder to be work made for hire. Consultant acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of County without restriction or limitation upon its use or dissemination by County.
- C. Nothing herein shall constitute or be construed to be any representation by Consultant that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by County for another project or project location shall be at County's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. County may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

43. Claims filed by County's Construction Consultant

- A. If claims are filed by County's construction consultant relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction consultant administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- B. Consultant's personnel that County considers essential to assist in defending against construction consultants' claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this agreement.
- C. Services of Consultant's personnel in connection with County's construction consultant claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this agreement in order to resolve the construction claims

44. **Confidentiality of Data**

- A. All financial, statistical, personal, technical, or other data and information relative to County's operations, which are designated confidential by County and made available to Consultant in order to carry out this agreement, shall be protected by Consultant from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by County relating to the agreement, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.
- C. Consultant shall not comment publicly to the press or any other media regarding the agreement or County's actions on the same, except to County's staff, Consultant's own personnel involved in the performance of this agreement, at public hearings, or in response to questions from a Legislative committee.
- D. Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this agreement without prior review of the contents thereof by County, and receipt of County's written permission
- E. All information related to the construction estimate is confidential and shall not be disclosed by Consultant to any entity, other than County, Caltrans, and/or FHWA. All of the materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of County or except by court order. If Consultant or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, County has the right to reimbursement and indemnity from Consultant for any damages caused by Consultant releasing the information, including, but not limited to, County's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

45. **National Labor Relations Board Certification**

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

46. Notification

Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, and addressed to the parties as follows:

COUNTY OF NEVADA:

Nevada County
Public Works Department
Address: 950 Maidu Ave
City, St, Zip Nevada City, CA 95959
Attn: xxxxxxx
Email: xxxxxx@co.nevada.ca.us
Phone: 530.265.xxxx

Consultant:

Name of firm
INSERT NAME OF FIRM
Address INSERT ADDRESS
City, St, Zip INSERT ADDRESS
Attn: INSERT NAME
Email: INSERT EMAIL
Phone: INSERT PHONE NUMBER

Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

Executed as of the day first above stated:

Authority: All individuals executing this Contract on behalf of Consultant represent and warrant that they are authorized to execute and deliver this Contract on behalf of Consultant.

IN WITNESS WHEREOF, the parties have executed this Contract effective on the Beginning Date, above.

COUNTY OF NEVADA:

By: _____ Date: _____

Printed Name/Title: Honorable Dan Miller, Chair, of the Board of Supervisors

By: _____

Attest: Julie Patterson Hunter, Clerk of the Board of Supervisors

Consultant: INSERT NAME OF FIRM

By: _____ Date: _____

Name: _____

* Title: _____

By: _____ Date: _____

Name: _____

* Title: _____

****If Consultant is a corporation, this Contract must be signed by two corporate officers; one of which must be the secretary of the corporation, and the other may be either the President or Vice President, unless an authenticated corporate resolution is attached delegating authority to a single officer to bind the corporation (California Corporations Code Sec. 313).***

Exhibits

- A. Schedule of Services
- B. Schedule of Charges and Payments
- C. Insurance Requirements
- D. DBE Participation

EXHIBIT A
SCHEDULE OF SERVICES

Some of the services that may be required as part of this contract includes, but is not limited to:

EXHIBIT B

SCHEDULE OF CHARGES AND PAYMENTS

1. Maximum Limit & Fee Schedule

Consultant's compensation shall be paid at the schedule shown below and in accordance with the approved Caltrans rates. Reimbursement of travel, lodging and miscellaneous expenses is not authorized. All expenses of Consultant, including any expert or professional assistance retained by Consultant to complete the work performed under this contract shall be borne by the Consultant.

The total amount payable by County for the On-Call Engineering Design Services Task Order Contracts shall not exceed a cumulative maximum total value of **xxxxxxxxx dollars (\$xx,xxx)** ("NTE Sum").

2. Payment Schedule:

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Fee Schedule/Cost Proposal as described below herein. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee.

Specific projects will be assigned to Consultant through issuance of Task Orders

The County shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from Consultant on a professional service contract. If the

If the County fails to pay promptly, the County shall pay interest to the Consultant, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the County shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the County as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to Consultant as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

County is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of the agreement and is not required to issue W-2 forms for income and employment tax purposes for any of Consultants assigned personnel. Consultant in the performance of its obligation hereunder, is only subject to the control or direction of the County as to the designation of tasks to be performed and the results to be accomplished.

Consultant will be reimbursed within thirty (30) days upon receipt by County's Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later

than thirty (30) calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this agreement number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by Consultant prior to the expiration or termination of this agreement.

3. Invoices

Invoices shall be submitted to County in a form and with sufficient detail as required by County. Work performed by Consultant will be subject to final acceptance by the County project manager(s).

Submit all invoices to:

Nevada County
Public Works Department
Address: 950 Maidu Ave
City, St, Zip Nevada City, Ca 95959
Attn: xxxxxx
Email: xxxxxxx@co.nevada.ca.us
Phone: 530.265-xxxx

Unless otherwise agreed to by County, all payments owed by County to Consultant under this Contract shall be made by Automated Clearing House (ACH). In the event County is unable to release payment by ACH the Consultant agrees to accept payment by County warrant.

COUNTY TO INSERT APPROVED COST PROPOSALS (EXHIBIT 10-Hx)

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. Coverage shall be at least as broad as:

- (i) **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- (ii) **Automobile Liability** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage. **(Note – required only if auto is used in performance of work, submit waiver to Risk for approval to waive this requirement)**
- (iii) **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. **(Not required if Consultant provides written verification it has no employees).**
- (iv) **Professional Liability** (Errors and Omissions) Insurance appropriate to the Consultant’s profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (i) **Additional Insured Status: The County, its officers, employees, agents, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of the work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 25, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used.)
- (ii) **Primary Coverage** For any claims related to this contract, the **Consultant’s insurance shall be primary** insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the County, its officers, employees, agents, and volunteers shall be excess of the Consultant’s insurance and shall not contribute with it.
- (iii) **Notice of Cancellation** This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Nevada.
- (iv) **Waiver of Subrogation** Consultant hereby grants to County a waiver of any right to subrogation which any insurer or said Consultant may acquire against the County by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any

endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

- (v) **Sole Proprietors** If Consultant is a Sole Proprietor and has no employees, they are not required to have Workers Compensation coverage. Consultant shall sign a statement attesting to this condition, and shall agree they have no rights, entitlements or claim against County for any type of employment benefits or workers' compensation or other programs afforded to County employees.
- (vi) **Deductible and Self-Insured Retentions** Deductible and Self-insured retentions must be declared to and approved by the County. The County may require the Consultant to provide proof of ability to pay losses and related investigations, claims administration, and defense expenses within the retention. The Policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County. **(Note – all deductibles and self-insured retentions must be discussed with risk, and may be negotiated)**
- (vii) **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.
- (viii) **Claims Made Policies** if any of the required policies provide coverage on a claims-made basis: **(note – should be applicable only to professional liability)**
 - a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - c. If the coverage is canceled or non-renewed, and not replaced with another **claims-made policy form with a Retroactive Date**, prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **five (5)** years after completion of contract work.
- (ix) **Verification of Coverage** Consultant shall furnish the County with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to County before work begins. However, failure to obtain and provide verification of the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The County reserves the right to require redacted copies of all required insurance policies, including endorsements required by these specifications, at any time.
- (x) **Subcontractors** Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that County is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- (xi) **Special Risks or Circumstances** County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- (xii) **Conformity of Coverages** If more than one policy is used to meet the required coverages, such as an umbrella policy or excess policy, such policies shall be following form with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of policies be different.
- (xiii) **Premium Payments** The insurance companies shall have no recourse against the County and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

(xiv) **Material Breach** Failure of the Consultant to maintain the insurance required by this Contract, or to comply with any of the requirements of this section, shall constitute a material breach of the entire Contract.

(xv) **Certificate Holder** The Certificate Holder on insurance certificates and related documents should read as follows:

County of Nevada
950 Maidu Ave.
Nevada City, CA 95959

Upon initial award of a contract to your firm, you may be instructed to send the actual documents to a County contact person for preliminary compliance review.

Certificates which amend or alter the coverage during the term of the contract, including updated certificates due to policy renewal, should be sent directly to Contract Administrator.

EXHIBIT D

DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

1. Participation

1.1 Consultant, subrecipient (County), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The County shows a contract goal for DBEs. Consultant shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

Consultant shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is Consultant's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found here.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies Consultant purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

This agreement is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who enter into a federally funded agreement will assist the County in a good faith effort to achieve California's statewide overall DBE goal.

The goal for DBE participation for this agreement is 0%. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in [Exhibit 10-O2: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the agreement. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

Consultant can meet the DBE participation goal by either documenting commitments to DBEs to meet the agreement goal, or by documenting adequate good faith efforts to meet the agreement goal. An adequate good faith effort means that the Consultant must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If Consultant has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

1.2 Contract Assurance

Under 49 CFR 26.13(b): Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

Consultant shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

1.3 Termination and Substitution of DBE Subconsultants

Consultant shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless Consultant or DBE subconsultant obtains the County's written consent. Consultant shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the County. Unless the County's consent is provided, the Consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid.

The County authorizes a request to use other forces or sources of materials if Consultant shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The County stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the County's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The County determines other documented good cause.

Consultant shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise Consultant and the County of the reasons why the use of other forces or sources of materials should not occur.

Consultant's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from Consultant to the DBE regarding the request.
3. Notices from the DBEs to Consultant regarding the request.

If a listed DBE is terminated or substituted, Consultant must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least

the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

1.4 Commitment and Utilization

The County's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The County shall request Consultant to:

1. Notify the County's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
 - Name and business address of each 1st-tier subconsultant
 - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

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

If a DBE is decertified before completing its work, the DBE must notify Consultant in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify Consultant in writing of the certification date. Consultant shall submit the notifications to the County. On work completion, Consultant shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the County within 30 days of contract acceptance.

Upon work completion, Consultant shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the County within 90 days of contract acceptance. The County will withhold \$10,000 until the form is submitted. The County will release the withhold upon submission of the completed form.

In the County's reports of DBE participation to Caltrans, the County must display both commitments and attainments.

A DBE is only eligible to be counted toward the agreement goal if it performs a commercially useful function (CUF) on the agreement. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the agreement, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the agreement is commensurate with the work it is actually performing, and other relevant factors.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its agreement with its own work force, or the DBE subcontracts a greater portion of the work of the agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE Consultant's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

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

After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the Agency.

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

SUMMARY OF CONTRACT

Contractor Name: INSERT FIRM NAME

Description of Services: xxxxxxxx

SUMMARY OF MATERIAL TERMS

Max Annual Price: n/a

Max Multi-Year Price: 250,000

Contract Start Date: 4/xx/2021

Contract End Date: 4/xx/2026

Liquidated Damages: n/a

INSURANCE POLICIES

Commercial General Liability	(\$2,000,000)
Automobile Liability	(\$1,000,000)
Worker's Compensation	(Statutory Limits)
Professional Errors and Omissions	(\$2,000,000)

LICENSES AND PREVAILING WAGES

Designate all required licenses: California Professional Engineers License

NOTICE & IDENTIFICATION

COUNTY OF NEVADA:

Nevada County
Public Works Department

Address: 950 Maidu Ave
City, St, Zip Nevada city, Ca 95959
Attn: xxxxxx
Email: xxxxxxxx@co.nevada.ca.us
Phone: 530.265.xxxx

Consultant:

INSERT FIRM NAME

Address INSERT ADDRESS
City, St, Zip INSERT ADDRESS
Attn: INSERT NAME
Email: INSERT EMAIL
Phone: INSERT PHONE NUMBER

Consultant is a: (check all that apply)

- Corporation: Calif., Other, LLC,
- Non- Profit Corp Yes No
- Partnership: Calif., Other, LLP, Limited
- Person: Individ., DbA, Assn' Other

EDD Worksheet Required

Yes No

ATTACHMENTS

Exhibit A: Schedule of Services

Exhibit D: DBE Participation Requirements

Exhibit B: Schedule of Charges and Payments

Exhibit C: Insurance Requirements