

**PROFESSIONAL SERVICES CONTRACT AE24-051**

**With Kimley-Horn and Associates, Inc.**

**Rumble Strip and Curve Warning Signs Project No: 50645**

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*Rumble Strip and Curve Warning Signs (Project No: 50645)*

This contract is made and entered into this 23rd day of July 2024 by and between the County of Ventura, hereinafter referred to as AGENCY, and Kimley-Horn and Associates, Inc., hereinafter referred to as CONSULTANT, regarding CONSULTANT's performance of the work and services described in Exhibit A hereto (the "Work"). CONSULTANT, or a principal of the firm, is registered, licensed, or certified by the State of California as a Traffic Engineer, number 2097.

In consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Scope of Work; Standard of Performance**

AGENCY hereby retains CONSULTANT to perform the Work described in Exhibit A hereto. The Work shall be performed in accordance with the terms and conditions of this contract and the County of Ventura Public Works Agency Consultant's Guide to Ventura County Procedures ("Guide") as amended from time to time, which is on file in the office of the Public Works Agency, and which by reference is made a part hereof. This contract shall take precedence over the Guide in case of conflicting provisions; otherwise they shall be interpreted together. In performing the Work CONSULTANT shall exercise the degree of skill and care customarily exercised by professionals in the State of California when providing similar services with respect to similarly complex work and projects.

**2. Time Schedule**

All Work and any portion thereof separately identified shall be completed within the time provided in the "Time Schedule" attached hereto as Exhibit B. AGENCY will issue a suspension of the contract time if CONSULTANT is delayed by any public agency reviewing documents produced by CONSULTANT under this contract, or solely due to acts or omissions of AGENCY, provided that CONSULTANT promptly notifies AGENCY in writing of such delays.

**3. Fees and Payments**

Payment shall be made monthly, or as otherwise provided, on presentation of a completed AGENCY Consultant Services Invoice Form in accordance with the "Fees and Payment" provisions attached hereto as Exhibit C.

**4. Termination**

AGENCY retains the right to terminate this contract for any reason prior to completion of the Work upon five days written notice to CONSULTANT. Upon termination, AGENCY shall pay CONSULTANT for all Work performed prior to such termination, provided however, that such charges shall not exceed the maximum fee specified in Exhibit C for completion of any separately identified task/phase of the Work which, at the time of termination, has been started by request of AGENCY, plus the outstanding amount of contract retention withheld to date.

**5. Right to Review**

AGENCY shall have the right to review the Work at any time during AGENCY's usual working hours. Review, checking, approval or other action by the AGENCY shall not relieve CONSULTANT of CONSULTANT's responsibility for the accuracy and completeness of the Work.

**6. Work Product**

On completion or termination of the contract, AGENCY shall be entitled to immediate possession of, and CONSULTANT shall promptly furnish, on request, all reports, drawings, designs, computations, plans, specifications, correspondence, data and other work product prepared or gathered by CONSULTANT arising out of or related to the Work (collectively, "Work Product"). AGENCY has a royalty-free

nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and authorize others to use, Work Product for government purposes. CONSULTANT may retain copies of the Work Product for its files. Work Product prepared by CONSULTANT pursuant to this contract shall not be modified by AGENCY unless CONSULTANT's name, signatures and professional seals are completely deleted. CONSULTANT shall not be responsible for any liabilities to AGENCY for the use of such Work Product that is modified by persons other than CONSULTANT. CONSULTANT is authorized to place the following statement on the drawings, specifications and other Work Product prepared pursuant to this contract:

"This drawing [or These specifications], including the designs incorporated herein, is [are] an instrument of professional service prepared for use in connection with the project identified hereon under the conditions existing on [date]. Any use, in whole or in part, for any other project without written authorization of [CONSULTANT's name] shall be at the user's sole risk."

## **7. Errors and Omissions**

Without limiting AGENCY's other available remedies, if a construction change order is required for the subject project as a proximate result of an error or omission of CONSULTANT in the preparation of the construction or survey documents pursuant to this contract, regardless of whether or not such error or omission was the result of negligence, the necessary amendment or supplement to the construction documents required for such change order shall be made by CONSULTANT at no additional charge to AGENCY.

## **8. Correction of Work**

If any Work performed by CONSULTANT does not conform to the requirements and professional standards of this contract, AGENCY may require CONSULTANT to correct the Work until it conforms to said requirements and standards at no additional cost to AGENCY. AGENCY may withhold payment for disputed Work until CONSULTANT correctly performs the Work or the dispute is otherwise resolved in accordance with this contract. When the Work to be performed is of such a nature that CONSULTANT cannot correct its performance, AGENCY may reduce the CONSULTANT's compensation to reflect the reduced value of the Work received by AGENCY. If CONSULTANT fails to promptly correct non-conforming Work, AGENCY may have the Work performed by a third party in conformance with the requirements and professional standards of this contract and charge CONSULTANT, or withhold from payments due CONSULTANT, any costs AGENCY incurs that are directly related to the performance of the corrective work. AGENCY shall not unreasonably withhold or reduce payment for CONSULTANT's Work under this section.

## **9. Sub Consulting**

With the prior written consent of AGENCY, CONSULTANT may engage the professional services of subconsultants for the performance of a portion of the Work ("Subconsultants"). CONSULTANT shall be fully responsible for all Work performed by Subconsultants which must be performed in accordance with all terms and conditions of this contract. All insurance requirements set forth in section 13 below, "Insurance Requirements," shall apply to each Subconsultant, except to the extent such requirements are modified or waived in writing by AGENCY. CONSULTANT shall ensure that each Subconsultant obtains and keeps in force and effect during the term of this contract the required insurance.

## **10. Independent Contractor**

a. No Employment Relationship. CONSULTANT is an independent contractor, and no relationship of employer and employee is created by this contract. Neither CONSULTANT nor any of the persons performing services for CONSULTANT pursuant to this contract, whether said person be a principal, member, partner, officer, employee, agent, volunteer, associate, Subconsultant or otherwise of CONSULTANT, will have any claim under this contract or otherwise against AGENCY for any salary, wages, sick leave, vacation pay, retirement, social security, workers' compensation, disability,

unemployment insurance, federal, state or local taxes, or other compensation, benefits or taxes of any kind. AGENCY is not required to make any deductions from the compensation payable to CONSULTANT under the provisions of this contract. CONSULTANT shall be solely responsible for self-employment Social Security taxes, income taxes and any other taxes levied against self-employed persons. CONSULTANT does not assign such obligation to AGENCY for collection or administration except as may be required by federal and state law.

b. No AGENCY Control of Means and Methods of Performance. Except as otherwise provided in this contract, AGENCY will have no control over the means or methods by which CONSULTANT will perform services under this contract, provided, however, that CONSULTANT will perform services hereunder and function at all times in accordance with approved methods of practice in the professional specialty of CONSULTANT.

c. Third Parties Employed by CONSULTANT. If, in the performance of this contract, any third parties (including, without limitation, Subconsultants) are employed by CONSULTANT, such third parties will be entirely and exclusively under the direction, supervision and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, and other applicable requirements of law will be the responsibility of and determined by CONSULTANT, and AGENCY will have no right or authority over such third parties or the terms of such employment, except as provided in this contract.

d. Compliance with Workers' Compensation Laws. CONSULTANT will comply with all applicable provisions of the Workers Compensation Insurance and Safety Act of the State of California (codified as amended commencing at Labor Code section 3200), including, without limitation, divisions 4 and 5 of the California Labor Code, and all amendments thereto, and all applicable similar state and federal acts or laws, and will indemnify and hold harmless AGENCY from and against all Third Party Claims (defined elsewhere herein) presented, brought or recovered against AGENCY, for or on account of any liability under any of said laws which may be incurred by reason of any services to be performed under this contract.

e. Indemnity for Claims of Employer-Employee Relationship. CONSULTANT agrees to defend, through attorneys approved by AGENCY, indemnify and hold harmless AGENCY and its boards, agencies, departments, officers, employees, agents and volunteers from and against any and all Third-Party Claims (defined elsewhere herein) made against AGENCY based upon any contention by any third party that an employer-employee relationship exists by reason of this contract. CONSULTANT further agrees to hold AGENCY harmless from and to compensate AGENCY for any Third-Party Claims against AGENCY for payment of state or federal income or other tax obligations relating to CONSULTANT's compensation under the terms of this contract. CONSULTANT will not settle or otherwise compromise a Third-Party Claim covered by this subsection without AGENCY's advance written approval. This subsection does not apply to any penalty imposed by any governmental agency that is not caused by or the fault of CONSULTANT.

#### **11. Duty of Loyalty; Conflicts of Interest**

- a. CONSULTANT owes AGENCY a duty of undivided loyalty in performing the Work under this contract, including the obligation to refrain from having economic interests and participating in activities that conflict with AGENCY's interests with respect to the Work and subject project. CONSULTANT shall take reasonable measures to ensure that CONSULTANT and its principals, officers, employees, agents and Subconsultants do not possess a financial conflict of interest with respect to the Work and subject project. CONSULTANT shall promptly inform AGENCY of any matter that could reasonably be interpreted as creating a conflict of interest for CONSULTANT with respect to the Work and subject project. This section is not intended to modify the standard of performance as set forth in Section 1.

- b. CONSULTANT acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that principals, officers, employees and agents of consultants retained by a public agency may be deemed "public officials" subject to the Act if they make or advise AGENCY on decisions or actions to be taken by AGENCY. To the extent AGENCY determines that the Act applies to CONSULTANT or its principals, officers, employees or agents, each designated person shall abide by the Act, including the requirement for public officials to prepare and file statements disclosing specified economic interests, as directed by AGENCY. In addition, CONSULTANT acknowledges and shall abide by the contractual conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.
- c. During the term of this contract CONSULTANT shall not employ or compensate AGENCY's current employees.

## 12. Defense and Indemnification

If this contract is a contract **"for design professional services"** within the meaning of Civil Code section 2782.8, then subsection b. applies, and subsection a. does not apply and is not part of this contract, notwithstanding its inclusion below. Otherwise, subsection a. applies, and subsection b. does not apply and is not part of this contract, notwithstanding its inclusion below.

- a. CONSULTANT agrees to defend, through attorneys approved by AGENCY, indemnify and hold harmless AGENCY and the County of Ventura (if not defined as AGENCY) and their boards, agencies, departments, officers, employees, agents and volunteers (collectively, "Indemnatee") from and against any and all claims, lawsuits, judgments, debts, demands, and liability (including attorney fees and costs) (collectively, "Third Party Claims"), including, without limitation, those arising from injuries or death of persons and/or damage to property, whether against CONSULTANT, AGENCY or others, arising directly or indirectly out of the obligations herein described or undertaken or out of operations conducted or subsidized in whole or in part by CONSULTANT, save and except third party claims arising through the sole gross negligence or sole willful misconduct of Indemnatee. CONSULTANT shall not settle or otherwise compromise a Third-Party Claim covered by this section without AGENCY's advance written approval.
- b. CONSULTANT agrees to defend, through attorneys approved by AGENCY, indemnify and hold harmless AGENCY and the County of Ventura (if not defined as AGENCY) and their boards, agencies, departments, officers, employees, agents and volunteers (collectively, "Indemnatee") from and against any and all claims, lawsuits, judgments, debts, demands and liability (including attorney fees and costs) (collectively, "Third Party Claims"), including, without limitation, those arising from injuries or death of persons and/or damage to property, that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT or its principals, officers, employees, agents or Subconsultants in the performance of this contract. This indemnity provision does not apply to Third Party Claims arising from the sole negligence or willful misconduct of Indemnatee, or to the extent caused by the active negligence of Indemnatee. The cost to defend charged to CONSULTANT or an Indemnatee shall not exceed its proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, CONSULTANT shall meet and confer with Indemnatee and any other defendants regarding unpaid defense costs. In the event AGENCY or Third-Party tenders, a Third-Party Claim to CONSULTANT for defense under this subsection 12.b., AGENCY and CONSULTANT shall meet and confer in good faith and make best efforts to agree to an equitable sharing of the costs of defense between them prior to any determination and apportionment of fault (or if no such determination and apportionment is made) based on the allegations of the claim. CONSULTANT shall not settle or otherwise compromise a Third-Party Claim covered by this section without AGENCY's advance written approval.

### 13. Insurance Requirements

- a. Without limiting CONSULTANT's duty to defend and indemnify AGENCY as required herein, CONSULTANT shall, at CONSULTANT's sole cost and expense and throughout the term of this contract and any extensions hereof, carry one or more insurance policies that provide at least the following minimum coverage:
  - i. Commercial general liability insurance shall provide a minimum of \$1,000,000.00 coverage for each occurrence and \$2,000,000.00 in general aggregate coverage.
  - ii. Automobile liability insurance shall provide a minimum of either a combined single limit (CSL) of \$1,000,000.00 for each accident or all of the following: \$250,000.00 bodily injury (BI) per person, and \$500,000.00 bodily injury per accident, and \$100,000.00 property damage (PD). Automobile liability insurance is not required if CONSULTANT does no traveling in performing the Work.
  - iii. Workers' compensation insurance in full compliance with California statutory requirements for all employees of CONSULTANT in the minimum amount of \$1,000,000.00. This workers' compensation insurance requirement may only be waived by AGENCY in writing if CONSULTANT is a sole proprietor with no employees and CONSULTANT provides AGENCY with evidence of such before commencing any work under the contract.
  - iv. Professional liability (errors and omissions) insurance shall provide a minimum of \$1,000,000.00 coverage per claim and \$2,000,000.00 in annual aggregate coverage.

If CONSULTANT maintains higher limits than the minimums shown above, AGENCY requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to AGENCY.

- b. With respect to any coverage written on a "claims made" basis, CONSULTANT shall, for three years after the date when this contract is terminated or completed, maintain such policy with a retroactive date that is on or before the start date of contract services or purchase an extended reporting period endorsement (tail coverage). AGENCY may withhold final payments due until satisfactory evidence of the continued maintenance of such policy or the tail coverage is provided by CONSULTANT to AGENCY. Such policy shall allow for reporting of circumstances or incidents that may give rise to future claims.
- c. CONSULTANT shall notify AGENCY immediately if CONSULTANT's general aggregate of insurance is exceeded by valid litigated claims in which case additional levels of insurance must be obtained to maintain the above-stated requirements. All required insurance shall be written by a financially responsible company or companies authorized to do business in the State of California. CONSULTANT shall notify AGENCY of any and all policy cancellations within three working days of the cancellation.
- d. The commercial general liability policy shall name AGENCY and the County of Ventura (if not defined as AGENCY) and their respective officials, employees, and agents as additional insureds ("Additional Insureds"). All required insurance shall be primary coverage as respects the Additional Insureds, and any insurance or self-insurance maintained by Additional Insureds shall be in excess of CONSULTANT's insurance coverage and shall not contribute to it. Coverage shall apply separately to each insured, except with respect to the limits of liability, and an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds. Additional Insured coverage shall include both ongoing and completed operations. In

the case of policy cancellation, AGENCY shall be notified by the insurance company or companies as provided for in the policy.

- e. CONSULTANT hereby waives all rights of subrogation against AGENCY, the County of Ventura, all special districts governed by the Board of Supervisors, and each of their boards, directors, employees and agents for losses arising directly or indirectly from the activities or Work under this contract. The commercial general liability, automobile liability and workers' compensation policies shall contain a provision or endorsement needed to implement CONSULTANT's waiver of these rights of subrogation.
- f. Prior to commencement of the Work, CONSULTANT shall furnish AGENCY with certificates of insurance and endorsements effecting all coverage required hereunder. Copies of renewal certificates and endorsements shall be furnished to AGENCY within 30 days of the expiration of the term of any required policy. CONSULTANT shall permit AGENCY at all reasonable times to inspect any policies of insurance required hereunder.
- g. Each insurance policy required above shall state that coverage shall not be canceled except with notice to AGENCY.

#### Claims and Disputes

- a. Administrative Review. Prior to filing a complaint in arbitration against AGENCY seeking payment of money or damages regarding the Work, an extension of contract time, or an interpretation or adjustment of the terms of this contract, including "pass-through" claims asserted by CONSULTANT on behalf of a Subconsultant (collectively referred to hereinafter as "claim"), CONSULTANT shall first exhaust its administrative remedies by attempting to resolve the claim with AGENCY's staff in the following sequence: 1) Project Manager, 2) Deputy Director of Public Works ("Department Director") and 3) Director of Public Works Agency ("Agency Director"). CONSULTANT shall initiate the administrative review process no later than 30 days after the claim has arisen by submitting to the Project Manager a written statement describing each claim and explaining why CONSULTANT believes AGENCY is at fault, as well as all correspondence and evidence regarding each claim. CONSULTANT may appeal the decision made by the Project Manager to the Deputy Director and may appeal the decision made by the Deputy Director to the Agency Director, provided that AGENCY receives such appeal in writing no later than seven days after the date of the decision being appealed. If CONSULTANT does not appeal a decision to the next level of administrative review within this seven-day period, the decision shall become final and binding and not subject to appeal or challenge.
- b. Arbitration. All CONSULTANT claims not resolved through the administrative review process stated above shall be resolved by arbitration unless AGENCY and CONSULTANT agree in writing, after the claim has arisen, to waive arbitration and to have the dispute litigated in a court of competent jurisdiction. Arbitration shall be pursuant to article 7.1 (commencing with section 10240) of chapter 1 of part 2 of the Public Contract Code and the regulations promulgated thereto, chapter 4 (commencing with section 1300) of division 2 of title 1 of the California Code of Regulations (collectively, "Rules for Public Works Contract Arbitrations"). Arbitration shall be initiated by a complaint in arbitration prepared, filed and served in full compliance with all requirements of the Rules for Public Works Contract Arbitrations. CONSULTANT consents and agrees that AGENCY may join it as a party to any arbitration involving third party claims asserted against AGENCY arising from or relating to any Work performed by CONSULTANT hereunder.

#### 12. Compliance with Laws and Regulations; Permits and Licenses

CONSULTANT shall perform its obligations hereunder in compliance with all applicable federal, state, and local laws and regulations. CONSULTANT certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to AGENCY, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its principals, officers, employees, agents

and Subconsultants to comply with all applicable statutes, ordinances, and regulations, or other laws, that apply to performance of the Work. AGENCY is entitled to review and copy all such applications, permits, and licenses which CONSULTANT shall promptly make available upon AGENCY's request.

### 13. Prevailing Wage Requirements

Certain work to be performed under this contract may be considered "public works" subject to prevailing wage, apprenticeship and other labor requirements of Labor Code division 2, part 7, chapter 1, section 1720 et seq. Such public works may include work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. CONSULTANT is solely responsible for determining whether the Work, or any portion thereof, is subject to said requirements, and for complying with all such requirements that apply. All such public works projects are subject to compliance monitoring by the California Department of Industrial Relations (DIR). AGENCY has obtained from the DIR general prevailing wage determinations for the locality in which the Work is to be performed that are on file with AGENCY's Public Works Agency and are available upon request. CONSULTANT is responsible for posting job site notices as prescribed by regulation pursuant to Labor Code section 1771.4(a)(2). CONSULTANT acknowledges that it is aware of state and federal prevailing wage and related requirements and shall comply with these requirements to the extent applicable to the Work, including, without limitation, Labor Code sections 1771 (payment of prevailing wage), 1771.1 (registration with DIR) and 1771.4 (submission of certified payrolls to Labor Commissioner).

### 14. Miscellaneous

- a. Entire Understanding. This contract is an integrated agreement and constitutes the final expression, and the complete and exclusive statement of the terms of, the parties' agreement with respect to the subject matter hereof. This contract supersedes all contemporaneous oral and prior oral and written agreements, understandings, representations, inducements, promises, communications or warranties of any nature whatsoever, by either party or any agent, principal, officer, partner, employee or representative of either party, with respect to the subject matter hereof. Without limiting the foregoing, CONSULTANT acknowledges that no representation, inducement, promise or warranty not contained in this contract will be valid or binding against AGENCY.
- b. No modification, waiver, amendment or discharge of this contract shall be valid unless the same is in writing and signed by duly authorized representatives of both parties.
- c. Non-assignability. CONSULTANT will not assign this contract or any portion thereof to a third party without the prior written consent of AGENCY, and any attempted assignment without such prior written consent will be null and void and will be cause, at AGENCY's sole and absolute discretion, for immediate termination of this contract. AGENCY may withhold its consent to assignment at its discretion. In the event AGENCY consents to assignment, the obligations of CONSULTANT hereunder shall be binding on CONSULTANT's assigns.
- d. Third Party Beneficiaries. Except for indemnitees under sections 10.e and 12 above, this contract does not, and the parties to this contract do not intend to, confer a third party beneficiary right of action on any third party whatsoever, and nothing set forth in this contract will be construed so as to confer on any third party a right of action under this contract or in any manner whatsoever.
- e. Time limits stated herein are of the essence.
- f. Governing Law; Venue. This contract is made and entered into in the State of California and shall, in all respects, be interpreted, governed and enforced in accordance with the laws of the State of California applicable to contracts entered into and fully to be performed therein. The venue for any action, suit, arbitration, judicial reference or other proceeding concerning this contract shall be in Ventura County, California.
- g. All notices, requests, claims, and other official communications under the contract shall be in writing and transmitted by one of the following methods:



- (1) Personal delivery.
- (2) Courier where receipt is confirmed.
- (3) Registered or certified mail, postage prepaid, return receipt requested.

Such notices and communications shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. All notices and communications shall be sent to CONSULTANT at the current address on file with AGENCY for contract payment purposes, and shall be sent to AGENCY as follows:

Public Works Agency  
County of Ventura L#1670  
800 South Victoria Avenue  
Ventura, CA 93009-1670

Either party may change its contact information by providing written notice of the change to the other party in accordance herewith.

- h. Further Actions. The parties hereto agree that they will execute any and all documents and take any and all other actions as may be reasonably necessary to carry out the terms and conditions of this contract.
- i. Legal Representation. Each party warrants and represents that in executing this contract, the party has relied upon legal advice from attorneys of the party's choice (or had a reasonable opportunity to do so); that the party has read the terms of this contract and had their consequences (including risks, complications and costs) completely explained to the party by the party's attorneys (or had a reasonable opportunity to do so); and that the party fully understands the terms of this contract. Each party further acknowledges and represents that the party has executed this contract freely and voluntarily without the undue influence of any person, and the party has not relied on any inducements, promises or representations made by any person not expressly set forth in this contract.
- j. No Waiver. Failure by a party to insist upon strict performance of each and every term, condition and covenant of this contract shall not be deemed a waiver or relinquishment of the party's rights to enforce any term, condition or covenant.
- k. Partial Invalidity. If any provision of this contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the parties intend, and it shall be so deemed, that the remaining provisions of this contract shall continue in full force without being impaired or invalidated in any way. If such provision is held to be invalid, void or unenforceable due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- l. Interpretation of Contract. For purposes of interpretation, this contract shall be deemed to have been drafted by both parties, and no ambiguity shall be resolved against any party by virtue of the party's participation in the drafting of the contract. Accordingly, Civil Code section 1654 shall not apply to the interpretation of this contract. Where appropriate in the context of this contract, the use of the singular shall be deemed to include the plural, and the use of the masculine shall be deemed to include the feminine and/or neuter.
- m. Counterparts. This contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same contract.

**PROFESSIONAL SERVICES CONTRACT AE24-051**

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**CONSULTANT:**

Kimley-Horn and Associates, Inc.

**AGENCY:**

County of Ventura

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Signature

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Public Works Director or  
Deputy Purchasing Agent

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Print Name and Title

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Signature

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Print Name and Title

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56-0885615

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Vendor Number

## EXHIBIT A - SCOPE OF WORK AND SERVICES

### 1. Overview of Services and Project

AGENCY has engaged CONSULTANT to provide the following services, which are more specifically described in the Basic Services section below, to assist AGENCY with the following project:

The Project involves construction of improvements to mitigate run-off road, hit object, head-on collisions, and side-swipe accidents by installing edgeline and/or centerline rumble strips, and/or curve warning signs.

The CONSULTANT shall provide Traffic Engineering Services during design, including support services to prepare the PS&E (Plans, Specifications, & Estimate) package, and support during the bidding and construction phase.

### 2. Basic Services

The following Basic Services shall be performed by CONSULTANT:

The scope of work required includes the preparation of construction documents including detailed plans, specifications, and cost estimates (PS&E). The design must conform to all laws, ordinances, and codes, including the latest ADA, County Ventura, Road Standards, Caltrans Standard Specifications, and Standard Plans, Standard Specifications for Public Works Construction and Plans, and the California Manual on Uniform Traffic Control Devices (CA MUTCD). All work products shall become property of the AGENCY and submitted to the AGENCY for review. CONSULTANT shall comply with all Federal & State Laws, Regulations, policies, Caltrans Local Assistance Procedures Manual and related requirements in Exhibit D, "Federal-Aid Contract Requirements".

#### Task 1: Project Management

CONSULTANT shall provide project management, coordination with the AGENCY staff, quality control of all deliverables, and tracking of internal deadlines and task budgets. CONSULTANT shall develop, track, and lead the following project management tasks:

- Project expenditures
- Project kick-off meeting
- Progress meetings (5 total)
- Meeting Agendas and action item summaries
- Monthly invoices, progress reports, and look-ahead summaries

#### Deliverables:

- Project schedule
- Meeting agendas, minutes, and action item summaries (PDF)
- Monthly invoices, progress reports and look-ahead summaries (PDF)

#### Task 2: Sign Survey, Evaluation, & Recommendations

CONSULTANT shall perform a field review and survey of existing regulatory and warning signs and perform a horizontal curve assessment on approximately 50 miles of AGENCY designated roads.

CONSULTANT shall perform the following field tasks which shall be completed by a registered engineer:

- Field review of regulatory and warning signs on approximately 50 miles of AGENCY designated roads
- Field review shall be completed by registered engineer and by Mobile LiDAR scanning.
- Horizontal curve evaluation by Rieker's Curve Advisory Reporting System (CARS)
- ESRI ArcGIS queries to determine critical curve connections.
- Retro-reflectivity observations and assessment

CONSULTANT shall evaluate the field data collected based on current published standards, guidance, and requirements per the CA MUTCD, Caltrans Highway Design Manual, and applicable AGENCY and Caltrans guidance documentation.

CONSULTANT shall provide recommendations in a Draft Roadway Safety Signing Audit (RSSA) report, which shall be followed up by a Final RSSA after AGENCY comments. Report shall include:

- Overview of existing conditions including field observations, sign inventory findings, horizontal curve data, and retro-reflectivity information.
- Prioritized list of improvements, including cost estimates, anticipated to include both relocations/modifications to existing conditions, and recommendations for new sign.
- Graphics/exhibits depicting existing conditions and recommend improvements.
- Sign table that contains unique sign ID and GPS coordinates compatible with AGENCY Inventory Manage System. GIS layer with attributes of corridors signage

**Deliverables:**

- Draft RSSA Project Report (PDF)
- Final RSSA Project Report (PDF)

**Task 3: Plans, Specifications, & Cost Estimates**

CONSULTANT shall prepare detailed plans, technical specifications, and construction cost estimates (PS&E). The Plans shall be generated using a geographic information system (GIS) and developed utilizing aerial imagery at a scale the AGENCY deems appropriate. The PS&E shall include the recommendations of the RSSA Report that were accepted by the AGENCY to be implemented.

**Task 3.1 35% PS&E**

After the RSSA Report is reviewed by the AGENCY and CONSULTANT notified on recommendations to be implemented and how to proceed, the CONSULTANT shall prepare a 35% PS&E package to be reviewed by the AGENCY. The AGENCY will provide comments and revisions to the CONSULTANT prior to proceeding with the design.

**Deliverables:**

- 35% PS&E Package (PDF, Word, Excel, DWG)

**Task 3.2 65% PS&E**

After the 35% PS&E is reviewed by the AGENCY and CONSULTANT is notified of the revisions that need to be made and how to proceed, the CONSULTANT shall prepare a 65% PS&E package to be reviewed by the AGENCY. The AGENCY will provide comments and revisions to the CONSULTANT prior to finalizing the design.

**Deliverables:**

- 65% PS&E Package (PDF, Word, Excel, DWG)

**Task 3.3 100% PS&E**

After the 65% PS&E is reviewed by the AGENCY and CONSULTANT is notified of the revisions that need to be made and how to proceed, the CONSULTANT shall prepare the 100% PS&E package stamped and signed by a registered California Civil Engineer. The 100% PS&E shall be based on the comments made by the AGENCY. The 100% PS&E Package shall include but not limited to:

- CONSULTANT shall prepare Plans on ACAD format, on AGENCY provided borders and at an engineered scale deemed appropriate.
- CONSULTANT shall prepare the title sheet, vicinity map, location map, legend, and general notes for the project.

- CONSULTANT shall prepare detail sheets
- CONSULTANT shall prepare, revise, compile a Cost Estimate for bidding purposes. Contingencies shall be included at the appropriate percentages.
- CONSULTANT shall prepare Special Provisions formatted to be suitable for County Standard Contract Documents. A sample special provisions document in electronic Word format will be provided by the AGENCY.

**Deliverables:**

- 100% PS&E Package (PDF, Word, Excel, DWG)

**Task 4: Construction Staking Support**

CONSULTANT shall perform construction staking to determine where new signs are to be installed using the Sign table provided in the Final RSSA Project Report. CONSULTANT shall determine appropriate lateral offset for varying field conditions:

- No lateral offset shall be determined where sidewalk is present. A nail (or similar object) and paint object ID shall be set in pavement near lip of the gutter to indicated longitudinal location.
- Lateral offset shall be established 6' outside edge of pavement where paved shoulder is more than 6' wide as measured from the edge of traveled way to edge of pavement or no stripe.
- Lateral offset shall be established 12' outside edge of traveled way where there is no shoulder or a small section of shoulder.
- If visible conflicts or obvious obstructions are encountered, a (requests for information) RFI shall be submitted for AGENCY guidance.

CONSULTANT shall set a stake with flagging and Sign ID at the lateral offset, and provide a photo for documentation.

**Deliverables:**

- Field notes and site photos of staking
- Construction stakes

**Task 5: Bidding & Construction Support Services**

CONSULTANT shall support the AGENCY staff during the contractor procurement process, be expected to address questions, and draft addenda language to the construction documents within 48 hours of request.

**Deliverables:**

- Correspondence and supporting documentation for any bid questions and supporting documents

The AGENCY will assume construction management duties during construction. CONSULTANT shall support the AGENCY staff during construction by:

- Reviewing submittals on an as-needed basis within 24 hours of request.
- Attend Pre-Construction Meeting.
- Respond to construction contractor's RFI on an as-needed basis.
- Assist the AGENCY's Project Manager with inspection of constructed facilities on an as-needed basis.
- Attend the final inspection of the project with the AGENCY's Project Manager and Contractor on an as-needed basis.

- Assist the AGENCY's Construction Manager with development of a "punch-list" on an as-needed basis.

**Deliverables:**

- RFI Responses
- Submittal Reviews

### **3. Extra Services**

Extra Services are separate from but related to the Basic Services described above. Extra Services shall be performed by CONSULTANT only after being authorized in writing by the Project Manager for AGENCY. AGENCY's written authorization will include a statement of the Extra Services required and time schedule for completion. CONSULTANT's billing and AGENCY's payment for Extra Services shall occur pursuant to Exhibit C.

### **4. County Services**

AGENCY will provide or accomplish the following:

1. Full information as to the requirements of the services to be provided by CONSULTANT under the contract.
2. Review documents submitted by CONSULTANT and provide comments, direction, or approval as needed in a timely manner.
3. AGENCY will provide traffic data as requested by CONSULTANT

End of Exhibit A

**EXHIBIT B - TIME SCHEDULE**

**1. Schedule**

All Work on this contract shall be completed by 12/31/2025.

CONSULTANT shall complete intermediate tasks as follows:

**Task Table**

Task	Description	Due Date
1	Project Management	12/31/2025
2	Sign Survey, Evaluation, & Recommendations	11/15/2024
3	Plans, Specifications, & Cost Estimates	
3.1	35% PS&E	1/24/2025
3.2	65% PS&E	3/21/2025
3.3	100% PS&E	4/18/2025
4	Construction Staking Report	12/31/2025
5	Bidding & Construction Support Services	12/31/2025

**2. Delays**

If Work cannot be completed by the dates specified in Exhibit B through no fault of CONSULTANT, the fee for the Work not then completed may be adjusted to reflect increases in cost which occur, due to delay, from the date that the Work was required to be complete as specified in Exhibit B until the time the Work can actually be completed. Any payment of an additional fee as described in this paragraph must be authorized by AGENCY with a modification to this contract.

End of Exhibit B

## EXHIBIT C – Fees and Payments

### 1. Compensation Summary

The following summarizes the maximum amount of compensation available to CONSULTANT under this contract. The actual amount of compensation shall be established and paid in accordance with the applicable provisions of the contract including this Exhibit C.

Maximum Fees for Basic Services:	<u>\$320,000.00</u>
Maximum Fees for Extra Services:	<u>\$ 10,000.00</u>
Maximum Reimbursement for Expenses:	<u>\$ 1,000.00</u>
Total Amount Not to Exceed:	<u>\$331,000.00</u>

### 2. Fees for Basic Services

AGENCY agrees to pay CONSULTANT the following fees for Basic Services

☒ an **hourly rate** compensation, for actual hours of Basic Services performed that is based upon the hourly rates set forth in the following Rate Table, which rates shall remain fixed for the duration of the contract, not to exceed the **maximum fee amount of \$200,000.00**. The maximum fees for the respective tasks identified in Exhibit A as well as the total maximum fee amount are shown in the below Task Table. In no case shall a fee for a specific task exceed that listed below without prior written approval by AGENCY. Rates to be charged are identified in the Rate Table listed below.

**Rate Table**

Item	Position/Equipment	Unit	Regular <sup>1</sup>	Prevailing <sup>2</sup>	Travel <sup>3</sup>
1	Principal-in-Charge	1	\$388.23	n/a	No
2	Project Manager	1	\$384.06	n/a	No
3	QC/QA Manager	1	\$303.41	n/a	No
4	Sr. Professional II	1	\$311.61	n/a	No
5	Sr. Professional I	1	\$251.42	n/a	No
6	Professional	1	\$184.76	n/a	No
7	Analyst	1	\$146.51	n/a	No
8	Project Support	1	\$117.01	n/a	No

Notes: 1) The Regular rates shown include all routine general and administrative expenses including but not limited to phone calls, travel within Ventura County (see note 3), incidental photocopying, and office equipment unless otherwise expressly listed in the Rate Table above.

2) The Prevailing rates shown include all routine general and administrative expenses including but not limited to phone calls, travel within Ventura County (see note 3), incidental photocopying, and office equipment unless otherwise expressly listed in the Rate Table above.

3) The word "Yes" in the Travel column above indicates that reimbursement for travel within Ventura County is authorized for the position described by that item.



## Professional Services Contract AE24-051

### Task Table

Task	Description	Maximum Fee
1	Project Management	\$30,000.00
2	Sign Survey, Evaluation, & Recommendations	\$70,000.00
3	Plans, Specifications, & Cost Estimates	\$85,000.00
5	Bidding & Construction Support Services	\$15,000.00
Total		\$200,000.00

☒ a **fixed fee** compensation, in the lump sum amount of **\$120,000.00**, for completion of all Basic Services.

### Task Table

Task	Description	Lump Sum
4	Construction Staking Report	\$120,000.00
Total		\$120,000.00

### 3. Fees for Extra Services

For Extra Services authorized in writing in advance by AGENCY in accordance with Exhibit A, AGENCY agrees to pay CONSULTANT an **hourly rate** compensation for actual hours of Extra Services performed that is based upon the hourly rates set forth in the Rate Table for Basic Services above or, if none, then based upon the hourly rates set forth in the following Rate Table for Extra Services, which rates shall remain fixed for the duration of the contract, not to exceed the **maximum fee amount of \$10,000**.

### 4. Delays

If Work cannot be completed by the dates specified in Exhibit B through no fault of CONSULTANT, the fees for the Work not then completed may be adjusted to reflect increases in cost which occur, due to delay, from the date that the Work was required to be complete as specified in Exhibit B until the time the Work can actually be completed. Any payment of an additional fee as described in this paragraph must be authorized by AGENCY with a written modification to this contract.

### 5. Reimbursable Expenses

CONSULTANT shall be reimbursed a sum for the following reasonable out-of-pocket expenses that are incurred and paid for by CONSULTANT in furtherance of performance of its obligations under this contract, but only to the extent that such expenses are directly related to CONSULTANT's services hereunder and do not exceed the **maximum reimbursable amount of \$1,000.00**:

(i) Outside printing directly related to deliverables but not for internal uses of CONSULTANT or its Subconsultants.

(ii) Reproduction or reprographic costs directly related to deliverables but not for internal uses of CONSULTANT or its Subconsultants. If CONSULTANT provides allowable reprographic services using its own equipment rather than using an outside service, the unit billing rates for such charges must be approved in advance by AGENCY.

(iii) Shipping, overnight mail, postage, messenger, courier and/or delivery services (but not for CONSULTANT's internal communications);

(iv) Only if authorized in writing in advance by AGENCY, reimbursement for business travel for the specific position descriptions so identified in the Rate Tables for Basic Services or Extra Services set forth above. AGENCY shall reimburse CONSULTANT for transportation, lodging, and meal expenses consistent with the policies and amounts approved for County employees as defined by policy number Chapter VII(C)-1, *Reimbursement of Employees County Business Expenses*, in the County's Administrative Policy Manual (latest edition);

(v) Only if authorized in writing in advance by AGENCY, fees and costs for Subconsultant services that are not included in the Rate Tables for Basic Services or Extra Services set forth above.

**Exclusive List.** The list of reimbursable expenses set forth above is the sole and exclusive list of reimbursable expenses that CONSULTANT is entitled to receive.

**Approval Limits.** Any reimbursable expense wherein a single item exceeds \$500 in value, whether purchased or leased, must be approved in writing in advance by AGENCY.

**No Administrative Charge or Mark-Ups.** The reimbursement provided for herein shall not include an administrative charge, multiplier or other mark-up by CONSULTANT unless authorized in writing, in advance, by AGENCY.

**No Reimbursement for Specified Basic Services Paid for by a Fixed Fee.** Notwithstanding the above, expenses related to Basic Services specified in Exhibit B are not reimbursable if CONSULTANT is compensated for Basic Services by a fixed fee.

## **6. Payment**

AGENCY shall make payments to CONSULTANT under the contract as follows:

### **Requests for Payment**

To request payment, CONSULTANT shall complete and submit to AGENCY a Consultant Services Invoice Form that shall include, at a minimum, (i) personnel time records for Basic Services and Extra Services actually performed at the rates specified in this Exhibit C, or the completed task for which payment of the fixed fee provided for in this Exhibit C is requested, as applicable, and (ii) receipts for all authorized reimbursable expense, along with the written AGENCY authorization for any specific reimbursable expenses requested for payment, if required above

When invoicing for Extra Services, CONSULTANT shall clearly mark on the Invoice Form which services are Extra Services and keep those services separate from Basic Services and shall include a copy of the written AGENCY authorization for the Extra Services for which payment is requested.

CONSULTANT shall submit all **invoices** to:

**PWA.consultantinvoices@ventura.org**

### **Payment Schedule**

Payments shall be made by AGENCY upon presentation of a properly completed AGENCY Invoice Form as described above. Payments based on an hourly rate compensation shall be made monthly.

### **Timely Invoicing**

Timely invoicing by CONSULTANT is required. Delays in invoicing for services performed increases the management effort required by AGENCY to ensure accurate payments to CONSULTANT and manage project budgets. Accordingly, CONSULTANT shall submit a properly completed invoice no later than 60 calendar days after the services which are the subject of the invoice were performed. An invoice received by AGENCY more than 60 calendar days after the services were performed shall be reduced by 5% to compensate AGENCY for the additional management costs. Additionally, since increases in administrative costs and budgetary problems caused by late invoicing correlate to the length of delay in invoicing, there will be an additional 5% reduction in compensation for each additional 30-calendar-day period beyond 60 days between the date the services were performed and the submission of the invoice for those services.

CONSULTANT shall submit a final invoice form within 60 days of the earliest of the following events: 1) completion and acceptance by AGENCY of all Work required by the contract; or 2) termination of the contract.

End of Exhibit C

**EXHIBIT D**  
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**FEDERAL-AID CONTRACT REQUIREMENTS**  
**Rumble Strips and Curve Warning Signs - Countywide**  
**HSIPL-5952(219)**

The following provisions and document included in Exhibit D represents the complete agreement between Agency and Consultant.

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- Cost Proposal
- Exhibit 10-I – Notice to Proposers DBE Information
- Exhibit 10-O1 – Consultant Proposal DBE Commitment
- Exhibit 10-O2 – Consultant Contract DBE Commitment
- Exhibit 10-Q – Disclosure of Lobbying Activities
- Exhibit 9-P – Prompt Payment Certification
- Exhibit 17-F - Final Report – Utilization of Disadvantaged Business Enterprises

**EXHIBIT D**

**FEDERAL AID CONTRACT REQUIREMENTS**

**Specific Rate of Compensation for Projects >\$150,000**

(For Local Assistance Federal-aid Projects)

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**1. ALLOWABLE COSTS AND PAYMENTS**

- A. CONSULTANT shall refer to the applicable provisions included in the Contract in Exhibit C “Fees & Payment”.

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

**3. RETENTION OF RECORDS/AUDIT**

For the purpose of determining compliance with Government Code §8546.37, the CONSULTANT, Subconsultant, and AGENCY shall maintain all books, documents papers, accounting records, Independent CPA Audited Indirect Cost Rate work papers and other evidence pertaining to the performance of the CONTRACT including, but not limited to, the costs of administering the CONTRACT. 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 CONTRACT period and for three (3) years from the date of final payment under the CONTRACT. AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal Government having jurisdiction under Federal laws or regulations (including the basis of Federal

funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultant, and the CONSULTANT'S Independent CPA, that are pertinent to the CONTRACT for audits, examinations, workpaper review excerpts, and transaction, and copies thereof shall be furnished if requested without limitation.

#### **4. AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this CONTRACT that is not disposed of by agreement, shall be reviewed by AGENCY's Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by AGENCY's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this CONTRACT.
- D. CONSULTANT and Subconsultant CONTRACTS, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, a Contract audit, an incurred cost audit an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the CONTRACT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is the CONSULTANT's responsibility to ensure Federal, AGENCY, or Local Government officials are allowed full access to the CPA's work papers including making copies as necessary. The CONTRACT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by AGENCY's Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the CONTRACT by this reference, if directed by AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that Federal, AGENCY, or Local Government officials have access to CPA work papers will be considered a breach of CONTRACT terms and cause for termination of the CONTRACT 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 Caltrans Audits and Investigation (A&I). Caltrans A&I, 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 AGENCY's Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will Be considered a breach of the CONTRACT terms and cause for termination of the CONTRACT and disallowance of prior reimbursed costs.

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

Accepted rates will be as follow:

- 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 Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this CONTRACT.
4. CONSULTANT may submit to AGENCY the final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this CONTRACT has been completed to the satisfaction of AGENCY; and, (3) Caltrans A&I has issued its final ICR review letter. The CONSULTANT must submit its final invoice to no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this CONTRACT and all other agreements executed between AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

## 5. SUBCONTRACTING

- A. Nothing contained in this CONTRACT or otherwise, shall create any contractual relation between AGENCY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to AGENCY 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 AGENCY'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 contract shall be subcontracted without written authorization by AGENCY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. Any subagreement entered into as a result of this CONTRACT, shall contain all the provisions stipulated in this entire CONTRACT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its subconsultants within (15) calendar days from receipt of each payment made to CONSULTANT by AGENCY.
- E. Any substitution of subconsultant(s) must be approved in writing by AGENCY's Contract Administrator prior to the start of work by the subconsultant(s).
- F. Prompt Progress Payment:

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

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

G. Prompt Payment of Withheld Funds to Subconsultants:

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

**6. STATE PREVAILING WAGE RATES**

- A. No CONSULTANT or Subconsultant may be awarded a CONTRACT 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 CONTRACT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this CONTRACT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer ([http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region\\_Map\\_Construction\\_7-8-15.pdf](http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf)). These wage rates are made a specific part of this CONTRACT 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 AGENCY's construction sites, at AGENCY's facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve AGENCY's 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 AGENCY's Representative's 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 the AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payroll submitted to AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
  - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to AGENCY's Contract Administrator by 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 AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.

5. The CONSULTANT shall inform AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city, and county, and shall, within five (5) working days, provide a notice of 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 AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by AGENCY's Contract Administrator.
- F. Penalty
1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the CONTRACT 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. He CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the CONTRACT.
  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 CONTRACT 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, AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
  6. If AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if AGENCY did not retain sufficient money under the CONTRACT 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 funds due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by AGENCY.
- G. Hours of Labor
- Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the CONTRACT 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 once 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 CONTRACT or the subconsultant contract exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6, 1777.7 in the employment of apprentices.
2. CONSULTANT's 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 subconsultant are advised to contact 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 CONTRACT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

**7. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

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

**8. PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

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 the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal Agency, a Member of the State Legislature or United States Congress, an Officer or employee of the Legislature or Congress in connection with the awarding or making of this CONTRACT, or with the extension, continuation, renewal, amendment, or modification of this CONTRACT.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this CONTRACT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction.

- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

#### **9. NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this CONTRACT, CONSULTANT and its subconsultants shall not deny the CONTRACT'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 AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this CONTRACT 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 AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or AGENCY shall require to ascertain compliance with this clause.

- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the CONTRACT.
- G. The CONSULTANT, with regard to the work performed under this CONTRACT, 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, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in Federally-assisted programs of the U.S. Department of Transportation (49 CFR 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.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the AGENCY'S components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

#### **10. DEBARMENT AND SUSPENSION CERTIFICATION**

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
  - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years.
  - 3. Does not have a proposed debarment pending; and

4. Has not been indicted, convicted, or had a civil judgement 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 AGENCY. Exceptions will not necessarily result in denial of recommendation for award but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

## **11. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. CONSULTANT, subrecipient (AGENCY), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 46 CFR 26.5, the AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT'S responsibility to verify at date of proposal opening that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American industry Classification system (NAICS) codes or work code applicable to the type of work the firm will perform on the contract. Additionally, the Consultant is responsible to document the verification record by printing out the CUCP data for each DBE firm. A list of DBE's certified by the CUCP can be found at <http://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 count 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 CONTRACT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance

Programs". CONSULTANT's who enter into a Federally-funded contract will assist the AGENCY in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this CONTRACT is 21%. Participation by DBE CONSULTANT or subconsultants if any, shall be in accordance with information contained in Exhibit 10-O1: Consultant Proposal DBE Commitment, or in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the CONTRACT. 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 DBE's to meet the Agreement goal, or by documenting adequate good faith efforts to meet the CONTRACT goal. An adequate good faith effort means that the CONSULTANT must demonstrate that all the necessary and reasonable steps to achieve the DBE goal were met. If CONSULTANT is not able to meet the DBE goal, then CONSULTANT shall complete and submit Exhibit 15-H: DBE Information-Good Faith Efforts documenting their efforts in meeting the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- D. Contract Assurance

CONSULTANT, subrecipient, or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR in award and administration of federal-aid contracts.

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

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

- E. Termination and Replacement of DBE Subconsultants

CONSULTANT shall utilize the specific DBE listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains the AGENCY'S written consent. CONSULTANT shall not terminate or replace a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the AGENCY. Unless the AGENCY consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied



by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the bid.

#### Termination of DBE Subconsultants

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

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

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

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

- c. The DBE's response to CONSULTANT's written notice, if received. If a written response was not provided, provide a statement to that effect.

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

#### Replacement of DBE Subconsultants

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

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

1. Submit a request to replace a DBE with other forces or material sources in writing to the AGENCY which must include:
  - a. Description of remaining uncommitted work item made available for replacement DBE solicitation and participation.
  - b. The proposed DBE replacement firm's business information, the work they have agreed to perform and the following:
    - i. Description of scope of work and cost proposal
    - ii. Proposed subcontract agreement and written confirmation of agreement to perform on the Contract.
    - iii. Revised Exhibit 10-O2: Consultant Contract DBE Commitment.
2. If CONSULTANT has not identified a DBE replacement firm, submits documentation of CONSULTANT's GFEs to use DBE replacement firms within seven (7) days of AGENCY's authorization to terminate the DBE. CONSULTANT may request the AGENCY's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:
  - a. Search results of certified DBEs available to perform the original DBE work identified and or other work CONSULTANT had intended to self-perform, to the extent needed to meet DBE commitment.
  - b. Solicitations of DBEs for performance of work identified.
  - c. Correspondence with interested DBEs that may have included contract details and requirements.
  - d. Negotiation efforts with DBEs that reflect why an agreement was not reached.
  - e. If a DBE's quote was rejected, provide reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive.
  - f. Copies of each DBE's and non-DBE's price quotes for work identified, as the AGENCY may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher.
  - g. Additional documentation that supports CONSULTANT's GFE

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

**F. Commitment and Utilization**

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

The AGENCY shall request CONSULTANT to:

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

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

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

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

**G. Commercially Useful Function**

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work of the CONTRACT and is carrying out its responsibilities by 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 CONTRACT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

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

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

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

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

CONSULTANT must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the Contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation. CONSULTANT must submit to the AGENCY these quarterly evaluations and validations by the 5th of the month for the previous three months of work.

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

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

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

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

- Certified payroll records
- Inventory rosters

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

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

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

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, CONTRACT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transaction, particularly those in which DBE's 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 CONTRACT with its own work force, or the DBE subcontracts a greater portion of the work in the CONTRACT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from subcontracts entered into with certified DBE's. 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 CONTRACT, 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 CONTRACT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to AGENCY's Contract Administrator within thirty (30) calendar days.

- L. For projects awarded on or after March 1, 2020, but before September 1, 2023: No later than the 10th of the month following the month of any payment(s), the CONSULTANT must submit an invoice for payment along with Exhibit 9-F: Monthly Disadvantaged Business Enterprise (DBE) Payment to the Caltrans Business Support Unit at [Business.Support.Unit@dot.ca.gov](mailto:Business.Support.Unit@dot.ca.gov). Provide a copy to the AGENCY administering the contract.

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

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

## **12. PROMPT PAYMENT**

### **A. Prompt Payment from AGENCY to CONSULTANT**

The AGENCY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the AGENCY fails to pay promptly, the AGENCY shall pay interest to the CONSULTANT which accrues at the rate of 10 percent per annum on the principal amount of a money judgement remaining unsatisfied and pro-rated as necessary. Upon receipt of a payment request, the AGENCY shall act in accordance with both of the following:

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

### **B. Prompt Payment Certification**

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

The AGENCY must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfalls to the DBE

commitment and prompt payment issues until the end of the project. The AGENCY must email a copy of Exhibit 9-P to [DBE.Forms@dot.ca.gov](mailto:DBE.Forms@dot.ca.gov) before the end of the month after receiving the Exhibit 9-P from the CONSULTANT.

### **13. TITLE VI ASSURANCES**

#### **APPENDICES A-E OF THE TITE VI ASSURANCES**

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

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

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

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

#### **APPENDIX A**

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

- a. Compliance with Regulation: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this Agreement.
- b. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.

- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT shall provide all information and reports required by the regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT'S noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. Cancellation, termination or suspension of the agreement, in whole or in part.
- f. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

## **APPENDIX B**

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

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

NOW THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of



Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### **(HABENDUM CLAUSE)**

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

#### **APPENDIX C**

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

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

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another

purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (aa may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

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

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

#### **APPENDIX D**

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

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

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest ,and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*

- C. With respect to deeds, in the event of breach of any of the above non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

## **APPENDIX E**

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

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin; and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 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).

## **Excerpts from the California Labor Code**

**AS of January 1, 2018.**

**These excerpts from the Labor Code are furnished for the convenience of the Consultant and in no way limit the required compliance with all laws.**

**1771.** Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

**1775.** (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the

prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) 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 contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and Sections **1771, 1776, 1777.5, 1813, and 1815**.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

**1776.** (a) Each contractor and subcontractor shall keep accurate payroll records, 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 him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

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

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(C) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request

to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to

prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply, subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

**1777.5.** (a) This chapter does not prevent the employment of properly registered apprentices upon public works.

(b) (1) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(2) Unless otherwise provided by a collective bargaining agreement, when a contractor requests the dispatch of an apprentice pursuant to this section to perform work on a public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division

of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are

eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) If the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Before commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body, if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program supplying apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates if the contractor agrees to be bound by those standards. However, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be



computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. When an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section who has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or who has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

- (1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.
- (2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.
- (3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.
- (4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) If an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the

prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) (A) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The grant funds shall be distributed as follows:

(i) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(ii) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and county for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices from that county registered in each program.

(iii) All training contributions not distributed under clauses (i) and (ii) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(B) An apprenticeship program shall only be eligible to receive grant funds pursuant to this subdivision if the apprenticeship program agrees, prior to the receipt of any grant funds, to keep adequate records that document the expenditure of grant funds and to make all records available to the Department of Industrial Relations so that the Department of Industrial Relations is able to verify that grant funds were used solely for training apprentices. For purposes of this subparagraph, adequate records include, but are not limited to, invoices, receipts, and canceled checks that account for the expenditure of grant funds. This subparagraph shall not be deemed to require an apprenticeship program to provide the Department of Industrial Relations with more documentation than is necessary to verify the appropriate expenditure of grant funds made pursuant to this subdivision.

(C) The Department of Industrial Relations shall verify that grants made pursuant to this subdivision are used solely to fund training apprentices. If an apprenticeship program is unable to demonstrate how grant funds are expended or if an apprenticeship program is found to be using grant funds for purposes other than training apprentices, then the apprenticeship program shall not be eligible to receive any future grant pursuant to this subdivision and the Department of Industrial Relations may initiate the process to rescind the registration of the apprenticeship program.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

**1813.** The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

**1815.** Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than  $1\frac{1}{2}$  times the basic rate of pay.

# ATTACHMENTS

**(REQUIRED CALTRANS DOCUMENTS)**



**Exhibit 10-H Cost Proposal**  
County Of Ventura  
Roads & Transpiration  
Specific Rate of Compensation

Consultant: Kimley-Horn and Associates, Inc. Date: 6/17/2024

Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_

Indirect Cost Rate = 0.45% + 190.79% = 191.24%  
(FCCM %) (Overhead %) Combined ICR

Fee = 10%

Fee is not charged on the FCCM portion of Kimley-Horns ICR.

Name/Job Classification <sup>1</sup>	Hourly Billing Rates		Effective Date of Hourly Rate		Actual/Avg. Hourly Rate	% Increase
	Straight <sup>2</sup>	OT (X1.5)	From	To		
Jean Fares Project Manager	\$384.06		7/1/2023	6/30/2024	\$119.90	5%
	\$403.27		7/1/2024	6/30/2025	\$125.90	5%
	\$423.43		7/1/2025	6/30/2024	\$132.19	5%
Mike Colety Principal-in-Charge	\$388.23		7/1/2023	6/30/2024	\$121.20	5%
	\$407.64		7/1/2024	6/30/2025	\$127.26	5%
	\$428.02		7/1/2025	6/30/2024	\$133.62	5%
Jason Melchor QA/QC	\$303.41		7/1/2023	6/30/2024	\$94.72	5%
	\$318.58		7/1/2024	6/30/2025	\$99.46	5%
	\$334.51		7/1/2025	6/30/2024	\$104.43	5%
Analyst	\$146.51		7/1/2023	6/30/2024	\$45.74	5%
	\$153.84		7/1/2024	6/30/2025	\$48.03	5%
	\$161.53		7/1/2025	6/30/2024	\$50.43	5%
Professional	\$184.76		7/1/2023	6/30/2024	\$57.68	5%
	\$194.00		7/1/2024	6/30/2025	\$60.56	5%
	\$203.70		7/1/2025	6/30/2024	\$63.59	5%
Sr. Professional I	\$251.42		7/1/2023	6/30/2024	\$78.49	5%
	\$263.99		7/1/2024	6/30/2025	\$82.41	5%
	\$277.19		7/1/2025	6/30/2024	\$86.54	5%
Sr. Professional II	\$311.61		7/1/2023	6/30/2024	\$97.28	5%
	\$327.19		7/1/2024	6/30/2025	\$102.14	5%
	\$343.55		7/1/2025	6/30/2024	\$107.25	5%
Project Support	\$117.01	\$175.52	7/1/2023	6/30/2024	\$36.53	5%
	\$122.86	\$184.29	7/1/2024	6/30/2025	\$38.36	5%
	\$129.01	\$193.51	7/1/2025	6/30/2024	\$40.27	5%

(Add additional pages if necessary)

- NOTES: 1. Employees that are subject to prevailing wage requirements must be marked with an asterisk (\*). All costs must comply with Federal cost principles.
2. Billing rate = ((actual hourly rate \* (1+ (Combined ICR)) + (actual hourly rate \*(1+Overhead)\* Fee)). Profit/Fee is not applied to FCCM. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.



**Exhibit 10-H Cost Proposal**  
County Of Ventura  
Roads & Transpiration  
Specific Rate of Compensation

Consultant: Kimley-Horn and Associates, Inc.

Date: 6/17/2024

Project No. \_\_\_\_\_

Contract No. \_\_\_\_\_

**SCHEDULE OF OTHER DIRECT COSTS ITEMS**

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs		per mile	Federal Rate	TBD
Equipment Rental and Supplies			Actual	TBD
Travel (Airfare, Rental Car, Tolls, etc.)			Actual	TBD
Per Diem		Per day	\$60	TBD
Outside Printing and Reproduction			Actual	TBD
Courier / Fed Ex / USPS, etc.			Actual	TBD
Subconsultant 1: Mark Thomas				\$116,157.18
Subconsultant 2:				
Subconsultant 3:				

(Add additional pages if necessary)

- NOTES: 1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Items when incurred for the same purpose, in like circumstance should not be included in any indirect cost pool or in the overhead rate.
3. Travel related costs shall be pre-approved by the Agency and shall not exceed current State Department of Personnel Administration rules.



**Exhibit 10-H Cost Proposal**  
County Of Ventura  
Roads & Transpiration  
Specific Rate of Compensation

**Certification of Direct Costs:**

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

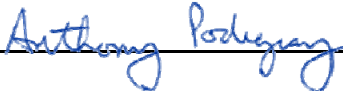
1. Generally accepted Accounting Principles (GAAP)
2. Terms and Conditions of the Contract
3. [Title 23 United States Code Section 112](#) - Letting of Contract
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement,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

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

**Prime Consultant Certifying:**

Name: Anthony Podegracz

Title\*: Vice President

Signature: 

Date of Certification: 6/17/2024

Email: anthony.podegracz@kimley-horn.com

Phone No.: 213.261.4040

Address: 660 South Figueroa St., Suite 2050, Loss Angeles, CA, 90017



**Exhibit 10-H Cost Proposal**  
County Of Ventura  
Roads & Transportation  
Specific Rate of Compensation

Consultant: Mark Thomas & Company, Inc.

Date: 6/17/2024

Project No. \_\_\_\_\_

Contract No. \_\_\_\_\_

Indirect Cost Rate = 95.61% + 55.05% = 150.66%  
(Fringe Benefit %) (General & Administrative %)

Fee = \_\_\_\_\_ **10%**

Name/Job Classification <sup>1</sup>	Hourly Billing Rates		Effective Date of Hourly Rate		Actual/Avg. Hourly Rate	% Increase
	Straight <sup>2</sup>	OT (X1.5)	From	To		
Survey Division Manager	\$317.99	\$476.99	7/1/2023	6/30/2024	\$115.33	
	\$333.89	\$500.84	7/1/2024	6/30/2025	\$121.10	5%
	\$350.59	\$525.88	7/1/2025	6/30/2026	\$127.15	5%
	\$368.12	\$552.18	7/1/2026	6/30/2027	\$133.51	5%
	\$386.52	\$579.79	7/1/2027	6/30/2028	\$140.18	5%
	\$405.85	\$608.78	7/1/2028	6/30/2029	\$147.19	5%
	\$426.14	\$639.22	7/1/2029	12/31/2029	\$154.55	5%
Assistant Surveyor II	\$135.99	\$203.98	7/1/2023	6/30/2024	\$49.32	
	\$142.79	\$214.18	7/1/2024	6/30/2025	\$51.79	5%
	\$149.93	\$224.89	7/1/2025	6/30/2026	\$54.38	5%
	\$157.42	\$236.13	7/1/2026	6/30/2027	\$57.09	5%
	\$165.29	\$247.94	7/1/2027	6/30/2028	\$59.95	5%
	\$173.56	\$260.34	7/1/2028	6/30/2029	\$62.95	5%
	\$182.24	\$273.36	7/1/2029	12/31/2029	\$66.09	5%
Assistant Surveyor I	\$120.99	\$181.48	7/1/2023	6/30/2024	\$43.88	
	\$127.04	\$190.56	7/1/2024	6/30/2025	\$46.07	5%
	\$133.39	\$200.08	7/1/2025	6/30/2026	\$48.38	5%
	\$140.06	\$210.09	7/1/2026	6/30/2027	\$50.80	5%
	\$147.06	\$220.59	7/1/2027	6/30/2028	\$53.34	5%
	\$154.42	\$231.62	7/1/2028	6/30/2029	\$56.00	5%
	\$162.14	\$243.20	7/1/2029	12/31/2029	\$58.80	5%
Survey Specialist II	\$161.99	\$242.98	7/1/2023	6/30/2024	\$58.75	
	\$170.09	\$255.13	7/1/2024	6/30/2025	\$61.69	5%
	\$178.59	\$267.89	7/1/2025	6/30/2026	\$64.77	5%
	\$187.52	\$281.28	7/1/2026	6/30/2027	\$68.01	5%
	\$196.90	\$295.35	7/1/2027	6/30/2028	\$71.41	5%
	\$206.74	\$310.12	7/1/2028	6/30/2029	\$74.98	5%
	\$217.08	\$325.62	7/1/2029	12/31/2029	\$78.73	5%
Survey Specialist I	\$126.01	\$189.01	7/1/2023	6/30/2024	\$45.70	
	\$132.31	\$198.46	7/1/2024	6/30/2025	\$47.99	5%
	\$138.92	\$208.38	7/1/2025	6/30/2026	\$50.38	5%
	\$145.87	\$218.80	7/1/2026	6/30/2027	\$52.90	5%
	\$153.16	\$229.74	7/1/2027	6/30/2028	\$55.55	5%
	\$160.82	\$241.23	7/1/2028	6/30/2029	\$58.33	5%
	\$168.86	\$253.29	7/1/2029	12/31/2029	\$61.24	5%



Lead Survey Technician	\$157.00	\$235.50	7/1/2023	6/30/2024	\$56.94	
	\$164.85	\$247.27	7/1/2024	6/30/2025	\$59.79	5%
	\$173.09	\$259.64	7/1/2025	6/30/2026	\$62.78	5%
	\$181.75	\$272.62	7/1/2026	6/30/2027	\$65.92	5%
	\$190.83	\$286.25	7/1/2027	6/30/2028	\$69.21	5%
	\$200.37	\$300.56	7/1/2028	6/30/2029	\$72.67	5%
	\$210.39	\$315.59	7/1/2029	12/31/2029	\$76.31	5%
Survey Technician II	\$126.01	\$189.01	7/1/2023	6/30/2024	\$45.70	
	\$132.31	\$198.46	7/1/2024	6/30/2025	\$47.99	5%
	\$138.92	\$208.38	7/1/2025	6/30/2026	\$50.38	5%
	\$145.87	\$218.80	7/1/2026	6/30/2027	\$52.90	5%
	\$153.16	\$229.74	7/1/2027	6/30/2028	\$55.55	5%
	\$160.82	\$241.23	7/1/2028	6/30/2029	\$58.33	5%
	\$168.86	\$253.29	7/1/2029	12/31/2029	\$61.24	5%
Survey Technician I	\$111.01	\$166.51	7/1/2023	6/30/2024	\$40.26	
	\$116.56	\$174.84	7/1/2024	6/30/2025	\$42.27	5%
	\$122.39	\$183.58	7/1/2025	6/30/2026	\$44.39	5%
	\$128.50	\$192.76	7/1/2026	6/30/2027	\$46.61	5%
	\$134.93	\$202.40	7/1/2027	6/30/2028	\$48.94	5%
	\$141.68	\$212.51	7/1/2028	6/30/2029	\$51.38	5%
	\$148.76	\$223.14	7/1/2029	12/31/2029	\$53.95	5%
2 Person Crew (OE12)*	\$379.01	\$568.52	7/1/2023	6/30/2024	\$137.46	
	\$397.96	\$596.95	7/1/2024	6/30/2025	\$144.33	5%
	\$417.86	\$626.79	7/1/2025	6/30/2026	\$151.55	5%
	\$438.75	\$658.13	7/1/2026	6/30/2027	\$159.13	5%
	\$460.69	\$691.04	7/1/2027	6/30/2028	\$167.08	5%
	\$483.73	\$725.59	7/1/2028	6/30/2029	\$175.44	5%
	\$507.91	\$761.87	7/1/2029	12/31/2029	\$184.21	5%
Sr. Project Coordinator	\$145.00	\$217.51	7/1/2023	6/30/2024	\$52.59	
	\$152.25	\$228.38	7/1/2024	6/30/2025	\$55.22	5%
	\$159.87	\$239.80	7/1/2025	6/30/2026	\$57.98	5%
	\$167.86	\$251.79	7/1/2026	6/30/2027	\$60.88	5%
	\$176.25	\$264.38	7/1/2027	6/30/2028	\$63.92	5%
	\$185.07	\$277.60	7/1/2028	6/30/2029	\$67.12	5%
	\$194.32	\$291.48	7/1/2029	12/31/2029	\$70.48	5%
Project Accountant	\$114.01	\$171.02	7/1/2023	6/30/2024	\$41.35	
	\$119.71	\$179.57	7/1/2024	6/30/2025	\$43.42	5%
	\$125.70	\$188.55	7/1/2025	6/30/2026	\$45.59	5%
	\$131.98	\$197.98	7/1/2026	6/30/2027	\$47.87	5%
	\$138.58	\$207.87	7/1/2027	6/30/2028	\$50.26	5%
	\$145.51	\$218.27	7/1/2028	6/30/2029	\$52.77	5%
	\$152.79	\$229.18	7/1/2029	12/31/2029	\$55.41	5%
Survey Coordinator	\$145.00	\$217.51	7/1/2023	6/30/2024	\$52.59	
	\$152.25	\$228.38	7/1/2024	6/30/2025	\$55.22	5%
	\$159.87	\$239.80	7/1/2025	6/30/2026	\$57.98	5%
	\$167.86	\$251.79	7/1/2026	6/30/2027	\$60.88	5%
	\$176.25	\$264.38	7/1/2027	6/30/2028	\$63.92	5%
	\$185.07	\$277.60	7/1/2028	6/30/2029	\$67.12	5%
	\$194.32	\$291.48	7/1/2029	12/31/2029	\$70.48	5%

(Add additional pages if necessary)

NOTES: 1. Employees that are subject to prevailing wage requirements must be marked with an asterisk (\*). All costs must comply with Federal cost principles.

2. Billing Rate = Actual Hourly Rate \* (1+ICR) \* (1+Fee).



### Exhibit 10-H Cost Proposal

County Of Ventura  
Roads & Transportation  
Specific Rate of Compensation

Consultant: Mark Thomas & Company, Inc.

Date: 6/17/2024

Project No. \_\_\_\_\_

Contract No. \_\_\_\_\_

SCHEDULE OF OTHER DIRECT COSTS ITEMS				
Description of Item	Quantity	Unit	Unit Cost	Total
ALLVISION Software and Fee	1		5742.5	\$5,742.50
CARS Digital Ball Bank Software & Fee	1		4765.5	\$4,765.50
MTLS Mobile Scanner	1	Day	5500	\$5,500.00
Per Diem	22	Day	260	\$5,720.00
Mileage	1000	Miles	0.67	\$670.00
				\$0.00
Subconsultant 1:				
Subconsultant 2:				
Subconsultant 3:				
Subconsultant 4:				
Subconsultant 5:				

(Add additional pages if necessary)

- NOTES: 1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Items when incurred for the same purpose, in like circumstance should not be included in any indirect cost pool or in the overhead rate.
3. Travel related costs shall be pre-approved by the Agency and shall not exceed current State Department of Personnel Administration rules.



**Exhibit 10-H Cost Proposal**  
County Of Ventura  
Roads & Transportation  
Specific Rate of Compensation

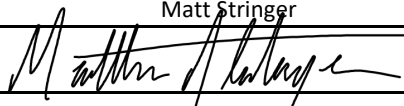
**Certification of Direct Costs:**

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

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

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

**Prime Consultant Certifying:**

Name: Matt Stringer  
Signature:   
Email: [mstringer@markthomas.com](mailto:mstringer@markthomas.com)  
Address: 701 University Ave Sacramento, CA 95825


Title\*: Principal  
Date of Certification: \_\_\_\_\_  
Phone No.: 530-669-3686

\* An individual executive or financial officer of the consultant's organization at a level lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

Reset Form

**EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT**

1. Local Agency: Ventura County Public Works 2. Contract DBE Goal: 0%  
 3. Project Description: Rumble Strip & Curve Warning Signs Project  
 4. Project Location: Ventura County, CA  
 5. Consultant's Name: Kimley-Horn and Associates, Inc. 6. Prime Certified DBE: ☐

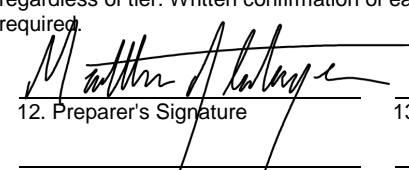
7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %	
N/A - No DBE subconsultants				
<b>Local Agency to Complete this Section</b>		<b>11. TOTAL CLAIMED DBE PARTICIPATION</b>	<b>0 %</b>	
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____ 20. Consultant's Ranking after Evaluation: _____  Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.  _____ _____ _____				
		<b>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.</b>  <div style="display: flex; justify-content: space-between;"> <div>             12. Preparer's Signature            Jean B. Fares, P.E.            14. Preparer's Name            Senior Vice President            16. Preparer's Title         </div> <div>           05/28/2024            13. Date            213.354.9402            15. Phone         </div> </div>		

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

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

**EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT**

1. Local Agency: \_\_\_\_\_ 2. Contract DBE Goal: \_\_\_\_\_
3. Project Description: \_\_\_\_\_
4. Project Location: \_\_\_\_\_
5. Consultant's Name: \_\_\_\_\_ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
<b>Local Agency to Complete this Section</b> 17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____ 20. Consultant's Ranking after Evaluation: _____  Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.  _____ _____ _____			<b>11. TOTAL CLAIMED DBE PARTICIPATION</b> %  IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.  12. Preparer's Signature      13. Date 14. Preparer's Name      15. Phone 16. Preparer's Title

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

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

**INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT****CONSULTANT SECTION**

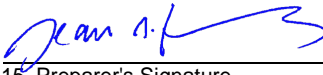
- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Location** - Enter the project location as it appears on the project advertisement.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

**LOCAL AGENCY SECTION**

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
- 20. Consultant's Ranking after Evaluation** - Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
- 21. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 22. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 23. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 24. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 25. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

**EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT**

1. Local Agency: Ventura County Public Works 2. Contract DBE Goal: 0%  
 3. Project Description: Rumble Strip & Curve Warning Signs Project  
 4. Project Location: Ventura County, CA  
 5. Consultant's Name: Kimley-Horn and Associates 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: \_\_\_\_\_  
 8. Total Dollar Amount for **ALL** Subconsultants: \_\_\_\_\_ 9. Total Number of **ALL** Subconsultants: \_\_\_\_\_

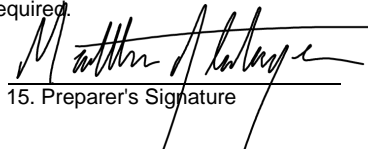
10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount	
N/A - No DBE subconsultants				
<b>Local Agency to Complete this Section</b>		<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>	\$	
20. Local Agency Contract Number: _____	21. Federal-Aid Project Number: _____		0 %	
22. Contract Execution Date: _____		<p>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.</p> <p> 05/28/24</p> <p>15. Preparer's Signature _____ 16. Date _____</p> <p>Jean B. Fares, P.E. 213.354.9402</p> <p>17. Preparer's Name _____ 18. Phone _____</p> <p>Senior Vice President</p> <p>19. Preparer's Title _____</p>		
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.				
23. Local Agency Representative's Signature _____	24. Date _____			
25. Local Agency Representative's Name _____	26. Phone _____			
27. Local Agency Representative's Title _____				

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

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

**EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT**

1. Local Agency: \_\_\_\_\_ 2. Contract DBE Goal: \_\_\_\_\_
3. Project Description: \_\_\_\_\_
4. Project Location: \_\_\_\_\_
5. Consultant's Name: \_\_\_\_\_ 6. Prime Certified DBE: ☐ 7. Total Contract Award Amount: \_\_\_\_\_
8. Total Dollar Amount for **ALL** Subconsultants: \_\_\_\_\_ 9. Total Number of **ALL** Subconsultants: \_\_\_\_\_

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount		
<b>Local Agency to Complete this Section</b>					
20. Local Agency Contract Number: _____		<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>	\$		
21. Federal-Aid Project Number: _____			%		
22. Contract Execution Date: _____		<p>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.</p> 			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.					
23. Local Agency Representative's Signature	24. Date				
25. Local Agency Representative's Name	26. Phone				
27. Local Agency Representative's Title					
		15. Preparer's Signature	16. Date		
		17. Preparer's Name	18. Phone		
		19. Preparer's Title			

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

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



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

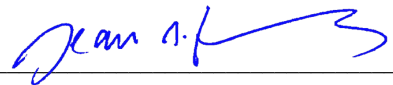
- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Description** - Enter the project description as it appears on the project advertisement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

**LOCAL AGENCY SECTION**

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

## EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change  <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
None / Not Applicable		
<b>4. Name and Address of Reporting Entity</b>  <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known  Congressional District, if known _____	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known _____	
<b>6. Federal Department/Agency:</b> _____	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> _____	
<b>10. Name and Address of Lobby Entity</b> (If individual, last name, first name, MI) _____  (attach Continuation Sheet(s) if necessary)	<b>11. Individuals Performing Services</b> (including address if different from No. 10) (last name, first name, MI) _____  (attach Continuation Sheet(s) if necessary)	
<b>12. Amount of Payment (check all that apply)</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>14. Type of Payment (check all that apply)</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
<b>13. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
<b>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 12:</b>  (attach Continuation Sheet(s) if necessary)		
<b>16. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		
Signature: 		Print Name: <u>Jean B. Fares, P.E.</u>  Title: <u>Senior V.P., Kimley-Horn and Associates, Inc.</u>  Telephone No.: <u>213.354.9402</u> Date: <u>5/28/24</u>
Authorized for Local Reproduction Standard Form - LLL		

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

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

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

**1. CONTRACT INFORMATION**

(1) Prime Contractor/Consultant	(2) Local Agency	(3) Federal Project Number	(4) Local Contract Number	(5) Total Contract Award Amt (\$)	(6) Total DBE Commitment Amt (\$)	(7) DBE Commitment (%)	(8) DBE Contract Goal (%)	(9) Reporting Period (Month/Year)

**2. PAYMENT INFORMATION**

(10) Subcontractor/Subconsultant Name	(11) DBE Cert. Number	(12) Subcontract Type	(13) Date Payment Received by Prime	(14) Date of Prime Payment to Sub	(15) Amount of Payment (\$)	(16) Amount Paid To Sub to Date (\$)	(17) Total committed to this Subcontractor (\$)	(18) Promptly Paid? (Y/N)	(19) Incremental Retainage Paid? (Y/N)	(20) Comments or Reason for Non-Payment/Non-Prompt Payment, including Payment of Incremental Retainage *
				Totals	\$0	\$0	\$0			

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

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

**3. CERTIFICATION**

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

\_\_\_\_\_  
(21) Prime Contractor Manager's Signature

\_\_\_\_\_  
(22) Date

\_\_\_\_\_  
(25) Prime Contractor Manager's Name

\_\_\_\_\_  
(26) Phone

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

\_\_\_\_\_  
(23) Local Agency Representative's Signature

\_\_\_\_\_  
(24) Date

\_\_\_\_\_  
(27) Local Agency Representative's Name

\_\_\_\_\_  
(28) Phone

## Exhibit 9-P Instructions

### I. Purpose

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

### II. Instruction

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

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

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

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

#### 1. CONTRACT INFORMATION

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

#### 2. PAYMENT INFORMATION

- (10) **Subcontractor/Subconsultant name:** List the firm name.
- (11) **DBE Cert. Number:** List the DBE's certification number as listed in the California Unified Certification Program
- (12) **Subcontract Type:** Enter the most appropriate Subcontractor's contract type, Construction or Consultant.
- (13) **Date Payment Received by Prime:** List date when a check is issued by LPA to the contractor/consultant for work performed by the contractor/consultant.
- (14) **Date of Prime Payment to Sub:** List date when a check is issued by prime to the subcontractor/subconsultant for work performed by the subcontractor/subconsultant.

- (15) **Amount of Payment (\$):** List the total amount paid to the subcontractor this period.
- (16) **Amount Paid to Sub to Date (\$):** List the total amount paid to this subcontractor to date. This should be a total of past payments plus payment for the current work just invoiced to the Local Agency.
- (17) **Total amount committed to this subcontractor (\$):** For DBE subcontractor, copy the information from the agency signed Exhibit 10-O2 or 15-G.
- (18) **Promptly Paid? (Y/N):** Enter "Y" if payment was made in accordance with the contract. Enter "N" if it's in dispute. Must provide comments regarding any dispute of payment.
- (19) **Incremental Retainage Paid? (Y/N):** Enter "Y" if this was a retainage payment. Enter "N" if this was a progress or final payment.
- (20) **Comments or Reason for Non-Payment/Non-Prompt Payment, including Payment of Incremental Retainage \*:** Only reasons based on dispute with subcontractor or supplier noncompliance may be accepted. Add appropriate notes if a DBE subcontract was terminated, a DBE subcontract was added, if change orders impacted the DBE's payments (include good faith efforts the prime contractor/consultant implemented), if task orders weren't issued, etc.

### 3. CERTIFICATION

- (21) **Prime Contractor Manager's Signature:** Self explanatory
- (22) **Date:** Provide the date Prime Contractor Manager signed this form.
- (23) **Local Agency Representative's Signature:** Self explanatory.
- (24) **Date:** Provide the date Local Agency Representative signed this form.
- (25) **Prime Contractor Manager's Name:** Self explanatory.
- (26) **Phone:** Self explanatory
- (27) **Local Agency Representative's Name:** Self explanatory.
- (28) **Phone:** Self explanatory

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

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

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

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

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

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

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