

CONSTRUCTION MANAGEMENT SERVICES AGREEMENT FOR MOVABLE SPAN BRIDGES IN SAN JOAQUIN COUNTY

A-23-_____

THIS AGREEMENT, made and entered into _____, by and between the COUNTY OF SAN JOAQUIN, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Consultant, _____, a _____ corporation, hereinafter referred to as "CONSULTANT."

WITNESSETH:

WHEREAS, COUNTY desires to conduct construction management services for movable span bridges in San Joaquin County hereinafter referred to as "PROJECT"; and

WHEREAS, COUNTY has requested construction management services from CONSULTANT for the PROJECT; and

WHEREAS, CONSULTANT employs experienced, qualified and duly licensed professional engineers; and

WHEREAS, COUNTY desires to engage the services of CONSULTANT for the PROJECT. NOW, THEREFORE, the parties hereto mutually agree as follows:

I - SCOPE OF WORK

A. CONSULTANT shall provide Services in accordance with list of "Tasks" as referenced and defined in Exhibit "A," which is attached hereto and incorporated herein by this reference, all the Tasks are hereinafter referred to as "SCOPE OF WORK." CONSULTANT shall provide all labor, equipment, tools, and facilities necessary to complete all Tasks listed in the SCOPE OF WORK.

B. CONSULTANT represents that all professional personnel required to perform the Tasks under this AGREEMENT have been identified in the CONSULTANT's Statement of Qualifications, which is incorporated herein to the SCOPE OF WORK.

C. CONSULTANT represents that all Services provided pursuant to this AGREEMENT, either by CONSULTANT or at its direction, shall be rendered in accordance with the accepted practices and standards of CONSULTANT's profession, and according to said standards and practices regarding the interpretation of the requirements of COUNTY as set forth herein, and other applicable federal, state, and local agencies.

D. COUNTY reserves the right to make changes, as it deems necessary, for the proper completion of the PROJECT by the CONSULTANT in connection with PROJECT and with implementation of PROJECT. Those changes are hereinafter referred to as "TASK ORDERS". TASK ORDERS shall be authorized and issued by COUNTY's Director of Public Works. TASK ORDERS shall constitute a supplement to this AGREEMENT.

E. Each TASK ORDER shall list the scope of altered or additional Services to be performed, state the time period within which the altered or additional work is to be completed, delineate any special conditions, state the compensation in accordance with the personnel wage rate sheets and other costs set forth in the COST PROPOSAL, include support data for work effort and cost detail, and authorize

CONSULTANT to proceed with the Services detailed in the TASK ORDER. When compensation for a Task is subject to adjustment under the provisions of this section, CONSULTANT shall promptly furnish the authorized COUNTY official with adequate cost data for such Task.

F. CONSULTANT shall perform altered or additional Services as requested by COUNTY only after receipt of a TASK ORDER from COUNTY executed and signed by COUNTY's Director of Public Works and CONSULTANT.

II - SCHEDULE

A. This AGREEMENT shall go into effect on _____, contingent upon approval by COUNTY, and CONSULTANT shall commence work after receipt of notification to proceed by COUNTY'S Contract Administrator. The AGREEMENT shall end on _____, unless extend by written agreement.

B. CONSULTANT is advised that any recommendation for contract award is not binding on COUNTY until this AGREEMENT is fully executed and approved by San Joaquin County Board of Supervisors.

C. Tasks shown in the SCOPE OF WORK shall be performed by CONSULTANT in accordance with the estimated schedule listed in Exhibit "B," which is attached hereto and incorporated herein by this reference, hereinafter referred to as "SCHEDULE."

D. The SCHEDULE may be modified by the written consent of COUNTY, but only in the event that such modifications are necessary due to revisions in the SCOPE OF WORK caused by the COUNTY or other reviewing agency, or for other reasons beyond the reasonable control of CONSULTANT, or it is mutually agreed upon and a written request for modification by CONSULTANT is made at least twelve (12) weeks prior to the end of the SCHEDULE.

III - ALLOWABLE COSTS AND PAYMENTS

A. The method of payment for this contract will be based on actual cost plus a fixed fee. COUNTY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S COST PROPOSAL as referenced and defined in Exhibit "C", unless additional reimbursement is provided for by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds COUNTY's approved overhead rate set forth in the COST PROPOSAL. In the event, that COUNTY determines that a change to the work from that specified in the COST PROPOSAL and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by COUNTY shall be adjusted by written agreement or task order to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by written agreement.

B. In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee which shall not exceed _____, (\$). The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the SCOPE OF WORK and such adjustment is made by written agreement or task order.

C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved COST PROPOSAL.

D. When milestone cost estimates are included in the approved COST PROPOSAL,

CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the SCHEDULE set forth in the SCOPE OF WORK, COUNTY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article IV - Termination.

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

G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each PROJECT as applicable. Invoices shall follow the format stipulated for the approved COST PROPOSAL and shall reference this AGREEMENT number and PROJECT title. Final invoice must contain the final cost and all credits due COUNTY including any equipment purchased under the provisions of Article IX - Equipment Purchase of this AGREEMENT. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:

AWNI TAHA Project Manager
San Joaquin County Department of Public Works
1810 E. Hazelton Avenue
Stockton, CA 95201

H. The total amount payable by COUNTY, including the fixed fee, shall not exceed _____ . 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.

I. COUNTY shall manage and administer task expenditure limits and associated CONSULTANT and subconsultant expenditure limits in accordance with the COST PROPOSAL. If tasks are completed by CONSULTANT and subconsultants and accepted by COUNTY, and if CONSULTANT can verify cost savings that result in available residual unexpended funds, then these amounts shall be identified by CONSULTANT and reported to COUNTY. If CONSULTANT forecasts any task expenditure limit overruns and associated CONSULTANT cost limit overruns or subconsultant cost limit overruns, then these cost overruns shall be identified by CONSULTANT and reported to COUNTY. Prior written COUNTY approval must be secured before any cost overrun can be authorized. If residual unexpended funds are available, then these funds, at COUNTY'S discretion and with prior written COUNTY approval, may be applied to cost overruns as well as additional supplemental work COUNTY may request from CONSULTANT. CONSULTANT shall provide a monthly written summary of progress, critical issues, schedule, and budget performance, etc, and any cost savings or forecasted overruns are to be identified by CONSULTANT and reported to COUNTY.

IV – TERMINATION

A. COUNTY reserves the right to terminate this AGREEMENT upon thirty (30) calendar days' written notice to CONSULTANT with the reasons for termination stated in the notice. CONSULTANT

shall cease work immediately upon receipt of such notice unless directed otherwise by COUNTY to continue work until termination of AGREEMENT takes effect.

B. COUNTY may terminate this AGREEMENT 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. If COUNTY terminates this AGREEMENT with CONSULTANT, 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 AGREEMENT, in which case the overage shall be deducted from any sum due CONSULTANT under this AGREEMENT and the balance, if any, shall be paid to CONSULTANT upon demand.

C. The maximum amount for which COUNTY may be liable if this AGREEMENT is terminated shall not exceed \$_____.

D. Upon termination, CONSULTANT shall immediately turn over to COUNTY all documents, records, papers, plans, drawings, and copies of electronic files, whether finished or not, generated by, or supplied to, CONSULTANT in connection with its performance of services pursuant to AGREEMENT. Costs to assemble, package, and transmit information submitted to COUNTY shall be entirely the responsibility of CONSULTANT and shall not be chargeable in any way to COUNTY. Said documents, records, papers, plans, drawings, and copies of electronic files shall become the property of COUNTY.

E. Except as to any rights or obligations which survive discharge, this AGREEMENT shall be discharged, and the parties shall have no further obligation to each other, upon completion of the PROJECT as certified by CONSULTANT and accepted by COUNTY. The following provisions in this AGREEMENT shall survive discharge: Article XV - DOCUMENTATION AND SERVICES BY CONSULTANT TO COUNTY, and Article XVIII - INDEMNIFICATION.

V - COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to COUNTY.

VI - RETENTION OF RECORDS AND AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq., and Title 21, California Code of Regulations, Chapter 21, Section 2500, et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and COUNTY 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 shall make such materials available at their respective offices at all reasonable times during the AGREEMENT period and for three years from the date of final payment under the AGREEMENT. The State, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its Certified Public Accountant's (CPA) work papers that are pertinent to the AGREEMENT and Indirect Cost Rates (ICR) for audit, examinations,

excerpts, and transactions, and copies thereof shall be furnished if requested.

VII – 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 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 contracts, including cost proposals and 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 AGREEMENT, COST PROPOSAL and ICR, and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31, and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, COST PROPOSAL, and ICR shall be adjusted by CONSULTANT and approved by COUNTY's 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 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 AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

VIII– PERSONNEL AND SUBCONTRACTING

A. Nothing contained in this contract 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.

B. 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.

C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by COUNTY.

D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this AGREEMENT to be applicable to subconsultants.

E. Any substitution of subconsultant(s) must be approved in writing by COUNTY's Contract Administrator prior to the start of work by the subconsultant(s).

IX - EQUIPMENT PURCHASE

A. 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.

B. 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.

C. Any equipment purchased as a result of this contract is subject to the following: "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 contract or, if the contract 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 sale price. If CONSULTANT elects to keep the equipment, fair market value shall be determined, at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable 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." 49 CFR, Part 18, requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the PROJECT.

X - STATE PREVAILING WAGE RATES

A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

B. Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

XI - CONFLICT OF INTEREST

The CONSULTANT affirms that the CONSULTANT presently has no interest that has not been previously disclosed to the COUNTY; and, shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required to be performed under this AGREEMENT; and, in the event of change in either private interests or services under this AGREEMENT, the CONSULTANT will immediately raise with the COUNTY any question regarding possible conflict of interest which may arise as a result of such change. The CONSULTANT further agrees that in the performance of this AGREEMENT, no person having any such interest shall be employed. A potential conflict of interest includes, but is not limited to, work related to contracts with County departments, (other cities), (other parties), local land developers and current clients who may have a financial interest in the outcome of the PROJECT. At the COUNTY's discretion, a potential conflict of interest may be waived or factored into a modified SCOPE OF WORK, as the case may be.

XII- 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, at its discretion, to terminate the AGREEMENT without liability; to pay only for the value of the work actually performed; or to deduct from the agreed to price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

XIII- PROHIBITION OF LOBBYING USING COUNTY, STATE, OR FEDERAL FUNDS

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal, or local agency appropriated funds have been paid, or will be paid by or on behalf of CONSULTANT, to any person for influencing, or attempting to influence, an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

XIV - DOCUMENTATION AND SERVICES BY COUNTY TO CONSULTANT

CONSULTANT shall collect and COUNTY shall furnish access to all information, data, and maps as currently exist in files necessary for carrying out the services as set forth in this AGREEMENT, to CONSULTANT, without charge, and COUNTY shall cooperate in the carrying out of the work without undue delay. CONSULTANT agrees that COUNTY's responsibility to provide access to information is limited to data in COUNTY files and in the format as stored. CONSULTANT shall check and investigate existing information and conditions and notify the COUNTY of any deficiencies that the CONSULTANT discovers.

XV - DOCUMENTATION AND SERVICES BY CONSULTANT TO COUNTY

i. CONSULTANT shall furnish all reports and drawings/plans, in hard copy and electronic format as determined by COUNTY, upon completion of this AGREEMENT or earlier termination. All documents and electronic files including, but not limited to, passwords, source codes, etc., submitted by CONSULTANT to COUNTY shall become the property of COUNTY upon completion of this AGREEMENT or earlier termination. CONSULTANT agrees to provide all required documentation to transfer ownership.

ii. No material prepared in connection with this AGREEMENT shall be subject to copyright in the United States or any other country. All drawings, specifications, documents, and other memoranda relating to work and services hereunder, shall remain or become the property of the COUNTY whether executed by or for the CONSULTANT for COUNTY, or otherwise by or for the CONSULTANT, or by or for a subcontractor operating under the CONSULTANT's supervision, or direction, and all such documents and copies thereof shall be returned or transmitted to COUNTY forthwith upon COUNTY's written demand, termination, or completion of the work under this AGREEMENT.

iii. COUNTY agrees that if COUNTY alters any of the instruments of service, including supporting studies, materials, plans, and other documents delivered to COUNTY by CONSULTANT upon completion of the AGREEMENT or early termination of the AGREEMENT, as provided in Section XI of the AGREEMENT, any use by COUNTY of such instruments of service for this or any other projects shall be at the COUNTY's sole risk and responsibility.

XVI - WORK PRODUCT

COUNTY and CONSULTANT acknowledge and agree that "Work Product," and all components of it, provided or developed by CONSULTANT hereunder or in connection herewith, shall constitute "works made for hire" within the meaning of Title 17 United States Code, Section 101, et seq., (the "Copyright Act"), and all right, title, and interest in and to the Custom Products shall vest in the COUNTY immediately upon development. To the extent any such Custom Products may not be the sole and exclusive property of the COUNTY and/or may not be a "work made for hire" as defined in the Copyright Act upon development, then CONSULTANT agrees to and hereby does sell, transfer, grant, and assign to the COUNTY all copyrights, patents, trade secrets, inventions, and other proprietary rights, title, and interest in and to such Custom Products upon development.

XVII ASSIGNMENT

Both parties shall give their personal attention to the faithful performance of this AGREEMENT and shall not assign, transfer, convey, or otherwise dispose of this AGREEMENT or any right, title, or interest in, or to, the same or any part thereof without the prior written consent of the other party and then only subject to such terms and conditions as the other party may require. A consent to one assignment shall not be deemed to be a consent to any subsequent assignments. Any assignments without such approval shall be void and, at the option of the other party, shall terminate this AGREEMENT and any license, right, or privilege granted herein. This AGREEMENT and interest herein shall not be assignable by operation of law without the prior written consent of the other party.

XVIII - DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

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

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify at date of proposal submitting that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes or work code applicable to the type of work the firm will perform on AGREEMENT. Additionally, the CONSULTANT is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

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

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

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

B. The goal for DBE participation for this AGREEMENT is 2.00%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10- O2: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

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

D. Contract Assurance Under 49 CFR 26.13(b):

CONSULTANT, or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of 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 contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

E. Termination and Substitution of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains 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 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 AGREEMENT.

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. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
3. 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).
4. Listed DBE's work is unsatisfactory and not in compliance with AGREEMENT.
5. Listed DBE is ineligible to work on the project because of suspension or debarment.
6. Listed DBE becomes bankrupt or insolvent.
7. Listed DBE voluntarily withdraws with written notice from AGREEMENT
8. Listed DBE is ineligible to receive credit for the type of work required.
9. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on AGREEMENT.
10. 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 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.

F. Commitment and Utilization

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

COUNTY shall request CONSULTANT to:

1. Notify the COUNTY's project manager or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work

3. Maintain records including:

- Name and business address of each 1 -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 Local Assistance Procedures Manual - Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

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

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to COUNTY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to COUNTY within 30 days of AGREEMENT 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 COUNTY within 90 days of contract acceptance. COUNTY will withhold \$10,000 until the form is submitted. The COUNTY will release the withhold upon submission of the completed form.

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 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 CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

K. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified

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

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

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

XIX- INDEMNIFICATION

A. The CONSULTANT shall, at its expense, defend, indemnify, and hold harmless the County of San Joaquin and its employees, officers, directors, contractors, and agents from and against any losses, liabilities, damages, penalties, costs, fees including, without limitation, reasonable attorneys' fees and expenses from any claim or action including, without limitation, for bodily injury or death, to the extent caused by, or arising from, the negligence or willful misconduct of CONSULTANT, its employees, officers, agents, or subconsultants.

B. The duty of CONSULTANT to indemnify and save harmless as set forth herein, shall include both the duty to indemnify and, at CONSULTANT's own cost and expense, the duty to defend as set forth in Section 2778 of the California Civil Code and as limited in section 2782.8 of the California Civil Code. This duty to defend arises when such claim is made and shall be independent of any finding of negligence. CONSULTANT shall provide legal counsel reasonably acceptable to the COUNTY.

XX- INSURANCE

C. CONSULTANT shall not commence any work until CONSULTANT obtains, at CONSULTANT's own expense, all required insurance that shall be primary, shall name the COUNTY as additional insured, except for professional liability insurance and Workman's Compensation insurance, and shall expressly indicate that such insurance is related to CONSULTANT's activities under this AGREEMENT. CONSULTANT shall furnish certification of insurance within ten (10) calendar days of execution of this AGREEMENT by COUNTY and prior to issuance by COUNTY of the Notice to Proceed. Such insurance must be from an insurer admitted to the State of California and have the approval of COUNTY as to limit, form, and amount. The types of insurance CONSULTANT are required to obtain for the full term of this AGREEMENT will be Commercial General Liability Insurance, Professional Liability Insurance, and Worker's Compensation Insurance. As evidence of specified insurance coverage, COUNTY may, in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies are in force for the specified period during which services will be provided by CONSULTANT. Each policy, or certificate, will bear an endorsement or statement waiving right of cancellation or reduction in coverage without thirty (30) calendar days notice in writing to be delivered by registered mail to COUNTY.

D. Commercial General Liability Insurance - CONSULTANT shall obtain, and keep in force and effect during the term of this AGREEMENT, at the CONSULTANT's own expense, General Liability Insurance on an occurrence based policy, including contractual liability, with a combined single limit in the minimum amount of Five Million Dollars (\$5,000,000), and automobile liability insurance with a combined single limit in the minimum amount of Two Million Dollars (\$2,000,000). Such insurance shall name COUNTY, its officers, agents, its employees, and representatives as additional insured.

E. Professional Liability Insurance - CONSULTANT shall obtain, at CONSULTANT's own expense, and provide evidence of Professional Liability Insurance on an occurrence based policy with an

aggregate limit in the minimum amount of Two Million Dollars (\$2,000,000.00).

F. Workers' Compensation Insurance - CONSULTANT shall take out and maintain, during the life of the AGREEMENT, Workers' Compensation Insurance for all employees of CONSULTANT employed at the site of the PROJECT and, in case any work is sublet, the CONSULTANT shall require subconsultant(s) to similarly provide Workers' Compensation Insurance for all of the latter's employees. If any class of employees engaged in hazardous work under this AGREEMENT at the site of the PROJECT is not protected under the Workers' Compensation Statute, the CONSULTANT shall provide and shall cause any subconsultant to provide insurance for the protection of employees engaged in hazardous work.

G. CONSULTANT, by executing this AGREEMENT, certifies that CONSULTANT is aware of the provisions of Section 3700, et seq., of the Labor Code of the State of California requiring every employer to be insured against the liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that code, and certifies that CONSULTANT will comply with such provisions before commencing the performance of the work of this AGREEMENT.

XXI- WAIVER

In the event that either COUNTY or CONSULTANT shall at any time, or times, waive any breach of this AGREEMENT by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this AGREEMENT whether of the same or any other covenant, condition, or obligation.

XXII- DISPUTES AND REMEDIES

A. Notice of any disputes, claims, or breach raised by CONSULTANT, arising under this AGREEMENT, must be submitted, in writing, to COUNTY within ninety (90) days of the incident(s). If such issues cannot be resolved within ninety (90) days following written notice, and if the parties mutually agree, the claim may be submitted to arbitration. Arbitration, if expressly agreed upon in writing by COUNTY and CONSULTANT, shall be pursuant to the provisions of California Code of Civil Procedure, Section 1280, et seq.

B. At the COUNTY's discretion, COUNTY may elect to raise a dispute or claim by submitting it, in writing, to CONSULTANT. Such dispute or claim would include conditions and time constraints required of CONSULTANT to remedy.

C. Neither the pendency of a dispute nor its consideration will excuse the parties from full and timely performance in accordance with terms of this AGREEMENT.

D. Any legal action or proceeding with respect to this AGREEMENT shall be brought in the courts of the State of California for the County of San Joaquin, or the courts of the United States of America for the Eastern District of California, and in no other courts and, by execution of this AGREEMENT, CONSULTANT hereby accepts such jurisdiction and venue and generally and unconditionally waives any objection, including, without limitation, any objection to the laying of venue or based on the grounds of *forum non conveniens*.

XXIII- COSTS AND ATTORNEY'S FEES

In any action brought by a party to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorney's fees and costs, including the reasonable value of any services provided by in-house counsel. The reasonable value of services provided by either party's counsel shall be capped at the hourly rate charged by Deputy County Counsel IV attorneys in the office of the County Counsel of San Joaquin County, California.

XXIV- NO CONTINGENT FEE

The CONSULTANT represents that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this AGREEMENT; and that he/she has not paid, or agreed to pay, any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon, or resulting from, the award or formation of this AGREEMENT. For breach or violation of this representation, COUNTY shall have the right to annul this AGREEMENT without liability, or at its discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

XXV- 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 CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to COUNTY.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

XXVI - TITLE VI ASSURANCES

During the performance of this Agreement, CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

A. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

B. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.

E. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
- ii. cancellation, termination or suspension of the Agreement, in whole or in part.

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

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

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the

terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not;

- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C.1681 et seq).

XXVII-NOTIFICATION

All notices and communications that may be required under this AGREEMENT shall be in writing and shall be given by personal service, registered mail, or overnight delivery to the person named at the address shown below:

COUNTY: AWNI TAHA
 Project Manager
 San Joaquin County Department of Public Works
 1810 E. Hazelton Avenue
 Stockton, CA 95201

CONSULTANT:

XXVIII- AGREEMENT CONTAINS ALL UNDERSTANDING

This AGREEMENT represents the entire integrated AGREEMENT between COUNTY and CONSULTANT, and supersedes all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument signed by both COUNTY and CONSULTANT. This AGREEMENT shall be governed by the laws of the State of California

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed on the day and year first above written.

COUNTY OF SAN JOAQUIN,
A political subdivision of the State of California.

_____,
, a _____ corporation

By: _____
ROBERT RICKMAN, Chairman
Board of Supervisors
"COUNTY" "CONSULTANT"

By: _____
Name
Title

Clerk of the Board of Supervisors
of the County of San Joaquin, State of California

By: _____

RECOMMENDED FOR APPROVAL

By: _____
FRITZ BUCHMAN, C.E., T.E., CFM
Director of Public Works

APPROVED AS TO FORM

By: _____

MATTHEW DACEY
Deputy County Counsel