

# The County of Yuba

## Community Development & Services Agency

**Kevin Mallen, Director**

Phone – (530) 749-5430 • Fax – (530) 749-5434  
915 8<sup>th</sup> Street, Suite 123  
Marysville, California 95901

[www.co.yuba.ca.us](http://www.co.yuba.ca.us)



**BUILDING**  
749-5440 • Fax 749-5616

**CODE ENFORCEMENT**  
749-5455 • Fax 749-5464

**ENVIRONMENTAL HEALTH • CUPA**  
749-5450 • Fax 749-5454

**PLANNING**  
749-5470 • Fax 749-5434

**PUBLIC WORKS • SURVEYOR**  
749-5420 • Fax 749-5424

**FINANCE AND ADMINISTRATION**  
749-5430 • Fax 749-5434

March 30, 2020

TO: CONSULTANT

FROM: Sam Bunton, Associate Engineer

SUBJECT: **ADDENDUM NO. 2 TO REQUEST FOR PROPOSAL FOR THE SYTIA COMPREHENSIVE IMPLEMENTATION STRATEGY PROJECT**

The following changes are hereby made to and considered a part of the request for proposal:

1. Change the due date to: Must be received in mail by end of business day (5:00PM) April 17, 2020. Due to Yuba County Government Center being closed to the public, all proposals shall be mailed in.
2. Add to Proposal Requirements: 1 flash drive containing Proposal in PDF format.
3. Add Appendix B
4. Add Appendix C

Please sign below and attach (staple) this Addendum 2 to the proposal package. **Failure to comply with the forgoing will nullify your proposal**

CONSULTANT

\_\_\_\_\_  
\_\_\_\_\_

BY \_\_\_\_\_

TITLE \_\_\_\_\_

Appendix B "Evaluation Criteria"

**Engineering Services for SYTIA Comprehensive Implementation Strategy**

Evaluation Criteria	Maximum Points	Consultant		
Understanding of the work to be done and demonstrated ability to work cooperatively with public agencies	30			
Experience with projects of similar size and scope	20			
Familiarity with Caltrans Procedures	10			
Qualifications and availability of key staff proposed for the project	20			
Overall quality of proposal	20			
<b>Total</b>	<b>100</b>			
Notes:				

# Appendix C

**AGREEMENT FOR  
PROFESSIONAL SERVICES  
(Type of Design)  
Contract No. 102-XXXX.X**

THIS AGREEMENT for professional engineering (i.e. surveying) services for the **Project Name** ("Agreement") is made as of the Agreement Date set forth below by and between the County of Yuba, a political subdivision of the State of California ("the COUNTY"), and

**Consultant Company Name**  
"CONSULTANT"

In consideration of the Services to be rendered, the sums to be paid, and each and every covenant and condition contained herein, the parties hereto agree as follows:

## OPERATIVE PROVISIONS

### 1. SERVICES

The CONSULTANT shall provide those services described in Attachment "A", Provision A-1. CONSULTANT shall provide said services at the time, place and in the manner specified in Attachment "A", Provisions A-2 through A-3.

### 2. PERFORMANCE PERIOD

This contract shall go into effect on     (Date)    , contingent upon approval by the COUNTY, and CONSULTANT shall commence work after notification to proceed by the COUNTY'S Contract Administrator. The contract shall end on     (Date)    , unless extended by the contract amendment.

Consultant is advised that any recommendation for contract award is not binding on the County until the contract is fully executed and approved by the County.

Notwithstanding the term set forth above, and unless this contract is terminated by either party prior to its termination date, the term of the Agreement may be automatically extended up to ninety (90) days. Any Notice of Termination during this automatic extension period shall be effective upon a thirty (30) day written notice to the other party. The purpose of this automatic extension is to allow for continuation of services, and to allow COUNTY time in which to complete a novation or renewal contract for CONSULTANT AND COUNTY approval.

CONSULTANT understands and agrees that there is no representation, implication, or understanding that the services provided by CONSULTANT pursuant to this Agreement will be purchased by COUNTY under a new agreement following expiration or termination of this Agreement, and CONSULTANT waives all rights or claims to notice or hearing respecting any

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failure to continue purchase of all or any such services from CONSULTANT.

### 3. PAYMENT

COUNTY shall pay CONSULTANT for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B". The payment specified in Attachment "B" shall be the only payment made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to COUNTY in the manner specified in Attachment "B".

### 4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF COUNTY

CONSULTANT shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement, unless an exception to this requirement is provided in Attachment "A", Provision A-4.

### 5. ADDITIONAL PROVISIONS

Those additional provisions unique to this Agreement are set forth in Attachment "C".

### 6. GENERAL PROVISIONS

The general provisions set forth in Attachment "D" are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.

### 7. DESIGNATED REPRESENTATIVES

The County's Public Works Director is the representative of the COUNTY. **Name of Consultant Contract Representative** is the authorized representative for CONSULTANT. Changes in designated representatives shall occur only by advance written notice to the other party.

### 8. ATTACHMENTS

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

- Attachment A – Scope of Work
- Attachment B – Payment
- Attachment C – Additional Provisions
- Attachment D – General Provisions
- Attachment E – Insurance Provisions
- Exhibit 1 – Scope of Services **Need to Add at end of Contract**
- Exhibit 2 – Cost **Need to Add at end of Contract**

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### 9. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

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

CONSULTANT also agrees to comply with federal procedures in accordance with 2 CFR, Part 200 et seq., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 2 CFR Part 200 et seq. and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to COUNTY.

All subcontracts in excess of \$25,000 shall contain the above provisions.

### 10. TERMINATION

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

The COUNTY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by the COUNTY. If the COUNTY terminates this contract with CONSULTANT, the COUNTY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to the COUNTY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

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

IN WITNESS WHEREOF, the parties hereto have executed this

Agreement on \_\_\_\_\_, 20\_\_\_\_.

"COUNTY"  
COUNTY OF YUBA

"CONSULTANT"

\_\_\_\_\_  
Board Chair  
\*\*Mike under \$25k  
purchasing agent 25k-50k\*\*

\_\_\_\_\_  
Name of Consultant Contract Representative, Job Title  
Consultant Company Name

INSURANCE PROVISIONS APPROVED

\_\_\_\_\_  
Jill Abel,  
Risk Manager

APPROVED AS TO FORM:  
COUNTY COUNSEL

\_\_\_\_\_  
Michael J. Ciccozzi,  
County Counsel

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## COUNTY OF YUBA

Consultant Company Name – Project Name

### ATTACHMENT A

#### SCOPE OF WORK

##### **A.1 SCOPE OF SERVICES AND DUTIES**

The services to be provided by CONSULTANT and the scope of CONSULTANT's duties are to provide for professional engineering (i.e. surveying) services for the Project Name and as included on the attached exhibits labeled as Exhibit 1- Scope of Services and Exhibit 2 - Cost.

##### **A.2. TIME SERVICES RENDERED**

The services will be provided on such dates and at such times as specified by the COUNTY. Specific date(s) to be mutually agreed upon by the COUNTY and CONSULTANT.

##### **A.3. MANNER SERVICES ARE TO BE PERFORMED**

As an independent Contractor, CONSULTANT shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. COUNTY shall not control the manner of performance.

CONSULTANT's Project Manager shall meet with COUNTY's Contract Administrator, as needed, to discuss progress on the contract.

##### **A.4. FACILITIES FURNISHED BY COUNTY**

CONSULTANT shall, at his/her sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.

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## COUNTY OF YUBA

Consultant Company Name – Project Name

### ATTACHMENT B

#### PAYMENT

COUNTY shall pay CONSULTANT as follows:

##### **B.1 BASE CONTRACT FEE**

COUNTY shall pay CONSULTANT a contract fee not to exceed **AMOUNT (\$AMOUNT)**; CONSULTANT shall submit requests for payment after completion of services or no later than the tenth (10th) day of the month following provision of services. In no event shall total compensation paid to CONSULTANT under this Provision B.1 exceed **AMOUNT (\$AMOUNT)** without a formal written amendment to this Agreement approved by the COUNTY.

##### **B.2 TRAVEL COSTS**

COUNTY shall not pay CONSULTANT for meals, lodging or other travel costs not included in this Agreement unless said costs are approved in advance by the COUNTY representative (Operative Provision 7) and then COUNTY shall pay CONSULTANT per diem rates in effect on the date of invoice upon presentation of invoices.

##### **B.3 AUTHORIZATION REQUIRED**

Services performed by CONSULTANT and not authorized in this Agreement shall not be paid for by COUNTY. Payment for additional services shall be made to CONSULTANT by COUNTY if, and only if, this Agreement is amended by formal written agreement signed by both parties in advance of performing additional services.

##### **B.4 ALLOWABLE COSTS AND PAYMENTS **\*\*Different for lump sum, on-call contracts. See Article V of Exhibit 10-R\*\*****

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



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- B. In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee (AKA PROFIT) of AMOUNT (\$AMOUNT). The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- D. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, COUNTY shall have the right to delay payment or terminate this Contract in accordance with Operative Provision 10 "Termination".
- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.
- G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due COUNTY including any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:
  - Dan Peterson, Deputy Director
- H. The total amount payable by COUNTY including the fixed fee shall not exceed AMOUNT (\$AMOUNT).
- I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by COUNTY's Contract Administrator.

915 8<sup>th</sup>. Street, Suite 125, Marysville CA 95901

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

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## COUNTY OF YUBA

Consultant Company Name – Project Name

### ATTACHMENT C

#### ADDITIONAL PROVISIONS

##### C.1 FUNDING

CONSULTANT and COUNTY agree that this Agreement will be null, void and not enforceable if all or part of the funds secured by COUNTY for the purposes of this Agreement are not made available to COUNTY. If this provision is invoked, COUNTY shall be liable for work already completed by CONSULTANT at contracted rates.

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- B. This contract is valid and enforceable only, if sufficient funds are made available to the County for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or the County governing board that may affect the provisions, terms, or funding of this contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- D. County has the option to void the contract under the 30-day termination clause pursuant to Operative Provision 10, or by mutual agreement to amend the contract to reflect any reduction of funds.

##### C.2 FORCE MAJEURE

Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

##### C.3 LAW, POLICY AND PROCEDURES, LICENSES, AND CERTIFICATES

CONSULTANT agrees to administer this Agreement in accordance with all applicable local, county, state, and federal laws, rules, and regulations applicable to their operations.

CONSULTANT shall further comply with all laws including, but not limited to, those relevant to wages and hours or employment, occupational safety, fire safety, health, sanitation standards and directives, guidelines, and manuals related to this Agreement. All issues shall be resolved using reasonable administrative practices and judgment. CONSULTANT shall keep in effect all licenses, permits, notices, and certificates required by law and by this Agreement.

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### C.4 RETENTION OF RECORDS/AUDITS

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and the COUNTY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, the COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

### C.5 ACCEPTANCE

All work performed and completed under the Agreement is subject to the acceptance of the COUNTY or its authorized representatives. Payment shall be made after inspection and approval by COUNTY. Failure by the CONSULTANT to take corrective action within 24 hours after personal or telephonic notice by the COUNTY's representative on items affecting essential use of the facility, safety or the preservation of property, and within ten days following written notice on other deficiencies, will result in the COUNTY taking whatever corrective action it deems necessary. All costs resulting from such action by the COUNTY will be claimed against CONSULTANT.

### C.6 CONFIDENTIALITY

CONSULTANT must maintain compliance with confidentiality regulations. At no time shall CONSULTANT'S employees, agents, or representatives in any manner, either directly or indirectly, use for personal benefit or divulge, disclose, or communicate in any manner, any information that is confidential to the COUNTY. CONSULTANT and its employees, agents, and representatives shall protect such information and treat it as strictly confidential.

### C.7 INTELLECTUAL PROPERTY

COUNTY shall have and retain all right, title, and interest in Intellectual Property in all plans specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, documents developed or modified under this Agreement.

### C.8 AUDIT REVIEW PROCEDURES **\*\*Needs Audit clauses for >\$150,000 and >3,500,000, Article IX of Exhibit 10R\*\***

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 the COUNTY'S Chief Financial Officer.

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- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by the COUNTY'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 the COUNTY 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 ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by the COUNTY'S contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by COUNTY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

### C.9 EQUIPMENT PURCHASE

- A. Prior authorization in writing, by the COUNTY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. CONSULTANT agrees to use, manage, and dispose of equipment purchased as a result of this contract in compliance with 2 CFR 200.313.
- C. All subcontracts in excess \$25,000 shall contain the above provisions.
- D. Any equipment purchased as a result of this contract is subject to the following:  
"CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit the COUNTY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by COUNTY and CONSULTANT, if it is determined to sell the equipment, the terms and

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conditions of such sale must be approved in advance by COUNTY.” 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

### **C.10 STATE PREVAILING WAGE RATES **\*\*Different when when all of the proposed work in the contract is performed by crafts not affected by state labor laws or are not contemplated for use, Article XII of Exhibit 10R\*\*****

- A. CONSULTANT shall comply with the State of California’s General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demoliocooinfn, repair, or maintenance of public works, shall contain all of the provisions of this Article.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

### **C.11 REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

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

**\*\*Need Article XV from Exhibit 10-R if more than \$150,000\*\***

### **C.12 DEBARMENT AND SUSPENSION CERTIFICATION**

- A. CONSULTANT’s signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)”, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official

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misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the COUNTY.

- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

### C.13 DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

#### **\*\*Removed on State or Locally funded projects\*\***

- A. This contract is subject to 49 CFR, Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”. Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this contract is 0%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) 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. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT 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, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as COUNTY deems appropriate.
- D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting COUNTY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is

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performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the, contract is commensurate with the work it is actually performing, and other relevant factors.

- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- I. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- J. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- 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 the COUNTY's Contract Administrator within 30 days.

### **C.14 CONTINGENT FEE**

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

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### C.15 DISPUTES

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the COUNTY's Contract Administrator and Director of Public Works, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by COUNTY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

### C.16 INSPECTION OF WORK

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

### C.17 SAFETY

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

### C.18 CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by the COUNTY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with the COUNTY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.



## Appendix C

- B. CONSULTANT's personnel that the COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the COUNTY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this contract.
- C. Services of CONSULTANT's personnel in connection with the COUNTY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

### **C.19 CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which are designated confidential by the COUNTY and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by the COUNTY relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the COUNTY's actions on the same, except to the COUNTY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the COUNTY, and receipt of the COUNTY'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.
- F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than the COUNTY.

### **C.20 NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

### **C.21 EVALUATION OF CONSULTANT**

## Appendix C

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

### **C.22 RETENTION OF FUNDS**

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

# Appendix C

## COUNTY OF YUBA

Consultant Company Name – Project Name

### ATTACHMENT D

#### GENERAL PROVISIONS

##### **D.1 INDEPENDENT CONTRACTOR STATUS**

At all times during the term of this Agreement, the following apply:

**D.1.1** All acts of CONSULTANT shall be performed as an independent Contractor and not as an agent, officer or employee of COUNTY. It is understood by both CONSULTANT and COUNTY that this Agreement is by and between two independent parties and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

**D.1.2** CONSULTANT shall have no claim against COUNTY for employee rights or benefits, including, but not limited to, seniority, vacation time, vacation pay, sick leave, personal time off, overtime, medical, dental or hospital benefits, civil service protection, disability retirement benefits, paid holidays or other paid leaves of absence.

**D.1.3** CONSULTANT is solely obligated to pay all applicable taxes, deductions and other obligations, including, but not limited to, federal and state income taxes, withholding and Social Security taxes, unemployment and disability insurance and Workers' Compensation and Medi-Care payments.

**D.1.4** As an independent Contractor, CONSULTANT is not subject to the direction and control of COUNTY except as to the final result contracted for under this Agreement. COUNTY may not require CONSULTANT to change its manner of doing business, but may require it to redirect its efforts to accomplish what it has agreed to do.

**D.1.5** CONSULTANT may provide services to others during the same period service is provided to COUNTY under this Agreement.

##### **D.1.6 SUBCONTRACTING**

A. Nothing contained in this contract or otherwise, shall create any contractual relation between the COUNTY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to the COUNTY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT.

## Appendix C

CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from the COUNTY'S obligation to make payments to the CONSULTANT.

B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the COUNTY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

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

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

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

**D.1.7** As an independent Contractor, CONSULTANT hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based on any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

CONSULTANT agrees to indemnify and hold harmless COUNTY, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of CONSULTANT. CONSULTANT will reimburse COUNTY for any expenditure, including reasonable attorney fees, incurred by COUNTY in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of CONSULTANT.

### **D.2 LICENSES, PERMITS, ETC.**

CONSULTANT represents and warrants to COUNTY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice its profession. CONSULTANT represents and warrants to COUNTY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice its profession at the time the services are performed. Failure of the CONSULTANT to comply with this provision shall authorize the COUNTY to immediately terminate this agreement notwithstanding any other provision in this agreement to the contrary.

### **D.3 TIME**

CONSULTANT shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

## Appendix C

### **D.4 CONSULTANT NOT AGENT**

Except as COUNTY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of COUNTY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement to bind COUNTY to any obligation whatsoever.

### **D.5 ASSIGNMENT PROHIBITED**

CONSULTANT may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.

### **D.6 PERSONNEL**

CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that COUNTY, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving written notice from COUNTY of its desire for removal of such person or persons.

### **D.7 STANDARD OF PERFORMANCE**

CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged. All products of whatsoever nature which CONSULTANT delivers to COUNTY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards or quality normally observed by a person practicing in CONSULTANT's profession.

### **D. 8 POSSESSORY INTEREST**

The parties to this Agreement recognize that certain rights to property may create a "possessory interest", as those words are used in the California Revenue and Taxation Code, §107. For all purposes of compliance by COUNTY with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by the COUNTY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties hereto. A taxable possessory interest may be created by this contract; and if created, the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

### **D.9 TAXES**

CONSULTANT hereby grants to the COUNTY the authority to deduct from any payments to CONSULTANT any COUNTY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONSULTANT.

### **D.10 TERMINATION**

Upon termination of this Agreement as otherwise provided herein, CONSULTANT shall immediately cease rendering service upon the termination date and the following shall apply:

## Appendix C

**D.10.1 CONSULTANT** shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

**D.10.2** COUNTY shall have full ownership and control of all such writings or other communications delivered by CONSULTANT pursuant to this Agreement.

**D.10.3** COUNTY shall pay CONSULTANT the reasonable value of services rendered by CONSULTANT to the date of termination pursuant to this Agreement not to exceed the amount documented by CONSULTANT and approved by COUNTY as work accomplished to date; provided, however, COUNTY shall not in any manner be liable for lost profits which might have been made by CONSULTANT had CONSULTANT completed the services required by this Agreement. In this regard, CONSULTANT shall furnish to COUNTY such financial information as in the judgment of the COUNTY is necessary to determine the reasonable value of the services rendered by CONSULTANT. In the event of a dispute as to the reasonable value of the services rendered by CONSULTANT, the decision of the COUNTY shall be final. The foregoing is cumulative and does not affect any right or remedy which COUNTY may have in law or equity.

CONSULTANT may terminate its services under this Agreement upon thirty (30) days written notice to the COUNTY, without liability for damages, if CONSULTANT is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY.

### **D.11 STATEMENT OF COMPLIANCE**

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and California Code of Regulations Title 2, § 11102.
- B. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this

## Appendix C

clause to labor organizations with which they have a collective bargaining or other Agreement.

- C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

### **D.12 REHABILITATION ACT OF 1973/AMERICANS WITH DISABILITIES ACT OF 1990**

In addition to application of the non-discrimination provision of this Agreement, above, CONSULTANT agrees to comply with all provisions of section 504 et seq. of the Rehabilitation Act of 1973, and with all provisions of the Americans with Disabilities Act of 1990, and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts, pertaining to the prohibition of discrimination against qualified handicapped and disabled persons, in all programs or activities, as to employees or recipients of services.

### **D.13 OWNERSHIP OF DATA**

- A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in the COUNTY; and no further agreement will be necessary to transfer ownership to the COUNTY. CONSULTANT shall furnish the COUNTY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the COUNTY of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by the COUNTY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by CONSULTANT.

## Appendix C

- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. The COUNTY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.
- F. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

### **D.14 WAIVER**

A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

### **D.15 COMPLETENESS OF INSTRUMENT**

This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

### **D.16 SUPERSEDES PRIOR AGREEMENTS**

It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

### **D.17 CAPTIONS**

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

### **D.18 DEFINITIONS**

Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

**D.18.1 NUMBER AND GENDER.** In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

**D.18.2 MANDATORY AND PERMISSIVE.** "Shall" and "will" and "agrees" are mandatory. "May" is permissive.



## Appendix C

### **D.19 TERM INCLUDES EXTENSIONS**

All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

### **D.20 SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

### **D.21 CHANGE IN TERMS**

- A. This contract may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the COUNTY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract without prior written approval by the COUNTY's Contract Administrator.

### **D.22 COUNTERPARTS**

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

### **D.23 OTHER DOCUMENTS**

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

### **D.24 PARTIAL INVALIDITY**

If any term, covenant, condition or provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

### **D.25 JURISDICTION**

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a Court of competent jurisdiction in the County of Yuba, State of California.

### **D.26 CONTROLLING LAW**

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

### **D.27 TIME IS OF THE ESSENCE**

Time is of the essence of this Agreement and each covenant and term a condition herein.

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### D.28 AUTHORITY

All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

### D.29 CONFLICT OF INTEREST **\*\*Different for PS&E contracts and Construction Administration contracts, Article XIII of Exhibit 10R\*\***

- A. CONSULTANT shall disclose any financial, business, or other relationship with the COUNTY that may have an impact upon the outcome of this contract, or any ensuing the COUNTY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing COUNTY construction project, which will follow.
- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

### D.30 NOTICES

All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "COUNTY":

Public Works  
County of Yuba  
Attn: Director  
915 8<sup>th</sup> Street, Suite 125  
Marysville, CA 95901

## Appendix C

With a copy to:

County Counsel  
County of Yuba  
915 8<sup>th</sup> Street, Suite 111  
Marysville, CA 95901

If to "CONSULTANT":

Consultant Name

Attn: Consultant Representative

Address

# Appendix C

## COUNTY OF YUBA

Consultant Company Name – Project Name

### ATTACHMENT E

#### INSURANCE PROVISIONS

##### E. INSURANCE

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

##### E.1 MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

**E.1.1. Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

**E.1.2. Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$2,000,000 per accident for bodily injury and property damage.

**E.1.3. Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$2,000,000 per accident for bodily injury or disease.  
*(Not required if CONSULTANT provides written verification it has no employees)*

**E.1.4. Professional Liability (Errors and Omissions)** Insurance as appropriate to CONSULTANT’s profession, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONSULTANT maintains higher limits than the minimums shown above, COUNTY requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT.

##### E.2 OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

## Appendix C

### **E.2.1 ADDITIONAL INSURED STATUS.**

**COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of CONSULTANT; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

### **E.2.2. PRIMARY COVERAGE**

For any claims related to this contract, **CONSULTANT's insurance coverage shall be primary** insurance as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be excess of CONSULTANT's insurance and shall not contribute with it.

### **E.2.3. NOTICE OF CANCELLATION**

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the COUNTY.**

### **E.3 WAIVER OF SUBROGATION**

CONSULTANT hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against COUNTY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not COUNTY has received a waiver of subrogation endorsement from the insurer.

### **E.4 DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retentions must be declared to and approved by COUNTY. COUNTY may require CONSULTANT to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

### **E.5 ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the COUNTY.

### **E.6 CLAIMS MADE POLICIES**

If any of the required policies provide coverage on a claims-made basis:

## Appendix C

**E.6.1.** The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

**E.6.2.** Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

**E.6.3.** If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, CONSULTANT must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

### **E.7 VERIFICATION OF COVERAGE**

CONSULTANT shall furnish COUNTY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive CONSULTANT’s obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### **E.8 SUBCONTRACTORS**

CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

### **E.9 SPECIAL RISKS OR CIRCUMSTANCES**

COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

# Appendix C

## COUNTY OF YUBA

Consultant Company Name – Project Name

### Exhibit 1

#### Scope of Services

**\*\*Attach Scope of Services from Consultant's Proposal\*\***

# Appendix C

## COUNTY OF YUBA

Consultant Company Name – Project Name

### Exhibit 2

Cost

\*\*Attach 10-H provided by Consultant\*\*