

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE COUNTY OF PLACER AND GHIRADELLI ASSOCIATES**

CONTRACT NO. 001282

ADMINISTERING  
AGENCY: DEPARTMENT OF PUBLIC WORKS

DESCRIPTION: PROFESSIONAL SERVICES AGREEMENT (PSA) FOR CONSTRUCTION  
MANAGEMENT SERVICES, CONSTRUCTION INSPECTION, MATERIAL  
TESTING, AND RELATED SERVICES FOR THE CROSSWALK  
ENHANCEMENT PROJECT

FEDERAL AID PROJECT HSIPL-5919(130)

This AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
by and between the COUNTY OF PLACER, hereinafter referred to as "COUNTY", and Ghirardell  
Associates, located in Roseville, California, hereinafter referred to as "CONSULTANT," and collectively,  
"PARTIES."

WITNESSETH

WHEREAS, pursuant to California Government Code section 31000, the COUNTY may contract with  
independent contractors for the furnishing of such services to or for the COUNTY or any Department  
thereof; and

WHEREAS, the COUNTY requires qualified professional engineering services to perform construction  
management services, construction inspection, and material testing, and optional construction staking for  
the CROSSWALK ENHANCEMENT PROJECT and related support services; and

WHEREAS, CONSULTANT is duly qualified and has the required experience to provide such services  
and is willing to perform such services; and

WHEREAS, COUNTY desires to retain the services of CONSULTANT to perform required professional  
services.

THEREFORE, it is agreed by COUNTY and CONSULTANT as follows:

**1. BASIS OF AGREEMENT**

CONSULTANT hereby agrees to provide professional services as an independent contractor for  
Construction Management Services for the CROSSWALK ENHANCEMENT PROJECT as described in  
Exhibit A entitled "Scope of Services" attached hereto and by this reference incorporated herein. In  
exchange, COUNTY agrees to pay CONSULTANT as set forth below.

The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of  
CONSULTANT'S expenses incurred in the performance hereof, including travel and per diem, unless  
otherwise expressly so provided. If there is any conflict between the approved Cost Proposal and this  
contract, this contract shall take precedence.

The COUNTY'S fiscal obligation under this AGREEMENT shall not exceed \$110,695.00.

## **2. EXHIBITS, MERGER CLAUSE**

This following exhibits and attachments are attached to this AGREEMENT and incorporated into this AGREEMENT by this reference:

Exhibit A	Scope of Services
Exhibit B	Location Map
Exhibit C	Payment Schedule
Exhibit D	Cost Proposal and Rate Schedules
Exhibit E	Form 10-O2 Consultant Contract DBE Commitment

This AGREEMENT, including the Exhibits and Attachments attached to this AGREEMENT and incorporated by reference, constitutes the sole AGREEMENT between the Parties and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this AGREEMENT conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this AGREEMENT, the provisions of the body of the AGREEMENT shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding.

## **3. AMENDMENTS**

No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing with written approval by the COUNTY'S Director of Public Works or designee and the authorized agent of the CONSULTANT. No oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by COUNTY'S Project Manager.

There shall be no change in CONSULTANT'S Project Manager or members of the project team, as listed in the approved Exhibit D: Cost Proposal and Rate Schedules which is a part of this contract without prior written approval by COUNTY'S Project Manager.

## **4. SERVICES OF CONSULTANT**

The professional services required of the CONSULTANT under this AGREEMENT shall consist of the tasks as described in Exhibit A: Scope of Services

CONSULTANT shall employ the customary skills and resources reasonably available to the CONSULTANT in accordance with sound engineering practices. The professional services shall be performed by or shall be immediately supervised by a principal or senior engineer, currently registered as a professional engineer in the State of California. The responsible engineer shall sign/seal all plans, specifications, estimates and engineering data furnished by him/her where appropriate indicating professional registration number.

CONSULTANT shall submit progress reports at least once a month. The reports should be sufficiently detailed for COUNTY'S Project Manager to determine, if the 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 Project Manager or Project Engineer, as needed, to discuss progress on the project.

CONSULTANT shall provide the COUNTY with copies of all documents prepared by CONSULTANT during the course of this contract as specified in the attached exhibits. All such documents shall become the property of the COUNTY.

**5. SERVICES TO BE PROVIDED BY COUNTY**

COUNTY will provide the following services or items to CONSULTANT:

- A. Copies of Project data developed to date

**6. TERM, PERFORMANCE PERIOD**

This AGREEMENT shall go into effect on \_\_\_\_\_, 2021, contingent upon approval by COUNTY and shall end on December 31, 2025, by which date CONSULTANT agrees to complete all tasks listed in Exhibit A: Scope of Services.

CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on the COUNTY until the AGREEMENT is fully executed and approved by the COUNTY.

**7. TERMINATION, SUSPENSION, ABANDONMENT, WITH OR WITHOUT CAUSE**

- A. COUNTY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY.
- B. This AGREEMENT may be terminated by COUNTY, provided that COUNTY gives not less than thirty (30) calendar days' written notice of intent to terminate. Upon termination, COUNTY shall be entitled to all work, including but not limited to reports, investigations appraisals, inventories, studies, analyses, drawings, and data estimates performed to that date, whether completed or not.
- C. COUNTY may temporarily suspend this AGREEMENT, at no additional cost to COUNTY, provided that CONSULTANT is given written notice of temporary suspension. If COUNTY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- D. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this AGREEMENT by CONSULTANT, and COUNTY may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due to COUNTY from CONSULTANT is determined.
- E. In the event of termination, COUNTY shall pay CONSULTANT the sum due to CONSULTANT under this AGREEMENT prior to termination, unless the cost of completion to COUNTY exceeds the funds remaining in the contract, in which case the overage shall be deducted from any sum due CONSULTANT under this contract.

- F. COUNTY may suspend or abandon, by written notice, all or a portion of the work under this AGREEMENT for any reason. CONSULTANT may request that all or a portion of the work under this AGREEMENT be suspended or abandoned for any reason by notifying COUNTY in writing. Suspension or abandonment shall only be valid upon receipt of written approval of the request by COUNTY.

**8. ALLOWABLE COSTS AND PAYMENTS**

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT'S Exhibit D: Cost Proposal and Rate Schedules. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fees. These rates are not adjustable for the performance period set forth in this AGREEMENT.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the Exhibit D: Cost Proposal and Rate Schedules and in the executed AGREEMENT.
- C. CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in Exhibit D: Cost Proposal and Rate Schedules. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.
- E. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the COUNTY Project Manager before exceeding such estimate.
- F. CONSULTANT shall not commence performance of work or services until this contract has been approved by COUNTY, and notification to proceed has been issued by COUNTY'S Project Manager. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- G. No expenditures are authorized on a project and work shall not commence until this AGREEMENT has been executed by COUNTY.
- H. CONSULTANT will be reimbursed within thirty (30) days upon receipt y COUNTY'S Project Manager of itemized invoices in duplicate. Invoices shall be submitted no later than forty-five (45) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Credits due COUNTY that include any equipment purchased under the provisions this AGREEMENT, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to COUNTY'S Contract Manager.

County Contract/Project Manager: Phil Vassion, P.E.  
Associate Civil Engineer  
Placer County Department of Public Works  
3091 County Center Drive, Suite 220  
Auburn, California 95603

- I. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in this AGREEMENT, no payment will be made until the deliverable has been satisfactorily completed.

## **9. RELATIONSHIP OF PARTIES**

CONSULTANT agrees and understands that the work/services performed under this AGREEMENT are performed as an independent contractor and not as an employee of COUNTY and that neither CONSULTANT nor its employees acquire any of the rights, privileges, powers, or advantages of COUNTY employees.

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

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

## **10. NON-ASSIGNABILITY; SUBCONTRACTING**

Except as expressly authorized herein, CONSULTANT'S obligations under this AGREEMENT are not assignable or transferrable, and CONSULTANT shall not subcontract any work without the prior written approval of COUNTY. However, claims for money due or which become due to CONSULTANT from COUNTY under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy without such approval. Notice of assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to COUNTY.

Nothing contained in this AGREEMENT or otherwise, shall create any contractual relationship between the COUNTY and any subconsultant and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT shall be as fully responsible to the 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 the CONSULTANT. The CONSULTANT'S obligation to pay its subconsultants is an independent obligation from the COUNTY'S obligation to make payments to the CONSULTANT.

CONSULTANT shall pay its subconsultant(s) within fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the COUNTY.

Any subcontracts entered into as a result of this AGREEMENT shall contain all applicable provisions of this entire AGREEMENT.

## **11. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.

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

## **12. RETENTION OF RECORDS/AUDIT**

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

## **13. AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT shall be reviewed by COUNTY'S Auditor-Controller.
- B. Not later than 30 calendar days after issuance of the final audit report, CONSULTANT may request a review by COUNTY'S Auditor-Controller of unresolved audit issues. The request for review will be submitted in writing.
- C. 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.
- D. CONSULTANT and subconsultant agreements, including Exhibit D: Cost Proposal and Rate Schedules 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 Certified Public Accountant (CPA) Indirect Cost (Overhead) Audit Work paper Review. If selected for audit or review, the agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instance of a CPA ICR Audit Workpaper Review, it is the CONSULTANT'S responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies if necessary. The AGREEMENT, Cost Proposal, and ICR shall be adjusted by the CONSULTANT and approved by the COUNTY Project 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 the COUNTY

at its sole discretion. Refusal by the 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 the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

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

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

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%), the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%), the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%), the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
  3. If the CONSULTANT fails to comply with the provisions of this section, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth 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: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of COUNTY; and (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO COUNTY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between COUNTY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

#### **14. EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES**

- A. Prior authorization in writing, by the COUNTY'S Project Manager shall be required before the CONSULTANT enters into any unbudgeted purchase order or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or subconsultant services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in the CONSULTANT'S approved Cost Proposal and exceeding \$5,000 with prior authorization by the COUNTY'S Project Manager, three competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract 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, the COUNTY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the 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 the COUNTY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT'S expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the COUNTY and the CONSULTANT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY."
  2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

#### **15. STATE PREVAILING WAGE RATES**

- A. No CONSULTANT or subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code § 1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of



Transportation's Regional / District Labor Compliance Officer  
(<https://dot.ca.gov/programs/construction/labor-compliance>).

These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code § 1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at COUNTY construction sites, at COUNTY facilities, and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve COUNTY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

C. 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.
  - 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 representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
  - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
  - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
  - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the COUNTY Project Manager by both email and regular mail on the business day following receipt of the request.
3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by COUNTY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
5. The CONSULTANT shall inform COUNTY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to COUNTY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by COUNTY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.

E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the COUNTY Project Manager.

F. Penalty

1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code § 1774 and § 1775. Pursuant to Labor Code § 1775, the CONSULTANT and any Subconsultant shall forfeit to the COUNTY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§ 1770 to 1780, inclusive.
2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code § 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the 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, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
  - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code § 1813.
5. Pursuant to Labor Code §1775, COUNTY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
  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, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by COUNTY.

#### G. Hours of Labor

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

#### H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Codes §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to

apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code § 1777. 7.

## **16. CONFLICT OF INTEREST**

CONSULTANT warrants and covenants that no official or employee of the COUNTY, nor any business entity which an official of the COUNTY has an interest, has been employed or retained to solicit or aid in the procuring of this AGREEMENT, nor that any such person will be employed in the performance of this AGREEMENT without immediate divulgence of such fact to the COUNTY.

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

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

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

CONSULTANT further certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT, will bid on any construction subcontracts included within the construction contract. An affiliated firm is one which is subject to the control of the same persons, through joint ownership or otherwise. Additionally, CONSULTANT certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract.

## **17. HOLD HARMLESS AND INDEMNIFICATION**

The CONSULTANT hereby agrees to protect, defend, indemnify, and hold PLACER COUNTY free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PLACER COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of PLACER COUNTY) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of this contract or agreement to the extent that the above arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct (all whether by act, error and/or omission) of the CONSULTANT. CONSULTANT'S obligation shall include the duty to defend PLACER COUNTY as set forth in California Civil Code Sections 2778 and 2782.8. This provision is not intended to create any cause of action in favor of any third party against CONSULTANT or PLACER COUNTY or to enlarge in any way the CONSULTANT'S liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from CONSULTANT'S performance pursuant to this contract or agreement.

As used above, the term PLACER COUNTY means the County of Placer, its officers, agents, employees, and volunteers.

## 18. INSURANCE

CONSULTANT shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-VII showing.

### A. Workers Compensation and Employer's Liability Insurance

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to CONSULTANT'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

1. Cancellation Notice: "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."
2. Waiver of Subrogation: The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this AGREEMENT by the CONSULTANT.
3. CONSULTANT shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

### B. General Liability Insurance

Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CONSULTANT, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

1. Contractual liability insuring the obligations assumed by CONSULTANT in this AGREEMENT.

One of the following forms is required:

1. Comprehensive General Liability;
2. Commercial General Liability (Occurrence); or
3. Commercial General Liability (Claims Made).

If CONSULTANT carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

1. One million dollars (\$1,000,000) each occurrence
2. Two million dollars (\$2,000,000) aggregate

If CONSULTANT carries a Commercial General Liability (Occurrence) policy:

1. The limits of liability shall not be less than:
  - a. One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
  - b. One million dollars (\$1,000,000) for Products-Completed Operations
  - c. Two million dollars (\$2,000,000) General Aggregate
2. If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

Special Claims Made Policy Form Provisions:

CONSULTANT shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

1. The limits of liability shall not be less than:
  - a. One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
  - b. One million dollars (\$1,000,000) aggregate for Products Completed Operations
  - c. Two million dollars (\$2,000,000) General Aggregate
2. The insurance coverage provided by CONSULTANT shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

#### C. Conformity of Coverages

If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the COUNTY as noted above. In no cases shall the types of policies be different.

#### D. Endorsements

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

1. "The County of Placer, their officers, agents, employees, and volunteers are to be covered as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this AGREEMENT."

2. "The insurance provided by the CONSULTANT, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
3. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

E. Automobile Liability Insurance

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

F. Professional Liability Insurance (Errors & Omissions)

Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

If CONSULTANT sub-contracts in support of CONSULTANT'S work provided for in the AGREEMENT, Professional Liability Insurance for Errors shall be provided by the subcontractor in an amount not less than one million dollars (\$1,000,000) in aggregate.

The insurance coverage provided by the CONSULTANT shall contain language providing coverage up to one (1) year following completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

G. Additional Requirements

1. Premium Payments: The insurance companies shall have no recourse against the COUNTY and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.
2. Policy Deductibles: The CONSULTANT shall be responsible for all deductibles in all of the CONSULTANT'S insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.
3. CONSULTANT'S Obligations: CONSULTANT'S indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this AGREEMENT.
4. Verification of Coverage: CONSULTANT shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT'S obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

5. Material Breach: Failure of the CONSULTANT to maintain the insurance required by this AGREEMENT, or to comply with any of the requirements of this section, shall constitute a material breach of the entire AGREEMENT.

**19. GENERAL COMPLIANCE WITH LAWS**

The CONSULTANT shall exercise usual and customary care in its efforts to comply with applicable Federal, State, and local laws, statutes, rules and regulations in effect as of the date of this AGREEMENT. CONSULTANT agrees to comply with any directives or regulations issued by the California State Department of Industrial Relations or any other regulatory body of competent jurisdiction.

**20. GOVERNING LAW; JURISDICTION; VENUE**

The Parties enter into this AGREEMENT in the County of Placer, California and agree to comply with all applicable laws and regulations therein. The laws of the State of California shall govern this AGREEMENT'S interpretation and effect. For litigation purposes, the parties agree that the proper venue for any dispute related to the AGREEMENT shall be the Placer County Superior Court. The Parties each waive any federal court removal and/or original jurisdiction rights they may have.

If any part of this AGREEMENT is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this AGREEMENT shall be in full force and effect.

**21. REBATES, KICKBACKS 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 this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

**22. NONDISCRIMINATION CLAUSE & STATEMENT OF COMPLIANCE**

- A. The CONSULTANT'S signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code § 12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT'S benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.



- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12990 et seq.), the applicable regulations promulgated there under (2 CCR § 11000 et seq.), the provisions of Gov. Code §§ 11135-11139.5, and the regulations or standards adopted by COUNTY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth at 2 CCR §§ 8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the 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.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. CONSULTANT shall comply with regulations relative to non-discrimination in federally assisted programs of the U.S. Department of Transportation (49 CFR Part 21 -Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR § 21.5, including employment practices and the selection and retention of subconsultants.

**23. DEBARMENT AND SUSPENSION CERTIFICATION**

- A. CONSULTANT'S signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
  - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  - 3. Does not have a proposed debarment pending; and
  - 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

- B. Any exceptions to this certification must be disclosed to 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.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

**24. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION**

- A. This AGREEMENT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". CONSULTANTS who enter into a federally funded agreement will assist the COUNTY in a good faith effort to achieve California's statewide overall DBE goal.
- B. The goal for DBE participation for this AGREEMENT is 10%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in Exhibit E: Form 10-O2 Consultant Contract DBE Commitment attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace it with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Caltrans Local Assistance 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.
- D. DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of AGREEMENTS financed in whole or in part with federal funds. The COUNTY, CONSULTANT, or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the COUNTY 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 the contractor from future bidding as non-responsible
- E. A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 CFR § 26.53(f). Prior to requesting COUNTY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR § 26.53(f). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace it with another DBE subconsultant, if the goal is not otherwise met.
- F. CONSULTANT shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of CONSULTANT) pursuant to prior written authorization of the COUNTY'S Project Manager.

- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime CONSULTANT'S shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. Upon completion of the AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, Caltrans Local Assistance Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) First-Tier Subconsultants, certified correct by CONSULTANT or CONSULTANT'S authorized representative and shall be furnished to the Project Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Project Manager.
- L. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to COUNTY'S Project Manager within thirty (30) calendar days.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

## **25. FUNDING REQUIREMENTS**

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

- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to COUNTY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or COUNTY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.

## **26. CONTINGENT FEES**

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

## **27. DISPUTES**

All claims, counterclaims, disputes, and other matters in question between COUNTY and CONSULTANT that cannot be settled by agreement between the parties, other than an audit, will be presented to the Board of Supervisors of COUNTY for consideration. In the event the Board of Supervisors cannot resolve the matter or matters to the satisfaction of the parties, either party may undertake whatever legal actions against the other, as it deems necessary.

Not later than 30 calendar days after completion of all work under the AGREEMENT, CONSULTANT may request review by COUNTY'S Board of Supervisors of unresolved claims or disputes, other than audit. The request will be submitted in writing.

Neither the pendency of a dispute, nor its consideration by the Board of Supervisors will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

## **28. 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.

## **29. 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 § 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.

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

**30. OWNERSHIP OF DATA**

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

**31. CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR**

- A. 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 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 for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT'S personnel that COUNTY considers essential to assist in defending against construction 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.

- C. 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 to resolve the construction claims.

### **32. CONFIDENTIALITY OF DATA**

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

### **33. 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.

### **34. EVALUATION OF CONSULTANT**

CONSULTANT'S performance will 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 AGREEMENT record.

**35. RETENTION OF FUNDS**

No retainage will be held by the COUNTY from progress payments due the CONSULTANT. Any retainage held by CONSULTANT or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within thirty (30) calendar days after the subconsultant's work is satisfactorily completed. Federal law (49 C.F.R. § 26.29) requires that any delay or postponement of payment over thirty (30) calendar days may take place only for good cause and with the COUNTY'S prior written approval. Any violation of this provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Business and Professions Code § 7108.5. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.

**36. NOTICES**

Any notice, request, demand, or other communication required or authorized under this Agreement shall be deemed to be properly given when either:

- A. Delivered personally to the person below, as of the date of delivery; or
- B. Emailed to the email address listed below, as of the date the email is sent; or
- C. Mailed to the physical address listed below by U.S. Mail or similar service, with postage prepaid and properly addressed, as of the date of postmark.

COUNTY:                   Attn: Phil Vassion  
Placer County Department of Public Works  
3091 County Center Drive, Suite 220  
Auburn, California 95603  
Phone: (530) 745-7522

CONSULTANT:           Attn: Gina Prchlik  
Ghirardelli Associates  
2990 Lava Ridge Ct., Ste 120  
Roseville, CA 95661  
Phone: (916) 757-6006

**37. COUNTERPARTS; ELECTRONIC SIGNATURES**

This AGREEMENT may be executed in duplicate counterparts. Each counterpart shall be an original and both together shall constitute but one and the same document. This AGREEMENT shall not be deemed executed unless and until at least one counterpart bears the signatures of all parties' designated signatories.

In addition, this AGREEMENT and future documents relating to this AGREEMENT may be digitally signed in accordance with California law. Any party to this AGREEMENT may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this AGREEMENT.

IN WITNESS WHEREOF, the parties have hereunto set their hands the year and date first above written.

**GHIRARDELL ASSOCIATES  
("CONTRACTOR")\***

**COUNTY OF PLACER ("COUNTY")**

\_\_\_\_\_  
Signature **\*Notarized**

\_\_\_\_\_  
Print Name

Chair of the Board,  President, or  
 Vice President

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

\_\_\_\_\_  
Ken Grehm, Director  
Department of Public Works

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

\_\_\_\_\_  
Signature **\*Notarized**

\_\_\_\_\_  
Print Name

Secretary,  Asst. Secretary,  
 Chief Financial Officer, or  Asst. Treasurer

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

Approved as to Funds  
Placer County Auditor-Controller

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

**EXHIBITS:**

- Exhibit A: Scope of Services
- Exhibit B: Location Map
- Exhibit C: Payment Schedule
- Exhibit D: Cost Proposal and Rate Schedules
- Exhibit E: Form 10-O2 Consultant Contract DBE Commitment
- Exhibit F: Form 10-K Certifications

Approved as to Form  
Office of Placer County Counsel

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

\*If Contractor is a corporation, the Agreement must be signed by two corporate officers, one from each category above. (See California Corporations Code § 313.) One signature will suffice, if the corporation's board of directors has passed a resolution that gives one person authority to sign. In that case, a copy of the most recent resolution must be attached to this Agreement.

If Contractor is another type of business entity, such as a partnership or limited liability company, the Agreement must be signed by an officer possessing the legal authority to bind the entity. A copy of a resolution, partnership agreement, operating agreement, or other evidence of authority must be attached to this Agreement.



**EXHIBIT A**  
**SCOPE OF SERVICES (August 5, 2021)**  
**CROSSWALK ENHANCEMENT PROJECT**  
**PLACER COUNTY**  
**DEPARTMENT OF PUBLIC WORKS**

**Task 1 – Constructability Review**

The CONSULTANT will review the project documents to become familiar with design intent prior to the start of construction. Documents to be reviewed include plans, specifications, permits, agreements, Resident Engineer's files, project schedules, temporary construction easements, right-of-way information, environmental impact report and/or geotechnical reports. The CONSULTANT will look for ambiguities, omissions, and constructability issues, and identify crucial aspects such as measurement and payment clauses, schedule constraints, staging details, and submittal review times. The CONSULTANT will pay special attention to items that could impede construction or become an unidentified constraint on the progress of the Project and suggest changes to the County as necessary.

**Task 2 – Attend Meetings**

The CONSULTANT will be available to attend and participate in preconstruction conferences, weekly progress meetings, safety meetings, public outreach meetings, utility coordination meetings and any other project specific meetings at the discretion of the County's Resident Engineer. The CONSULTANT's role will be to acquire project information, provide field status, contribute towards resolution issues, coordinate action items, and take minutes as needed.

**Task 3 – Monitor Contractor's Work**

The CONSULTANT will serve as the front line of quality assurance of the contractor's work, and as the eyes and ears to identify potential problems such as utility conflicts, schedule issues, and design ambiguities, before they occur. Primary inspection services will include the following:

- Provide day-to-day written inspection reports on all activities performed by the contractor
- Determine whether work complies with the project plans, specifications, contract documents, County's standards, Caltrans' requirements, and project permits; and approve/ reject work accordingly
- Document daily activities, manpower, equipment, materials, and extra work using daily diaries
- Verify that the contractor is implementing the safety plan and safe practices in accordance with Cal/OSHA regulations
- Monitor BMPs per the approved SWPPP
- Schedule quality assurance material testing, and coordinate corrective measures, as required, for failing materials
- Identify any potential flaws in the constructed product and provide feedback on proposed remedial action from the contractor
- Perform quantity calculations based on completed work for progress payments
- Take progress photos of the work and field conditions
- Prepare a punch list and update as-built drawing records as the work progresses
- Monitor traffic detours/lane closures and verify that they are re-opened in a timely manner.
- Be available to residents to discuss their concerns and answer questions in a courteous manner

#### **Task 4 – Prepare Daily Inspection Reports**

The CONSULTANT will document daily activities using a daily report form approved by the County. The CONSULTANT will record information such as weather conditions, names and classification of all workers, subcontractors working on site, quantities of materials incorporated into the project, construction equipment at the site, deliveries of construction materials, material shortages, tests, labor compliance, general observations, and any unusual occurrences. The onsite inspector will be equipped with a laptop computer to maintain this information on a daily basis.

#### **Task 5 – Measure, Calculate and Verify Pay Quantities for Progress Payments**

The CONSULTANT will record and maintain field measurements of all bid item quantities as they are constructed in the field. On a monthly basis, the inspector will calculate the units of work completed for each pay item for the development of the monthly progress payment. Additionally, the inspector will review the contractor's applications for payment and assist the Resident Engineer with negotiating any differences between the amount requested and the engineer's measure quantities for work completed.

#### **Task 6 – Conduct Employee Interviews**

The CONSULTANT will assist the County with labor compliance verification by conducting contractor and subcontractor employee interviews using State Exhibit 16-N, "Employee Interview: Labor Compliance/EEO". The CONSULTANT will provide the information to the County in order to cross-reference with the contractor's certified payrolls and verify compliance with County, State, and federal guidelines.

#### **Task 7 – Maintain Photographic Record of Progress**

Prior to construction, the CONSULTANT will take photographs of the project sites to document the preconstruction conditions, create a visual record of existing utilities, property conditions, physical constraints, drainage conditions, etc. This information can be used to determine if facilities were damaged due to the contractor's activities and substantiate or refute future claims of differing site conditions. Throughout construction, our inspector will continue to take daily photographs of construction progress, change order work, unusual operations, and milestones events.

#### **Task 8 – Assist with Public Outreach**

The CONSULTANT will work with the County to help the local community keep informed about project activities and understand the effects of construction. The CONSULTANT will work with the contractor to develop a specific plan to make sure driveway and street access is maintained. The CONSULTANT will also meet face to face with the property owners to inform them of any changes due to construction and to confirm their needs and concerns are met.

#### **Task 9 – Submittal Review**

The CONSULTANT will assist the County with reviewing the contractor's submittals during construction. The status of submittals will be accounted for in the submittal log. The CONSULTANT will review submittals if appropriate and/or forward them to the the County. If necessary, the CONSULTANT will assist with meetings with the contractor and reviewing parties to discuss and resolve issues.

### **Task 10 – Review RFI's, CCO's, and Daily Extra Work Forms**

The CONSULTANT will provide technical input on requests for information and contract change orders. The CONSULTANT will assist the Resident Engineer with reviewing the plans and specifications in order to establish the intent of the contract documents. This information can be used to determine if additional input is need from the Designer. He will also aid with evaluating proposed change order costs and schedule impacts. Once an RFI or CCO has been finalized, our inspector will become familiar with the new information and verify the changes or clarification are put into place in the field. He will track change order work separately from item work and verify additional costs using daily extra work reports signed by both parties. These can be used to accurately justify future extra work bills submitted by the contractor.

### **Task 11 – Materials Testing**

The CONSULTANT will provide materials testing and specialty inspections. Materials testing will include material compliance sampling and testing per project specifications, the Placer County Quality Assurance Program (QAP) Manual, and the Caltrans Construction Manual "Frequency Tables." Anticipated field materials include:

- Roadway Excavation, Grading, and Compaction
- Utility Trench Backfill
- Unsuitable Material to Remove and Replace
- Minor Concrete
- Aggregate Base
- Hot Mix Asphalt Pavement

### **Task 12 – Project Closeout**

#### **12.1 – Perform Final Inspection**

Items to be corrected or furnished by the construction Contractor before project acceptance will be put in the form of a punch list as the work nears completion. The CONSULTANT will conduct a final inspection with representatives of the County and the Contractor before acceptance of the project.

#### **Task 12.2 – Receive Record Drawings**

Deviations from the design drawings during construction will be noted as they occur on a set of 'As Built' drawings kept by the Contractor. The CONSULTANT will review the individual marked up 'As Built' plans as provided by the Contractor and compile these drawings. These revisions will be documented on one marked up copy of the project plans.

#### **Task 12.3 – Prepare Final Payment Request**

After project acceptance, the CONSULTANT will assist with preparing a proposed final estimate (PFE) to allow the Contractor to make exceptions to the final amount of compensation. Prior to submitting the PFE, the CONSULTANT will meet with the Contractor to attempt to agree on final payment for all contract items and change orders. If the Contractor still objects to the PFE, the CONSULTANT will assist the County in negotiating final settlement with the Contractor and process the final estimate.

**EXHIBIT C**  
**PAYMENT SCHEDULE**  
**CROSSWALK ENHANCEMENT PROJECT**

COUNTY will make payments as provided in this AGREEMENT. All payment requests shall be subject to the following budget. If agreed upon in writing by both Parties, the COUNTY may reallocate budget amounts listed below.

Task No.	Description	Amount (not to exceed)
1	Construction Management, Inspection, Materials Testing and Related Services	\$110,695.00
Total		\$110,695.00