

**CITY OF FONTANA  
PROFESSIONAL SERVICES AGREEMENT  
DE-25-67-SP**

This Agreement is made and entered into as of February 26, 2025 by and between the City of Fontana, a public agency organized and operating under the laws of the State of California with its principal place of business at 8353 Sierra Avenue, Fontana, California 92335 ("City"), and UltraSystems Environmental, Inc., a CORPORATION, with its principal place of business at 16431 Scientific Way Irvine, CA 92618-4355 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**RECITALS**

A. City is a public agency of the State of California and is in need of professional services for the following project:

Foothill Boulevard from Hemlock Avenue to Almeria Avenue Street Improvement Project (Federal Project No. STPL-5307(031); Tracking Number DE-25-67-SP) (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

**AGREEMENT**

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A."

2. Compensation.

a. Subject to paragraph 2(b) though 2(f) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit "B."

b. The method of payment for this Agreement will be based on lump sum. The total lump sum price paid to the Consultant will include compensation for all work and deliverables, including travel and equipment described in paragraph 1 Services. No additional compensation will be paid to the Consultant, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between the Consultant and the City. Adjustment in the total lump sum compensation will not be effective until authorized by Agreement amendment and approved by the City.

c. Progress payments may be made monthly in arrears based on the percentage of work completed by the Consultant. If the Consultant fails to submit the required deliverable items according to the schedule set forth in paragraph 1 Services, the City shall have the right to delay payment or terminate this Agreement in accordance with the provisions of paragraph 17 Termination or Abandonment.

d. The Consultant shall not commence performance of work or services until this Agreement has been approved by the City notification to proceed has been issued the City's Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this Agreement.

e. The Consultant will be reimbursed within thirty (30) days upon receipt by the City's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which the Consultant is billing. 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 and project title. Final invoice must contain the final cost and all credits due the City that include any equipment purchased under the provisions of paragraph 35 Equipment Purchase and Other Capital Expenditures. The final invoice must be submitted within sixty (60) calendar days the City. Invoices shall be mailed to City's Contract Administrator at the following address:

City of Fontana  
Attn: Christopher Smethurst  
8353 Sierra Avenue  
Fontana, CA 92335

f. The total amount payable by City shall not exceed \$379,509.23

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed").

Consultant shall complete the services required hereunder within Six hundred (600) calendar days. The Notice to Proceed shall set forth the date of commencement of work.

**6. Delays in Performance.**

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

**7. Compliance with Law.**

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

**8. Standard of Care**

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

**9. Assignment and Subconsultant**

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

**10. Independent Contractor**

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed

shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Contractors Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and

property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
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Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the

City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant,

City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the

foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. [RESERVED]

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Bernardino, State of California.

17 Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

18. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

19. Organization

Consultant shall assign Hina Gupta as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Fontana  
8353 Sierra Avenue  
Fontana, California 92335  
Attn: Christopher Smethurst, Department  
of Engineering

CONSULTANT:

UltraSystems Environmental, Inc.  
16431 Scientific Way  
Irvine, California 92618-4355  
Attn: Hina Gupta, Project Manager

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or

contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

31. Federal Requirements

When funding for the services is provided, in whole or in part, by an agency of the federal government, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (Federal Requirements) attached hereto and incorporated herein by reference

(“Federal Requirements”). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

**[SIGNATURES ON FOLLOWING PAGE]**

**CITY OF FONTANA  
SIGNATURE PAGE  
DE-25-67-SP**

**CITY OF FONTANA**

**ULTRASYSTEMS ENVIRONMENTAL,  
INC.**

By:

\_\_\_\_\_  
Matthew C. Ballantyne  
City Manager

By:

\_\_\_\_\_  
Betsy A. Lindsay  
President/CEO

*Attest:*

By:

\_\_\_\_\_  
City Clerk's Office

By:

\_\_\_\_\_  
Philip Burum  
Deputy City Manager

*Approved as to form:*

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

By:

\_\_\_\_\_  
Public Works Director/City Engineer

**IN COMPLIANCE WITH CONTRACT INSURANCE REQUIREMENTS**

By:

\_\_\_\_\_  
Human Resources & Risk Management Director

**IN COMPLIANCE WITH PURCHASING AND CONTRACT ADMINISTRATION POLICIES/PROCEDURES**

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Purchasing Office

EXHIBIT A

Scope of Services



## COVER LETTER

January 9, 2025

Via Digital Submittal

**City of Fontana, Purchasing**

Attn: Steve McGuffey, Buyer I  
8353 Sierra Avenue  
Fontana, CA 92335

**SUBJECT: ENVIRONMENTAL CONSULTING SERVICES FOR THE FOOTHILL BOULEVARD FROM HEMLOCK AVENUE TO ALMERIA AVENUE STREET IMPROVEMENT PROJECT | FEDERAL PROJECT NO.: STPL-5307(031) DE-25-67-SP**

Dear Mr. McGuffey:

**UltraSystems Environmental Inc.** ("UltraSystems") is pleased to submit our proposal to the City of Fontana ("City") to prepare an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA).

The following requested information is provided about the company, and depicts its legal entity name, FEIN, and Dun & Bradstreet identification numbers, along with other relevant information.

FIRM PROFILE	
<b>Company Name:</b>	UltraSystems Environmental, Incorporated (UltraSystems)
<b>Corporation Type:</b>	UltraSystems is a S Corporation (C1747565). It is privately held.
<b>Headquarters:</b>	16431 Scientific Way, Irvine, CA 92618 T: 949/788-4900   F: 949/788-4901
<b>Website:</b>	<a href="https://ultrasytems.com/">https://ultrasytems.com/</a>
<b>Year Incorporated:</b>	July 14, 1994   S-Corp
<b>FEIN:</b>	33-0623499
<b>D&amp;B Number:</b>	87924-8243
<b>Years in Business:</b>	30
<b>Organizational Structure:</b>	Flat, with six distinctive Groups. Including: (1) AQ, Noise, GHG; (2) Biological Services; (3) Cultural Resources; (4) GIS; (5) Environmental; (6) Water Resources.
<b>Diversity Certifications:</b>	➤ Disadvantaged Business Enterprise (DBE) ➤ Small Business Enterprise (SBE) ➤ Woman-owned Business Enterprise (WBE) ➤ Federal Woman-owned Small Business (WOSB) ➤ DIR # 1000369051
<b>Contact for the Contract:</b>	Betsy A. Lindsay, President/CEO   E: <a href="mailto:blindsay@ultrasytems.com">blindsay@ultrasytems.com</a> T: 949/788-4900 x227
<b>Number of Employees:</b>	Full-time employees in Irvine = 42
<b>NAICS:</b>	541620, 541330, 541370, 541618, 541720, 541690, 541990
<b>Office Locations:</b>	Irvine and Grass Valley

## City of Fontana - Purchasing

January 9, 2025

Page 2



UltraSystems is a full-service planning and environmental consulting firm serving public and private sector clients throughout California. We have 52 employees that provide a broad range of experience to prepare environmental documents and technical studies in full compliance with the California Environmental Quality Act (CEQA). UltraSystems is headquartered in Irvine, California, and this specific project would be managed from our Irvine office.

UltraSystems is a full-service planning and environmental consulting firm. Since our inception in 1994, we have successfully prepared more than 7,000 environmental compliance documents pursuant to CEQA/NEPA, as well as engineering studies and focused technical reports. Our team can perform robust CEQA environmental analysis and document preparation for this project.

The core project team will be based in our Irvine office, led by **Betsy Lindsay**, MURP, Principal, and **Hina Gupta**, MPI, LEED-AP, Senior Project Manager, and **Michael Milroy**, MS, Deputy Project Manager. Their knowledge, skills and experience are highlighted herein and will leverage their leadership skills with our experienced in-house experts to manage and provide the required services.

**UltraSystems is committed** to successful project management, time management and project delivery of every project it undertakes. For that reason, it is our responsibility as a consultant to develop legally defensible environmental documents and to communicate our technical knowledge clearly and concisely to our client, and ultimately, to the public.

Throughout our proposal, we will demonstrate why the UltraSystems project team is perfectly suited to work with the City and prepare the EIR for the Foothill Boulevard Street Improvement Project. In summary, our project team offers the following:

- A perfect combination of experience and expertise. Our firm is very cost-competitive and includes strategic teaming partners with detailed knowledge of road improvements projects and Caltrans requirements.
- Our project team has the resource capacity and staff availability for this project.

As the President/CEO of UltraSystems, I am a duly authorized officer of the firm with the legal authority to bind and commit the firm to contractual obligations. This proposal remains in effect for a period of **not less than 180 days** from the date of submittal. Should you need any additional information, you can reach me via email at [blindsay@ultrasytems.com](mailto:blindsay@ultrasytems.com), telephone (949) 788-4900 ext. 227 or cellphone (949) 274-3935.

UltraSystems is also requesting protection of all proprietary information contained within our proposal and costing proposal.

Sincerely,

Betsy A. Lindsay  
President/CEO | **UltraSystems Environmental, Inc.**



## ❖ ENVIRONMENTAL SERVICES – FOOTHILL BLVD STREET IMPROVEMENT ❖

### Table of Contents

<b>COVER LETTER .....</b>	<b>1</b>
<b>1.0 FIRM IDENTIFICATION .....</b>	<b>4</b>
<b>2.0 CONTACT INFORMATION.....</b>	<b>4</b>
<b>3.0 SUBCONSULTANTS.....</b>	<b>4</b>
<b>4.0 PROJECT UNDERSTANDING AND WORK PLAN .....</b>	<b>4</b>
<b>5.0 ORGANIZATIONAL CHART.....</b>	<b>14</b>
<b>6.0 SCHEDULE OF DEADLINES.....</b>	<b>14</b>
<b>7.0 STAFFING PLAN.....</b>	<b>15</b>
<b>8.0 PROPOSED TEAM.....</b>	<b>16</b>
<b>9.0 KEY PERSONNEL .....</b>	<b>16</b>
<b>10.0 STAFF RESUMES.....</b>	<b>17</b>
<b>11.0 NAME OF CONSULTANTS PROJECT MANAGER.....</b>	<b>17</b>
<b>12.0 REFERENCES.....</b>	<b>17</b>
12.1 Project References.....	17

### **TABLES**

<b>Table 1.1-1 – Firms Comprising the UltraSystems Project Team .....</b>	<b>4</b>
<b>Table 6.0-1 – Timeline Schedule.....</b>	<b>15</b>
<b>Table 8.0-1 – UltraSystems Key Personnel .....</b>	<b>16</b>
<b>Table 12.0-1 - UltraSystems References .....</b>	<b>17</b>

### **APPENDIX**

**Appendix**      Key Personnel Resumes and Required Forms



## ❖ ENVIRONMENTAL SERVICES – FOOTHILL BLVD STREET IMPROVEMENT ❖

### 1.0 FIRM IDENTIFICATION

The preparation and review of CEQA/NEPA documents has been a **core service** of UltraSystems since our inception in 1994. The UltraSystems project team is fully equipped to undertake the completion of the CEQA EIR for the Foothill Boulevard Street Improvement Project for the City. UltraSystems is committed to applying a well-honed project management approach, effective and transparent cost/schedule/control protocols, and quality assurance/quality control procedures on this assignment to proceed on schedule, with no costly delays in processing or review time.

**Table 1.1-1** identifies the firms comprising the UltraSystems Project Team, their roles, and office location from where the work would be performed. UltraSystems would serve as Prime on the upcoming assignment to ensure the successful completion of the Scope of Services (Work Program).

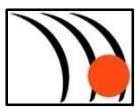
**Table 1.1-1**  
**FIRMS COMPRISING THE ULTRASYSTEMS PROJECT TEAM**

FIRM	PROJECT TEAM ROLE	LOCATION	EMPLOYEES
<b>PRIME CONTRACTOR</b>			
UltraSystems Environmental, Inc.	<b>Project Management, CEQA Document, Noticing/Distribution and Technical Report Preparation</b>  CEQA Management, Quality Assurance/Control, Technical Oversight, Noticing, EIR Preparation and Production, Mitigation Monitoring and Reporting Program, CEQA Noticing, Prepare 15091 Findings, and 15093 Statement of Overriding Considerations	Irvine	42
<b>SUBCONSULTANT</b>			
CRM TECH	Caltrans Cultural Resources Studies, Historic Resources, SHPO Coordination	Colton	10

### 2.0 CONTACT INFORMATION

UltraSystems Principal is Betsy A. Lindsay, MURP, President/CEO at 16431 Scientific Way, Irvine, CA, (949) 788-4900, (949) 788-4901, BLindsay@UltraSystems.com.

### 3.0 SUBCONSULTANTS



**CRM TECH** will handle Historical Resources, Architectural Historian, SHPO Coordination and was established in 1993 to provide a broad range of services for managing cultural resources throughout California. The services provided by CRM TECH include all phases of archaeological, paleontological, and historical investigations and will be implemented following CEQA, NHPA and Caltrans guidelines as needed. CRM Tech uses up-to-date technologies and keeps up with the latest paradigms of the history, prehistory, and paleontology of the region. **Tom Tang, MS** would lead the preparation of Caltrans Cultural Resources Studies and historical resources reporting for this project.

### 4.0 PROJECT UNDERSTANDING AND WORK PLAN

UltraSystems prepared the existing Caltrans technical studies and the Draft IS/MND and for the Foothill Boulevard from Hemlock Avenue to Almeria Avenue Improvement Project (project) located in the City of Fontana, San Bernardino County, CA. In 2024, UltraSystems completed preparation of the existing Caltrans Cultural Resources Studies for the project, including the Historic Property



## ❖ ENVIRONMENTAL SERVICES - FOOTHILL BLVD STREET IMPROVEMENT ❖

Survey Report (HSPR), Area of Potential Effect (APE) Maps, Archaeological Survey Report (ASR), Historical Resources Evaluation Report (HRER) and Finding of No Adverse Effect (FOE). These studies were submitted to the California State Historic Preservation Officer (SHPO) for review by Caltrans District 8. SHPO completed their review of the HPSR, HRER, ASR, APE Map and FOE and provided comments.

Based on review of the submitted documentation, the SHPO did not concur with Caltrans' determination that the Malaga Underpass Bridge and the Malaga Underpass Bridge Pumphouse are not eligible for the NRHP. The SHPO concurred with the remaining determinations of eligibility in the documentation submitted by Caltrans. In response to SHPO comment regarding non concurrence with the determination that the Malaga Underpass Bridge and the Malaga Underpass Bridge Pumphouse are not eligible for the NRHP, Caltrans advised that a revised HPSR with a Finding of Adverse Effect (FAE) should be prepared for the project. As a result of this change in determination of impact significance related to historic resources, preparation of revised Cultural Resources Studies, a NEPA EA/FONSI and a CEQA EIR is required for the project. Our scope of work provided below is divided into major tasks and includes preparation of revised technical studies and additional CEQA and NEPA documents required for the project.

### SCOPE OF WORK

#### MAJOR TASK 1.0: PROJECT MANAGEMENT, COORDINATION, MEETINGS AND HEARINGS

**Task 1.1: Project Initiation/Progress Meetings.** The UltraSystems Project Manager will attend one Project Kick-Off Meeting with the City. After receiving the NTP, and before the project kickoff meeting, UltraSystems will prepare a detailed draft project schedule and submit to the City for review, and to be finalized based on City's input. This task also includes UltraSystems' attendance at up to thirty (30) Progress Meetings. All meetings are assumed to be conducted via MS Teams or some other virtual meeting platform and expected to last one hour each.

**Task 1.2: Scoping Meeting/Public Hearing Attendance.** UltraSystems' Senior Project Manager shall facilitate up to two (2) public scoping meetings during the Notice of Preparation (NOP) circulation period. In addition, the UltraSystems' Senior Project Manager will also attend and participate in up to four (4) public hearings before the City Planning Commission and the City Council for the Draft and Final EIRs.

**Task 1.3: Project Management and Coordination.** UltraSystems shall be available throughout the performance schedule to respond to City staff requests for input concerning various aspects during the CEQA process. At all stages, UltraSystems will advise the project team and the City regarding relevant environmental issues, oversee all environmental compliance activities related to the Draft EIR, and ensure that all work is performed in accordance with applicable CEQA requirements. This task also facilitates the conduct of routine project management activities for the duration of the contract performance period. Efforts included in this regard would include but not necessarily limited to: coordinating with the City, Caltrans, and sub-consultants; monitoring and controlling labor and other direct costs; and the preparation of routine correspondence to the City.

**Major Task 1 Deliverables:** *One electronic copy each of the Meeting Minutes after all project meetings, Draft and Final Project Schedule, and monthly progress reports.*

#### MAJOR TASK 2.0 – REVISED CALTRANS CULTURAL STUDIES, AIR QUALITY CONFORMITY ANALYSIS, SECTION 4(F) EVALUATION AND PSI

**Task 2.1: Revised APE Map, HPSR, HRER and ASR.** The UltraSystems cultural resources team will work with its subconsultant CRM Tech and revise the existing APE Map, HPSR, HRER, ASR and pertinent DPR forms to reflect the altered significance evaluation of Malaga Bridge and the



## ❖ ENVIRONMENTAL SERVICES – FOOTHILL BLVD STREET IMPROVEMENT ❖

pumphouse. The revised studies will be submitted to Caltrans for review. This task includes two rounds of review by Caltrans and subsequent revision of the studies based on Caltrans comments.

**Task 2.2: Stakeholder Consultation.** Under this task, our team will initiate further consultation with the Route 66 interest groups identified in the City's protective covenant and document the results. This task includes preparation of draft consultation letters for review and approval by Caltrans and mailing of consultation letters to up to 25 stakeholders. This task also includes follow-up via phone calls, with different agencies and attendance at additional consultation meetings (up to 4, one-hour each virtual meetings) with interested agencies, in case they request further consultation.

**Task 2.3: Prepare Finding of Effect (FOE).** UltraSystems will prepare a new/significantly revamped Finding of Effect (FOE) documentation to address project effects to Malaga Bridge and the pumphouse and enhance treatment of the other "historic properties" as requested by Caltrans staff during the team meeting held with UltraSystems on July 30, 2024. The FOE will be submitted to Caltrans for review. This task includes two rounds of review by Caltrans and subsequent revision of the FOE based on Caltrans comments.

**Task 2.4: Prepare MOA.** This task includes preparation of a draft Memorandum of Agreement (MOA) regarding project effects to Malaga Bridge, the pumphouse, and Route 66 as a whole and potential mitigation measures for Caltrans review and adoption. The draft MOA will be submitted to Caltrans for review. This task includes two rounds of review by Caltrans and subsequent revision of the MOA based on Caltrans comments.

**Task 2.5: Revise Air Quality Conformity Analysis.** UltraSystems will revise/update the existing Air Quality Conformity Analysis (AQCA) prepared for the project (in July 2024), using Caltrans' Air Quality Conformity Analysis Annotated Outline, dated June 25, 2024. The AQCA will include all information needed by the Federal Highway Administration (FHWA) to make a project-level conformity determination for a project that falls under 23 USC 327 NEPA Assignment to Caltrans. The AQCA report will be submitted to Caltrans for review. This task includes two rounds of review by Caltrans and subsequent revision of the AQCA report based on Caltrans comments.

**Task 2.6: Prepare Section 4(f) Programmatic Evaluation Report.** UltraSystems will prepare a Section 4(f) Programmatic Evaluation for the project, using Caltrans' Programmatic Section 4(f) Evaluation Annotated Outline dated/revised in February, 2023. The Section 4(f) evaluation will include documentation of prudent and feasible avoidance alternatives and of all possible measures to minimize harm to historic or archaeological resources listed on or eligible for the National Register of Historic Places. The Section 4(f) evaluation report will be submitted to Caltrans for review. This task includes two rounds of review by Caltrans and subsequent revision of the Section 4(f) evaluation report based on Caltrans comments.

**Task 2.7: Prepare Phase II Subsurface Investigation (PSI).** UltraSystems' Subconsultant Citadel EHS (Citadel) will perform a Phase II Subsurface Investigation (PSI) for the project. Citadel completed an Initial Site Assessment Report (ISA) of the Site on May 24, 2022 and revised on August 26, 2022. Based on the report, Citadel identified the historical occupancy of the Site as a railway, the long-term occupancy of the Site as a major roadway, and the current and historical occupancies of auto repair shops and the unknown status of an underground storage tank (UST) at adjoining properties as recognized environmental conditions (REC). Based on the ISA findings, Citadel recommended conducting a Phase II Subsurface Investigation consisting of soil sampling throughout the Site to determine if the soil has been impacted by the historical occupancy as a railway and by aerially deposited lead (ADL) from vehicle exhaust; soil vapor sampling near three adjoining properties



## ❖ ENVIRONMENTAL SERVICES - FOOTHILL BLVD STREET IMPROVEMENT ❖

located at 15129, 15559 and 15735 Foothill Boulevard that represents a vapor encroachment condition (VEC); and lead-based paint (LBP) sampling of the bridge components.

- **Health and Safety Plan.** A site-specific Health and Safety Plan (HASP) will be prepared. This HASP will identify existing and potential hazards for workers at the Site during drilling activities. Examples of hazards may include slips, falls, heat, noise, contaminated soil and soil vapor, and injuries related to operation of hand tools, and heavy equipment, and moving vehicles.
- **Soil and Vapor Sampling.** To evaluate the subsurface, Citadel proposes to advance 24 borings across the Site and collect soil and soil vapor samples.

Citadel will advance seven borings along the railway at approximately 250 foot spacing to a depth of approximately two feet below ground surface (bgs), and eight borings along Foothill Boulevard at approximately 500 foot spacing to a depth of approximately one foot bgs using a hand auger. Soil samples will be collected from each boring from depths of between six inches and one foot, and between two and two and a half feet using a stainless steel drive sleeve and placed into laboratory supplied jars. The soil sampling equipment will be properly decontaminated between each sampling. The soil borings will be logged by, or under the supervision of, a California Professional Geologist. Spilt soil samples collected from each boring will be field screened with a photoionization detector (PID) or equivalent monitoring device to monitor the vapor space for the presence of volatile organic compounds (VOCs). Following the collection of soil samples, the boring locations will be backfilled with hydrated bentonite.

Citadel will advance nine small diameter borings across the Site using a rotary hammer drill, with seven borings along the railway and offset to the soil borings, and two borings at each adjoining property identified in the ISI as a potential VEC. The borings will be advanced to a depth of approximately five feet bgs in seven borings, and approximately 10 feet bgs in the two borings at 15559 Foothill Boulevard where a UST of unknown status is potentially present. A soil vapor probe will be set in each boring at approximately five feet bgs. Probes will also be set at ten feet bgs in the two deeper borings. The soil vapor sampling probes will be installed in accordance with the California Environmental Protection Agency's (Cal EPA) Department of Toxic Substance Control (DTSC) - Active Soil Gas Investigation and Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air. Soil vapor probe tips will be placed within a sand pack at the proposed sampling depth. Approximately six inches of dry bentonite chips will be placed over the sand pack, followed by placement of hydrated bentonite. Gas tight fittings will be placed at the end of the probes at the surface.

Field measurements of VOCs will be collected from each vapor probe. Prior to the collection of soil vapor samples, the probes, fittings and tubing will be tested for leaks and purged at least three soil pore volumes (volumes of tubing, sand pack and annular bentonite). Samples will be collected at a sampling rate of between 100 and 200 milliliters per minute (mL/min). Soil vapor samples will be collected from each probe in a one-liter Tedlar bag following the procedure of the Cal EPA's Active Soil Gas Investigation Authority approximately two hours after the probes have been installed. For quality control purposes, two replicate vapor samples will also be collected.

The soil samples will be placed in a chilled cooler and the soil vapor samples will be placed in a non-chilled cooler for transportation to an Environmental Laboratory Accreditation Program (ELAP) certified laboratory under standard chain of custody (COC) procedures. Following the collection of soil vapor samples, the tubing will be removed from each boring,

and backfilled with hydrated bentonite and the surface will be finished to match the surrounding surface.

Fifteen soil samples collected from the six inch depth of each boring will be analyzed for lead by EPA Method 6010B. The six inch depth samples collected from the railway will also be analyzed for organochlorine pesticides (OCP) by EPA Method 8081. Seven soil samples collected from the two foot depth in each of the railway borings will be analyzed for VOCs by EPA Method 8260B, total petroleum hydrocarbons (TPH) full range by EPA Method 8015B and polynuclear aromatic hydrocarbons (PAHs) by EPA Method 8270C SIM.

Fifteen soil vapor samples and two replicate samples will be analyzed for VOCs by EPA Method TO-15. Four vapor samples from the 15559 Foothill Boulevard location will also be analyzed for TPH as gasoline (TPHg) by EPA Method TO-3. Citadel will collect up to four paint chip samples from the bridge components. The samples will be analyzed for lead using Inductively Coupled Plasma (ICP) by NIOSH Method 7300.

- **Data Evaluation and Reporting.** At the completion of on-Site activities and receipt of laboratory analysis, a report will be submitted to City and Caltrans documenting Citadel's methodologies and procedures, and laboratory analytical results. The report will provide a discussion of findings, conclusions, and recommendations, if necessary. Comments from City and Caltrans on the draft report will be addressed and incorporated in the final report and submitted for approval. Deliverable: Draft and Final Phase II Investigation Report
- Additional Soil, Soil Vapor and Paint Chip Sampling. Citadel will collect additional soil, soil vapor, or paint chip samples as requested. The samples may be analyzed for VOCs, TPH, PAH, OCP, lead, or Title 22 Metals. For budgeting purposes Citadel assumes one additional day of soil sampling and the analysis of three soil samples, six soil vapor samples, and two paint chip samples.

**Major Task 2 Deliverables:** One electronic copy each in MS Word (if applicable) and PDF versions of the Draft and Final APE Map, HPSR, HRER, ASR, FOE, MOA and ACQA studies, Section 4(f) report and Phase II Investigation Report.

### MAJOR TASK 3.0 – REVISED INITIAL STUDY AND CULTURAL RESOURCES STUDY

**Task 3.1: Revised Cultural Resources Technical Study.** UltraSystems will revise the existing Phase I Cultural Resources Technical Study prepared for the project to address project effects to Malaga Bridge, the pumphouse, and Route 66 as a whole and potential mitigation measures for minimizing impacts. The Phase 1 Cultural Resources Study will be used as supporting documentation for the CEQA EIR to be prepared for the project.

**Task 3.2: Revised Initial Study.** This task includes revision of the existing Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the project for use in the CEQA EIR to be prepared for the project. Our team will use the existing Draft IS/MND to prepare an Initial Study for public circulation and scoping of the CEQA EIR. Responses to thresholds for which impacts have been identified to be significant and mitigation measures have been recommended will be revised and recommended for further evaluation in the EIR to be prepared for the project. The revised IS will be submitted to the City for review and approval. After City's approval, the IS/NOP will be finalized for public circulation and scoping.

**Task 3.3: Public Review of IS/NOP.** The IS/MND must be circulated for public review for 30 days if sent to the State Clearinghouse. UltraSystems will assist the City in the dissemination of the IS/NOP for public review. We will work with the City to compile the distribution list. UltraSystems will identify Local, Responsible and Trustee agencies defined in CEQA Guidelines §§ 15381 and 15386,



## ❖ ENVIRONMENTAL SERVICES – FOOTHILL BLVD STREET IMPROVEMENT ❖

and will consult with each, as appropriate, to satisfy Public Resource Code (PRC) § 21080.3 and CEQA Guidelines § 15063(g). UltraSystems will submit the draft distribution list to the City for review and comment.

UltraSystems will prepare a master copy of the IS/NOP for reproduction. We will coordinate the production of copies for public distribution and deliver the IS/NOP to the State Clearinghouse. UltraSystems will complete the following tasks on behalf of the City.

- UltraSystems will prepare all notices for this project. This includes the Notice of Preparation and other supporting documentation required for this project. The NOP will be: (1) mailed to those previously requesting notice; (2) provided in one general circulation newspaper; (3) posted on-site; (4) mailed to owners/occupants within 500' of the project site; (5) filed with the State Clearinghouse; and (6) filed with the County Clerk.

Mailings will be via certified mail (return receipt requested) and proof of deliveries will be assembled and provided to the City to document compliance. The NOP will indicate the final day for accepting written comments.

**Major Task 3 Deliverables:** *One electronic copy each in MS Word (if applicable) and PDF versions of the Revised Final IS, Draft and Final NOP and distribution list. Up to 100 printed copies of the NOP for public review and circulation.*

### MAJOR TASK 4.0 - PREPARATION OF ADMINISTRATIVE DRAFT EIR

This major task encompasses all work efforts required to prepare an Administrative Focused Draft EIR for the proposed project. The Draft EIR will be developed for the purpose of satisfying the City's environmental disclosure obligations and shall include those mandatory elements identified in CEQA and its implementing guidelines. The tasks described below comprise the activities of the scientific and management professionals assigned to the project.

**Task 4.1: Introduction.** An introductory section shall be provided which contains the following: (1) discussion of the purpose for producing the Draft EIR; (2) an identification of the statutory authority for the Draft EIR; (3) a listing of the documents incorporated by reference, including a discussion of their relevancy to the proposed action (pursuant to § 15150 of the California Code of Regulations [CCR]); and (4) a matrix of project approvals, identifying those actions which will be involved in the approval of the project. The introduction will further describe scoping activities (i.e., consultation and coordination) undertaken by the City and UltraSystems to identify environmental issues and mitigation measures included in the environmental review record.

**Task 4.2: Summary of Impacts, Mitigation Measures and Alternatives.** A summary will be prepared pursuant to §§ 15123 of the CCR. The summary will include a matrix outlining all identified impacts, mitigation measures, and conditions of approval recommended to reduce or avoid those effects and shall present a conclusion indicating the post-project level of significance after implementation of those measures. The summary shall identify: (1) each significant effect with proposed mitigation measures and alternatives that would reduce or avoid the effect; (2) areas of controversy known to the City acting in its capacity as the Lead Agency, including issues raised by the public and commenting agencies during the public scoping meeting and public review periods; and (3) issues to be resolved, including the choice among alternatives and how to mitigate the project's significant environmental effects.

UltraSystems, in consultation with City staff, will prepare mitigation measures that are based on final Cultural Resources technical study and significance determinations. UltraSystems will use a spreadsheet that will include a bulleted outline analysis of each chapter, impacts under each section

of the Draft EIR, organization of issues for each impact, draft mitigation measures, and potential significance determinations before and after mitigation.

**Task 4.3: Project Description.** UltraSystems will prepare a Project Description in full compliance with the content provisions set forth in §15124 of the State CEQA Guidelines, as amended. The Project Description will graphically and textually identify the location and boundaries of the Proposed Project on both an area-wide and local basis. The Project Description will then identify the objectives of the Proposed Project and follow that with a discussion of the Project's technical, economic and environmental characteristics including principal engineering proposals and supporting public service facilities. The entitlements requiring approval for the Proposed Project to be implemented will be identified and characterized.

**Task 4.4: Basis For Cumulative Analyses.** When evaluating the potential environmental effects of a proposed activity, Section 15130 of the CCR requires that the Lead Agency also examine potential cumulative impacts when they are significant. As further indicated, the discussion of cumulative impacts should be guided by the standards of practicality and reasonableness. When assessing cumulative effects, CEQA affords agencies the opportunity to conduct the analyses in accordance with either of the following methodologies: (1) a list of past, present, and reasonably anticipated future projects producing related or cumulative impacts; or (2) a summary of projections contained in an adopted planning document designed to evaluate regional or area-wide conditions. Since this EIR will be assessing impacts at the construction or project level, this section of the Draft EIR will identify those projects which should be used when conducting a project-level cumulative analysis. UltraSystems will work cooperatively with City staff to formulate an appropriate strategy in response to this CEQA obligation and to identify related projects.

**Task 4.5: Environmental Setting.** As defined under Section 15358(b) of the CCR, effects analyzed under CEQA must be related to a physical change in the environment. As a result, the effects, which are to be examined in the Draft EIR, relate to the change between the existing conditions and the future conditions resulting from project implementation and development. This section shall contain a description of the natural and built environment on and in the vicinity of the Project Site, as it exists prior to project implementation from both a local and regional perspective. Special emphasis will be placed on any environmental resources which are considered rare or unique.

**Task 4.6: Discussion of Environmental Impacts and Mitigation Measures.** For each impact identified as having the potential to be significant, it is in this section of the EIR where the reader or reviewer of the EIR can find what methods may have been employed in an effort to more accurately define the degree of impact significance and what the results ultimately were in that regard. For any impact that was determined to be significant that same reader could also discover how the significance of such an impact can be reduced to less than significant levels. It is in this section of the EIR where the additional analyses undertaken, and impact significance conclusions drawn are reported. Regardless of impact category or the nature of the information used, each environmental issue discussed will comprise the same format: Environmental Setting, Regulatory Setting, Thresholds of Impact Significance, Environmental Impacts, Mitigation Measures, including project design features and new mitigation measures, and Level of Impact Significance after Mitigation. UltraSystems will incorporate all information necessary to assist the casual reviewer of the document in understanding what they are viewing.

**Task 4.7: Unavoidable Significant Environmental Effects.** Based on the environmental evaluation, UltraSystems will summarize and discuss any significant environmental effects that were unable to be avoided. A Draft EIR must disclose the significant unavoidable impacts that would result from implementing a Proposed Project. Moreover, State CEQA Guidelines § 15126(b) states that a Draft

EIR should explain the implications of such impacts and the reasons why the project is being proposed, notwithstanding such impacts.

**Task 4.8: Significant Irreversible Environmental Changes.** A Draft EIR must disclose the long-term commitment to natural resources and the energy implications associated with implementing the project.

**Task 4.9: Growth-Inducing Impacts.** The assessment of direct or indirect growth-inducing impacts of the project would be discussed within the Draft EIR.

**Task 4.10: Effects Not Found to be Significant.** Section 15128 of the State CEQA Guidelines requires that; “An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. This section will summarize information contained in the Initial Study prepared for the project for all environmental topical areas for which project impacts would be less than significant.

**Task 4.11: Alternatives to the Proposed Action.** The Draft EIR shall include a discussion of a reasonable range of alternatives to the proposed action. The Draft EIR will include the evaluation of up to three (3) feasible alternatives, including the No Project Alternative. UltraSystems, working in cooperation with City staff, will identify additional alternatives, which could attain the stated objectives of the project, evaluate the environmental impacts associated with each alternative, and provide a summary analysis of anticipated impacts under each of the topical issues examined in the Draft EIR. A matrix shall be developed presenting a comparative analysis of the corresponding impacts associated with the project and each of the alternatives identified in the Draft EIR. A superior Alternative shall also be identified.

**Task 4.12: References>List of Preparers.** This task will include the preparation of the above-referenced section in accordance with the provisions of CEQA and its implementing guidelines. This section will identify City Staff, UltraSystems personnel, and sub-consultant representatives who participated in preparing the Draft EIR. Also to be included in this section will be a list of organizations and persons consulted, and references employed to prepare the Draft EIR.

**Major Task 4 Deliverables:** *One electronic copy in MS Word and PDF versions of the Admin Draft EIR and supporting technical appendices to the City.*

## MAJOR TASK 5.0 - PREPARATION OF DRAFT EIR

This major task encompasses all activities required to finalize and disseminate the Draft EIR.

**Task 5.1: Revise Administrative Draft EIR.** Upon receipt of City comments on the Administrative Draft EIR, UltraSystems shall: (1) undertake all necessary actions and allocate all appropriate resources required to adequately address technical revisions to the Draft EIR raised by those comments, and (2) submit a revised Administrative Draft EIR (incorporating subsequent revisions) to City staff for their final review. Two rounds of City review have been assumed in the budget.

Should new technical issues arise from that review that have not been previously identified nor considered in this proposal or should further investigative analysis be required beyond the specific limits of this SOW, UltraSystems reserves the right to enter further negotiations to amend the scope of services as may be required to complete those additional tasks and responsibilities. Following acceptance of the revised Draft EIR by the City, that document shall be disseminated in the manner as described herein.

**Task 5.2: Distribute Draft EIR.** Upon concurrence of a document distribution list, UltraSystems will print the Draft EIR, which will be disseminated to those agencies, organizations, and individuals

required to receive notice. All mailing will be done via certified mail (return receipt requested). The proof of deliveries will be assembled by UltraSystems to document distribution compliance.

**Task 5.3: Noticing.** UltraSystems will prepare the Notice of Availability (NOA) and Notice of Completion (NOC).

**Major Task 5 Deliverables:** *One electronic copy in MS word and PDF versions of the Draft EIR and supporting technical appendices. Upto 100 printed copies of the NOA and NOC and upto 25 electronic copies of the Draft EIR and supporting technical appendices (on flash drives) for public review and circulation.*

#### **MAJOR TASK 6.0 - PREPARATION OF FINAL EIR**

This major task includes those activities associated with the preparation of the Final EIR. The content and format of the Final EIR shall follow the procedures set forth in CEQA and its implementing guidelines.

**Task 6.1: Prepare Administrative Draft Response to Comments.** This task encompasses the preparation of written administrative draft responses to comments received on the Draft EIR. All substantive and relevant comments shall be addressed and organized in a manner to facilitate easy reference. The Administrative Draft Response to Comments volume will include a written response to all comments, as well as a copy of each written comment in its original form. The Administrative Draft Response to Comment volume shall include an introduction describing the document's contents, statutory authority, and relationship to the Draft EIR. Each comment will be identified and classified by topic (e.g., federal, State, City, and local agencies; private organizations; and interested individuals). The number and substance of comments may vary greatly. As a result, UltraSystems has allocated a specific number of labor hours to this task assignment. Should the number or substance of comments exceed this budget allocation, a revised not-to-exceed budget shall be developed and submitted to the City. All subsequent efforts in this regard will be compensated on a time-and-materials basis, in an amount to be negotiated with the City upon receipt of all public and government agency comments.

**Task 6.2: Prepare Revisions to the Administrative Draft Response to Comments.** Upon receipt of City comments on the Administrative Draft Response to Comments volume, UltraSystems shall make the appropriate revisions and resubmit a Final Draft Response to Comments document to the City for its review and consideration. Two rounds of City review have been assumed in our budget.

**Task 6.3: Prepare Mitigation Monitoring and Reporting Program.** UltraSystems will prepare a draft Mitigation Reporting and Monitoring Program, pursuant to § 21081.6 of the Public Resources Code. The monitoring program shall specify: (1) the responsibility for implementation; (2) the timing for implementation; (3) the mechanisms of monitoring activities, including the frequency, contact, and format for reporting requirements; and (4) the content, requirements, and ultimate disposition of a Final Mitigation Reporting and Monitoring Report. UltraSystems shall assist the City in soliciting and incorporating the views of Responsible Agencies regarding the scope and the appropriate aspects of the monitoring and reporting program.

**Task 6.4: Administrative Draft Final EIR.** UltraSystems will prepare an Administrative Draft Final EIR incorporating the Draft EIR, Response to Comments, and the Mitigation Monitoring and Monitoring Program and submit it for City review and comment.

**Task 6.5: Revise Administrative Draft Final EIR.** Following the City's review, UltraSystems will make any appropriate revisions and then compile a Final EIR incorporating the Draft EIR, Response to Comments, and the Mitigation Monitoring and Monitoring Program.



## ❖ ENVIRONMENTAL SERVICES - FOOTHILL BLVD STREET IMPROVEMENT ❖

**Task 6.6: Notices.** UltraSystems will file the following notices: Notice of Determination (NOD), Notice of Completion, and Notice of Availability.

**Task 6.7: Findings of Fact/Statement of Overriding Considerations (if warranted).** UltraSystems will prepare Findings of Fact (Section 15091, CCR) in cooperation with the City Attorney or his/her designee. Based on City comments, a final set of findings shall be provided for adoption concurrently with the certification of the Final EIR. In the event the Final EIR identifies the continuing existence of significant adverse impacts after mitigation, UltraSystems will draft a Statement of Overriding Considerations (Section 15093, CCR) for review by City staff.

**Major Task 6 Deliverables:** *One electronic copy each in MS word and PDF versions, of the Response to Comments document, the Final EIR including all technical appendices, the Findings of Fact/Statement of Overriding Considerations. One electronic and one printed copy of the NOD.*

### MAJOR TASK 7.0 - PREPARATION OF NEPA EA/FONSI

This major task encompasses all work efforts required to prepare a NEPA Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the proposed project. The Draft EA will be developed for the purpose of satisfying Caltrans' environmental disclosure obligations and shall include those mandatory elements identified for preparation of NEPA EAs on Caltrans Standard Environmental Reference (SER) website, Caltrans Project Development Procedures Manual, and FHWA Technical Advisory 6640.81 and its implementing guidelines.

**Task 7.1: Prepare Aministrative Draft EA.** UltraSystems will utilize the existing Caltrans Technical Studies, and the revised Cultural Resources Studies and CEQA EIR to be prepared for the project to prepare a Draft EA for the project. The Draft EA (inlcuding format and information to be included) will prepared using Caltrans' NEPA only EA Annotated Outline, dated December 05, 2023, currently available on Caltrans' website. UltraSystems will submit the Draft EA to Caltrans for review and comment.

**Task 7.2: Prepare Draft EA.** Upon receipt of Caltrans comments on the Administrative Draft EA, UltraSystems shall: (1) undertake all necessary actions and allocate all appropriate resources required to adequately address technical revisions to the Draft EA raised by those comments, and (2) submit a revised Draft EA (incorporating subsequent revisions) to Caltrans staff for their final review. Two rounds of Caltrans review have been assumed in the budget.

Should new technical issues arise from that review that have not been previously identified nor considered in this proposal or should further investigative analysis be required beyond the specific limits of this SOW, UltraSystems reserves the right to enter further negotiations to amend the scope of services as may be required to complete those additional tasks and responsibilities.

**Task 7.3: Notices.** Federal regulations do not require the circulation of the draft EA or FONSI for public comment; however, the EA must be made available for public review for 30 days prior to making a final determination (i.e., the FONSI). In order to advise the public of the availability of the draft EA, a Notice of Availability (NOA) is published at least one time in a local newspaper. This notice is usually combined with the Notice of Public Hearing or Notice of Opportunity. UltraSystems understands that Caltrans handles circulation of the Draft EA for review by public agencies, posting of the NOP in the newspaper and filing of the NOP with the State Clearinghouse. Therefore, this task does not include public distribution of the Draft EA and NOP, or filing of the NOP with the State Clearinghouse. This task includes assisstance to Caltrans staff for preparation of draft notices required for public review of the Draft EA, if necessary.

**Task 7.4: Prepare Final EA/FONSI.** UltraSystems will work with Caltrans staff and provide assisstance in preparing responses to any comments received on the Draft EA/FONSI, and prepare



## ❖ ENVIRONMENTAL SERVICES – FOOTHILL BLVD STREET IMPROVEMENT ❖

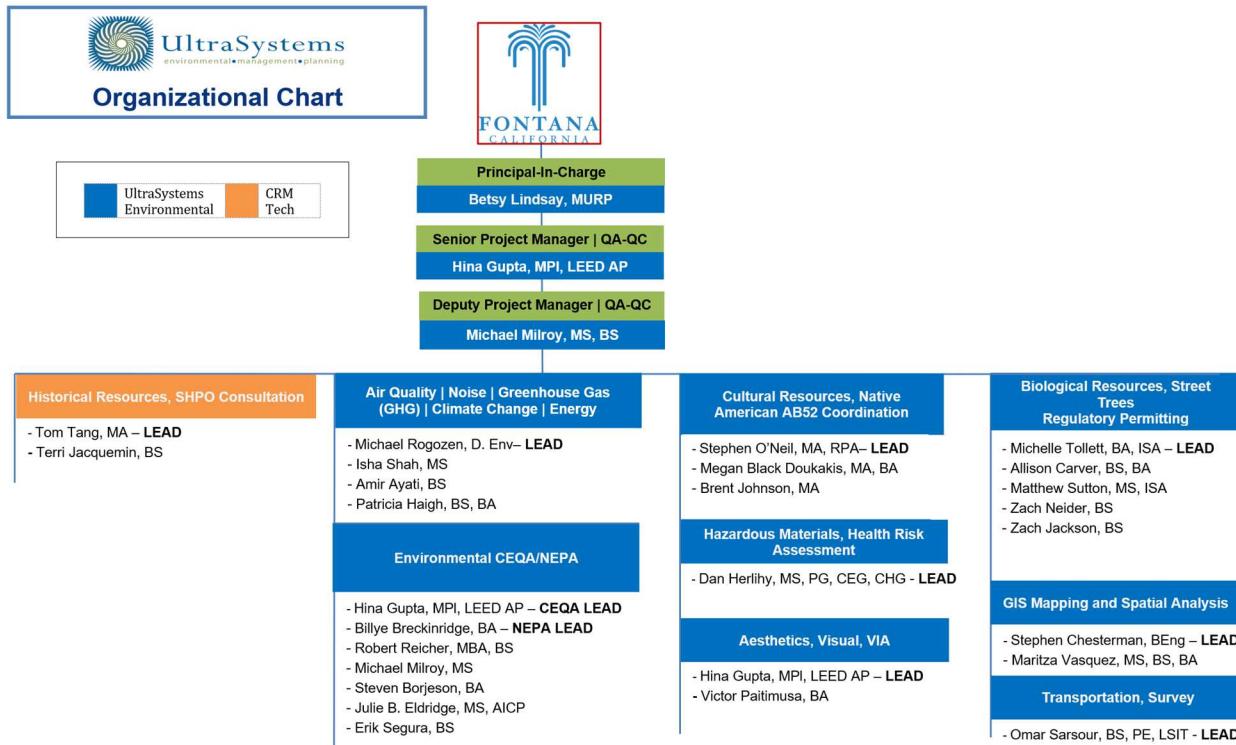
the Final EA/FONSI for the project. The Final EA/FONSI will be submitted to Caltrans for their final review. Two rounds of Caltrans review have been assumed in the budget.

Upon completion of a FONSI, a Notice of Availability (NOA) along with a Notice of Completion (NOC) must be sent to the SCH. Caltrans may also elect to prepare a Statute of Limitations (SOL) Notice for the FONSI for the Federal Highway Administration's (FHWA's) publication in the Federal Register. This scope of work assumes that Caltrans will complete preparation and filing of the NOA and the NOC with the SCH and preparation and publication of the SOL, if required.

**Major Task 7 Deliverables:** *One electronic copy each in MS word and PDF versions of the Draft and Final EA/FONSI and supporting technical appendices.*

## 5.0 ORGANIZATIONAL CHART

The UltraSystems team's organization chart depicts all key individuals to service and support this specific contract. These key individuals all have experience working within the City of Fontana or working on Master Plan projects. UltraSystems has worked with our subconsultant on several projects and trusts their integrity to perform for the City of Fontana, in accordance with your established standards.



## 6.0 SCHEDULE OF DEADLINES

**Timeline Schedule.** The proposed task-by-task performance schedule for the preparation of the Foothill Boulevard EIR-EA from inception to Final EIR certification is provided below. Assuming a start date in mid-March 2025, allowing City reviews of deliverables within 2 weeks, and that our technical analysis doesn't find anything in one of the studies that delay incorporation of the study into the EIR, the CEQA Final EIR and NEPA Final EA/FONSI would be ready for certification in approximately 16 months by July 2026.

**Table 6.0-1**  
**Estimated Project Schedule**

Major Task Milestone	Estimated Duration	
	Start Date	End Date
Begin Work and Kick-Off Meeting (Major Task 1)	March 2025	March 2025
Revised Caltrans Cultural Resources Studies and ACQA Study (Major Task 2)	March 2025	July 2025
Initial Study/NOP and Scoping (Major Task 3)	March 2025	June 2025
Administrative Draft EIR (Major Task 4)	April 2025	September 2025
Revised Draft EIR (Major Task 5)	October 2025	December 2025
Release Draft EIR for Public Review (Major Task 5)	December 2025	January 2026
Response to Comments and Admin Final EIR (Major Task 6)	February 2026	April 2026
Final EIR, Findings of Fact/SOC and NOD (Major Task 6)	May 2026	July 2026
NEPA EA/FONSI (Major Task 7)	July 2025	June 2026

## 7.0 STAFFING PLAN

UltraSystems has worked closely with municipal and state governments, transportation authorities, and other agencies and stakeholders to assess environmental effects, identify mitigation measures and facilitate project approval. We apply these principles on all levels of CEQA/NEPA documentation. To expedite the environmental compliance process, our professional staff utilizes a process of streamlined techniques designed to expedite each process and save our clients from additional project expenditures or unnecessary project delays.

As with any project undertaken, the UltraSystems project team will implement each project in an orderly manner, technical service assignment to ensure that the most qualified staff will be assigned to work activities. Our Project Manager immediately communicates to each designated staff a clearly defined task assignment and his/her area of responsibility on a project as coordinated in a Project Management Plan (PMP). Generally, the PMP includes: (1) an overall work flow chart identifying the critical path; (2) a detailed description of each task order; (3) a detailed schedule for each work task; (4) a detailed breakdown of the costs for each task; (5) a detailed staffing plan for each task; (6) a communication protocol; (7) quality assurance and quality control plan; (8) monthly progress reports to the City; (9) project meetings; (10) communications with the City and other entities; and (11) subcontracts with our teaming partners. The PMP will be the basis against which a specific project status and progress will be measured and reported to the City.

Once a task order is issued from the City, the UltraSystems team will mobilize quickly to commence work activities. Dependent on the complexity of project assignment(s) Betsy A. Lindsay/Hina Gupta will develop and implement a project management plan (PMP) for each assignment. The PMP will contain an orderly, structured process for identifying, scheduling, and coordinating all specific line items within the Work Plan. The assigned PM will be responsible for ensuring that the highest-quality work products are prepared for the approved costs. The PMP will be specific to this project and will be designed to meet the criteria for all environmental compliance and regulatory requirements.

## 8.0 PROPOSED TEAM

**Table 8.0-1** identifies the key project management, scientific, engineering and planning personnel comprising the UltraSystems Project Team. For each Project Team member, the table identifies their names, title, educational level, registrations (as applicable), area(s) of responsibility (Project Role), and years of experience.

**Table 8.0-1**  
**Key Personnel and Roles**

Name/Title	Project Role	Yrs. Exp.
<b>Management Leads</b>		
<b>Betsy A. Lindsay, MURP, ENV SP</b> Principal In Charge/Project Director	Contract Administration, Resource Allocation	35
<b>Hina Gupta, MURP, LEED-AP</b> Senior Project Manager	CEQA lead, Aesthetics, Visual Resources QA/QC	17
<b>Michael Milroy, MS, BS</b> Deputy Project Manager	Alternatives, QA/QC	18
<b>Technical Leads and Staff</b>		
<b>Dr. Michael Rogozen, D. Env.</b> Senior Principal Engineer	Air Quality, Health Risk, Noise	45
<b>Isha Shah, MS</b> , Scientist Engineer	GHG, Climate Change, and Adaption	2
<b>Patricia Haigh, BS, BA</b> , Scientist Engineer	Energy	4
<b>Michelle Tollett, BA, ISA</b> , Senior Biologist	Biological Resources, Surveys	22
<b>Allison Carver, BS, BA</b> , Senior Biologist	Hydrology and Water Quality	21
<b>Matthew Sutton, MS, ISA</b> , Staff Biologist	Biological Surveys	16
<b>Stephen O'Neil, MA, RPA</b> Cultural Specialist	Cultural Resources, Archaeology, Assist County with AB52, Tribal Coordination	43
<b>Megan Black, MA, BA</b> , Archaeologist	Cultural Resources, Tribal Coordination	13
<b>Victor Paitimusa, BA</b> , Associate Planner	Population and Housing, Land Use, Environmental Justice	5
<b>Billye Breckenridge, BA</b> Senior Planner	GIS Spatial Analysis	23
<b>Stephen Chesterman, BEng</b> Principal GIS Consultant	GIS, Utilities	32
<b>Amir Ayati, BS</b> , Staff Scientist	Noise Field Studies	4
<b>Erik Segura, BS</b> , Staff Scientist	Noise Analysis	6
<b>Steven Borjeson, BA</b> , Senior Planner	Aesthetics, Agriculture Resources, Community Growth,	23
<b>Maritza Vasquez, MS, BS, BA</b> , GIS Tech	GIS Analysis and Mapping	1
<b>Andrew Soto, BA</b> , Word Processor	Word Processing	5
<b>Subconsultants</b>		
<b>Tom Tang, MS</b> , Principal – <b>CRM Tech</b>	Architectural Historian, SHPO	30
<b>Terri Jacquemin, BS</b> – <b>CRM Tech</b>	Architectural Historian, SHPO	20

## 9.0 KEY PERSONNEL

The Principal-in-Charge for the upcoming assignment will be Ms. Betsy Lindsay, UltraSystems' owner. She will be our Primary Point of Contact for all contractual matters, will ensure the availability of all necessary corporate resources to complete the assignment and will be part of the deliverable



## ❖ ENVIRONMENTAL SERVICES - FOOTHILL BLVD STREET IMPROVEMENT ❖

QA process. Day-to-day project management will be the responsibility of Ms. Hina Gupta, an UltraSystems Senior Project Manager. Ms. Gupta will be the Project Team's Primary Point of Contact with the City for all non-contractual matters. Ms. Gupta will be supported by Michael Milroy, also an UltraSystems' Project Manager who will serve in the capacity of Deputy Project Manager.

### 10.0 STAFF RESUMES

UltraSystems includes key personnel resumes in the [Appendix](#).

### 11.0 NAME OF CONSULTANTS PROJECT MANAGER

The UltraSystems Sr. Project Manager is Hina Gupta and Betsy A. Lindsay will negotiate the contract.

### 12.0 REFERENCES

The table below provides references from public agency clients who will attest to the quality of work performed by UltraSystems in its capacity as providing environmental consulting services in southern California.

**Table 12.0-1**  
**UltraSystems References**

JURISDICTION/CLIENT	PROJECT NAME	WORK SCOPE	CONTACT	TELEPHONE NO.
City of San Clemente - Beaches, Parks & Recreation Department	Richard T. Steed Memorial Park/Baron Von Willard Dog Park Master Plan Update	IS/MND	Samantha Wiley	949-429-8875
City of Baldwin Park	Zocalo Park Project	CEQA	Yovanni Viramontes	626-960-4011 x420
City of Irvine	2055 Main Street/IBC Vision Plan Addendum FEIR	CEQA	Bill Rodrigues	949-724-6440

#### 12.1 Project References

##### PROJECT: THE DISTRICT AT JURUPA VALLEY SPECIFIC PLAN EIR

**Client:** City of Jurupa Valley

**Contact:** Thomas Gorham, Principal Planner | T: 951/332-6464 X215 | E: [tgorham@jurupavalley.org](mailto:tgorham@jurupavalley.org)

**Contract Duration:** Nov. 2021 to Present

**Contract Amount:** \$188,770

**Project Team:** Michael Milroy PM, Hina Gupta (Planning), Billye Breckenridge (Planning), Michael Rogozen (Air Quality, GHG Emissions, Noise), Michelle Tollett (Biology), Amir Ayati (Noise), Steve O'Neil (Cultural and Tribal Cultural Resources), Stephen Chesterman (GIS).

##### PROJECT: COMMERCE TRANSIT MAINTENANCE FACILITY - IS/MND

**Client:** City of Commerce

**Contact:** Claude McFerguson, Director | T:323/887-4419 X2235 | E: [claudem@ci.commerce.ca.us](mailto:claudem@ci.commerce.ca.us)

**Contract Duration:** May 2022

**Contract Amount:** \$106,090

**Project Team:** Betsy Lindsay PM, Hina Gupta (Planning), Billye Breckenridge (Planning), Michael Rogozen (Air Quality, GHG Emissions, Noise), Michelle Tollett (Biology), Amir Ayati (Noise), Steve O'Neil (Cultural and Tribal Cultural Resources), Stephen Chesterman (GIS).

## EXHIBIT B

### Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.

**COST PROPOSAL**  
**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**  
(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

 Prime Consultant Subconsultant 2nd Tier Subconsultant

Consultant UltraSystems Environmental

Project No.

Contract No.

Date

2/6/2025

**DIRECT LABOR**

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Project Director	Betsy Lindsay	68	\$74.28	\$5,051.04
Sr. Project Manager	Hina Gupta	305	\$57.93	\$17,668.65
Deputy Project Manager	Michael Milroy	145	\$41.57	\$6,027.65
Senior Planner	Billye Breckenridge	150	\$40.04	\$6,006.00
Senior Principal Engineer	Dr. Michael Rogozen	120	\$49.14	\$5,896.80
Scientist Engineer	Isha Shah	80	\$35.00	\$2,800.00
Scientist Engineer	Patricia Haigh	132	\$32.00	\$4,224.00
Scientist Engineer	Amir Ayati	50	\$33.00	\$1,650.00
Staff Scientist	Erik Segura	50	\$28.00	\$1,400.00
Senior Planner	Steve Borjeson	172	\$41.47	\$7,132.84
Associate Planner	Victor Paitimus	400	\$40.38	\$16,152.00
Senior Biologist	Allison Carver	50	\$40.43	\$2,021.50
Senior Biologist II	Michelle Tollett	36	\$47.42	\$1,707.12
Staff Biologist I	Matthew Sutton	47	\$36.09	\$1,696.23
Cultural Specialist	Steve O'Neil	264	\$35.42	\$9,350.88
Archaeologist	Megan Doukakis	242	\$31.20	\$7,550.40
Sr. GIS Analyst	Stephen Chesterman	87	\$52.50	\$4,567.50
GIS Technician	Maritza Vasquez	98	\$32.69	\$3,203.62
Word Processor	Andrew Soto	162	\$25.00	\$4,050.00

**LABOR COSTS**

2658

a) Subtotal Direct Labor Costs	\$108,156.23
b) Anticipated Salary Increases (see page 2 for calculations)	\$0.00
<b>c) TOTAL DIRECT LABOR COSTS [(a) + (b)]</b>	<b>\$108,156.23</b>

**INDIRECT COSTS**

d) Fringe Benefits (Rate: 33.86%)	e) Total Fringe Benefits [(c) x (d)] \$36,621.70
f) Overhead (Rate: 63.83%)	g) Overhead [(c) x (f)] \$69,036.12
h) General and Administrative (Rate: 74.33%)	i) Gen & Admin [(c) x (h)] \$80,392.53
<b>Total</b>	<b>j) TOTAL INDIRECT COSTS [(e) + (g) + (i)] \$186,050.35</b>

**FIXED FEE**

k) TOTAL FIXED FEE [(c) + (J)] x fixed fee:

10.00%

\$ 29,420.66

**l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)**

Description of Item	Quantity	Unit	Unit Cost	Total
Scoping				\$2,000.00
Graphics - Project Alternatives				\$548.00
Socioeconomics				\$1,500.00
Public Noticing and Distribution				\$3,000.00
Public Noticing - Newspapers				\$1,200.00
Noticing - ROD/NOD - CDFW				\$4,500.00
				\$0.00
				\$0.00
				\$0.00

**l) TOTAL OTHER DIRECT COSTS****\$12,748.00****m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

Sub-consultant Name	Task			
CRM TECH	Revised HPSR and HRER			\$1,740.00
CRM TECH	Stakeholder Consultation			\$630.00
CRM TECH	Prepare Finding of Effect			\$7,500.00
CRM TECH	Prepare MOA			\$7,000.00
CITADEL EHS	Prepare Phase II Subsurface Investigation			\$26,264.00

m) **TOTAL SUBCONSULTANTS' COSTS** **\$43,134.00**

n) <b>TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l) + (m)]</b>	<b>\$55,882.00</b>
<b>TOTAL COST [(c) + (j) + (k) + (n)]</b>	<b>\$379,509.23</b>

NOTES:

1. Key personnel **must** be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
3. Anticipated salary increases calculation (page 2) must accompany.

**COST PROPOSAL**  
**COST-PLUS-FIXED FEE OR LUMP SUM **OR** FIRM FIXED PRICE CONTRACTS**  
(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant UltraSystems Environmental Contract No. Date 2/6/2025

Consultant UltraSystems Environmental

Contract No.

Date 2/6/2025

**1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

<b>Direct Labor Subtotal</b> per Cost Proposal	<b>Total Hours</b> per Cost Proposal	<b>Avg Hourly</b> Rate	<b>5 Year Contract</b> <b>Duration</b>
\$108,156.23	1146	= \$94.38	Year 1 Avg Hourly Rate

**2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)**

Avg Hourly Rate			Proposed Escalation				
Year 1	\$94.38	+	5.0%	=	\$99.10	Year 2 Avg Hourly Rate	
Year 2	\$99.10	+	5.0%	=	\$104.05	Year 3 Avg Hourly Rate	
Year 3	\$104.05	+	5.0%	=	\$109.25	Year 4 Avg Hourly Rate	
Year 4	\$104.05	+	5.0%	=	\$109.25	Year 5 Avg Hourly Rate	
Year 5	\$109.25	+	5.0%	=	\$114.72	Year 5 Avg Hourly Rate	

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	100.00%	*	1146.0	=	1146.0
Year 2	0.00%	*	0.0	=	0.0
Year 3	0.00%	*	0.0	=	0.0
Year 4	0.00%	*	0.0	=	0.0
Year 5	0.00%	*	0.0	=	0.0
Total	100%		Total	=	1146.0

#### 4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$94.38	*	1146	=	\$108,156.23	Estimated Hours Year 1
Year 2	\$99.10	*	0	=	\$0.00	Estimated Hours Year 2
Year 3	\$104.05	*	0	=	\$0.00	Estimated Hours Year 3
Year 4	\$104.05	*	0	=	\$0.00	Estimated Hours Year 4
Year 5	\$109.25	*	0	=	\$0.00	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$108,156.23	

Direct Labor Subtotal before Escalation	=	\$108,156.23
Estimated total of Direct Labor Salary Increase	=	<b>\$0.00</b>

*Transfer to Page 1*

NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e.  $\$250,000 \times 2\% \times 5 \text{ yrs} = \$25,000$  is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

## COST PROPOSAL

Consultant UltraSystems Environmental

Contract No.

Date 1/29/2025

### Certification of Direct Costs

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

### Prime Consultant or Subconsultant Certifying:

Name: Betsy A. Lindsay

Title\*: President/CEO

Signature: Betsy A. Lindsay

Date of Certification (mm/dd/yyyy): 2/6/2025

Email: [blindsay@ultrasytem.com](mailto:blindsay@ultrasytem.com)

Phone Number: 949/788-4900

Address: 16431 Scientific Way, Irvine, CA 92618

\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Preparation of EIS/EIR and Technical Studies

Preparation of Initial Study - CEQA only

Design of Parking Study, Project Alternatives

Public Noticing and Outreach



**TASK BY TASK COST BREAKDOWN - FOOTHILL BLVD. IMPROVEMENT PROJECT EIR-EA**

TASKS		Principal	Senior Project Manager	Senior Principal Engineer	Scientist/Engineer	Senior Planner	Associate Planner	Archaeologist	Senior Biologist II	Staff Biologist I	Cultural Specialist	Senior GIS Analyst	GIS Technician	Word Processor	Total		Travel		Direct Costs		Direct Expense	TOTAL (rounded)
															Hours	Cost	Miles	\$0.700	Sub	Markup	1.1	
Hourly Rate>>>		\$185.00	\$175.00	\$175.00	\$150.00	\$150.00	\$145.00	\$135.00	\$145.00	\$130.00	\$140.00	\$135.00	\$125.00	\$95.00								
<b>1.0</b>	<b>PROJECT MANAGEMENT AND COORDINATION</b>																					
1.1	Project Kick-off and Progress Meetings	8	45	6	0	0	0	8	0	0	8	0	0	0	75	\$12,605.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$12,610
1.2	Scoping Meeting/Public Hearings	4	16	4	0	0	0	0	0	0	4	0	0	0	28	\$4,800.00	600	\$420.00	\$0.00	\$0.00	\$2,000.00	\$7,220
1.3	Project Management and Coordination	4	20	4	0	0	0	0	0	0	0	0	0	0	28	\$4,940.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$4,940
	<b>Subtotal</b>	<b>16</b>	<b>81</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>131</b>	<b>\$22,345.00</b>	<b>600</b>	<b>\$420.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,000.00</b>	<b>\$24,770</b>
<b>2.0</b>	<b>REVISED CALTRANS CULTURAL STUDIES, AQCA, Section 4(f) and PSI</b>																					
2.1	Revised Ape Map, HPSR, HRER and ASR	1	4	0	0	0	0	4	0	0	12	8	8	2	39	\$5,375.00	100	\$70.00	\$1,740.00	\$1,914.00	\$0.00	\$7,360
2.2	Stakeholder Consultation	1	4	0	0	0	0	8	0	0	8	0	0	1	22	\$3,180.00	0	\$0.00	\$630.00	\$693.00	\$0.00	\$3,870
2.3	Prepare Finding of Effect (FOE)	1	4	0	0	0	0	4	0	0	8	0	0	2	19	\$2,735.00	0	\$0.00	\$7,500.00	\$8,250.00	\$0.00	\$10,990
2.4	Prepare MOA	1	4	0	0	0	0	0	0	0	12	0	0	2	19	\$2,755.00	0	\$0.00	\$7,000.00	\$7,700.00	\$0.00	\$10,460
2.5	Revise AQCA	1	4	8	20	0	0	0	0	0	0	0	0	2	35	\$5,475.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$5,480
2.6	Prepare Section 4(f) Programmatic Evaluation	4	12	0	0	30	40	40	0	0	34	4	8	4	176	\$25,220.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$25,220
2.7	Prepare Phase II Subsurface Investigation	4	8	8	0	0	0	0	0	0	0	0	0	0	20	\$3,540.00	0	\$0.00	\$26,264.00	\$28,890.40	\$0.00	\$32,430
	<b>Subtotal</b>	<b>13</b>	<b>40</b>	<b>16</b>	<b>20</b>	<b>30</b>	<b>40</b>	<b>56</b>	<b>0</b>	<b>0</b>	<b>74</b>	<b>12</b>	<b>16</b>	<b>13</b>	<b>330</b>	<b>\$48,280.00</b>	<b>100</b>	<b>\$70.00</b>	<b>43,134.00</b>	<b>\$47,447.40</b>	<b>\$0.00</b>	<b>\$95,810</b>
<b>3.0</b>	<b>ADDITIONAL TECHNICAL ANALYSIS</b>																					
3.1	Revised Cultural Resources Technical Study	0	2	0	0	0	0	4	0	0	6	1	0	1	14	\$1,960.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$1,960
3.2	Revised Initial Study	1	8	0	0	4	8	4	0	0	8	0	0	8	41	\$5,765.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$5,770
3.3	Public Review of IS/NOP and Scoping	2	4	0	0	0	8	0	0	0	0	0	4	8	26	\$3,490.00	0	\$0.00	\$0.00	\$0.00	\$1,745.00	\$5,240
	<b>Subtotal</b>	<b>3</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>16</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>14</b>	<b>1</b>	<b>4</b>	<b>17</b>	<b>81</b>	<b>\$11,215.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$1,745.00</b>	<b>\$12,970.00</b>
<b>4.0</b>	<b>PREPARE ADMINISTRATIVE DRAFT EIR</b>																					
4.1	Introduction	0	2	0	0	2	8	0	0	0	0	0	0	2	14	\$2,000.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$2,000
4.2	Summary of Impacts, Mitigation Measures and Alternatives	2	12	0	0	8	16	0	0	0	0	0	0	4	42	\$6,370.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$6,370
4.3	Project Description	1	2	0	0	8	0	0	0	0	8	0	4	23	\$3,195.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$3,200	
4.4	Basis For Cumulative Analyses	1	4	2	0	4	8	2	0	0	0	0	0	2	23	\$3,455.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$3,460
4.5	Environmental Setting	1	2	0	0	8	12	8	0	0	2	0	0	4	37	\$5,215.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$5,220
4.6	Discussion of Environmental Impacts and Mitigation Measures	2	16	2	8	24	40	16	4	8	12	4	0	24	160	\$22,400.00	0	\$0.00	\$600.00	\$660.00	\$0.00	\$23,060
4.7	Unavoidable Significant Environmental Effects	1	2	0	0	8	4	4	0	0	4	0	0	2	25	\$3,605.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$3,610
4.8	Significant Irreversible Environmental Changes	0	2	0	2	8	0	4	0	0	4	0	0	2	22	\$3,140.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$3,140
4.9	Growth-Inducing Impacts	0	2	0	0	4	8	0	0	0	0	0	0	2	16	\$2,300.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$2,300
4.10	Effects Not Found to be Significant	1	8	2	6	16	32	0	2	4	4	0	0	4	79	\$11,625.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$11,630
4.11	Alternatives to the Proposed Action	2	12	2	0	24	0	0	0	0	4	0	0	4	48	\$7,360.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$7,360
4.12	References/List of Preparers	0	2	0	0	0	8	2	0	0	2	0	0	4	18	\$2,440.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$2,440
	<b>Subtotal</b>	<b>11</b>	<b>66</b>	<b>8</b>	<b>16</b>	<b>114</b>	<b>136</b>	<b>36</b>	<b>6</b>	<b>12</b>	<b>32</b>	<b>12</b>	<b>0</b>	<b>58</b>	<b>507</b>	<b>\$73,105.00</b>	<b>0</b>	<b>\$0.00</b>	<b>\$600.00</b>	<b>\$660.00</b>	<b>\$0.00</b>	<b>\$73,790</b>

5.0		PREPARE DRAFT EIR																				
5.1	Revise Adminstrative Draft EIR	2	8	2	4	20	24	8	2	4	16	2	0	8	100	\$14,360.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$14,360
5.2	Distribute Draft EIR	2	8	0	0	0	16	0	0	0	0	0	0	16	42	\$5,610.00	0	\$0.00	\$0.00	\$0.00	\$2,000.00	\$7,610
5.3	Noticing	2	2	0	0	0	8	8	0	0	0	0	0	2	22	\$3,150.00	0	\$0.00	\$0.00	\$0.00	\$3,500.00	\$6,650
	<b>Subtotal</b>	<b>6</b>	<b>18</b>	<b>2</b>	<b>4</b>	<b>20</b>	<b>48</b>	<b>16</b>	<b>2</b>	<b>4</b>	<b>16</b>	<b>2</b>	<b>0</b>	<b>26</b>	<b>164</b>	<b>\$23,120.00</b>	<b>0</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$5,500.00</b>	<b>\$28,620</b>
6.0		PREPARE FINAL EIR																				
6.1	Prepare Adminstrative Draft Response to Comments	2	12	8	8	16	8	8	2	4	16	4	0	8	96	\$14,060.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$14,060
6.2	Revise Adminstrative Draft Response to Comments	1	8	2	1	8	8	4	1	2	8	2	0	4	49	\$7,160.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$7,160
6.3	Prepare Mitigation Monitoring & Reporting Program (MMRP)	1	2	0	0	2	4	8	0	0	4	0	0	2	23	\$3,245.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$3,250
6.4	Administrative Draft Final EIR	1	8	0	0	8	16	8	2	2	8	0	0	4	57	\$8,235.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$8,240
6.5	Revise Admistrative Draft Final EIR	1	4	0	0	4	8	4	1	1	4	0	0	2	29	\$4,210.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$4,210
6.6	Notices	1	2	0	0	0	4	8	0	0	0	0	0	2	17	\$2,385.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$2,390
6.7	Findings of Fact/Statement of Overriding Considerations (if warranted)	2	8	0	0	16	4	2	0	0	8	0	0	4	44	\$6,520.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$6,520
	<b>Subtotal</b>	<b>9</b>	<b>44</b>	<b>10</b>	<b>9</b>	<b>54</b>	<b>52</b>	<b>42</b>	<b>6</b>	<b>9</b>	<b>48</b>	<b>6</b>	<b>0</b>	<b>26</b>	<b>315</b>	<b>\$45,815.00</b>	<b>0</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$45,830</b>
7.0		Prepare NEPA EA/FONSI																				
7.1	Prepare Aministrative Draft EA	4	16	24	40	32	80	40	8	12	40	8	16	8	328	\$47,700.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$47,700
7.2	Prepare Draft EA	2	12	16	32	20	40	20	2	6	12	4	8	4	178	\$26,240.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$26,240
7.3	Notices	0	2	0	0	0	4	0	0	0	0	0	0	2	8	\$1,120.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$1,120
7.4	Prepare Final EA/FONSI	4	12	24	20	16	24	16	2	4	16	2	4	8	152	\$22,660.00	0	\$0.00	\$0.00	\$0.00	\$0.00	\$22,660
	<b>Subtotal</b>	<b>10</b>	<b>42</b>	<b>64</b>	<b>92</b>	<b>68</b>	<b>148</b>	<b>76</b>	<b>12</b>	<b>22</b>	<b>68</b>	<b>14</b>	<b>28</b>	<b>22</b>	<b>666</b>	<b>\$97,720.00</b>	<b>0</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$97,720.00</b>
	<b>Total Hours</b>	<b>68</b>	<b>305</b>	<b>114</b>	<b>141</b>	<b>290</b>	<b>440</b>	<b>242</b>	<b>26</b>	<b>47</b>	<b>264</b>	<b>47</b>	<b>48</b>	<b>162</b>	<b>2194</b>							
	<b>GRAND TOTAL</b>	<b>\$12,580</b>	<b>\$53,375</b>	<b>\$19,950</b>	<b>\$21,150</b>	<b>\$43,500</b>	<b>\$63,800</b>	<b>\$32,670</b>	<b>\$3,770</b>	<b>\$6,110</b>	<b>\$36,960</b>	<b>\$6,345</b>	<b>\$6,000</b>	<b>\$15,390</b>		<b>\$321,600.00</b>	<b>\$700.00</b>	<b>\$490.00</b>	<b>\$43,734.00</b>	<b>\$48,107.40</b>	<b>\$9,245.00</b>	<b>\$379,510</b>

## EXHIBIT C

### Activity Schedule



**❖ ENVIRONMENTAL SERVICES – FOOTHILL BLVD STREET IMPROVEMENT ❖**

**Table 6.0-1**  
**Estimated Project Schedule**

<b>Major Task Milestone</b>	<b>Estimated Duration</b>	
	<b>Start Date</b>	<b>End Date</b>
Begin Work and Kick-Off Meeting (Major Task 1)	March 2025	March 2025
Revised Caltrans Cultural Resources Studies and ACQA Study (Major Task 2)	March 2025	July 2025
Initial Study/NOP and Scoping (Major Task 3)	March 2025	June 2025
Administrative Draft EIR (Major Task 4)	April 2025	September 2025
Revised Draft EIR (Major Task 5)	October 2025	December 2025
Release Draft EIR for Public Review (Major Task 5)	December 2025	January 2026
Response to Comments and Admin Final EIR (Major Task 6)	February 2026	April 2026
Final EIR, Findings of Fact/SOC and NOD (Major Task 6)	May 2026	July 2026
NEPA EA/FONSI (Major Task 7)	July 2025	June 2026

EXHIBIT D

Federal Requirements

**Exhibit 10-R: A&E BOILERPLATE AGREEMENT LANGUAGE**

(For Local Assistance Federal-Aid Projects)

NOTE TO LOCAL AGENCY - BE SURE THAT YOUR LEGAL STAFF REVIEWS AND APPROVES ALL CONSULTANT CONTRACTS BEFORE EXECUTION. THIS AGREEMENT LANGUAGE IS RECOMMENDED LANGUAGE, EXCEPT ARTICLE XXXII TITLE VI ASSURANCES (APPENDICES A AND E MUST BE PHYSICALLY INCLUDED, UNMODIFIED, IN ANY FEDERAL-AID CONTRACT AND APPENDICES B-D MUST BE PHYSICALLY INCLUDED, UNMODIFIED, IN ANY FEDERAL-AID CONTRACT INVOLVING RIGHT OF WAY ACQUISITION). MODIFY AS RECOMMENDED BY YOUR OWN LEGAL STAFF AND TO FIT YOUR PARTICULAR REQUIREMENTS AND PROJECT.

THE FISCAL AND FEDERAL PROVISIONS ARE REQUIRED IN ALL FEDERALLY FUNDED CONTRACTS. THE ORIGINAL INTENT OF THE ARTICLE SHALL REMAIN, IF MODIFIED BY YOUR LEGAL STAFF.

THIS EXHIBIT CONTAINS FISCAL REQUIREMENTS FROM 2 CFR 200 AND IS TO BE USED FOR STATE-ONLY FUNDED CONTRACTS AS WELL.

*[Note: italic text within brackets throughout the Articles is intended for instructional purposes only]*

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I INTRODUCTION .....	3
ARTICLE II CONSULTANT'S REPORTS OR MEETINGS .....	4
ARTICLE III STATEMENT OF WORK .....	4
ARTICLE IV PERFORMANCE PERIOD.....	6
ARTICLE V ALLOWABLE COSTS AND PAYMENTS.....	6
ARTICLE VI TERMINATION .....	10
ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS.....	11
ARTICLE VIII RETENTION OF RECORD/AUDITS .....	11
ARTICLE IX AUDIT REVIEW PROCEDURES .....	12
ARTICLE X SUBCONTRACTING .....	13
ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES .....	15
ARTICLE XII STATE PREVAILING WAGE RATES.....	16
ARTICLE XIII CONFLICT OF INTEREST.....	19
ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION .....	19
ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING .....	20
ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE.....	20
ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION .....	21
ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION.....	22
ARTICLE XIX INSURANCE .....	28
ARTICLE XX FUNDING REQUIREMENTS.....	29
ARTICLE XXI CHANGE IN TERMS .....	29

---

<b>ARTICLE XXII CONTINGENT FEE .....</b>	<b>29</b>
<b>ARTICLE XXIII DISPUTES.....</b>	<b>30</b>
<b>ARTICLE XXIV INSPECTION OF WORK .....</b>	<b>30</b>
<b>ARTICLE XXV SAFETY .....</b>	<b>30</b>
<b>ARTICLE XXVI OWNERSHIP OF DATA.....</b>	<b>31</b>
<b>ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR.....</b>	<b>31</b>
<b>ARTICLE XXVIII CONFIDENTIALITY OF DATA.....</b>	<b>32</b>
<b>ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION.....</b>	<b>32</b>
<b>ARTICLE XXX EVALUATION OF CONSULTANT .....</b>	<b>33</b>
<b>ARTICLE XXXI PROMPT PAYMENT.....</b>	<b>33</b>
<b>ARTICLE XXXII TITLE VI ASSURANCES .....</b>	<b>33</b>
<b>ARTICLE XXXIII NOTIFICATION.....</b>	<b>38</b>
<b>ARTICLE XXXIV CONTRACT .....</b>	<b>38</b>
<b>ARTICLE XXXV SIGNATURES .....</b>	<b>39</b>

## ARTICLE I INTRODUCTION

A. This AGREEMENT is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:

(NAME OF CONSULTANT)

Incorporated in the State of (NAME OF STATE)

The Project Manager for the "CONSULTANT" will be (NAME)

The name of the "LOCAL AGENCY" is as follows:

(NAME)

The Contract Administrator for LOCAL AGENCY will be (NAME)

B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal dated (DATE). The approved CONSULTANT's Cost Proposal is attached hereto (Attachment #) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.

C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.

D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.

E. LOCAL AGENCY 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 CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.

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

- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the LOCAL AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

## **ARTICLE II CONSULTANT'S REPORTS OR MEETINGS**

*[Choose either Option 1 or Option 2]*

*[Option 1 - Use paragraphs A & B below for standard AGREEMENTs]*

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY's Contract Administrator 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.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

*[Option 2 - Use paragraphs A & B below for on-call AGREEMENTs]*

- A. 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 LOCAL AGENCY's Contract Administrator or Project Coordinator 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.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

## **ARTICLE III STATEMENT OF WORK**

*[Insert Appropriate Statement of work including a Description of the Deliverables in the following sections. If a section does not apply to the AGREEMENT, state "Not Applicable to this AGREEMENT."]*

- A. CONSULTANT Services

*[Detail based on the services to be furnished should be provided by CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent*

*uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in CONSULTANT AGREEMENT should be included. Describe acceptance criteria, and if the responsible CONSULTANT/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the AGREEMENT including registration number.*

*Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the Finding of No Significant Impact, or the Caltrans District Director signs the Record of Decision (see [LAPM Chapter 6: Environmental Procedures](#), and the Standard Environmental Reference).]*

**B. Right of Way**

*[State whether Right of Way requirements are to be determined and shown by CONSULTANT, whether land surveys and computations with metes and bounds descriptions are to be made, and whether Right of Way parcel maps are to be furnished.]*

**C. Surveys**

*[State whether or not the CONSULTANT has the responsibility for performing preliminary or construction surveys.]*

**D. Subsurface Investigations**

*[State specifically whether or not CONSULTANT has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of CONSULTANT, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in the Standard Environmental Reference.]*

**E. Local Agency Obligations**

All data applicable to the project and in possession of LOCAL AGENCY, another agency, or government agency that are to be made available to CONSULTANT are referred to in the AGREEMENT. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.

**F. Conferences, Site Visits, Inspection of Work**

This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

**G. Checking Shop Drawings**

*[For AGREEMENTs requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by CONSULTANT may be included in the AGREEMENT fee, or provision may be made for separate payment.]*

**H. CONSULTANT Services During Construction**

The extent, if any of CONSULTANT's services during the course of construction as material testing, construction surveys. etc., are specified in the AGREEMENT together with the method of payment for such services.

**I. Documentation and Schedules**

AGREEMENTs where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the AGREEMENT objectives.

**J. Deliverables and Number of Copies**

The number of copies or documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way parcel maps shall be specified. Provision may be made for payment for additional copies.

**ARTICLE IV PERFORMANCE PERIOD**

*[A time must be set for beginning and ending the work under the AGREEMENT. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the AGREEMENT. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by CONSULTANT, they should be identified and incorporated into the AGREEMENT.]*

- A. This AGREEMENT shall go into effect on **(DATE)**, contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on **(DATE)**, unless extended by AGREEMENT amendment.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

*[Use paragraph C below in addition to paragraphs A & B above for on-call AGREEMENTs. On-call AGREEMENTs shall be 5 years maximum.]*

- C. 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 AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT 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 (5) years.

**ARTICLE V ALLOWABLE COSTS AND PAYMENTS**

*[Choose either Option 1, 2, 3, or 4]*

*[Option 1 - Use paragraphs A through K below for Cost-Plus-Fixed Fee AGREEMENTs]*

- A. The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY's approved overhead rate set forth in the Cost Proposal. In the event, that LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by LOCAL AGENCY shall be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I" of this Article shall not be exceeded, unless authorized by AGREEMENT amendment.
- B. The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT. CONSULTANT's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or AGREEMENT award.

- C. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$(AMOUNT). The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- E. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT.
- G. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- H. CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)  
(ADDRESS)

- I. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed \$(Amount).
- J. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

*[Option 2 - For Cost per Unit of Work AGREEMENTs, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and re-letter the remaining paragraphs. Adjust as necessary for work specific to your project].*

- A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$(Amount) per approved Cost Proposal. This rate shall be for fully equipped vehicle(s) specified in

Article III Statement of Work, as applicable. The specified rate to be paid for equipment shall be, as listed in the approved Cost Proposal.

C. The method of payment for this AGREEMENT, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and AGREEMENT is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I," of this article shall not be exceeded unless authorized by AGREEMENT amendment.

*[Option 3 - Use paragraphs A through P for Specific Rates of Compensation Agreements (such as on-call Agreements). This payment method shall only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. The specific rates of compensation payment method should be limited to AGREEMENTs or components of AGREEMENTs for specialized or support type services where the CONSULTANT is not in direct control of the number of hours worked, such as construction engineering and inspection.]*

A. 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 LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate.

B. 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.

C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.

D. After a project to be performed under this AGREEMENT is identified by LOCAL AGENCY, LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY and CONSULTANT.

E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

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.

F. *[Local Agency to include either (a) or (b) below; delete the other one]*

- (a) Reimbursement for transportation and subsistence costs shall not exceed State rates.
- (b) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.

G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

I. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.

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

K. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'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 LOCAL AGENCY 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. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR)  
(ADDRESS)

L. 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.

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

N. 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.

- O. Task Orders may not be used to amend the language (or the terms) of this AGREEMENT nor to exceed the scope of work under this AGREEMENT.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.

*[Option 4 - Use paragraphs A through E below for lump sum agreements.]*

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article III Statement of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.
- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- D. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. 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 and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work unless a later date is approved by the LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)  
(ADDRESS)

- E. The total amount payable by LOCAL AGENCY shall not exceed \$ (Amount).

## **ARTICLE VI TERMINATION**

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY 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.

- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY 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.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY 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.

## **ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. The CONSULTANT agrees that 48 CFR 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 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 31 or 2 CFR 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

## **ARTICLE VIII RETENTION OF RECORD/AUDITS**

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY 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 and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. LOCAL AGENCY, 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.

**ARTICLE IX AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. 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 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, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY 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 LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY 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.
- E. 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 LOCAL AGENCY 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.
  1. 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, LOCAL AGENCY will reimburse the CONSULTANT 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:

- a. 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.
- b. 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.
- c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.

2. 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.
3. 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.
4. CONSULTANT may submit to LOCAL AGENCY 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 LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY 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 LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

## **ARTICLE X SUBCONTRACTING**

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY 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 LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. 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 LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement 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.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.

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

F. Prompt Progress Payment

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.

G. Prompt Payment of Withheld Funds to Subconsultants

The LOCAL AGENCY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The LOCAL AGENCY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

*[Choose either Method 1, Method 2, or Method 3 below and delete the other two.]*

**Method 1:** No retainage will be held by the LOCAL AGENCY 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 LOCAL AGENCY's 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.

**Method 2:** No retainage will be held by the LOCAL AGENCY from progress payments due to CONSULTANT. Any retainage kept by CONSULTANT or by a subconsultant must be paid in full to the earning subconsultant within 15 days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and 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.

**Method 3:** The LOCAL AGENCY shall hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the LOCAL AGENCY of the contract work and pay retainage to CONSULTANT based on these acceptances. CONSULTANT or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the LOCAL AGENCY. Any delay or postponement of payment may take place only for good cause and with the LOCAL AGENCY's 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.

Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements 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 subcontract performance, or noncompliance by a subconsultant.

## **ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES**

- A. Prior authorization in writing by LOCAL AGENCY'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 LOCAL AGENCY'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, LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY procedures; and credit LOCAL AGENCY 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 LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
  2. Regulation 2 CFR 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.

## ARTICLE XII STATE PREVAILING WAGE RATES

- A. 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.
- B. 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 LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY 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.
- C. 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>.
- D. Payroll Records
  1. 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:
    - a. The information contained in the payroll record is true and correct.
    - b. 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.
  2. 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 LOCAL AGENCY 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:
    - a. 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.
    - b. 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 LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.

- c. 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 LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
- 3. 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.
- 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY 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.
- 5. The CONSULTANT shall inform LOCAL AGENCY 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.
- 6. 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 LOCAL AGENCY, 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 LOCAL AGENCY 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.

E. 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 LOCAL AGENCY Contract Administrator.

F. Penalty

- 1. 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 LOCAL AGENCY 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.
- 2. 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.

3. 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.
4. 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 CONSULTANT of the project is not liable for the penalties described above unless the CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the CONSULTANT fails to comply with all of the following requirements:
  - a. 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.
  - b. 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.
  - c. 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.
  - d. 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.
5. Pursuant to Labor Code §1775, LOCAL AGENCY 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.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY 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 LOCAL AGENCY.

#### G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, 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.

#### H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement 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.

### **ARTICLE XIII CONFLICT OF INTEREST**

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY ordinance or State law.
- C. 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.
- D. 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.

### **ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY 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.

**ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

*[Include this article in all AGREEMENTs where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the AGREEMENT; delete this article and re-number the subsequent articles.]*

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
  1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of 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.
  2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.
- C. 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 subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

**ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. 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.
- B. 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.
- C. 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 LOCAL AGENCY 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.

- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY 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 LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. 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.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. 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.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR 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.
- I. 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 LOCAL AGENCY 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.

## **ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION**

- A. 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:
  1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  3. Does not have a proposed debarment pending; and

4. 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.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. 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.
- C. Exceptions to the Federal Government excluded parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

## **ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. CONSULTANT, subrecipient (LOCAL AGENCY), 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 LOCAL AGENCY 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 (GFE) to meet this goal. It is CONSULTANT's responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

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. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

This AGREEMENT is subject to 49 CFR 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 LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this AGREEMENT is 88.63 %. 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.

C. 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: Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. 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

E. Termination and [Replacement](#) 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 LOCAL AGENCY's written consent. CONSULTANT shall not terminate or [replace](#) a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the LOCAL AGENCY. Unless the LOCAL AGENCY'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.

[Termination of DBE Subconsultants](#)

After execution of the AGREEMENT, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the LOCAL AGENCY:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The LOCAL AGENCY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the LOCAL AGENCY'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 or exhibits credit unworthiness.
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 LOCAL AGENCY determines other documented good cause.

CONSULTANT must use the following procedures to request the termination of a DBE or portion of a DBE's work:

1. Send a written notice to the DBE of the CONSULTANT's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the LOCAL AGENCY. The written notice to the DBE must request they provide any response within five (5) business days to both the CONSULTANT and the LOCAL AGENCY by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
2. If the DBE does not respond within five (5) business days, CONSULTANT may move forward with the request as if the DBE had agreed to CONSULTANT's written notice.
3. Submit CONSULTANT's DBE termination request by written letter to the LOCAL AGENCY and include:
  - One or more above listed justifiable reasons along with supporting documentation.
  - CONSULTANT's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of CONSULTANT's written notice
  - The DBE's response to CONSULTANT's written notice, if received. If a written response was not provided, provide a statement to that effect.

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE termination request within five (5) business days.

#### Replacement of DBE Subconsultants

After receiving the LOCAL AGENCY's written authorization of DBE termination request, CONSULTANT must obtain the LOCAL AGENCY's written agreement for DBE replacement. CONSULTANT must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the LOCAL AGENCY which must include:
  - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
  - b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
    - Description of scope of work and cost proposal

- Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
- Revised Exhibit 10-O2: Consultant Contract DBE Commitment

2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT's GFEs to use DBE replacement firms within seven (7) days of LOCAL AGENCY's authorization to terminate the DBE. CONSULTANT may request the LOCAL AGENCY's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:

- Search results of certified DBEs available to perform the original DBE work identified and or other work CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment
- Solicitations of DBEs for performance of work identified
- Correspondence with interested DBEs that may have included contract details and requirements
- Negotiation efforts with DBEs that reflect why an agreement was not reached
- If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
- Copies of each DBE's and non-DBE's price quotes for work identified, as the LOCAL AGENCY may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
- Additional documentation that supports CONSULTANT's GFE

The LOCAL AGENCY shall respond in writing to CONSULTANT's DBE replacement request within five (5) business days.

## F. Commitment and Utilization

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

The LOCAL AGENCY shall request CONSULTANT to:

1. Notify the LOCAL AGENCY'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 1<sup>st</sup> -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 LOCAL AGENCY. On work completion, CONSULTANT shall complete Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change and submit the form to the LOCAL AGENCY 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 LOCAL AGENCY within 90 days of contract acceptance. The LOCAL AGENCY will withhold \$10,000 until the form is submitted. The LOCAL AGENCY will release the withhold upon submission of the completed form.

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

#### G. Commercially Useful Function

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a 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.

CONSULTANT must perform CUF evaluation for each DBE working on a federal-aid contract, with or without a DBE goal. Perform a CUF evaluation at the beginning of the DBE's work and continue to monitor the performance of CUF for the duration of the project.

CONSULTANT must provide written notification to the LOCAL AGENCY at least 15 days in advance of each DBE's initial performance of work or supplying materials for the Contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 days of a DBE initially performing work or supplying materials on the Contract, CONSULTANT shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

CONSULTANT must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation. CONSULTANT must submit to the LOCAL AGENCY

these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

CONSULTANT must notify the LOCAL AGENCY immediately if they believe the DBE may not be performing a CUF.

The LOCAL AGENCY will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAMP 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional LOCAL AGENCY evaluations. The LOCAL AGENCY must evaluate DBEs and their CUF performance throughout the duration of a Contract. The LOCAL AGENCY will provide written notice to the CONSULTANT and the DBE at least two (2) business days prior to any evaluation. The CONSULTANT and the DBE must participate in the evaluation. Upon completing the evaluation, the LOCAL AGENCY must share the evaluation results with the CONSULTANT and the DBE. An evaluation could include items that must be remedied upon receipt. If the LOCAL AGENCY determines the DBE is not performing a CUF, the CONSULTANT must suspend performance of the noncompliant work.

CONSULTANT and DBEs must submit any additional CUF related records and documents within five (5) business days of LOCAL AGENCY's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If CONSULTANT and/or the LOCAL AGENCY determine that a listed DBE is not performing a CUF in performance of their DBE committed work, CONSULTANT must immediately suspend performance of the noncompliant portion of the work. LOCAL AGENCY may deny payment for the noncompliant portion of the work. LOCAL AGENCY will ask the CONSULTANT to submit a corrective action plan (CAP) to the LOCAL AGENCY within five (5) days of the noncompliant CUF determination. The CAP must identify how the CONSULTANT will correct the noncompliance findings for the remaining portion of the DBE's work. LOCAL AGENCY has five (5) days to review the CAP in conjunction with the CONSULTANT's review. The CONSULTANT must implement the CAP within five (5) days of the LOCAL AGENCY's approval. The LOCAL AGENCY will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a commercially useful function on the Contract, CONSULTANT may have good cause to request termination of the DBE.

- H. 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.
- I. 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.

- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. 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 LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- L. For projects awarded on or after March 1, 2020, but before September 1, 2023: 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 must complete and email Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to local administering agencies.

For projects awarded on or after September 1, 2023: Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract. If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

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

## **ARTICLE XIX INSURANCE**

[Choose either Option 1 or Option 2]

*[Option 1 - for AGREEMENT with a scope of services that may require the CONSULTANT or subconsultant to work within the operating state or Local Agency Highway Right of Way; where there would be exposure to public traffic or construction operations.]*

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
  1. That the insurer will not cancel the insured's coverage without thirty (30) calendar days prior written notice to LOCAL AGENCY.
  2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
  3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.

C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

*[Option 2 - for AGREEMENTs with a scope of services that will not require the CONSULTANT or subconsultant to work within the operating state or Local Agency Highway Right of Way where there would be exposure to public traffic or construction CONSULTANT operations.]*

CONSULTANT is not required to show evidence of general comprehensive liability insurance.

## **ARTICLE XX FUNDING REQUIREMENTS**

- A. 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.
- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY 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 LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY 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.

## **ARTICLE XXI CHANGE IN TERMS**

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
- C. 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 LOCAL AGENCY's Contract Administrator.

## **ARTICLE XXII 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, LOCAL AGENCY 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.

## **ARTICLE XXIII 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.

*[Choose either Option 1 or Option 2]*

*[Option 1 - Use paragraphs A through C below for all AGREEMENTs without PS&E submittal]*

- 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 LOCAL AGENCY's Contract Administrator and (Insert Department Head or Official), 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 LOCAL AGENCY 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.

*[Option 2 - Replace Paragraph B, above, with the following for AGREEMENTs requiring the submission of PS&E]*

- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

## **ARTICLE XXIV INSPECTION OF WORK**

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, 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.

## **ARTICLE XXV 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 LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY 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.

C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

*[Add the following paragraph to all AGREEMENTs, which may require trenching of five feet or deeper]*

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.

## **ARTICLE XXVI OWNERSHIP OF DATA**

A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, 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 City 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 City.

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 City without restriction or limitation upon its use or dissemination by City.

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 City for another project or project location shall be at City'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. LOCAL AGENCY 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.

## **ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR**

A. If claims are filed by LOCAL AGENCY's construction contractor 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 LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY.

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 LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

#### **ARTICLE XXVIII CONFIDENTIALITY OF DATA**

A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY 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 LOCAL AGENCY 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 LOCAL AGENCY's actions on the same, except to LOCAL AGENCY'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 LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.

E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

*[For PS&E contracts add paragraph F, below, to paragraphs A through E, above]*

F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, 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 City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

#### **ARTICLE XXIX 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.

## **ARTICLE XXX EVALUATION OF CONSULTANT**

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

## **ARTICLE XXXI PROMPT PAYMENT**

### **A. PROMPT PAYMENT FROM LOCAL AGENCY TO CONSULTANT**

The LOCAL AGENCY shall make all project progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY 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 and pro-rated as necessary. Upon receipt of the payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- (1) The LOCAL AGENCY shall review each payment request as soon as feasible after receipt to verify it is a proper payment request.
- (2) The LOCAL AGENCY must return any payment request deemed improper by the LOCAL AGENCY to the CONSULTANT as soon as feasible, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall include documentation setting forth in writing the reasons why it is an improper payment request.

### **B. PROMPT PAYMENT CERTIFICATION**

For projects awarded on or after September 1, 2023: the CONSULTANT must now submit Exhibit 9-P to the LOCAL AGENCY administering the contract by the 15th of the month following the month of any payment(s). If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

The LOCAL AGENCY must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. The LOCAL AGENCY must email a copy of Exhibit 9-P to [DBE.Forms@dot.ca.gov](mailto:DBE.Forms@dot.ca.gov) before the end of the month after receiving the Exhibit 9-P from the CONSULTANT.

## **ARTICLE XXXII TITLE VI ASSURANCES**

### **APPENDICES A - E of the TITLE VI ASSURANCES**

*[The U.S. Department of Transportation Order No.1050.2A requires all federal-aid Department of Transportation contracts between an agency and a consultant to contain Appendices A and E of the Title VI Assurances. Include Appendices B, C, and D if applicable as shown below. In addition, the consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract.]*

*The clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a LOCAL AGENCY.*

*The clauses set forth in Appendix C and Appendix D of this Assurance shall be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the LOCAL AGENCY with other parties:*

- a. *for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and*
- b. *for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.]*

## APPENDIX A

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- a. **Compliance with Regulations:** CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- b. **Nondiscrimination:** CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Sub-agreements, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. **Information and Reports:** CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.

f. **Incorporation of Provisions:** CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## **APPENDIX B** **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

### **(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

**APPENDIX C**  
**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**APPENDIX D**  
**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest ,and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on,

over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

## APPENDIX E

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:

### **Pertinent Non-Discrimination Authorities:**

- 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.).

### **ARTICLE XXXIII NOTIFICATION**

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

#### **CONSULTANT:**

(CONSULTANT)

(NAME)

, Project Manager

(ADDRESS)

\_\_\_\_\_

#### **LOCAL AGENCY:**

(LOCAL AGENCY)

(NAME)

, Contract Administrator

(ADDRESS)

\_\_\_\_\_

### **ARTICLE XXXIV CONTRACT**

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

## **ARTICLE XXXV SIGNATURES**

(Name of LOCAL AGENCY)

(Name of CONSULTANT)

(Signature)  
(Name of Signer)

(Signature)  
(Name of Signer)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: City of Fontana 2. Contract DBE Goal: 19%  
 3. Project Description: Environmental Services  
 4. Project Location: Foothill Blvd. from Hemlock Ave to Almeria Ave St, City of Fontana, CA  
 5. Consultant's Name: UltraSystems Environmental 6. Prime Certified DBE:  7. Total Contract Award Amount: \$379,509.23  
 8. Total Dollar Amount for ALL Subconsultants: \$43,134 9. Total Number of ALL Subconsultants: 2

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Technical Studies, CEQA EIR and NEPA EA/FONSI	25485	Betsy A. Lindsay blindsay@ultrasytems.com	336,375.23
<b>Local Agency to Complete this Section</b>		<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>	\$ 336,375. + 88.63 %
20. Local Agency Contract Number	DE-25-67-SP		
21. Federal-Aid Project Number:	STPL-5307(031)		
22. Contract Execution Date:	TBD		
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
23. Local Agency Representative's Signature Christopher Smethurst	02-09-2025 (909) 350-6649	15. Preparer's Signature Betsy A. Lindsay	02/06/2025 949/788-4900
25. Local Agency Representative's Name Senior Engineer	26. Phone	17. Preparer's Name CEO	18. Phone
27. Local Agency Representative's Title	19. Preparer's Title		

DISTRIBUTION: 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

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

**INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT****CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 4. Project Location** - Enter the project location as it appears on the project advertisement.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
- 8. Total Dollar Amount for ALL Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 9. Total number of ALL subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 10. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 12. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 13. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 14. Total Claimed DBE Participation** - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 15. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 16. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 17. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 18. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 19. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

**LOCAL AGENCY SECTION**

- 20. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 22. Contract Execution Date** - Enter the date the contract was executed.
- 23. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 24. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 25. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 26. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 27. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

## **EXHIBIT 9-P: PROMPT PAYMENT CERTIFICATION**

Section 7108.5 of the California Business and Professions Code (CBPC) requires a prime contractor or subcontractor (i.e. builders) to pay any subcontractor not later than seven (7) days after receipt of each progress payment received or final retention payment. Section 3321 of the California Civil Code (CCC) requires prime design professionals (prime consultants directly in contract with a public agency) to pay any subconsultant not later than fifteen (15) days after receipt of each progress payment or final retention payment. The payment cannot be delayed because of disagreements on other contracts. Any delay or postponement of payment among the parties may take place only for good cause with the agency's prior written approval. This requirement applies to both DBE and non-DBE subcontractors.

## 1. CONTRACT INFORMATION

## 2. PAYMENT INFORMATION

(10) Subcontractor/Subconsultant Name	(11) DBE Cert. Number	(12) Subcontract Type	(13) Date Payment Received by Prime	(14) Date of Prime Payment to Sub	(15) Amount of Payment (\$)	(16) Amount Paid To Sub to Date (\$)	(17) Total Committed to This Subcontractor (\$)	(18) Promptly Paid? (Y/N)	(19) Incremental Retainage Paid? (Y/N)	(20) Comments or Reason for Non-Payment/Non-Prompt Payment, including Payment of incremental Retainage *
Totals					\$0.00	\$0.00	\$0.00			

List all first-tier subcontractors/subconsultants, whether or not the firms were originally listed in Exhibit 10-O2 or 15-G as a DBE commitment. If the actual DBE utilization was different than that approved at the time of award, provide comments in box (20). All payments reported, including payments to contractor/consultant, are for the date listed.

\* Only reasons based on dispute on subcontractor or supplier noncompliance may be accepted.

### 3. CERTIFICATION

**The prime contractor or consultant hereby certifies that the foregoing Prompt Payment Certification Form is true and correct.**

---

(21) Prime Contractor Manager's Signature

---

(??) Date

(25) Prime Contractor Manager's Name

---

**(26) Phone**

Local Agency certifies that all information in this form is complete and verified.

---

(23) Local Agency Representative's Signature

---

(24) Date

(27) Local Agency Representative 's Name

---

(28) Phone

## Exhibit 9-P Instructions

### **I. Purpose**

Section 7108.5 of the California Business and Professions Code (CBPC) requires a prime contractor or subcontractor (i.e. builders) to pay any subcontractor not later than seven (7) days after receipt of each progress payment received or final retention payment. Section 3321 of the California Civil Code (CCC) requires prime design professionals (prime consultants directly in contract with a public agency) to pay any subconsultant not later than fifteen (15) days after receipt of each progress payment or final retention payment. The payment cannot be delayed because of disagreements on other contracts. Any delay or postponement of payment among the parties may take place only for good cause with the agency's prior written approval. This requirement applies to both DBE and non-DBE subcontractors.

### **II. Instruction**

For projects that are awarded on or after September 1, 2023:

The prime contractor or consultant must submit Exhibit 9-P to the LPA administering the contract by the 15<sup>th</sup> of the month following the month of any payment(s). If the prime contractor or consultant does not make any payments to subcontractors, suppliers, and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

A failure to complete the Prompt Pay reporting requirement may result in the withholding of the prime contractor or consultant's next progress payment and/or final payment. Additionally, Caltrans may require the LPA to issue a corrective action plan and /or it may require the LPA to suspend the contract in whole or in part if the prime or consultant does not make up the shortfall.

LPA must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE commitment and prompt payment issues until the end of the project. The LPA must email a copy of Exhibit 9-P to DBE.Forms@dot.ca.gov before the end of the month after receiving the Exhibit 9-P from prime contractor or consultant.

### **1. CONTRACT INFORMATION**

- (1) **Prime Contractor/Consultant:** Enter the business name for the prime contractor/consultant.
- (2) **Local Agency:** Enter the local agency name.
- (3) **Federal Aid Project Number:** Enter the 7-digit federal-aid project number of the lead project on the contract.  
E.g. 5002(123) is a valid Federal-Aid Project Number.
- (4) **Local Contract Number:** Enter the Local Agency contract number or identifier.
- (5) **Total Contract Award Amount (\$):** Enter the total contract award amount of the project.
- (6) **Total Contract DBE Commitment Amount (\$):** Enter the total DBE commitment award amount of the project as it appears on Exhibit 10-O2 or Exhibit 15-G.
- (7) **DBE Commitment (%):** Enter percentage of the Prime contract committed to DBE firms as it appears on Exhibit 10-O2 or Exhibit 15-G.
- (8) **DBE Contract Goal (%):** Enter the contract DBE goal percentage as it appears on the project advertisement.
- (9) **Reporting Period (Month-Year):** Indicate the month and year of payments being reported.

### **2. PAYMENT INFORMATION**

- (10) **Subcontractor/Subconsultant name:** Enter subcontractor/consultant firm's name.
- (11) **DBE Cert. Number:** List the DBE's certification number as listed in the California Unified Certification Program (CUCP) database.
- (12) **Subcontract Type:** Enter the most appropriate Subcontractor's contract type.

(13) **Date of Payment Received by Prime:** Enter date when a check is issued by LPA to the prime contractor/consultant for work performed by the contractor/consultant.

(14) **Date of Prime Payment to Sub:** Enter date when a check is issued by prime to the subcontractor/subconsultant for work performed by the subcontractor/subconsultant.

(15) **Amount of Payment (\$):** Enter the total amount paid to the subcontractor this period.

(16) **Amount Paid to Sub to Date (\$):** Enter the total amount paid to this subcontractor to date. This should be a total of past payments plus payment for the current work just invoiced to the Local Agency.

(17) **Total amount committed to this subcontractor (\$):** Enter the total amount committed to this subcontractor, copy the information from the agency signed Exhibit 10-O2 or 15-G.

(18) **Promptly Paid? (Y/N):** Enter "Y" if payment was made in accordance with the contract. Enter "N" if it's in dispute. Must provide comments regarding any dispute of payment.

(19) **Incremental Retainage Paid? (Y/N):** Enter "Y" if this payment was a retainage payment. Enter "N" if this was a progress or final payment.

(20) **Comments or Reason for Non-Payment/Non-Prompt Payment, including Payment of Incremental Retainage \*:** Only reasons based on dispute with subcontractor or supplier noncompliance may be accepted. Add appropriate notes if a DBE subcontract was terminated, a DBE subcontract was added, if change orders impacted the DBE's payments (include good faith efforts the prime contractor/consultant implemented), if task orders weren't issued, etc.

### **3. CERTIFICATION**

(21) **Prime Contractor Manager's Signature:** Self explanatory

(22) **Date:** Provide the date Prime Contractor Manager signed this form.

(23) **Local Agency Presentative's Signature:** Self explanatory.

(24) **Date:** Provide the date Local Agency Presentative signed this form.

(25) **Prime Contractor Manager's Name:** Self explanatory.

(26) **Phone:** Self explanatory

(27) **Local Agency Presentative's Name:** Self explanatory.

(28) **Phone:** Self explanatory

**Exhibit 10-G: INDIVIDUAL A&E TASK ORDER DBE TRACKING SHEET**

Please fill out form in order

CONSULTANT NAME	CONTRACT NUMBER	FEDERAL PROJECT NUMBER	TASK ORDER NUMBER
ADDRESS			
CONSULTANT CONTRACT ADMINISTRATOR NAME	PHONE NUMBER	E-MAIL	
PROJECT TITLE:			
PROJECT LOCATION:			
SCOPE OF WORK			
TOTAL MASTER CONTRACT AMOUNT: _____		END OF CONTRACT DATE: _____	
TASK ORDER AMOUNT: _____		TASK ORDER BEGIN DATE: _____	TASK ORDER END DATE: _____

**TOTAL DBE CONTRACT ESTIMATE OF THIS TASK ORDER**

CONSULTANT / SUBCONSULTANT	DESCRIPTION OF WORK	AMOUNT (NON-DBE)	AMOUNT (DBE)	% OF DBE
SUBTOTAL				
TOTAL TASK ORDER AMOUNT				

COMMENTS ON DBE UTILIZATION DEFICIENCIES (COMMITTED VERSUS MET) AND PLANS TO MEET COMMITTED PERCENTAGES:

(If percent less than task order DBE goal, briefly state why in 1-2 sentences).

The consultant acknowledges the DBE listed in the DBE Task Order Utilization section above must be used, unless authorized by [the Local Agency](#).

Approved By:

CONSULTANT CONTRACT MANAGERS SIGNATURE

DATE

LOCAL AGENCY ADMIN SIGNATURE

DATE

**Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors**

1. Local Agency Contract Number		2. Federal-Aid Project Number		3. Local Agency			4. Contract <i>Acceptance</i> Date	
5. Contractor/Consultant			6. Business Address			7. Final Contract Amount		
8. Contract Item Number	9. Description of Work, Service, or Materials Supplied	10. Company Name and Business Address		11. DBE Certification Number	12. Contract Payments		13. Date Work Completed	14. Date of Final Payment
					Non-DBE	DBE		
15. ORIGINAL DBE COMMITMENT AMOUNT \$ _____				16. TOTAL				

List all first-tier subcontractors/subconsultants and DBEs regardless of tier whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at the time of award, provide comments on an additional page. List actual amount paid to each entity. If no subcontractors/subconsultants were used on the contract, indicate on the form.

**I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT**

17. Contractor/Consultant Representative's Signature		18. Contractor/Consultant Representative's Name		19. Phone	20. Date
<b>I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAVE BEEN MONITORED</b>					
21. Local Agency Representative's Signature		22. Local Agency Representative's Name		23. Phone	24. Date

DISTRIBUTION: Original – Local Agency, Copy – Caltrans District Local Assistance Engineer. Include with Final Report of Expenditures

**INSTRUCTIONS – FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS**

- 1. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 2. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 3. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 4. Contract Acceptance Date** - Enter the date the contract was accepted by the Local Agency.
- 5. Contractor/Consultant** - Enter the contractor/consultant's firm name.
- 6. Business Address** - Enter the contractor/consultant's business address.
- 7. Final Contract Amount** - Enter the total final amount for the contract.
- 8. Contract Item Number** - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
- 9. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials provided. Indicate all work to be performed by DBEs including work performed by the prime contractor/consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 10. Company Name and Business Address** - Enter the name, address, and phone number of all subcontracted contractors/consultants. Also, enter the prime contractor/consultant's name and phone number, if the prime is a DBE.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. Leave blank if subcontractor is not a DBE.
- 12. Contract Payments** - Enter the subcontracted dollar amount of the work performed or service provided. Include the prime contractor/consultant if the prime is a DBE. **If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. If the materials or supplies are purchased from a DBE regular dealer/supplier, count 60% of the cost of the materials or supplies toward DBE goals.** The Non-DBE column is used to enter the dollar value of work performed by firms that are not certified DBE or for work after a DBE becomes decertified.
- 13. Date Work Completed** - Enter the date the subcontractor/subconsultant's item work was completed.
- 14. Date of Final Payment** - Enter the date when the prime contractor/consultant made the final payment to the subcontractor/subconsultant for the portion of work listed as being completed.
- 15. Original DBE Commitment Amount** - Enter the "Total Claimed DBE Participation Dollars" from Exhibits 15-G or 10-O2 for the contract.
- 16. Total** - Enter the sum of the "Contract Payments" Non-DBE and DBE columns.
- 17. Contractor/Consultant Representative's Signature** - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
- 18. Contractor/Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
- 19. Phone** - Enter the area code and telephone number of the person signing the form.
- 20. Date** - Enter the date the form is signed by the contractor's preparer.
- 21. Local Agency Representative's Signature** - A Local Agency Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
- 22. Local Agency Representative's Name** - Enter the name of the Local Agency Representative signing the form.
- 23. Phone** - Enter the area code and telephone number of the person signing the form.
- 24. Date** - Enter the date the form is signed by the Local Agency Representative.