

**AMADOR COUNTY TRANSPORTATION COMMISSION**  
**AND [REDACTED] AGREEMENT**  
**FOR AMADOR AND CALAVERAS**  
**SYSTEMIC SAFETY ANALYSIS REPORT PROGRAM**  
**APPROVED BY THE ACTC BOARD ON: [REDACTED]**  
**[On Call]**

This is an agreement (“Agreement”) between the Amador County Transportation Commission (hereinafter “ACTC”) and [REDACTED], a California corporation located at [Address of Consultant] (hereinafter “Consultant”).

The parties agree as follows:

1. Employment of Consultant. ACTC hereby engages Consultant and Consultant hereby agrees to perform the services set forth in Exhibit A, in conformity with the terms of this Agreement. Consultant will complete all work in accordance with the work schedule set forth in Exhibit A.
  - (a) The work is generally described as follows: On-call traffic modeling, analysis, and related services.
  - (b) Consultant represents that Consultant and its agents, subcontractors and employees performing work hereunder are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required by this Agreement.
  - (c) Consultant, its agents, subcontractors, and employees, shall perform all work in a safe, skillful, and professional manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements. Consultant shall ensure for itself and for any subcontractors under this Agreement that the applicable requirements of Labor Code section 1725.5, concerning the registration of contractors for public works, shall be in force and maintained for the term of this Agreement.
  - (d) Consultant shall furnish, at its own expense, all materials and equipment necessary to carry out the terms of this Agreement, except as otherwise provided herein. Consultant shall not use ACTC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations hereunder.
  - (e) Consultant’s project manager shall be the person specified in Paragraph 35, below. If Consultant desires to change the project manager, Consultant shall get written approval from ACTC of the new project manager.

- (f) Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Administrator to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
  - (g) Consultant's Project Manager shall meet with ACTC's Contract Administrator, as needed, to discuss progress on the contract.
2. Term of Agreement. The term of this Agreement shall begin upon [REDACTED], contingent upon approval by the ACTC Board, and Consultant shall commence work only after a Notice to Proceed has been issued by ACTC's Project Manager specified in Paragraph 35. This Agreement shall end on June 31, 2018, unless extended by written amendment pursuant to Paragraph 17 below. Consultant acknowledges that this Agreement is not binding until it is fully executed and approved by ACTC.
3. Payments to Consultant; maximum liability. Subject to the limitations set forth herein, ACTC shall pay to Consultant the amounts provided in Exhibit B: Cost Proposal, upon receipt and acceptance of deliverables listed therein. Each payment by ACTC shall be for a specific deliverable outlined in Exhibit A: Scope of Work and Schedule. The maximum amount payable to the Consultant under this Agreement is set forth in Exhibit B: Cost Proposal and shall not exceed the amount of [dollar amount (\$XXXX)]. If there is any conflict between the terms of this Agreement and the terms of either Exhibit A (Scope of Work) or Exhibit B (Cost Proposal), the terms of this Agreement shall prevail. ACTC does not guarantee any minimum amount of dollars to be spent under this Agreement.
4. Method of Payment/Allowable Costs and Payment. The method of payment for this Agreement will be as follows:
- (a) Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's approved "Cost Proposal" (Exhibit B to this Agreement, in the form of Caltrans' Local Assistance Procedures Manual, Exhibit 10-H, as applicable), which rates shall be inclusive of direct salary costs, employee benefits, overhead and fees, if any. These rates are not adjustable for the performance period set forth in this Agreement.
  - (b) In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the Cost Proposal and in the executed Task Order.
  - (c) Consultant agrees to be on call to perform work as described in Section 1(a) until the term of the Agreement expires.
  - (d) Work on specific projects shall be directed via Task Orders.

- (e) Once a specific project to be performed under this Agreement is identified by ACTC, ACTC's Project Manager will prepare a draft Task Order less the cost estimate. The draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and an ACTC Task Manager. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days, along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee (if any), and a total dollar amount for the Task. After agreement has been reached on the negotiable items and total not to exceed cost, a finalized Task Order with the finalized Task Order Budget shall be signed by both ACTC and Consultant.
- (f) If no agreement on the Task Order is reached within a reasonable amount of time, ACTC may present the draft Task Order to a different consultant with which ACTC has an on call agreement, or may take such other actions as ACTC deems appropriate to accomplish the Task.
- (g) Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's approved Cost Proposal.
- (h) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- (i) When milestone cost estimates are included in the approved Cost Estimate, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- (j) Progress payments for each Task Order will be made monthly in arrears, based on services provided and actual costs incurred.
- (k) Consultant shall not commence performance of work or services until this Agreement has been approved by ACTC, and notification to proceed has been issued by ACTC's Contract Administrator. No payment will be made prior to approval, or for any work performed prior to approval of this Agreement.
- (l) A Task Order is of no force or effect until returned to ACTC and signed by an authorized representative of ACTC. No expenditures are authorized on a project or task, and work shall not commence until a Task Order for that project/task has been executed by ACTC.
- (m) Consultant will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by ACTC's Contract Administrator of itemized invoices in triplicate.

Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number and project title and Task Order number. Credits due ACTC that include any equipment purchased under the provisions of Paragraph 27 (Equipment, Supplies or Consultant Services Purchases) must be reimbursed by Consultant prior to the expiration or termination of this Agreement.

- (n) The final invoice should be submitted within 60 calendar days after completion of Consultant's work. Invoices shall be mailed to ACTC's Contract Administrator at the address contained in Paragraph 35 (Notices).
- (o) The period of performance for Task Orders shall be in accordance with the dates specified in the Task Order. No Task Order will be written which extends beyond the expiration of this Agreement.
- (p) The total amount payable by ACTC for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by a written amendment.
- (q) If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- (r) Task Orders may not be used to amend this Agreement and may not exceed the scope of work, or the term, of this Agreement.
- (s) The total amount payable by ACTC under all Task Orders resulting from this Agreement shall not exceed the amount [dollar amount (\$XXXX)]. It is understood and agreed that there is no guarantee, either expressed or implied, that this dollar amount will be authorized under this Agreement through Task Orders.
- (t) All subcontracts under this Agreement in excess of \$25,000 shall contain the above provisions.

#### 5. Retention of Funds.

- (a) Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.
- (b) No retainage will be withheld by ACTC from progress payments due the prime Consultant. Retainage by the prime consultant or subconsultants is prohibited, and no

retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

6. Termination.

- a. ACTC reserves the right to terminate this Agreement upon thirty (30) calendar days' written notice to Consultant without cause, or with the reasons for termination stated in the notice.
- b. ACTC may also terminate this Agreement at any time should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. ACTC may proceed with the work in any manner, which it deems proper. If ACTC terminates this Agreement, ACTC shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to ACTC exceeds the funds remaining in the contract. In such a case, the overage shall be deducted from any sum due Consultant under this Agreement, and the balance, if any, shall be paid to Consultant upon demand. Other costs incurred by ACTC thereby shall also be deducted from any sum otherwise due Consultant.
- c. The maximum amount for which ACTC shall be liable if this Agreement is terminated is zero (0) dollars.
- (a) It is also mutually understood between ACTC and Consultant that this Agreement may have been written before ascertaining the availability of funds, or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to ACTC for the purpose of this Agreement. It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds. ACTC retains the right to direct Consultant immediately to stop work and to terminate this Agreement for convenience, pursuant to Paragraph 6(a) above, in order to address any reduction of funds.
- d. Termination of this Agreement shall not terminate Consultant's duty to defend, indemnify and hold harmless ACTC, as provided in Paragraphs 8 and 20.

## 7. Cost Principles and Administrative Requirements.

- a. Consultant agrees that the contract Cost Principles and Procedures, 48 Code of Federal Regulations (CFR), Chapter 1, Part 31.000 *et seq.*, Federal Acquisition Regulations System, and “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, 2 CFR, Part 200, shall be used to determine the cost allowability of individual items.
- b. Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” and 2 CFR, Part 2225.
- c. Any costs for which payment has been made to Consultant under this Agreement that are determined by subsequent audit to be unallowable under 2 CFR Part 200 and 48 CFR Part 31, 23 CFR, 49 CFR, Part 18, 2 CFR Part 225, or any other applicable State or Federal Regulations, are subject to repayment by Consultant to ACTC. Disallowed costs must be reimbursed to ACTC within thirty (30) days unless ACTC approves in writing an alternative repayment plan. Should Consultant fail to return disallowed costs to ACTC within thirty (30) days, ACTC is authorized to withhold payments due to Consultant from other ACTC contracts.
- d. Consultant shall comply with, and shall require its subcontractors to comply with, the requirements for non-State employee travel and subsistence (per diem) expenses found in the California Department of Transportation (“Caltrans”) Travel Guide, Non-State Employee Travel (referencing the current California Department of Personnel Administration rules) at the following link: <http://www.dot.ca.gov/hqasc/travel/index.htm>. Lodging rates shall not exceed rates authorized to be paid non-State employees unless written verification is supplied that such rates are not commercially available to Consultant and/or its subcontractors at the time and location required as specified in the Caltrans Travel Guide Exception Process.
- e. Consultants and subconsultants shall maintain accounting systems related to the work to be performed pursuant to this Agreement that conform to Generally Accepted Accounting Principles (GAAP) which segregates and accumulates reasonable, allowable, and allocable costs and matching funds for work elements by line item and produces quarterly reports which clearly identify reimbursable costs and other expenditures and shall provide support for all invoices sent to ACTC. Consultant shall also provide ACTC with the Caltrans, Local Assistance Procedures Manual, Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System, when applicable.
- f. Consultants and subconsultants shall comply with: 23 CFR; Caltrans’ Local Assistance Procedures Manual ([at http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm](http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm)); Caltrans’ Local

Assistance Programs Guidelines (at <http://www.dot.ca.gov/hq/LocalPrograms/lam/lapg.htm>); California Public Contract Code, Sections 10300 to 10334, and 10335 to 10381; and all other applicable State and Federal statutes, regulations, and guidelines or additional restrictions, limitations, conditions, or any statute enacted by the state Legislature or adopted by the California Transportation Commission that may affect the provisions, terms, or funding of this project in any manner.

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

8. Indemnification.

To the fullest extent permitted by law, including California Civil Code sections 2782 and 2782.6, Consultant shall defend (with legal counsel reasonably acceptable to ACTC), indemnify and hold harmless ACTC, its officers, agents, and employees, from and against any and all claims, losses, costs, damages, injuries (including injury to or death of an employee of Consultant or its subcontractors), expenses and liabilities of every kind, nature and description (including incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify ACTC, its officers, agents, and employees, shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of ACTC, its officers, agents, and employees. To the extent there is an obligation to indemnify under this Paragraph, Consultant shall be responsible for incidental and consequential damages resulting directly or indirectly, in whole or in part, from Consultant's negligence, recklessness, or willful misconduct. Notwithstanding any other provision of this Agreement, Consultant's obligation to defend, indemnify and hold harmless ACTC shall survive the termination or expiration of the Agreement for a term to include the applicable statute of limitations related to the Consultant's performance pursuant to the Agreement.

9. Insurance.

- a. Without limiting Consultant's duty to indemnify as set forth in this Agreement, Consultant shall maintain, at no additional cost to ACTC, throughout the term of this Agreement a policy or policies of insurance with the following coverage and minimum limits of liability (check if applicable):
- Commercial general liability insurance, including but not limited to premises, personal injury, products, and completed operations, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence.

- Professional liability insurance in the amount of not less than One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims made” basis rather than an “occurrence” basis, Consultant shall, upon the expiration or termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three years following the surviving term of Consultant’s obligation to defend, indemnify and hold harmless ACTC as set for in Paragraph 8.
  - Comprehensive automobile insurance covering all motor vehicles, including owned, leased, hired and non-owned vehicles used in providing services under this Agreement, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.
- b. All insurance required under this Agreement shall be with a company acceptable to ACTC and authorized by law to transact insurance business in the State of California. Unless otherwise provided in this Agreement, all such insurance shall be written on an occurrence basis; or, if any policy cannot be written on an occurrence basis, such policy shall continue in effect for a period of two years following the date of Consultant’s completion of performance hereunder.
  - c. Each policy of insurance required under this Agreement shall provide that ACTC shall be given written notice at least thirty days in advance of any change, cancellation or non-renewal thereof. Each policy shall provide identical coverage for each subcontractor performing work under this Agreement, or be accompanied by a certificate of insurance for each subcontractor showing identical insurance coverage.
  - d. Commercial general liability and automobile liability policies shall provide an endorsement naming ACTC, its officers, agents, and employees, as additional insureds and shall further provide that such insurance is primary to any insurance or self-insurance maintained by ACTC, and that no insurance of any additional insured shall be called upon to contribute to a loss covered by Consultant’s insurance.
  - e. ACTC shall not be responsible for any premiums or assessments on the policy.
10. Workers’ Compensation Insurance. If during the performance of this Agreement, Consultant employs one or more employees, then Consultant shall maintain a workers’ compensation plan covering all of its employees as required by Labor Code Sec. 3700, either (a) through workers’ compensation insurance issued by an insurance company, with coverage meeting the statutory limits and with a minimum of One Million Dollars (\$1,000,000) per occurrence for employer’s liability, or (b) through a plan of self-insurance certified by the State Director of Industrial Relations, with equivalent coverage. If Consultant elects to be self-insured, the



certificate of insurance otherwise required by this Agreement shall be replaced with consent to self-insure issued by the State Director of Industrial Relations. The provisions of this paragraph apply to any subcontractor employing one or more employees, and Consultant shall be responsible for all subcontractors' compliance herewith.

11. Safety Provisions.

- a. Consultant shall comply with Division of Occupational Safety and Health (CAL-OSHA) regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by ACTC Safety Officer and other ACTC representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on a construction project site.
- b. If applicable to work to be performed by Consultant identified in the Scope of Work (Exhibit A), and pursuant to the authority contained in Section 591 of the Vehicle Code, ACTC 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 Agreement, shall contain all of the provisions of this Section.
- d. Consultant must have a CAL-OSHA permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

12. Certificate of Insurance and Taxpayer Identification. Prior to the execution of this Agreement by ACTC, Consultant shall submit a completed federal W-9 form, Request for Taxpayer Identification Number and Certification, and file certificates of insurance with ACTC's contract administrator evidencing that Consultant has in effect the insurance required by this Agreement. Consultant shall file a new or amended certificate promptly after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify any indemnification provision of this Agreement.

13. Retention of Records/Audit. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7, Consultant, subconsultants, and ACTC shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but

not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, ACTC, 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 Agreement 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.

14. Audit Review Procedures.

- a. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by ACTC'S Chief Financial Officer.
- b. Not later than 30 days after issuance of the final audit report, Consultant may request a review by ACTC'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 ACTC will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.

**(The following AUDIT CLAUSE must be inserted into all contracts of \$150,000 or greater)**

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 ACTC contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by ACTC at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

15. Inspection of Work. Consultant and any subconsultant shall permit ACTC, the State, and the FHWA (if federal participating funds are used in this Agreement) to review and inspect the

project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

16. Confidentiality; Return of Records. Consultant and its officers, employees, agents, and subcontractors shall comply with all federal, State and local laws providing for the confidentiality of records and other information. Consultant shall not disclose any confidential information received from ACTC or prepared in connection with the performance of this Agreement without the express permission of ACTC. Consultant shall promptly transmit to ACTC all requests for disclosure of any such confidential information. Consultant shall not use any confidential information gained through the performance of this Agreement except for the purpose of carrying out Consultant's obligations hereunder. When this Agreement expires or terminates, Consultant shall return to ACTC all records, which Consultant utilized or received from ACTC to perform services under this Agreement.
17. Amendments and Modifications. No modification or amendment of this Agreement shall be valid unless it is set forth in writing and executed by the parties hereto.
18. Statement of Compliance/Non-Discrimination.

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 following non-discrimination and equal opportunity laws. Any failure by Consultant to comply with these provisions shall constitute a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as ACTC may deem appropriate.

- a. During the performance of this Agreement, 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 thereunder (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. In addition, Consultant shall comply with the Americans with Disabilities Act of 1990 (ADA) and other applicable discrimination laws and regulations (including 49 CFR Part 21 through Appendix C, 23 CFR part 200, 23 CFR part 230, 49 U.S.C. 5332, 42 U.S.C. 12101 et seq.) 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.

[If federal funding, add c) through e)]

- b. Consultant shall comply with regulations relative to Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d, *et seq.*, with U.S. D.O.T. regulations, “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), and with any applicable implementing Federal directives that may be issued. 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.
  - c. 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. Consultant and its subconsultants shall comply with all applicable equal employment opportunity (EEO) provisions of 42 U.S.C. §§ 2000e, implementing Federal regulations, and any applicable implementing Federal directives that may be issued. Consultant and its subconsultants shall ensure that applicants and employees are treated fairly without regard to their race, color, creed, sex, disability, age, or national origin.
  - e. Consultant and its subconsultants shall also comply with the Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age, Section 324 of Title 23 U.S.C., prohibiting discrimination based on gender, and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.
  - f. Consultant will include the provisions of this Paragraph 18 in all contracts to perform work funded under this Agreement.
19. Harassment. ACTC maintains a strict policy prohibiting unlawful harassment, including sexual harassment, in any form, including verbal, physical and visual harassment by any employee, supervisor, manager, officer or Board member, or agent of the employer. Vendors, contractors, and consultants shall not engage in conduct that has an effect of unreasonably

interfering with an ACTC employee's work performance or creates an intimidating, hostile or offensive work environment.

20. Independent Contractor. In its performance under this Agreement, Consultant is at all times acting and performing as an independent contractor and not as an employee of ACTC or any of its member jurisdictions. No offer or obligation of employment is intended in any manner, and Consultant shall not become entitled by virtue of this Agreement to receive any form of benefits accorded to employees including without limitation leave time, health insurance, workers' compensation coverage, disability benefits, and retirement contributions. Consultant shall be solely liable for and obligated to pay directly all applicable taxes, including without limitation federal and State income taxes and social security arising out of Consultant's performance of this Agreement. In connection therewith, Consultant shall defend, indemnify, and hold harmless ACTC from any and all liability, which ACTC may incur because of Consultant's failure to make such payments.

21. Delegation of Duties; Subcontracting.

- a. Nothing contained in this Agreement or otherwise, shall create any contractual relation between ACTC and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to ACTC 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 ACTC'S obligation to make payments to the Consultant.
- b. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by ACTC's Contract Administrator, except that, which is expressly identified in the approved Budget/Cost Proposal.
- c. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by ACTC.
- d. Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.
- e. Any substitution of subconsultant(s) must be approved in writing by ACTC's Contract Administrator prior to the start of work by the subconsultant(s).

22. Ownership of Data.

- a. Upon completion of all work under this Agreement, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this Agreement will

automatically be vested in ACTC; and no further agreement will be necessary to transfer ownership to ACTC. Consultant shall furnish ACTC 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 connection with the project for which this Agreement 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 ACTC of the machine-readable information and data provided by Consultant under this Agreement; further, Consultant is not liable for claims, liabilities, or losses arising out of, or connected with any use by ACTC 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.
- d. Applicable patent rights provisions regarding rights to inventions shall be included in the Agreements as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- e. ACTC may permit copywriting reports or other agreement products. If copyrights are permitted, FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the data, and may authorize others to use the work for government purposes.
- f. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

### 23. Confidentiality of Data.

- a. All financial, statistical, personal, technical, or other data and information relative to ACTC's operations, which are designated confidential by ACTC and made available to Consultant in order to carry out this Agreement, shall be protected by Consultant from unauthorized use and disclosure.
- b. Permission to disclose information on one occasion, or public hearing held by ACTC relating to the Agreement, 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 Agreement or ACTC's actions on the same, except to ACTC's staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from a Legislative committee.

- d. Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by ACTC, and receipt of ACTC's written permission.
- e. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

24. Compliance with Terms of Federal or State Grant. If any part of this Agreement has been or will be funded pursuant to a grant from the federal or State government in which ACTC is the grantee, Consultant shall comply with all provisions of such grant applicable to Consultant's work hereunder, and said provisions shall be deemed a part of this Agreement as though fully set forth herein.

25. Use of United States –flag Vessels. If this Agreement relates to a federally-funded construction contract, the Consultant agrees:

- a. To utilize privately owned United State-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Agreement, to the extent such vessels are available at fair and reasonable rates for Unites States-flag commercial vessels.
- b. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) of this section to both the ACTC Project Manager (through the prime contractor in the case of subcontractor bills-of lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- c. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Agreement.

26. Prevailing Wages.

- a. Consultant shall comply with the all prevailing wage requirements, including California Labor Code section 1770, et seq., and any Federal or local laws or ordinances, that may be applicable to the work to be performed pursuant to this Agreement.
- b. Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works, shall contain all the provisions of this Paragraph 26.

- c. When prevailing wages may 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 found on the DIR website.

27. Equipment, Supplies or Consultant Services Purchases.

- a. Prior authorization in writing by ACTC's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding Five Thousand Dollars (\$5,000) for supplies, equipment, or unbudgeted Consultant services. Consultant shall provide an evaluation of desirability of incurring such costs.
- b. For purchase of any items, service or consulting work not covered in Consultant's Cost Proposal and exceeding Five Thousand Dollars (\$5,000), prior authorization is required by ACTC's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- c. Any equipment purchased as a result of this Agreement is subject to the following:
  - i. 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 Five Thousand Dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, ACTC shall receive a proper refund or credit for such equipment at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit ACTC 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 ACTC procedures for such sales and then credit ACTC in an amount equal to that 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 and appraiser mutually acceptable to ACTC and Consultant; if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by ACTC.
  - ii. Consultant acknowledges that, if federal funds are used in this Agreement, 49 CFR, Part 1201 requires a credit to Federal funds when participating equipment with a fair market value greater than Five Thousand Dollars (\$5,000) is credited to the project for which this Agreement was entered into.
- d. Consultant shall include these provisions into any subcontract in excess of Twenty-Five Thousand Dollars (\$25,000).



28. Conflict of Interest.

- a. Consultant shall disclose any financial, business, or other relationship with ACTC that may have an impact upon the outcome of this Agreement, or any ensuing ACTC construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing ACTC 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 Agreement.
- c. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.

29. Governing Laws. This Agreement shall be construed and enforced according to the laws of the State of California, and the parties hereby agree that the County of Amador shall be the proper venue for any dispute arising hereunder.

30. Construction of Agreement. The parties agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any exhibit or amendment. To that end, it is understood and agreed that this Agreement has been arrived at through negotiation, and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654. Section and paragraph headings appearing herein are for convenience only and shall not be used to interpret the terms of this Agreement.

31. Waiver. Any waiver of any term or condition hereof must be in writing. No such waiver shall be construed as a waiver of any other term or condition herein.

32. Successors and Assigns. This Agreement and all rights, privileges, duties and obligations hereunder, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and heirs.

33. Time is of the Essence. The parties mutually acknowledge and agree that time is of the essence with respect to every provision hereof in which time is an element. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act, nor shall any such extension create a precedent for any further or future extension.

34. Contract Administrators. Consultant's designated principal responsible for administering Consultant's work under this Agreement shall be \_\_\_\_\_, Project Manager; ACTC's designated administrator of this Agreement shall be John Gedney, Executive

Director. ACTC's Project Manager under this Agreement shall be Allison Platt, Transportation Planner.

35. Notices. Notices required under this Agreement shall be delivered personally or by electronic facsimile, or by first class or certified mail with postage prepaid. Notice shall be deemed effective upon personal delivery or facsimile transmission, or on the third day after deposit with the U.S. Postal Service. Consultant shall give ACTC prompt notice of any change of address. Unless otherwise changed according to these notice provisions, notices shall be addressed as follows:

|          |  |                |                            |
|----------|--|----------------|----------------------------|
| To ACTC: | John Gedney<br>Executive Director<br>117 Valley View Way<br>Sutter Creek, CA 95685 | To Consultant: | Project Manager<br>Address |
| Tel:     | 209-267-2282   | Tel:           | XXX-XXX-XXXX               |
| Email:   | john@actc-amador.org   | Email:         | xxxx@xxxxx.com             |

36. Non-exclusive Agreement. This Agreement is non-exclusive and both parties reserve the right to contract with other entities for the same or similar services.

37. Execution of Agreement. Any individual executing this Agreement on behalf of an entity represents and warrants that he or she has the requisite authority to enter into this Agreement on behalf of such entity and to bind the entity to the terms and conditions hereof. This Agreement 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 agreement.

38. Debarment and Suspension Certification.

- a. Consultant's signature affixed below shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (nonprocurement)," which certifies that Consultant or any person associated with Consultant 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 an federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or otherwise criminally or civilly charged by a government entity (Federal, State, or local), or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct, or had one or more public transactions or contracts (Federal, State, or local) terminated for cause or default, within the past three (3) years. Any exceptions to this certification must be disclosed to the ACTC.

- 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.

39. Rebates, Kickbacks or Other Unlawful Consideration Prohibited. Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any ACTC employee. ACTC shall have the right, in its sole and absolute discretion to do any of the following for breach or violation of this warranty: to terminate the Agreement without liability; to pay for the value of the work actually performed; or to deduct from the compensation to be paid under this Agreement (or otherwise recover) the full amount of any such rebate, kickback or unlawful consideration.

40. Prohibition of Expending Local Agency, State or Federal Funds for Lobbying.

- a. Consultant certifies to the best of his, her or its knowledge and belief that:
  - i. No State, Federal or local agency appropriated funds have been paid, or will be paid, by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the State Legislature or United States Congress, or any employee of a Member of the Legislature or Congress, in connection with the awarding of any State or Federal contract; in connection with the making of any State or Federal grant; in connection with the making of any State or Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan or cooperative agreement.
  - ii. If any funds other than Federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress; or an employee of a Member of Congress, in connection with this contract, grant, loan or cooperative agreement, then Consultant shall complete and submit a Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions and Exhibit 10-Q, "Disclosure of Lobbying Activities" from Caltrans' Local Assistance Procedures Manual.
- b. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352,

Title 31, U.S. Code. Consultant acknowledges that 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 such failure.

- c. By signing this Agreement, Consultant also agrees that Consultant will require that the language of this certification will be included in all lower-tier subcontracts which exceed One Hundred Thousand Dollars (\$100,000), and that all recipients of such subcontracts shall certify and disclose accordingly.

41. Drug-Free Certification. By signing this Agreement, Consultant hereby certifies under penalty of perjury under the laws of the State of California that Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, *et seq.*) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
  - (1) The dangers of drug abuse in the workplace;
  - (2) The person's or the organization's policy of maintaining a drug-free workplace;
  - (3) Any available counseling, rehabilitation, and employee assistance programs; and
  - (4) Penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee of Consultant who works under this Agreement shall:
  - (1) Receive a copy of Consultant's Drug-Free Workplace Policy Statement; and
  - (2) Agree to abide by the terms of Consultant's Statement as a condition of employment on this Agreement.

42. Union Organizing. By signing this Agreement, Consultant hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.

- a. Consultant will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.

- b. Consultant will not meet with employees or supervisors on ACTC or State property if the purpose of the meeting is to assist, promote or deter union organizing, unless the property is equally available to the general public for meetings.

43. Disadvantaged Business Enterprise (DBEs) Participation. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations (CFR) entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Financial Assistance Programs.” DBE’s and other small businesses, as defined in Title 49 CFR Part 26, are encouraged to participate in the performance of agreements financed in whole or in part with Federal funds; however, DBE participation is not a condition of award. In any event, Consultant shall complete the DBE Information Form attached to this Agreement as Exhibit “C,” **(Delete this if not DLAE Contract -> as well as Exhibit 10-02 from the Caltrans Local Assistance Procedures Manual,)** so that ACTC may compile statistics for Federal reporting purposes.

- a. Non-Discrimination: Consultant or its subconsultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Consultant or its subconsultants shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by Consultant or its subconsultants to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as ACTC may deem appropriate. Each subcontract signed by Consultant in the performance of this Agreement must include this nondiscrimination clause.

- b. Prompt Payments to DBE and Non-DBE Subcontractors:

(1) Consultant agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than 30 days from the receipt of each payment Consultant receives from ACTC. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of ACTC. This clause applies to both DBE and non-DBE subcontracts.

(2) The foregoing requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Consultant or its subconsultants in the event of a dispute involving late payment or non-payment to the Consultant or deficient subcontract performance or noncompliance by a subcontractor.

- c. Records: Consultant shall maintain records of all subcontracts entered into with certified DBE subcontractors and records of materials purchased from certified DBE suppliers. The records shall show the name and business address of each DBE subcontractor or vendor and the total dollar amount actually paid each DBE subcontractor or vendor. The records

shall show the date of payment and the total dollar figure paid to all firms. Upon completion of the contract, a summary of these records shall be prepared and submitted to ACTC.

d. Termination of a DBE: In conformance with 49 CFR Section 26.53:

- (1) Consultant shall not terminate a listed DBE subcontractor unless Consultant has received prior written authorization from ACTC's Project Manager. ACTC's Project Manager will authorize termination only if the Project Manager determines that Consultant has good cause to terminate the DBE subcontractor. As used in this Section, "good cause" includes those circumstances listed in 49 CFR Section 26.53(f)(3).
- (2) Prior to requesting ACTC's authorization to terminate and/or substitute a DBE subcontractor, Consultant shall give notice in writing to the DBE subcontractor, with a copy to ACTC, of its intent to request termination and/or substitution, and the reason for the request. The DBE subcontractor shall have five days to respond to the Consultant's notice and state the reasons, if any, why it objects to the proposed termination of its subcontract and why ACTC should not approve the Consultant's action. ACTC may, in instances of public necessity, approve a response period shorter than five days.
- (3) If a DBE subcontractor is terminated or fails to complete its work for any reason, Consultant shall be required to make good faith efforts to replace the original DBE subcontractor with another DBE.

e. DBE Certification and Decertification: If a DBE subcontractor is decertified during the life of the contract, the decertified subcontractor shall notify Consultant in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the contract, the subcontractor shall notify Consultant in writing with the date of certification. Consultant shall then provide to the Project Manager of ACTC written documentation indicating the DBE's existing certification status.

f. Noncompliance by Consultant. Consultant's failure to comply with any requirement of this Paragraph is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as ACTC may deem appropriate.

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

44. Campaign Contribution Disclosure. Consultant has complied with the campaign contribution disclosure provisions of the California Levine Act (Government Code § 84308) and has completed the Levine Act Disclosure Statement attached hereto as Exhibit “D.”
45. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.
46. Headings. The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.
47. Evaluation of Consultant Performance. Consultant’s performance may be evaluated by ACTC. 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 file.
48. Authority. Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.
49. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.
50. Clean Air Act. Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, including sections 174 and 176, subdivisions (c) and (d) (42 U.S.C. §§ 7504, 7506 (c) and (d)) and 40 CFR part 93 (“Clean Air requirements”). Consultant agrees to report each Clean Air requirement violation to ACTC and understands and agrees that ACTC will, in turn, report each Clean Air requirement violation as required to assure notification to FTA and the appropriate EPA Regional Office. Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

51. Disputes. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be submitted in writing to a committee consisting of ACTC's **Contracts Administrator and Executive Director**. This Committee may consider the written information or additional verbal information submitted by Consultant at the request of the Committee. A determination shall be made by the Committee within 10 business days. In the event that Consultant disputes the Committee's determination, Consultant may request review by **ACTC's Executive Director** of unresolved claims or disputes, other than audit, not later than 30 days after completion of all work under the Agreement. The Consultant's request for review must be submitted in writing. Neither the pendency of a dispute, nor its consideration by the Committee, will excuse Consultant from full and timely performance in accordance with this Agreement.

52. Exhibits. The following Exhibits are attached hereto and incorporated by reference:  
Exhibit A – Scope of Work and Work Schedule  
Exhibit B – Cost Proposal (LAPM Exhibit 10-H)  
Exhibit C - DBE Information Form  
Exhibit D – Levine Act Disclosure  
Exhibit 10-K – Consultant Certification of Contract Costs and Financial Management System  
Exhibit 10-02 – Consultant Contract DBE Commitment

53. Entire Agreement. This document, including all exhibits hereto, constitutes the entire agreement between the parties, and supersedes any and all prior written or oral negotiations and representations between the parties concerning all matters relating to the subject of this Agreement.

**(ADD CLAUSE BELOW if this contract pertains to Federal-Aid Highway Program Funds or DLAE projects, (i.e., all federally funded construction projects) awarded after February 15, 2016. IF NOT, DELETE IT.)**

55. United States-flag Vessels. Per 46 CFR 381, Use of United States-flag vessels, the Consultant agrees:

- a. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- b. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1)



of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

- c. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

**[Signatures on Following Page]**

IN WITNESS WHEREOF, ACTC and Consultant execute this agreement as follows:

ACTC

CONSULTANT

By: \_\_\_\_\_  
Brian Oneto  
ACTC Chair

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

INSTRUCTIONS: If Consultant is a corporation (including limited liability and nonprofit corporations), the full legal name of the corporation shall be set forth together with the signatures of two specified officers. If Consultant is a partnership, the name of the partnership shall be set forth together with the signature of a partner with authority to execute this Agreement on behalf of the partnership. If Consultant is contracting in an individual capacity, the individual shall set forth the name of his or her business, if any, and shall personally sign the Agreement.

\*\*\*\*\*

Approved as to form:

\_\_\_\_\_  
ACTC Counsel

Dated: \_\_\_\_\_

For ACTC internal use:

Work Element number to be used for the contract: \_\_\_\_\_

## **Exhibit A**

### **Scope of Work**

#### **TASK 1: Identify Focus Crash Types & Risk Factors**

- Oversee ACTC & CCOG Staff Analysis of safety collision data using SWITRS, TIMS, and stakeholder meetings to identify high risk and collision locations.
- Select Focus Crash Types & Facilities and Identify and evaluate risk factors.

#### **TASK 2: Screen and Prioritize Candidate Locations**

- Identify Network Elements to Analyze
- Conduct Risk Assessment
- Prioritize Focus Facility Elements

#### **TASK 3: Select Countermeasures**

- Assemble a Comprehensive List of Countermeasures while taking into consideration the 4 E's (Education, Enforcement, Engineering and the Emergency "golden hour").
- Evaluate and Screen Countermeasures
- Select Countermeasures for Deployment

#### **TASK 5: Identify Fire Evacuation Routes**

- Considering the 4<sup>th</sup> E (Emergency), gather stakeholders to identify crucial fire evacuation routes in Amador and Calaveras Counties.
- Develop a list of priority roads to be maintained to enhance fire evacuation routes.

#### **TASK 4: Prioritize Projects**

- Create a decision process for countermeasure selection (ie. cost-benefit analysis)
- Develop list of Safety Projects and Programs
- Prioritize Safety Project Implementation using the 4 E's.

#### **TASK 5: Develop Conceptual Projects**

- Develop conceptual projects and programs for priority projects.
- Prepare HSIP Applications for Priority Projects for 2018 HSIP Call for Projects.

## Exhibit C

### **DISADVANTAGED BUSINESS ENTERPRISE INFORMATION FORM**

#### Background

The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR). It is the policy of the Amador County Transportation Commission ("ACTC"), the California Department of Transportation ("Caltrans"), and the U.S. Department of Transportation that DBE's have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal transportation funds. A certified DBE may participate in the performance of ACTC contracts as a contractor, subcontractor, joint venture partner, or as a vendor of material or supplies.

#### Requirements and Purpose of Form

The awardee shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Even if no DBE participation will be reported, the awardee shall check the "No DBE Participation" option below (Option #1), and sign and return this form.

#### Resources

The California Unified Certification Program (CUCP) may be used for DBE certification and to identify firms eligible to participate as DBE's. The CUCP database may be accessed on-line at <http://www.californiaucp.com>. If you believe a firm is certified but cannot locate it in the CUCP database, you may contact the CalTrans Office of Certification toll free number 1-866-810-6346 for assistance. If you do not have internet access, you may order a written directory of certified DBE firms from the CalTrans Division of Procurement and Contracts/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

#### **DBE Participation Information**

*(Awardee must check at least one of the options below, provide required information regarding certified DBE's, and sign this Information Sheet on page 2)*

\_\_\_\_\_ **Option #1 - No Certified DBE participation proposed for this contract.**

\_\_\_\_\_ **Option #2 - It is proposed that the following DBE(s) be used on this contract:**

*(Please attach an additional sheet if necessary)*

**Name of Certified DBE**

**DBE Certification No.**

\_\_\_\_\_  
DBE Address  
\_\_\_\_\_

\_\_\_\_\_  
DBE Telephone No.  
\_\_\_\_\_

DBE E-Mail Address

Annual Gross Receipts (check one):  Less than \$500,000 \_\_\_\_\_

\$500,000-\$1 million \_\_\_\_\_ Age of Firm

\$1 million-\$2 million \_\_\_\_\_

\$2 million-\$5 million \_\_\_\_\_

Over \$5 million \_\_\_\_\_

Majority Owner Gender:  Male /  Female

Race/Ethnicity:  Asian Pacific  Caucasian  Other \_\_\_\_\_

Asian Subcontinent  Hispanic

Black  Native American

\_\_\_\_\_  
Capacity of DBE (e.g., contractor, subcontractor, vendor)

\_\_\_\_\_  
\$ Amount DBE Participation

\_\_\_\_\_  
Description of services or materials to be provided by DBE

\_\_\_\_\_  
**Name of Certified DBE**

\_\_\_\_\_  
DBE Certification No.

\_\_\_\_\_  
DBE Address

\_\_\_\_\_  
DBE Telephone No.

\_\_\_\_\_

\_\_\_\_\_  
DBE E-Mail Address

Annual Gross Receipts (check one):  
 Less than \$500,000  
 \$500,000-\$1 million  
 \$1 million-\$2 million  
 \$2 million-\$5 million  
 Over \$5 million

\_\_\_\_\_  
Age of Firm

Majority Owner Gender:  Male /  Female

Race/Ethnicity:  Asian Pacific  
 Asian Subcontinent  
 Black  
 Caucasian  
 Hispanic  
 Native American  
 Other \_\_\_\_\_

\_\_\_\_\_  
Capacity of DBE (e.g., contractor, subcontractor,  
vendor)

\_\_\_\_\_  
\$ Amount DBE Participation

\_\_\_\_\_  
Description of services or materials to be provided by DBE

**Submitted by:**

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

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Print Name and Title**

\_\_\_\_\_  
**Name of Contractor, if different than signatory**

## Exhibit D

### LEVINE ACT DISCLOSURE STATEMENT

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract.

Current members of the ACTC Board of Directors are:

Members: Tim Murphy, Brian Oneto, Richard Forster, John Plasse, Jon Colburn, Dominic Atlan

Alternates: Dan Epperson, Patrick Crew, Josie Cadieux-Faillers,

Ex-Officio: Carl Baker

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any ACTC Commissioner(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

\_\_\_ YES \_\_\_ NO

If yes, please identify the Commissioner(s): \_\_\_\_\_

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any ACTC Commissioner (s) in the three months following the award of the contract?

\_\_\_ YES \_\_\_ NO

If yes, please identify the Commissioner(s): \_\_\_\_\_

Answering yes to either of the two questions above does not preclude ACTC from awarding a contract to your firm. It does, however, preclude the identified Director(s) from participating in the contract award process for this contract.

---

DATE

---

(SIGNATURE OF AUTHORIZED OFFICIAL)

---

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

---

(TYPE OR WRITE NAME OF COMPANY)