

# **Standard Professional Services Agreement (“PSA”)**

## **Federal Funds**

### **AGREEMENT FOR CONSULTING SERVICES**

This agreement (“Agreement”), dated as of \_\_\_\_\_, 20\_\_ (“Effective Date”) is made by and between the County of Sonoma, a political subdivision of the State of California (“County”), and Kathy Wood & Associates (“Consultant”).

#### **RECITALS**

WHEREAS, Consultant represents that it is a duly qualified Right-of-Way professional, experienced in the management of right-of-way programs, procedures, regulations, and related services; and

WHEREAS, in the judgment of the Department of Transportation & Public Works, it is necessary and desirable to contract for the services of Consultant for Right of Way Management.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

#### **AGREEMENT**

##### **1. Scope of Services**

###### **1.1. Consultant's Specified Services.**

Consultant shall perform the services described in Exhibit C attached hereto and incorporated herein by this reference (“Scope of Work”), within the times or by the dates provided for in the Scope of Work and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and the Scope of Work, the provisions in the body of this Agreement shall control.

All services shall be performed on an as-needed basis as determined by County in its sole discretion. No amount of services or purchase orders are guaranteed. Nothing herein grants Contractor any exclusive right to provide any services, and County reserves all right and discretion to obtain any and all services from other providers.

###### **1.2. Cooperation With County.**

Consultant shall cooperate with County and County staff in the performance of all work hereunder.

###### **1.3. Performance Standard.**

Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant’s work by County shall not operate as a waiver or release of Consultant’s obligations under the Section. If County determines that any of Consultant’s work is not in accordance with such level of competency and standard of care,

County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

#### **1.4. Assigned Personnel.**

Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County.

Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the following key personnel: Kathy Wood, Geoff Hornsby.

In the event that any of Consultant's personnel assigned to perform services under this Agreement becomes unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

#### **1.5. Consultant's Reports or Meetings.**

Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for County's Contract Administrator or designated 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.

Consultant's Project Manager shall meet with County's Contract Administrator or designated project coordinator, as needed, to discuss progress on the project(s).

#### **1.6. Federal Requirements.**

Work under this Agreement or any Task Order may be funded by the County, the State or the Federal Highway Administration (FHWA), or by the Federal Emergency Management Agency (FEMA). Work will be separated by funding source through Task Orders, and all applicable federal requirements as set forth in Exhibit B "Federal Requirements – FHWA" or Exhibit A "Federal Requirements – FEMA" (collectively, the "Federal Requirements") will be incorporated into each Task Order. In the event of any conflict between the body of this Agreement and the Federal Requirements, the Federal Requirements shall control.

## **2. Allowable Costs and Payments.**

### **2.1. Method of Payment.**

Consultant will be reimbursed for hours worked at the hourly rates specified in the approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost.

2.2. Indirect Cost Rate.

The indirect cost rate included in the Cost Proposal shall be fixed for the duration of this Agreement.

2.3. Transportation & Subsistence.

Reimbursement for transportation and subsistence costs shall not exceed the lower of the rates specified in the approved Cost Proposal or State rates.

2.4. Progress Payments.

Progress payments will be made monthly in arrears based on services provided and actual costs incurred.

2.5. Payment.

No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.

2.6. Invoices.

Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (a) the task(s) performed; (b) the time in quarter hours devoted to the task(s); (c) the hourly rate or rates of the persons performing the task(s); and (d) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed, including a copy of all invoices paid to sub-consultants for work required included in the prime consultant's invoice. Consultant shall submit a Subconsultant Payment Declaration with each invoice.

Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County. Invoices shall be mailed to County's Contract Administrator at the following address:

Janice Thompson, P.E.  
2300 County Center Drive, Suite B100  
Santa Rosa, CA 95403

2.7. Contract Value.

The total amount payable by County for all work resulting from this Agreement shall not exceed \$700,000. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement.

2.8. Salary Increases.

Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by County's Contract Administrator.

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.

2.9. Taxes.

Pursuant to California Revenue and Taxation Code Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this Agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) a limited liability company or partnership with a permanent place of business in California, (3) a corporation, limited liability company or partnership qualified to do business in California by the Secretary of State, or (4)

an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by Consultant in order for payments to be made. If Consultant is qualified, then County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, Consultant agrees to promptly notify the County of any changes in the facts. Forms should be sent to County pursuant to Article 12. To reduce the amount withheld, Consultant has the option to provide County with either a full or partial waiver from the State of California.

### **3. Term of Agreement.**

3.1.1. This Agreement shall commence on the Effective Date, , and Consultant shall commence work after notification to proceed by County's Contract Administrator. The Agreement shall end on December 31, 2026 unless extended by contract amendment.

3.1.2.

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 contract amendment.

### **4. Termination.**

#### **4.1. Termination Without Cause.**

Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement or any Task Order by giving 5 days written notice to Consultant.

#### **4.2. Termination for Cause.**

Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement or any Task Order, County may immediately terminate this Agreement or any Task Order by giving Consultant written notice of such termination, stating the reason for termination.

#### **4.3. Delivery of Work Product and Final Payment Upon Termination.**

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

#### **4.4. Payment Upon Termination.**

Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times

the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

#### **4.5. Authority to Terminate.**

The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Department of Transportation and Public Works Department Head, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

### **5. Indemnification.**

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', subconsultants' or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Consultant's or its agents', employees', subconsultants', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. The above defense and indemnity obligations shall be limited, with respect to any design professional services provided and to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.

### **6. Insurance.**

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subconsultants, consultants, and other agents to maintain, insurance as described in Exhibit D, which is attached hereto and incorporated herein by this reference.

### **7. Prosecution of Work.**

The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

### **8. Extra or Changed Work.**

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or

significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors or Purchasing Agent must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

## **9. Representations of Consultant.**

### **9.1. Standard of Care.**

County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

### **9.2. Status of Consultant.**

The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

### **9.3. Taxes.**

Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In the event County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

### **9.4. Conflict of Interest**

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

9.4.2. Consultant certifies that it has disclosed to County any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant agrees to advise County of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with

County disclosing Consultant's or such other person's financial interests.

9.5. Statutory Compliance / Living Wage Ordinance.

Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.6. Nondiscrimination.

Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, gender expression, gender identity, genetic information, or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.7. AIDS Discrimination.

Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.8. Assignment of Rights.

Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.9. Ownership and Disclosure of Work Product.

All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, subconsultants, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to County all such documents, which have not already been provided to County in such form or format, as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

9.10. Authority.

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9.11. Prevailing Wage.

- 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 the DIR must be maintained throughout the entire term of this Agreement, including any subsequent amendments. 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. These wage rates are made a specific part of this Agreement by reference pursuant to Labor Code § 1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at County construction sites, at County facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve County projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site 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' and (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 County at all reasonable hours at the principal office of Consultant. 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 County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by Consultant; (c) The public shall not be given access to certified payroll records by Consultant. Consultant is required to forward any requests for certified payrolls to County by both email and regular mail on the business day following receipt



of the request.

3. 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 County shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of Consultant or subconsultant performing the work shall not be marked or obliterated.
  5. Consultant shall inform County of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
  6. 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 Consultant or subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to County, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties may be withheld by County from payments then due. Consultant is not subject to a penalty assessment pursuant to this section due to the failure of a subconsultant to comply with this section.
- E. When prevailing wage rates apply, Consultant is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by County.
- F. Penalty.
1. Consultant and any of its subconsultants shall comply with Labor Code § 1774 and § 1775. Pursuant to Labor Code § 1775, Consultant and any subconsultant shall forfeit to County a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under this Agreement by 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 Consultant or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of 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 Consultant or subconsultant had knowledge of the obligations under the Labor Code. Consultant is responsible for paying the appropriate rate, including any escalations that take place during the term of this 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 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 prime Consultant of the project is not liable for the penalties described above unless the prime Consultant had knowledge of that failure of the subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime Consultant fails to comply with all of the following requirements: (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, 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, County shall notify 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 County determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if County did not retain sufficient money under the Agreement to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, Consultant shall withhold an amount of moneys due the subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by County.
- G. Hours of Labor. Eight (8) hours labor constitutes a legal day's work. Consultant shall forfeit, as a penalty to County, twenty-five dollars (\$25) for each worker employed in the execution of the Agreement by 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 this Agreement or any subcontract exceeds thirty thousand dollars (\$30,000), 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. Consultant 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. Consultant is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

#### 9.12. Retention of Records/Audit.

For the purpose of determining compliance with California Government Code Section 8546.7, Consultant and subconsultants shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties, including the Consultant's independent certified public accountant, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the Agreement. County, Caltrans Auditor, FHWA, or any duly authorized representative of the federal government having jurisdiction under federal laws or regulations (including the basis of federal funding in whole or in part) shall have access to any books, records, and documents of Consultant, subconsultants, and Consultant's independent certified public accountant, that are pertinent to the Agreement for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

#### 9.13. Audit Review Procedures.

- 9.13.1. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by County.
- 9.13.2. Not later than thirty (30) days after issuance of the final audit report, Consultant may request a review by County of unresolved audit issues. The request for review must be submitted in writing.
- 9.13.3. Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.
- 9.13.4. Consultant and subconsultant contracts, including cost proposals and Indirect Cost Rates (ICR), are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by County contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

9.13.5. Consultant Cost Proposal is subject to a CPA ICR Audit Work Paper Review by Caltrans' Audit and Investigation (Caltrans). Caltrans, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by Consultant and approved by County 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 a Caltrans' review of the ICR audit work papers created by Consultant's independent CPA, Caltrans 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 Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, County will reimburse Consultant at a provisional ICR until a Federal Acquisition Regulation (FAR) 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 A&I. Accepted rates will be as follows:
  - a. If the proposed rate is less than 150% - the provisional rate reimbursed will be 90% of the proposed rate.
  - b. If the proposed rate is between 150% and 200% - the provisional rate will be 85% of the proposed rate.
  - c. If the proposed rate is greater than 200% - the provisional rate will be 75% of the proposed rate.
2. If Caltrans is unable to issue a cognizant letter per paragraph E.1. above, Caltrans 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. Caltrans 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 Section E, or if Caltrans 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 provisional 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 County final invoice only when all of the following items have occurred: (a) Caltrans approves or rejects the original or revised independent CPA-audited ICR; (b) all work under this Agreement has been completed to the satisfaction of County; and, (c) Caltrans has issued its final ICR review letter. Consultant must submit its final invoice to County no later than 60 days after

occurrence of the last of these items. The accepted ICR will apply to this Agreement and all other contracts executed between County and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

9.14. Subcontracting.

- 9.14.1. Nothing contained in this Agreement or otherwise, shall create any contractual relation between County and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.
- 9.14.2. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by County's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- 9.14.3. Consultant shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to Consultant by County.
- 9.14.4. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- 9.14.5. Any substitution of subconsultant(s) must be approved in writing by County's Contract Administrator in advance of assigning work to the substitute subconsultant.

9.15. Equipment Purchase and Other Capital Expenditures.

- 9.15.1. Prior authorization in writing, by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- 9.15.2. For purchase of any item, service or consulting work not covered in Consultant's Cost Proposal and exceeding \$5,000 prior authorization by County's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- 9.15.3. Any equipment purchased as a result 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 \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County; and (2) 2 CFR Part 200

requires a credit to federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

9.16. Rebates, Kickback or Other Unlawful Consideration.

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

9.17. Funding Requirements.

9.17.1. 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.

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

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

9.17.4. County has the option to terminate the Agreement pursuant to Article 4, or by mutual agreement to amend the Agreement to reflect any reduction of funds.

9.18. Evaluation of Consultant.

Consultant's performance may be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

9.19. Claims Filed By County's Construction Contractor.

9.19.1. If claims are filed by County'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 County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

9.19.2. Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this Agreement.

9.19.3. Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to resolve the construction claims.

#### 9.20. National Labor Relations Board Certification

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

#### 9.21. Retention of Funds.

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

9.21.2. No retainage will be withheld by the County from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

#### 9.22. Contingent Fee.

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

#### 9.23. Inspection of Work.

Consultant and any subconsultant shall permit County, the state, and the FHWA if federal participating funds are used in this Agreement; to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

#### 9.24. Safety.

- A. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code Section 591, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles

## **10. Demand for Assurance.**

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

## **11. Assignment and Delegation.**

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

## **12. Method and Place of Giving Notice, Submitting Bills and Making Payments.**

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

### **To County:**

Sonoma County Department of Transportation and Public Works  
Attn: Janice Thompson  
2300 County Center Drive, Suite B-100 Santa Rosa, CA 95403  
(707) 565-2231  
[janice.thompson@sonoma-county.org](mailto:janice.thompson@sonoma-county.org)

### **To Consultant:**

Kathy Wood & Associates  
Attn: Kathy Wood  
215 Caledonia Street, Suite 303  
Sausalito, CA 94965  
(415) 729-9002  
[kwood@kwoodassociates.com](mailto:kwood@kwoodassociates.com)

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and



addresses of the person to whom notices are to be given by giving notice pursuant to this Article.

### **13. Miscellaneous Provisions.**

#### **13.1. No Waiver of Breach.**

The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

#### **13.2. Construction.**

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

#### **13.3. Consent.**

Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

#### **13.4. No Third Party Beneficiaries.**

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

#### **13.5. Applicable Law and Forum.**

This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

#### **13.6. Captions.**

The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

#### **13.7. Merger.**

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

#### **13.8. Survival of Terms.**

All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

#### **13.9. Time of Essence.**

Time is and shall be of the essence of this Agreement and every provision hereof.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.**

**SIGNATURES FOLLOW ON NEXT PAGE -  
- THIS SPACE LEFT INTENTIONALLY BLANK -**

CONSULTANT:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

COUNTY OF SONOMA:

CERTIFICATES OF INSURANCE ON  
FILE WITH AND APPROVED AS  
TO SUBSTANCE FOR COUNTY:

By: \_\_\_\_\_  
Technical Writing Specialist

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

By: \_\_\_\_\_  
Director of Transportation & Public  
Works

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

APPROVED AS TO FORM FOR  
COUNTY:

By: \_\_\_\_\_  
County Counsel

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

AGREEMENT EXECUTED:

By: \_\_\_\_\_  
Chair Board of Supervisors

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

ATTEST

By: \_\_\_\_\_

## Exhibit A

### FEDERAL REQUIREMENTS – FEMA

*Construction (TPW Caltrans Spec.) and Services Agreements*

[Revise date 10-1-18]

#### 1. **DEFINITIONS**

- 1.1. **Government** means the United States of America and any executive department or agency thereof.
- 1.2. **FEMA** means the Federal Emergency Management Agency.
- 1.3. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or any subcontractor, financed in whole or in part with federal assistance derived from the Federal Emergency Management Agency.
- 1.4. For purposes of this Exhibit, **Contractor** means the Contractor or Consultant as identified in the Agreement, and shall sometimes be referred to as “contractor.”
- 1.5. **Agreement** means that certain Agreement between the County of Sonoma (“County”) and Contractor, and to which this Exhibit is made a part.

#### 2. **FEDERAL REQUIREMENTS**

- 2.1. Contractor acknowledges that FEMA financial assistance will be used to fund this Agreement.
- 2.2. Contractor shall at all times comply with all applicable federal laws, regulations, executive orders, Office of Budget and Management circulars, and FEMA policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 C.F.R.<sup>1</sup> 200.317 through 200.326 and Appendix II to 2 CFR Part 200—“Contract Provisions for non-Federal Entity Contracts Under Federal Awards,” which is included herein by reference; and including the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990, the Civil Rights Act of 1964 (Title VI); the Civil Rights Act of 1968 (Title VIII); the Drug-Free Workplace Act of 1988; the Drug Abuse Office and Treatment Act of 1972; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; the Public Health Service Act of 1912; the Education Amendments of 1972 (Title IX); the Equal Opportunity in Education Act; the Energy Policy and Conservation Act; the False Claims Act; the Hotel and Motel Fire Safety Act of 1990; the National Environmental Policy Act; the Rehabilitation Act of 1973; the Whistleblower Protection Act; the Hatch Act (5 U.S.C.<sup>2</sup> 1501 et seq.); and all related and Department of Homeland Security--mandated federal regulations, including 44 CFR Part 7.
- 2.3. Whether or not expressly set forth herein, all contractual provisions required by FEMA are hereby incorporated by reference. In the event of any conflict between any provision of this Agreement or any FEMA term, condition, or requirement, the stricter standard shall apply. Contractor shall refer any inconsistency or perceived inconsistency between

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<sup>1</sup> Code of Federal Regulations (“CFR”).

<sup>2</sup> United States Code (“USC”).

this Agreement and any federal requirement to County for guidance. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests that would cause County to be in violation of any FEMA term, condition, or requirement.

- 2.4. Contractor acknowledges that this Agreement may be subject to grant assurances mandated by funding federal agencies. In such event, this Agreement shall be subject to and subordinate to all such grant assurances in effect at all times during the term of this Agreement. Any grant assurances mandated by any federal funding agency for inclusion after the execution date of this Agreement shall be deemed by the parties to have been incorporated herein.
- 2.5. Contractor must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.
- 2.6. The Government shall enjoy the right to seek judicial enforcement of any law, regulation, condition, or provision stated herein.
- 2.7. Drug-free workplace. Contractor acknowledges County maintains a drug-free workplace plan. Contractor shall comply with applicable requirements of that plan and otherwise comply with applicable requirements of the Drug-Free Workplace Act of 1988 (41 USC 701-707).
- 2.8. Contractor shall ensure it has the necessary processes and systems in place to comply with applicable federal reporting requirements, including those contained in 2 CFR Part 170 as applicable.
- 2.9. Whistleblower Protections. Contractor shall inform all its employees in writing of the rights and remedies provided under the federal Whistleblower Protection Act, including 41 USC 4712.
- 2.10. Repair or Construction Activity. For all repair or construction activity done pursuant to this Agreement (if applicable), all such repair or construction shall be carried out in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications and standards, including those required pursuant to 44 CFR 206.400.
- 2.11. The Contractor agrees to include the above clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

### **3. ACCESS TO RECORDS**

- 3.1. Contractor and its successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Government access to records, accounts, documents, information, facilities, and staff, including compliance review, investigation, evaluation, documentation and reporting requirements.
- 3.2. The Contractor agrees to provide the County, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are related to this Agreement, for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor

agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- 3.3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.
- 3.4. The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than five years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date all projects, programs, and close outs are completed, except in the event of audit, litigation, or settlement of claims arising from this Agreement, in which case, Contractor agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Contractor shall grant County the option of retention of the records, books, papers, and documents in unalterable, electronic form if Contractor elects to dispose of said documents following the mandatory retention period.
- 3.5. The requirements set forth above are all in addition to, and should not be considered to be in lieu of, any more stringent requirement set forth in the Agreement.

#### **4. DEBARMENT AND SUSPENSION**

- 4.1. This Agreement is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 CFR 180.995), or its affiliates (defined at 2 CFR 180.905) are excluded (defined at 2 CFR 180.940) or disqualified (defined at 2 CFR 180.935). Covered transactions shall not be entered into with excluded or disqualified persons or with parties listed on the Government's Excluded Parties List System in the System for Award Management (SAM). The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority. (2 CFR Part 200 Appendix II, (I)). No entity, including subcontractors, may receive any federal funds through this Agreement unless the entity has provided its unique entity identifier to County.
- 4.2. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or Executive Order 12689, and that it is not on the Excluded Parties List System in the System for Award Management (SAM) or on any comparable list of precluded persons, entities, or facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or any federal regulation, including 2 CFR Part 200. Gov. Code § 4477.
- 4.3. The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. Contractor agrees to the provisions of Exhibit A-1, Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Exhibit A-1, Contractor is the “prospective lower tier participant.”

- 4.4. The Contractor agrees to include the above paragraphs in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- 4.5. This certification is a material representation of fact relied upon by County. If it is later determined that the Contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the County, the Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 4.6. The bidder or proposer agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **5. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

- 5.1. The County and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Government, the Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the County, Contractor, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the Agreement.
- 5.2. The Contractor agrees to include the above clause in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

## **6. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

(all construction contracts awarded meeting the definition of “federally assisted construction contract” under 41 CFR 61-1.3)

Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60-1.4 is hereby incorporated by reference.

During the performance of this Agreement, Contractor agrees as follows:

- 6.1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such

action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- 6.2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 6.3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- 6.4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 6.5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6.6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6.7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 6.8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or



purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **7. NONDISCRIMINATION CLAUSE**

- 7.1. Contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, denial of family care leave, or based on any other prohibited basis.
- 7.2. Contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- 7.3. Contractor shall comply with the applicable provisions of the Fair Employment and Housing Act (Gov. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 7.4. The Contractor agrees to include the above clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

## **8. CONTRACT WORK HOURS AND SAFETY STANDARDS**

(all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

- 8.1. **Compliance:** Contractor and all subcontractors shall comply with the Contract Work Hours and Safety Standards Act, 40 USC 3701 through 3708 (including sections 3702 and 3704), as supplemented by Department of Labor regulations at 29 CFR Part 5, which are incorporated hereto. CFR Contractor and all subcontractors shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Contractor shall not require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health or safety.

- 8.2. Overtime: No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics (including watchmen and guards) shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 8.3. Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the provisions of Paragraph B, the contractor or any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor or subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions of paragraph B in the sum of \$25 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- 8.4. Withholding for unpaid wages and liquidated damages: The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- 8.5. Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.
- 8.6. Further requirements are contained in the Davis-Bacon provisions (see 29 CFR 5.5(a)) stated further herein and are incorporated here by reference.

## **9. NOTICE OF REPORTING REQUIREMENTS**

- 9.1. Contractor acknowledges that it has read and understands the reporting requirements of FEMA, including the "SF-425 Federal Financial Report Filing Instructions" (available at <https://www.fema.gov/media-library/assets/documents/28389>). Contractor agrees to comply with all applicable reporting requirements, including those contained in any grant terms and conditions, notices of funding opportunity, or any program guidance associated with any FEMA funding related to this Agreement.
- 9.2. The Contractor agrees to include the above clause in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

## **10. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS**

10.1. Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

10.1.1. The copyright in any work developed with the assistance of funds provided under this Agreement;

10.1.2. Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.

10.2. The Contractor agrees to include the above paragraph in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

## **11. PATENT RIGHTS**

(contracts meeting the definition of “funding agreements” (see 37 CFR Part 401) for experimental, research, or development projects financed by FEMA)

-Not applicable-

## **12. ENERGY CONSERVATION REQUIREMENTS**

12.1. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).

12.2. The Contractor agrees to include the above paragraph in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

## **13. CLEAN AIR AND WATER REQUIREMENTS**

(all contracts and subcontracts in excess \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year)

13.1. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q), as amended, and the Federal Water Pollution Control Act as amended (33 USC 1251-1388) (as all or any may be amended), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

13.2. Contractor agrees to report each violation of these requirements to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.

13.3. The Contractor agrees to include the above paragraphs in each Third Party Subcontract exceeding \$150,000, such that all provisions will equally apply to the subcontractor. It

is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

#### **14. TERMINATION FOR CONVENIENCE OF COUNTY**

(all contracts in excess of \$10,000)

For construction contracts, see Section 8 of the 2015 Standard Specifications, as may be modified by County's applicable Notice to Bidders, Special Provisions, and Addenda.

For services contracts, see Article 4 of the "Standard Professional Services Agreement."

#### **15. TERMINATION FOR DEFAULT**

(all contracts in excess of \$10,000)

Contractor's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement.

For construction contracts, see Section 8 of the 2015 Standard Specifications, as may be modified by County's applicable Notice to Bidders, Special Provisions, and Addenda.

For services contracts, see Article 4 of the "Standard Professional Services Agreement."

#### **16. CHANGES**

For construction contracts, see Sections 4-1.05, 4-1.06, 4-1.07, and 8 of the 2015 Standard Specifications, as may be modified by County's applicable Notice to Bidders, Special Provisions, and Addenda.

For services contracts, see Article 8 of the "Standard Professional Services Agreement."

#### **17. LOBBYING (Byrd Anti-Lobbying Amendment, 31 USC 1352 (as amended))**

(all contracts and subcontracts in excess of \$100,000)

- 17.1. Contractor shall not use or expend any funds received under this Agreement with any person or organization to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 17.2. Contractor agrees to the provisions of Exhibit A-2, Certification Regarding Lobbying, attached hereto and incorporated herein, and shall obtain such certifications for all subcontracts in excess of \$100,000. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for

influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

- 17.3. Contractor agrees to include the above paragraphs in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

## **18. MBE / WBE REQUIREMENTS**

Contractor shall make good faith effort and take all necessary affirmative steps (including those listed in 2 CFR 200.321) to assure that Minority and Women's Business Enterprises and labor surplus area firms are used when possible. Failure to engage in such affirmative steps shall be considered as a material breach of the contract.

Contractor, and all its subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible, including as sources of supplies, construction, equipment, or services. These affirmative steps must be documented and reported. Failure of Contractor or any subcontractor thereof to take the following steps shall be deemed a material breach of this Agreement:

- i. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- iv. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- v. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

If subcontracts are to be let, Contractor shall take the affirmative steps listed above and as otherwise required by 2 CFR 200.321.

## **19. PROCUREMENT OF RECOVERED MATERIALS**

- 19.1. Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a

satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

19.2. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

19.2.1. Competitively within a timeframe providing for compliance with the contract performance schedule;

19.2.2. Meeting contract performance requirements; or

19.2.3. At a reasonable price.

19.3. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

19.4. The Contractor agrees to include the above clauses in each Third Party Subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

## **20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The Contractor acknowledges that 31 USC Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

## **21. DHS SEAL, LOGO, AND FLAGS**

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials, including those of FEMA or the United States Coast Guard, without specific FEMA pre-approval.

## **22. DAVIS-BACON ACT AND COPELAND ANTI-KICKBACK ACT**

(all prime construction, repair, or alteration contracts in excess of \$2,000 funded under the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program [unless other grant or state/local law require independently])

### **A. Compliance with the Davis –Bacon Act:**

Contractor shall comply with the Davis-Bacon Act (40 USC 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction), and shall comply with all of the following:

29 CFR 5.5(a):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ( 29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

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

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

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

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

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

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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



(2) Withholding. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor,

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

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

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

#### (4) Apprentices and trainees -

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered

program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

(10) Certification of eligibility.

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

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

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

**B. Compliance with the Copeland “Anti-Kickback” Act**

(required for all Davis-Bacon contracts, and for contracts for construction or repair of public work financed in whole or part by federal loan or grant):

(1) Contractor. The contractor shall comply with 18 USC 874, 40 USC 3145, and the requirements of 29 CFR Part 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

### **23. BONDS**

(all construction or facility improvement contracts, or any subcontracts thereof, exceeding \$150,000)

Unless otherwise excepted in writing by County, for construction or facility improvement contracts exceeding \$150,000, or any subcontracts thereof in excess of \$150,000, Contractor shall obtain and maintain bonds as follows:

- i. A performance bond for 100 percent of the Agreement price, and
- ii. A payment bond for 100 percent of the Agreement price.

### **24. POLITICAL ACTIVITIES**

Contractor understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government without the express prior written approval of DHS.

## **Exhibit A-1**

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

(Lower Tier refers to the agency or Contractor receiving Federal funds, as well as any subcontractors that the agency or Contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, County may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Contractor is required to sign the certification below which specifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Contractor will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any Contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

#### **Instruction for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from

participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

***Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions***

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Contractor Signature

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Date



## Exhibit A-2

### CERTIFICATION REGARDING LOBBYING

#### *Certification for Contracts, Grants, Loans, and Cooperative Agreements*

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person or organization for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person or organization 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 Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. If any registrant under the Lobbying Disclosure Act of 1995 has made lobbying contacts on behalf of the undersigned with respect to this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
4. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. An imposition of a civil penalty under this subsection does not prevent the United States from seeking any other remedy that the United States may have for the same conduct that is the basis for the imposition of such civil penalty.

The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC 3801 *et seq.*, apply to this certification and disclosure, if any.

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Contractor Signature

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Date

## **Exhibit B**

### **FEDERAL REQUIREMENTS – FHWA**

Professional Services Agreements

[Revise Date 02-21]

#### **1. Disadvantaged Business Enterprise (DBE) Participation.**

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

Consultant shall meet the DBE goal shown below or demonstrate that it made adequate good faith efforts to meet this goal. It is Consultant's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found 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. 49CFR26.55 defines "manufacturer" and "regular dealer."

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

- 1.2. The goal for DBE participation for this Agreement is 0%. Participation by a DBE consultant or subconsultant shall be in accordance with information contained in the Caltrans Local Assistance Procedures Manual (LAPM) Form, Exhibit 10-O1 "Consultant Proposal DBE Commitment," or Exhibit 10-O2 "Consultant Contract DBE Information," incorporated as part of the Agreement by this reference. If a DBE subconsultant is unable to perform its obligations under this Agreement, Consultant shall make a good faith effort to replace him/her with another DBE subconsultant, if the participation goal is not otherwise met.
- 1.3. 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 LAPM Form, Exhibit 15-H "DBE Information – Good Faith Efforts" to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

- 1.4. Under 49 CFR 26.13(b): County, Consultant, or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. 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 Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
  2. Assessing sanctions;
  3. Liquidated damages; and/or
  4. Disqualifying Consultant from future proposing as non-responsible.
- 1.5. Consultant shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless Consultant or DBE subconsultant obtains the County's written consent. Consultant shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the County. Unless the County's consent is provided, the Consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in Consultant's bid or proposal.

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

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

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

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

1. One or more of the reasons listed in the preceding paragraph

2. Notices from Consultant to the DBE regarding the request
3. Notices from the DBEs to Consultant regarding the request

If a listed DBE is terminated or substituted, Consultant must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

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

The County shall request Consultant to:

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

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

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

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

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

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

- 1.8. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- 1.9. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- 1.10. Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- 1.11. If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to County within 30 days.
- 1.12. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

## **2. Debarment and Suspension.**

- 2.1. This Agreement is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 1200. As such, Consultant is required to verify that none of Consultant, its principals (defined at 2 CFR Part 180.995), or its affiliates (defined at 2 CFR Part 180.905) are excluded (defined at 2 CFR Part 180.940) or disqualified (defined at 2 CFR Part 180.935). Covered transactions shall not be entered into with excluded or disqualified persons or with parties listed on the Government's Excluded Parties List System in the System for Award Management (SAM). The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority. No entity, including subcontractors, may receive any federal funds through this Agreement unless the entity has provided its unique entity identifier to County.
- 2.2. Consultant, by executing this Agreement, certifies under penalty of perjury under the laws of the State of California that Consultant or any person associated therewith in the capacity of owner, partner, director, officer or manager: (a) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; (b) has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; (c) does not have a proposed debarment pending; and (d) 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.
- 2.3. Any exceptions to this certification must be disclosed to County. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in

determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

- 2.4. Exceptions to the Federal Government Excluded Parties List System in SAM maintained by the U.S. General Services Administration are to be determined by the Federal Highway Administration.
- 2.5. Consultant agrees that neither Consultant nor any of its third party subconsultants shall enter into any subcontracts for any of the work under this Agreement with a third party who is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs.
- 2.6. This certification is a material representation of fact relied upon by County. If it is later determined that Consultant did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 1200, subpart C, in addition to remedies available to County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

**3. Lobbying (Byrd Anti-Lobbying Amendment, 31 USC 1352 (as amended))**

(all contracts and subcontracts in excess of \$150,000)

- 3.1. Consultant shall not use or expend any funds received under this Agreement with any person or organization to influence or attempt to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 3.2. Consultant, by executing this Agreement, certifies, to the best of his or her knowledge and belief, that: (a) No federal, state or local appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of this Agreement, or with the extension, continuation, renewal, amendment, or modification of this Agreement; and (b) If any funds other than federal, state, or local 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3.3. 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 and 49 CFR Part 20. 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.
- 3.4. Consultant also agrees by signing this Agreement that it shall require that the language of this Section be included in all subcontracts that exceed one hundred thousand dollars (\$100,000), and that all such subconsultants shall certify and disclose accordingly.

#### **4. Cost Principles and Administrative Requirements.**

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

#### **5. Equal Employment Opportunity Compliance.**

(all contracts involving “construction work” as defined in 41 CFR 61-1.3, including construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services; also including the supervision, inspection, and other onsite functions incidental to the actual construction)

Consultant agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60-1.4 is hereby incorporated by reference. During the performance of this Agreement, Consultant agrees as follows:

- 5.1. Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 5.2. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 5.3. Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Consultant’s legal duty to furnish information.
- 5.4. Consultant will send to each labor union or representative of workers with which it has a

collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 5.5. Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5.6. Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 5.7. In the event of Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Consultant may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 5.8. Consultant will include this Section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

## **6. Non-Discrimination Clause and Statement of Compliance.**

- 6.1. Consultant's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that Consultant has, unless exempt, complied with the nondiscrimination program requirements of Cal. Gov. Code § 12990 and 2 CCR § 8103.
- 6.2. 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.
- 6.3. Consultant and subconsultants shall comply with the provisions of the Fair Employment and



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

- 6.4. Consultant shall permit access by representatives of the Department of Fair Employment and Housing and County upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said department or County shall require to ascertain compliance with this clause.
- 6.5. 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.
- 6.6. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

**6.7. Title VI Assurances.**

During the performance of this Contract, Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor" in this Section 6.7 and Section 6.8) agrees as follows:

- 6.7.1. Compliance with Regulations: The contractor will comply with the Acts and the Regulations relative to Non-discrimination in federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
- 6.7.2. Non-discrimination: The contractor, with regard to the work performed by it during the Contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 6.7.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this Contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- 6.7.4. Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the

Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.

- 6.7.5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this Contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: withholding payments to the contractor under the contract until the contractor complies; and/or cancelling, terminating, or suspending a contract, in whole or in part.
- 6.7.6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### 6.8. Pertinent Non-Discrimination Authorities:

During the performance of this Contract, the contractor also agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR 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 USC § 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 on 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 at 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).

## **7. Text Messaging While Driving.**

- 7.1. In accordance with Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving” and Department of Transportation Order 3902.10 “Text Messaging While Driving,” text messaging while driving is prohibited in the performance of any duties included under this Agreement for both Consultant and any sub-consultants. Consultant shall include a provision prohibiting texting while driving in all sub-consultant agreements entered into under this Agreement.
- 7.2. For the purposes of this provision, “driving” means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise. It does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- 7.3. For the purposes of this provision, “text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication.

## **8. Energy Conservation Requirements.**

- 8.1. Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).
- 8.2. Consultant agrees to include the above paragraph in each subcontract such that all provisions will equally apply to the subcontractor. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**9. Clean Air and Water Requirements.**

- 9.1. Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q), as amended, and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1388) (as all or any may be amended), and will report violations to the FHWA and the Regional Office of the Environmental Protection Agency (EPA).
- 9.2. Consultant agrees to report each violation of these requirements to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FHWA and the appropriate EPA regional office.
- 9.3. Consultant agrees to include the above paragraphs in each subcontract exceeding \$150,000, such that all provisions will equally apply to the subconsultant. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

**10. Notice of Requirements Pertaining to Copyrights.**

- 10.1. Consultant agrees that the FHWA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes: (a) the copyright in any work developed with the assistance of funds provided under this Agreement; (b) any rights of copyright to which Consultant purchases ownership with the assistance of funds provided under this Agreement.
- 10.2. Consultant agrees to include the above paragraph in each subcontract such that all provisions will equally apply to the subconsultant. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject thereto.

## **Exhibit C - Scope of Services & Rates**

The County performs construction projects within multiple divisions in the Public Works Department, including Roads, Integrated Waste, Airport and County Service Districts. Many of these projects are local, State or Federally funded. The selected Consultant shall perform consultation, research, professional and technical services required for Right of Way Management, on an as-needed basis.

The County currently does not have an in-house right of way agent. The selected consultant will be expected to oversee all aspects of Right of Way Management for TPW and advise County staff on right of way related matters and to interact with personnel at other agencies with whom the County conducts business.

The selected consultant will also be responsible for coordinating, overseeing, and reviewing appraisal and acquisition work performed by other right of way firms that have been hired by TPW.

### **Anticipated Scope of Services**

#### **Task 1 -Oversight & Coordination**

- Preparation of right of way estimates and budgets
- Preparation of Right of Way Certification
- General consulting regarding right of way activities
- Coordinate with TPW and other County Staff as necessary
- Review of R/W Appraisal, Appraisal Review, Acquisition and Relocation Consultant monthly charges and sign-off on invoices
- Administer and oversee budget for R/W Appraisal, Appraisal Review, Acquisition and Relocation Consultants
- Documentation of R/W charges
- Review executed agreements and deeds for accuracy
- Maintain electronic files for each project
- File management and organization
- Coordination with County Counsel
- Draft Board Agenda Items for transmittal of Right of Way Documents for Board Approval
- Handle Section 83 requests from Caltrans
- Preparation of files for audit on federally funded projects (Caltrans District 4)
- Ongoing communications with Caltrans Local Assistance
- Assist with utility issues – review design and documentation

#### **Task 2 – Appraisal**

- Review title reports and draft legal descriptions and plats
- Assist with design of appraisal maps
- Prepare final Notices of Decision to Appraise and send out with required documentation
- Participate in preparation of documentation for Hearings of Necessity

### **Task 3 - Acquisition**

- Review of Acquisition documents – quality control (pre-offer)
- Prepare and review acquisition status reports and communicate with management on schedule and progress
- Acquisition file review
- Ongoing communications with acquisition agent – handle queries from owners and obtain upper management approvals
- Request funding for property acquisition
- Guidance with regard to negotiations and obtain approvals for administrative settlements
- Assist with drafting of Administrative Settlement Memos

### **Task 4 – Escrow Work**

Right of Way Manager handles all escrows

- Order Preliminary Title Reports
- Draft escrow instructions to title company with executed documents
- Work with title company on partial reconveyances and contacts with lenders
- Coordinate signature with County management on title company supplemental escrow instructions
- Process title company invoices – work with County accounting staff

### **Task 5 – Other Necessary Tasks**

While the above list is expected to represent the majority of the consultant Right of Way Manager's time, other Right of Way Management work may arise which the consultant is asked to perform.

### **Location of Work**

To deliver the services described above, TPW provides office space and access to the Department's computer network and electronic files. This procurement requires that the appointed Supervising Right of Way Agent be available to work onsite at 2300 County Center Drive, Suite B100, Santa Rosa, CA 95404. The hours required to be onsite will vary and should be coordinated with the County Contract Administrator: Janice Thompson.

### **Personnel Requirements**

#### **Consultant Staff Requirements**

The Consultant is responsible to provide fully trained personnel to efficiently perform the work.

#### **Key Staff**

Proposers must provide the following Key Staff:

1. Contract Manager
2. Right of Way Manager
3. Assistant Right of Way Manager

The Contract Manager may also be the Right of Way Manager, however, TPW would recommend

naming at least two employees as Key Staff to ensure continuity of service.

### **Key Staff Requirements**

1. Key Staff will be named in the Contract Agreement and are expected to remain available for the full contract term
2. Key Staff must be named on the Consultant Cost Proposal (Exhibit 10-H2) and their Actual Hourly Rate should be specified
3. If consultant requires to replace Key Staff, a written request must be submitted to the County Contract Administrator including the resume and updated Cost Proposal (Exhibit 10-H2) for the proposed replacement staff. The substitute personnel shall have the same job classification, as set forth herein or in the Consultant's Cost Proposal, shall not exceed the billing rate, and shall meet or exceed the qualifications and experience level of the previously assigned personnel, at no additional cost to the County. The substitute personnel shall have significant experience in the work involving a similar transportation facility for at a minimum five (5) previous projects, unless otherwise approved by the County Contract Administrator.

### **Assigned Staff**

In response to this RFQ, the proposer's cost proposal should list all job classes/ titles that consultant anticipates using to perform work. Hourly rates for these positions should be listed as a salary range from minimum to maximum.

### **Method of Payment**

This agreement is based on an On Call, **Specified Rate of Compensation**. Rates may be updated annually with an escalation detailed in the approved 10-H2 which will be included as part of the final agreement resulting from this procurement. The Indirect Cost Rate (ICR) agreed to at contract execution will remain for the full duration of the agreement.

### **General Requirements**

The County will not reimburse the Consultant for costs to relocate its personnel to the service area of this Contract. The County will not reimburse the Consultant for per diem costs, unless preapproved by the County's Contract Manager. The County will not reimburse the Consultant for out-of-state travel without prior written approval from the County's Contract Manager.

The Consultant may claim reimbursement for providing equipment or supplies. However, such claimed costs will be compliant with 48 Code of Federal Regulation (CFR), Chapter 1, Part 31 (Federal Acquisition Regulation - FAR cost principles) and 2 CFR, Part 200, and be consistent with the Consultant's company-wide allocation policies and charging practices with all clients including federal government, state governments, local agencies, and private clients.

The Consultant will provide all necessary tools, instruments, equipment, materials, supplies, and safety equipment required to perform the work identified in each Task Order and this Contract accurately, efficiently, and safely. The Consultant's personnel must be fully trained in the use of such necessary tools, instruments, equipment, materials, supplies, and safety equipment. The Consultant shall not be reimbursed separately for tools of the trade, which may include, but not be limited to, the above-mentioned equipment.



## **SCOPE OF WORK**

### **Right of Way Management**

Following is a general overview of steps involved in coordinating right of way work with engineering staff and Right of Way Consulting firms providing acquisition services. The list below is presented in chronological order of anticipated work:

- Kick-Off Meeting with engineering staff to review project
- Review preliminary plans and provide input regarding right of way impacts, utility issues, and potential budgeting issues
- Prepare right of way estimates as requested by engineering staff
- Order preliminary title reports
- Outreach to potentially impacted property owners
- Coordinate with County surveyor (or private consulting firm) to work on right of way legal descriptions, plats, appraisal maps, and vesting documents
- Assist with preparation of Task Orders for Consultant RFP's
- Assist Management with review of RFP submittals as considered appropriate
- Set up meeting with the selected right of way consulting firm and engineering staff to provide overview of project
- Prepare project spreadsheets with property information and distribute to staff
- Provide right of way firm with projected schedule and work out project deliverables
- Provide right of way firm with document templates for use in preparing offers of just compensation (and relocation notices if applicable)
- Schedule regular meetings with staff and right of way firm (conference calls may be appropriate) to monitor progress of appraisal work and negotiations
- Prepare project management spreadsheet to monitor all right of way activities
- Act as liaison between title company and right of way firm
- Review of all acquisition documents prior to use by acquisition consultant
- Review of signed right of way documents
- Field property owner questions as necessary
- Provision of ongoing guidance to right of way firm with respect to owner negotiations
- Review of final signed documents





- Preparation of written staff reports and agenda items as necessary
- Escrow Coordination with title company – preparation of escrow instructions/assist with removal of liens and encumbrances not acceptable to County
- Coordinate with accounting to order funds for deposit to escrow
- Coordination with County legal counsel as required
- Ongoing communications with Caltrans staff (as needed)
- Eminent domain support services as needed
- Preparation of documents for Hearings of Necessity proceedings
- Preparation of right of way certification (as needed)
- File organization and close out

Project deliverables: (Federally funded projects)

Right of way project management summary spreadsheet for each project

Right of Way Certification (FHWA/Caltrans Projects only)

Preparation of Files subject to Federal Agency Audit

Other Services within the Scope of the Supervising Right of Way Agent may include the following:

- Handling Section 83 requests from Caltrans
- Preparation of documents for Hearings of Necessity
- Handling right of way/real estate inquiries from the general public
- Coordination with different departments/sections within the County
- Guidance to Right of Way Consultants with regard to negotiations
- Provide ongoing consultation and advisory services regarding right of way matters to management and DTPW Staff

Cost Control and Budgeting Methodology:

As the right of way manager, oversight of Right of Way Consultants is ongoing. Consultant monthly invoices are reviewed for purposes of monitoring right of way tasks completed and number of hours submitted. These numbers are compared to overall task budgets and work progress. Changes in scope and design may require amendment of task order budgets and the



right of way manager must report budget impacts to the Engineering Project Manager as early in the process as possible. The right of way manager will consult with County personnel as needed to review contract terms and task order budgets to ensure that funding is available to complete tasks.

#### Quality Control and Costs Control Measures

**kw+a** will implement the following quality control measures in-house for all tasks:

- Project Manager and administrative personnel will review and discuss assignments
- Available and pertinent background information will be studied and incorporated into project files
- All phone calls, emails, mailings and other contact with project-affected persons, as well as with project personnel, will be documented in the project file diary
- Any discrepancies in information will be researched and reconciled as soon as possible
- **kw+a** staff to review documents for grammatical errors and content prior to use
- Prior to submittal to the County, **kw+a**'s Project Manager will review all reports, findings, forms and other deliverables for conformation with the County's requirements
- In addition to submitting a monthly written status report, **kw+a** will apprise County's staff of the project status on a more frequent basis, including a projection of upcoming work and milestones
- Input on project schedule – flag properties with potential problems for schedule
- Budgets will be reviewed on a regular basis to ensure fiscal responsibility
- Out of scope services will be pre-approved by County staff prior to implementation of work

## PROFESSIONAL FEE SCHEDULE – (Effective 1/1/21)

### **Right of Way Project Management/Consulting:**

Coordination, management, consulting	\$155
Attend public meetings	\$155
Eminent Domain support	\$155
Caltrans Right of Way Certifications	\$155

### **Acquisition Services:**

Permits to Enter/Non-complex agreements	\$140
Preparation of acquisition documents	\$140
Negotiate permanent/temporary easement rights & Full-take and part-take fee simple acquisitions	\$140
Escrow coordination	\$140
Right of Way Estimates	Lump-Sum*

### **Relocation Services:**

Relocation Consulting	\$155
Replacement Housing Valuation Reports	Lump-Sum*
Relocation Plans	Lump-Sum*
Relocation Assistance Services	\$1340
Relocation Appeals	\$155

\* Fee to be determined on a case-by-case basis depending upon the complexity of the assignment

### **Appraisal Services:**

kw+a contracts out all appraisal and appraisal review services as needed.  
Reports and reviews prepared on a Lump-Sum fee basis

*(All rates quoted are hourly and fully loaded)*

## Exhibit D: Insurance

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

### 1. Workers Compensation and Employers Liability Insurance

- a. Required if Consultant has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.

If Consultant currently has no employees as defined by the Labor Code of the State of California, Consultant agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

### 2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Consultant is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving the County.
- d. **The County of Sonoma, its Officers and Employees**, shall be endorsed as additional insureds for liability arising out of operations by or on behalf of the Consultant in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory

with, any insurance or self-insurance program maintained by them.

- f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
  - ii. Certificate of Insurance.

### **3. Automobile Liability Insurance**

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

### **4. Professional Liability/Errors and Omissions Insurance**

- a. Minimum Limits: \$1,000,000 per claim or per occurrence; \$1,000,000 annual aggregate.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County.
- c. If Consultant’s services include: (1) programming, customization, or maintenance of software; or (2) access to individuals’ private, personally identifiable information, the insurance shall cover:
  - i. Breach of privacy; breach of data; programming errors, failure of work to meet contracted standards, and unauthorized access; and
  - ii. Claims against Consultant arising from the negligence of Consultant, Consultant’s employees and Consultant’s subcontractors.
- d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- e. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- f. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

### **5. Standards for Insurance Companies**

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

## **6. Documentation**

- a. The Certificate of Insurance must include the following reference: On Call Right of Way Management Services 2021
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: David Cameron, [david.cameron@sonoma-county.org](mailto:david.cameron@sonoma-county.org)
- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

## **7. Policy Obligations**

Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

## **8. Material Breach**

If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Consultant, County may deduct from sums due to Consultant any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/29/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Stanley McDonald Agency 3167 Berlin Drive  La Crosse WI 54601	<b>CONTACT</b> NAME: James R McDonald PHONE (A/C, No. Ext): (608) 788-6160 E-MAIL ADDRESS: jim@mcdonaldagency.com FAX (A/C, No): (608) 788-7012
<b>INSURED</b> Kathy Wood & Associates  215 Caledonia St Ste 303  Sausalito CA 94965	<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: United National Insurance Comp INSURER B: Sentinel Insurance Company, Lt INSURER C: INSURER D: INSURER E: INSURER F:
(415) 729-9002	NAIC # 13064 11000

**COVERAGES**

CERTIFICATE NUMBER: Cert ID 3909

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y		41SBAF08617	02/16/2021	02/16/2022	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>Errors and Omissions</b>  Claims Made			MEO0815508 Retro Date: 7/21/2006	07/24/2021	07/24/2022	Per Claim \$ 1,000,000 Aggregate \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

On Call Right of Way Management Services 2021

County of Sonoma, its Officers, Agents and Employees are Additional Insured per the Business Liability Coverage Form SS0008 attached to this policy.

**CERTIFICATE HOLDER****CANCELLATION**

County of Sonoma  2300 County Center Drive, Suite B100 Santa Rosa CA 95403	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/30/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> UNITED GENERAL INSURANCE 35 MITCHELL BLVD STE 3 SAN RAFAEL, CA 94903	<b>CONTACT NAME:</b> KYLE GILBERT	
	<b>PHONE (A/C, No, Ext):</b> 415-922-7283 <b>FAX (A/C, No):</b>	
<b>INSURED</b> KATHY WOOD & ASSOCIATES 215 CALEDONIA ST STE 303 SAUSALITO, CA 94965	<b>E-MAIL ADDRESS:</b> UNITEDGENERAL61@GMAIL.COM	
	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
	<b>INSURER A:</b> UNITED FINANCIAL CASUALTY CO	
	<b>INSURER B:</b> (PROGRESSIVE INSURANCE COMPANY)	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

<b>COVERAGES</b>	<b>CERTIFICATE NUMBER:</b>	<b>REVISION NUMBER:</b>
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		06526336-9	9/10/2021	03/10/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N N/A If yes, describe under DESCRIPTION OF OPERATIONS below					WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

PLEASE REFERENCE: ON CALL RIGHT OF WAY MANAGEMENT SERVICES 2021

**CERTIFICATE HOLDER**

SONOMA COUNTY DEPARTMENT OF TRANSPOR  
AND PUBLIC WORKS  
2300 COUNTY CENTER DR STE B100  
SANTA ROSA, CA 95403

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE





P.O. BOX 8192, PLEASANTON, CA 94588

**CERTIFICATE OF WORKERS' COMPENSATION INSURANCE****ISSUE DATE: 10-11-2021****GROUP:**  
**POLICY NUMBER: 9031318-2020**  
**CERTIFICATE ID: 19**  
**CERTIFICATE EXPIRES: 11-01-2021**  
**11-01-2020/11-01-2021****COUNTY OF SONOMA DTPW**  
**DAVID CAMERON**  
**2300 COUNTY CENTER DR STE B100**  
**SANTA ROSA CA 95403-3012****NA**

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period that will expire or did expire as indicated above.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

A handwritten signature in black ink, appearing to read "Karl R. La...".

Authorized Representative

A handwritten signature in black ink, appearing to read "Vernon Steiner".

President and CEO

**UNLESS INDICATED OTHERWISE BY ENDORSEMENT, COVERAGE UNDER THIS POLICY EXCLUDES THE FOLLOWING: THOSE NAMED IN THE POLICY DECLARATIONS AS AN INDIVIDUAL EMPLOYER OR A HUSBAND AND WIFE EMPLOYER; EMPLOYEES COVERED ON A COMPREHENSIVE PERSONAL LIABILITY INSURANCE POLICY ALSO AFFORDING CALIFORNIA WORKERS' COMPENSATION BENEFITS; EMPLOYEES EXCLUDED UNDER CALIFORNIA WORKERS' COMPENSATION LAW.**

**EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.**

**ENDORSEMENT #2065 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 11-01-2012 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.**

EMPLOYER

**WOOD, KATHLEEN DBA: KATHY WOOD & ASSOCIATES**  
**215 CALEDONIA ST STE 303**  
**SAUSALITO CA 94965**

[JG3,CS]