

ATTACHMENT 1 – SAMPLE CONTRACT

SAMPLE CONTRACT AND CONTRACT EXHIBITS

AMADOR COUNTY TRANSPORTATION COMMISSION WITH (INSERT NAME OF CONSULTANT) FOR (INSERT PROJECT NAME)

1. INTRODUCTION

- 1.1 This Agreement is made and entered into this _____ day of _____, 201_, (the "Effective Date") by and between the AMADOR COUNTY TRANSPORTATION COMMISSION ("the Commission" or "Commission") and [INSERT CONTRACTOR NAME] ("Consultant" or "Contractor"), a California corporation.
- 1.2 Consultant desires to perform and assume responsibility for the provision of certain professional consulting services required by Commission on the terms and conditions set forth in this Agreement. Consultant represents that it is a professional consulting firm, experienced in providing consulting services concerning [INSERT TYPE OF CONSULTING SERVICE(S) HERE], is licensed in the State of California, and is familiar with the needs of Commission.
- 1.3 Commission desires to engage Consultant to render certain [INSERT SERVICES HERE] (the "Project") as set forth herein.
- 1.4 The work to be performed under this contract is described in part 2 entitled Scope of Work and the approved Consultant's Cost Proposal. The approved Consultant's Cost Proposal is attached hereto (Exhibit "B") and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.
- 1.5 Commission hereby designates John Gedney, or his or her designee, to act as its representative for the performance of this Agreement ("Commission's Representative"). Commission's representative shall have the power to act on behalf of Commission for all purposes under this Agreement. Consultant shall not accept direction from any person other than Commission's Representative or his or her designee.
- 1.6 Consultant hereby designates [INSERT CONSULTANT'S REPRESENTATIVE NAME], or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement.
- 1.7 Consultant and the agents and employees of Consultant, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of the Commission. Consultant retains the right to perform similar or different services for others during the term of this Agreement.
- 1.8 Commission reserves right to employ other consultants in connection with this Project.
- 1.9 Consultant shall perform the Services under this Agreement in a skillful and competent manner, consistent with the standard generally recognized as being employed by professionals in the same discipline in the State of California.
 - 1.9.1 Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services.

- 1.9.2 Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them.
- 1.9.3 Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement.
- 1.10 This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.
- 1.11 No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- 1.12 The consideration to be paid to Consultant as provided herein, shall be in compensation for all of Consultant's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.
- 1.13 Consultant and Commission agree to work closely in the performance of Services and Consultant shall be available to Commission's staff, consultants and other staff at all reasonable times.
- 1.14 Consultant and Commission shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.
- 1.15 Time is of the essence for each and every provision of this Agreement.
- 1.16 This Agreement shall be governed by the laws of the State of California. Venue shall be in Amador County.
- 1.17 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.
- 1.18 Failure of Commission to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.
- 1.19 This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by Consultant without the prior written consent of Commission.

2. SCOPE OF WORK

- 2.1 Consultant promises and agrees to furnish to Commission all labor materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately provide professional consulting services and advice on various issues affecting the decisions of Commission regarding the Project and on other programs and matters affecting Commission, hereinafter referred to as "Services."
- 2.2 The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. To the extent that Exhibit "A" is in conflict with or is inconsistent with this Agreement, the terms of this Agreement shall govern. All Services shall be subject to, and

performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules and regulations.

- 2.3 All work prepared by Consultant shall be subject to the approval of Commission.
- 2.4 No work or activities that are in addition to, or otherwise outside of, the Services shall be performed. Notwithstanding the foregoing, the Commission's Executive Director may make a written change to this Agreement, other than a Cardinal Change. For purposes of this Agreement, a Cardinal Change is a change which is "outside the scope" of the Agreement; in other words, work which should not be regarded as having been fairly and reasonably within the contemplation of the parties when the Agreement was entered into. An example of a change which is not a Cardinal Change would be where, in a contract to construct a building there are many changes in the materials used, but the size and layout of the building remains the same. Cardinal Changes are not within the authority of this provision to order, and shall be processed by the Commission as "sole source" procurements according to applicable law.
 - 2.4.1 In addition to the changes authorized above, a modification which is signed by Consultant and the Commission's Executive Director, other than a Cardinal Change, may be made in order to: (1) make a negotiated equitable adjustment to the Agreement price, delivery schedule and other contract terms resulting from the issuance of a Change Order, (2) reflect definitive letter contracts, and (3) reflect other agreements of the parties modifying the terms of this Agreement ("Bilateral Contract Modification").
 - 2.4.2 Consultant shall not perform, nor be compensated for any change, without written authorization from the Commission's Executive Director as set forth herein. In the event such a change authorization is not issued and signed by the Commission's Executive Director, Consultant shall not provide such change.

3. CONSULTANT'S REPORTS OR MEETINGS

- 3.1 Consultant shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for the Commission's Representative or Project Coordinator 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.
- 3.2 Consultant's Project Manager shall meet with the Commission's Representative or Project Coordinator, as needed, to discuss progress on the project(s).

4. PERFORMANCE PERIOD AND SCHEDULE

- 4.1 The term of this Agreement shall be from the Effective Date through [INSERT START DATE], unless otherwise terminated as provided for in this Agreement or extended by written agreement between the parties. Consultant shall commence work after written notification to proceed by the Commission's Representative.
- 4.2 Consultant is advised that any recommendation for contract award is not binding on the Commission until the contract is fully executed and approved by the Commission. In addition, the applicable federal agency or Caltrans acting on behalf of a federal agency, may require that prior to performance of any work for which Federal reimbursement is requested and provided,

that said federal agency or Caltrans must give to the Commission an "Authorization to Proceed."

- 4.3 Upon request of the Commission, Consultant shall provide a more detailed schedule of anticipated performance to complete performance of the Services in a timely manner at no additional cost.
- 4.4 The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this contract, the terms of the contract may be extended by contract amendment.

5. ALLOWABLE COSTS AND PAYMENTS

- 5.1 Payment to Consultant by the Commission shall be made as set forth in Exhibit B.
- 5.2 The amount to be paid to Consultant under this Agreement shall not exceed [AMOUNT] dollars (\$), unless expressly authorized in writing by the Commission's Executive Director. In no instance shall the Commission be liable for any payments or costs for work in excess of this amount, nor for any unauthorized or ineligible costs.
- 5.3 Reimbursement for transportation and subsistence costs shall not exceed the rates specified in Exhibit B.
 - 5.3.1 Transportation and subsistence expenses shall not exceed rates authorized to be paid exempt non-represented State employees under current State Department of Personnel Administration rules. If the rates invoiced are in excess of those authorized DPA rates, any excess payment shall be reimbursed to the Commission on demand.
 - 5.3.1 The reimbursement of Transportation and subsistence expenses shall be consistent with Section 10 of this Agreement.
- 5.4 When milestone cost estimates are included in Exhibit B, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Commission's Representative before exceeding such cost estimate.
- 5.5 No payment will be made prior to approval of any work, nor for any work performed prior to the Effective Date of this Agreement.
- 5.6 Consultant will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by the Commission's Representative 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 reference the contract number and project title, and shall describe the amount of services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. The final invoice must contain the final cost and all credits due the Commission, including any equipment purchased under the provisions of section 17 of this Agreement. The final invoice must be submitted within 60 calendar days after completion of Consultant's work. Invoices shall be mailed to the Commission's Representative at the following address:

[Commission's Representative]
Amador County Transportation
Commission
117 Valley View Way, Sutter Creek, CA 95685

- 5.7 Hourly rate increases will be reimbursable if the new rate is within the range identified in Exhibit B and is approved by the Commission's Representative.

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.

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

6. TERMINATION

- 6.1 Commission may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof. Upon termination, Consultant shall be compensated only for that portion of Consultant's services which have been fully and satisfactorily rendered to Commission through the effective date of the termination, less any compensation to the Commission for damages suffered as a result of Consultant's failure to comply with the terms of this Agreement. Consultant may not terminate this Agreement except for cause.
- 6.2 If this Agreement is terminated Consultant shall provide all finished or unfinished Documents and Data, as defined below, and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement within fifteen (15) days of the termination.

7. FUNDING REQUIREMENTS

- 7.1 Anticipated sources of funding for payment for professional services provided under this Agreement are [INSERT FUND SOURCE(S) HERE].
- 7.2 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.
- 7.3 This contract is valid and enforceable only, if sufficient funds are made available to the Commission 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 Commission governing board that may affect the provisions, terms, or funding of this contract in any manner. The funds provided under this Agreement are contingent on meeting all Federal requirements and could be withdrawn if the required procedures are not completed.
- 7.4 It is mutually agreed that if sufficient funds are not appropriated, this contract may be terminated or amended to reflect any reduction in funds.

8. CHANGE IN TERMS

- 8.1 This contract may be amended or modified only by mutual written agreement of the parties.
- 8.2 Consultant shall only commence work covered by an amendment after the amendment is executed and written notification to proceed has been provided by the Commission's Representative.

9. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- 9.1 Consultants must give consideration to DBE firms as specified in Title 49, Part 26 of the Code of Federal Regulations. These regulations are incorporated in their entirety herein by this reference. If the contract has a DBE goal, as identified in Exhibit D, Consultant must meet the goal by using DBEs as subconsultants or document a good faith effort to have met the goal. 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.
- 9.2 A DBE may be terminated only for the reasons specified in 49 CFR 26.53 (f). Prior to requesting the Commission's consent for the proposed termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f).
 - 9.2.1 Consultant shall not terminate a listed DBE subcontractor unless Consultant has received prior written authorization from The Commission's Representative. The Commission's Representative will authorize termination only if the Commission's Representative determines that Consultant has good cause to terminate the DBE subconsultant. As used in this Section, "good cause" includes those circumstances listed in 49 CFR Section 26.53(f)(3).
 - 9.2.2 Prior to requesting the Commission's authorization to terminate and/or substitute a DBE subcontractor, Consultant shall give notice in writing to the DBE subcontractor, with a copy to the Commission, 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 the Commission should not approve the Consultant's action. The Commission may, in instances of public necessity, approve a response period shorter than five days.
 - 9.2.3 If a DBE subconsultant 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 subconsultant with another DBE.
- 9.3 Consultant shall complete the necessary DBE Information Forms in Exhibit D attached to this Agreement so that the Commission may compile statistics for federal reporting purposes. In addition to the provisions set forth below, the contract provisions set forth in Exhibit 10-J, attached hereto, are incorporated herein by this reference.
- 9.4 Consultant's failure to make good faith efforts to comply with the Commission's DBE program shall be considered a material breach of this Agreement and may give rise to certain administrative penalties and proceedings, including, but not limited to, those set forth in 49 C.F.R. Part 26.107.

10. COST PRINCIPLES

- 10.1 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.
- 10.2 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.

10.3 Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 49 CFR Part 18, *Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments*, and/or 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to the Commission. Disallowed costs must be reimbursed to the Commission within sixty (60) days unless the Commission approves in writing an alternative repayment plan.

10.4 Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of Sections 10.1 through 10.3 above.

11. 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 Commission 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.

12. RETENTION OF RECORDS/AUDIT

12.1 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 and subconsultants 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.

12.2 The Consultant's files shall be maintained in a manner to be consistent with Federal and State requirements.

12.3 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.

12.4 The state, State Auditor, the Commission, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested

12.5 Subcontracts in excess of \$25,000 shall contain this provision.

13. DISPUTES

13.1 Any dispute, other than an audit-related dispute, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by the Commission's Executive Director, who may consider written or verbal information submitted by Consultant.

13.2 Not later than 30 days after completion of all work under the contract, Consultant may request

review by the Commission's Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

- 13.3 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.
- 13.4 If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of such actions.

14. AUDIT REVIEW PROCEDURES

- 14.1 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 Commission's Representative.
- 14.2 Not later than 30 days after issuance of the final audit report, Consultant may request a review by the Commission's Representative of unresolved audit issues. The request for review will be submitted in writing.
- 14.3 Neither the pendency of a dispute nor its consideration by the Commission will excuse Consultant from full and timely performance, in accordance with the terms of this contract.
- 14.4 Consultant and subconsultants' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers, 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 Workpaper Review it is Consultant's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The contract, cost proposal, and ICR shall be adjusted by Consultant and approved by the Commission 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 the Commission 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 workpapers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

15. PERSONNEL

- 15.1 Consultant shall perform the work contemplated with resources available within its own organization.
- 15.2 Consultant represents that it has the personnel required to perform the Services.
- 15.3 Any additional personnel performing services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control.
- 15.4 Consultant shall pay all wages, salaries, social security taxes, income tax withholding, unemployment insurance, workers' compensation insurance, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law.

15.5 Consultant has represented to Commission that certain key personnel employed by Consultant will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence and experience upon written approval of Commission.

15.5.1 The key personnel for performance of this Agreement are as follows: [INSERT KEY PERSONNEL NAMES]).

16. SUBCONTRACTING

16.1 No portion of the work pertinent to this contract shall be subcontracted without written authorization by the Commission's Representative, except that, which is expressly identified in the approved Cost Proposal.

16.2 Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from the Commission. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Commission. This clause applies to both DBE and non-DBE subcontractors.

16.3 The Consultant agrees further to release retainage payments, if any, to each subconsultant within 30 days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Commission. This clause applies to both DBE and non-DBE subconsultants.

16.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

16.5 Any substitution of subconsultants must be approved in writing by the Commission's Representative prior to the start of work by the subconsultant.

17. EQUIPMENT PURCHASE

17.1 Unless expressly identify in the approved cost proposal, prior authorization in writing, by the Commission's Representative shall be required before Consultant enters into any 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.

17.2 For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by the Commission's Representative; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

17.3 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 Commission 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 the Commission 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 the Commission's established procedures; and credit the Commission 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 the Commission and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the Commission.” 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.

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

18. INSPECTION OF WORK

Consultant and any subconsultant shall permit the Commission, 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.

19. SAFETY

- 19.1 Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.
- 19.2 Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by the Commission and Commission representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- 19.3 Pursuant to the authority contained in Section 591 of the Vehicle Code, the Commission 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.
- 19.4 Any subcontract entered into as a result of this contract, shall contain all of the provisions of this section.

20. INSURANCE

- 20.1 Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:
 - 20.1.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

- 20.1.2 Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage; and (3) if Consultant has an employees, Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Practices Liability limits of \$1,000,000 per accident.
- 20.2 Professional Liability. Consultant and its subcontractors if applicable shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of three (3) years following completion of the Project, a claims made errors and omissions liability insurance appropriate to its profession. Such insurance shall be in an amount not less than \$1,000,000 per claim and in the aggregate.
- 20.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the Commission to add the following provisions to the insurance policies:
- 20.3.1 General Liability. The general liability policy shall be endorsed to state that: (1) the Commission, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the Commission, its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its directors, officials, officers, employees and agents shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.
- 20.3.2 Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the Commission, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its directors, officials, officers, employees and agents shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.
- 20.3.3 Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Commission, its directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.
- 20.3.4 All Coverages. Each insurance policy required by this Agreement shall be endorsed to state

that: (A) coverage shall not canceled except after thirty (30) days prior written notice by first class mail, has been given to the Commission; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Commission, its directors, officials, officers, employees and agents.

- 20.4 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Commission. If the Commission does not approve the deductibles or self-insured retentions as presented, Consultant shall guarantee that, at the option of the Commission, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Commission, its directors, officials, officers, employees and agents; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.
- 20.5 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A: VIII, licensed to do business in California, and satisfactory to the Commission. Deviations to these requirements must be approved by the commission in writing.
- 20.6 Verification of Coverage. Consultant shall furnish Commission with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Commission. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by the Commission before work commences. The Commission reserves the right to require complete, certified copies of all required insurance policies, at any time.
- 20.7 Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the Commission that it and its subcontractors have secured all insurance required under this section. In the event said insurance coverage expires at any time or times during the term of this contract, Consultant agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the Commission. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, the Commission may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

21. OWNERSHIP OF DATA

21.1 Warranty.

Consultant represents and warrants that: (i) all materials used or work products produced in the performance of this Agreement, including, without limitation, all computer software materials and all written materials, are either owned by or produced by Consultant or that all required permissions and license agreements have been obtained and paid for by Consultant; and (ii) the Commission is free to use, reuse, publish or otherwise deal with all such materials or work products except as otherwise specifically provided in Exhibit "A." Consultant shall defend, indemnify and hold harmless the Commission and its directors, officers, employees, and agents from any claim, loss, damage, cost, liability, or expense to the extent of any violation or falsity of the foregoing representation and warranty.

21.2 Documents & Data.

This Agreement creates an exclusive and perpetual license for Commission to copy, use, modify, reuse, or sub-license any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, materials, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”); and no further agreement will be necessary to transfer ownership to the Commission.

- 21.1.1 Consultant shall require all subcontractors to agree in writing that Commission is granted an exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement.
- 21.1.2 Consultant represents and warrants that Consultant has the legal right to grant the exclusive and perpetual license for all such Documents & Data.
- 21.1.3 Consultant shall provide copies on electronic media of all work product produced under this Agreement. To the extent that reports or lengthy passages of text are included in a given work product, the document shall be prepared in Microsoft Word or a format compatible with Word or as directed by the Commission.

21.3 Intellectual Property. In addition, Commission shall have and retain all rights, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, inventions, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“Intellectual Property”) prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

- 21.3.1 The Commission shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by Commission, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of Commission.
- 21.3.2 Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the Commission.
- 21.3.3 All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

- 21.3.4 Commission further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.
- 21.3.5 Should the Commission permit the copyrighting of reports or other documents, 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.
- 21.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this section.

22. INDEMNIFICATION

- 22.1 Consultant specifically agrees to indemnify, defend, and hold harmless the Commission, its directors, officers, members, agents, and employees (collectively the "Indemnitees") from and against any and all actions, claims, demands, losses, costs, expenses, including reasonable attorneys' fees and costs, damages, and liabilities (collectively "Losses") arising out of, pertaining to, or relating to, or in any way connected with the negligence, recklessness, or willful misconduct of the Consultant.
- 22.2 Consultant shall pay all costs and expenses that may be incurred by the Commission in enforcing this indemnity, including reasonable attorneys' fees.
- 22.3 The provisions of this Section shall survive the expiration, termination, or assignment of this Agreement.

23. CLAIMS FILED BY COMMISSION'S CONSTRUCTION CONTRACTOR

- 23.1 If claims are filed by the Commission'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 Commission's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- 23.2 Consultant's personnel that the Commission considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the Commission. 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.
- 23.3 Services of Consultant's personnel in connection with the Commission'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.
- 23.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

24. CONFIDENTIALITY OF DATA

- 24.1 All financial, statistical, personal, technical, or other data and information relative to the Commission's operations, which are designated confidential by the Commission and made available to Consultant in order to carry out this contract, shall be protected by Consultant from unauthorized use and disclosure.

- 24.2 Permission to disclose information on one occasion, or public hearing held by the Commission relating to the contract, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.
- 24.3 Consultant shall not comment publicly to the press or any other media regarding the contract or the Commission's actions on the same, except to the Commission'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.
- 24.4 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 Commission, and receipt of the Commission's written permission.
- 24.5 Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

25. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, by signing this Agreement, Consultant hereby swears 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.

26. EVALUATION OF CONSULTANT

Consultant's performance will be evaluated by the Commission. 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.

27. LAWS & REGULATIONS

- 27.1 Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. For example, and not by way of limitation, Consultant shall keep itself fully informed of and in compliance with all implementing regulations, design standards, specifications, and previous commitments that must be incorporated in the design of the Project, and administrative controls including those of both the California State and United States Department of Transportation. For example, and not by way of limitation, a signed Categorical Exclusion, Finding of No Significant Impact, or published Record of Decision may be required to be approved and/or completed by the United States Department of Transportation.
- 27.2 Consultant shall be liable for all violations of such laws and regulations in connection with Services.

28. STATEMENT OF COMPLIANCE

- 28.1 It is the Commission's policy to comply with state and federal laws and regulations including Title VI of the Civil Rights Act of 1964, Americans with Disabilities Act of 1990 (ADA) and other federal discrimination laws and regulations, as well as the Unruh Civil Rights Act of 1959, the California Fair Employment and Housing Act, and other California State discrimination laws and regulations. The Commission does not discriminate on the basis of race, color, sex, creed, religion, national origin, age, marital status, ancestry, medical condition, disability, sexual orientation or gender identity in conducting its business. The Commission prohibits discrimination by its employees,

contractors and consultants.

28.2 Consultant assures the Commission that it complies with, and that Consultant will require that its subcontractors comply 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 the Commission may deem appropriate.

28.2.1 Consultant and its subcontractors shall comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of 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 – Effectuation of Title VI of the Civil Rights Act”, 49 C.F.R. Part 21, and with any applicable implementing federal directives that may be issued.

28.2.2 Consultant and its subcontractors 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 subcontractors shall ensure that applicants and employees are treated fairly without regard to their race, color, creed, sex, disability, age, or national origin.

28.2.3 Consultant and its subcontractors will not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religion, national origin, physical disability, mental disability, medical condition, age or marital status. Contractor and its subcontractors will insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its subcontractors will comply with all applicable federal and state employment laws and regulations including, without limitation, the provisions of the California Fair Employment and Housing Act (Government Code § 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §§ 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. Consultant and its subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

28.2.4 By signing this Agreement, Consultant assures the Commission that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

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

29. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITIES

29.1 Consultant’s signature affixed herein, shall constitute a certification under penalty of perjury

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

29.1.1 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.

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

29.2 Consultant warrants that it has not, within the three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

29.3 Consultant warrants it is not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commissions of any of the offenses enumerated in paragraph "b" above.

29.4 Consultant warrants it has not, within a three-year period preceding this Agreement, had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

30. STATE PREVAILING WAGE RATES

30.1 The State of California's General Prevailing Wage Rates are not applicable to this contract.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

31. CONFLICT OF INTEREST

31.1 For the term of this Agreement, no member, officer or employee of Commission, during the term of his or her service with Commission, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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

31.3 Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business

interest that would create a conflict of interest with the Commission or in any way compromise the services to be performed under this Agreement. Consultant shall immediately notify the Commission of any and all potential violations of this paragraph upon becoming aware of the potential violation.

31.4 Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

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

32.1 Consultant certifies to the best of his or her knowledge and belief that:

32.1.1 No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

32.1.2 If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

32.2 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, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

32.4 For breach or violation of this warranty, Commission shall have the right to rescind this Agreement without liability.

33. POLITICAL REFORM ACT COMPLIANCE

Consultant is aware and acknowledges that certain contractors that perform work for governmental agencies are "consultants" under the Political Reform Act (the "Act") (Government Code § 81000, et seq.) and its implementing regulations (2 California Code of Regulations § 18110, et seq.).

Consultant agrees that any of its officers or employees deemed to be "consultants" under the Act by the Commission, as provided for in the Conflict of Interest Code for the Commission, shall promptly file economic disclosure statements for the disclosure categories determined by the Commission, to be relevant to the work to be performed under this Agreement and shall comply with the disclosure and disqualification requirement of the Act, as required by law.

34. 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 "C."

35. UNION ORGANIZING

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

35.1.1 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.

35.1.2 Consultant will not meet with employees or supervisors on the Commission 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.

36. DRUG FREE CERTIFICATION

36.1 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.).

36.1.1 Consultant shall 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.

36.1.2 Consultant shall establish a Drug-Free Awareness Program to inform employees about:

- (a) The dangers of drug abuse in the workplace;
- (b) The person's or the organization's policy of maintaining a drug-free workplace;
- (c) Any available counseling, rehabilitation, and employee assistance programs; and
- (d) Penalties that may be imposed upon employees for drug abuse violations.

36.1.3 Every employee of Consultant who works under this Agreement shall:

- (a) Receive a copy of Consultant's Drug-Free Workplace Policy Statement; and
- (b) Agree to abide by the terms of Consultant's Statement as a condition of employment on this Agreement.

37. NOTIFICATION

All notices permitted or required hereunder and communications regarding interpretation of the terms of this contract and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

(CONSULTANT)

 Attn: _____ (NAME)

 -----(ADDRESS)

COMMISSION:

Amador County Transportation
 Commission Attn: Executive Director
 117 Valley View Way
 Sutter Creek, CA 95685

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address.

338. CONTRACT

The two parties to this contract, who are the before named Consultant and the before named Commission, 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.

39. LEGAL REMEDIES

In addition to those contract remedies set forth under relevant provisions of California law, either party to this Agreement may, where applicable and following the exhaustion of applicable administrative remedies, seek legal redress for violations of this Agreement pursuant to the relevant provisions of 49 C.F.R. Parts 23 and 26, to the relevant federal or state statutory provisions governing civil rights violations, and to the relevant federal and state provisions governing false claims or “whistleblower” actions, as well as any and all other applicable federal and state provisions of law. The Consultant shall include a provision to this effect in each of its agreements with its subcontractors.

40. 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.

41. SIGNATURES

[Name of Consulting Firm]

Amador County Transportation Commission

[Name] _____ [Name]
[Title]

[Title]

Approved as to Form:

Sloan Sakai Yeung & Wong LLP
General Counsel to ACTC

ATTACHMENT 2 (LAMP EXHIBIT 10-H1 COST PROPOSAL Page 1 of 3)

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Prime Consultant

Subconsultant

Consultant _____

Project No. _____ Contract No. _____ Date _____

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
(Project Manager)	_____	_____	\$ _____	\$ _____
(Sr. Civil Engineer)	_____	_____	\$ _____	\$ _____
(Envir. Scientist)	_____	_____	\$ _____	\$ _____
(Inspector)	_____	_____	\$ _____	\$ _____

LABOR COSTS

a) Subtotal Direct Labor Costs \$ _____

b) Anticipated Salary Increases (see page 2 for calculation) \$ _____

c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]** \$ _____

INDIRECT COSTS

d) Fringe Benefits (Rate: _____%) e) Total Fringe Benefits [(c) x (d)] \$ _____

f) Overhead (Rate: _____%) g) Overhead [(c) x (f)] \$ _____

h) General and Administrative (Rate: _____%) i) Gen & Admin [(c) x (h)] \$ _____

j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)]** \$ _____

FIXED FEE

k) **TOTAL FIXED FEE [(c) + (j)] x fixed fee _____%** \$ _____

l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs			\$	\$
Equipment Rental and Supplies			\$	\$
Permit Fees			\$	\$
Plan Sheets			\$	\$
Test			\$	\$

l) **TOTAL OTHER DIRECT COSTS** \$ _____

m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)

Subconsultant 1: _____ \$ _____

Subconsultant 2: _____ \$ _____

Subconsultant 3: _____ \$ _____

Subconsultant 4: _____ \$ _____

m) **TOTAL SUBCONSULTANTS' COSTS** \$ _____

n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]** \$ _____

TOTAL COST [(c) + (j) + (k) + (n)] \$ _____

NOTES:

- All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates should be based on consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS

(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor <u>Subtotal</u> per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
\$250,000.00	5000		\$50.00	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$50.00	+	2%	=	\$51.00	Year 2 Avg Hourly Rate
Year 2	\$51.00	+	2%	=	\$52.02	Year 3 Avg Hourly Rate
Year 3	\$52.02	+	2%	=	\$53.06	Year 4 Avg Hourly Rate
Year 4	\$53.06	+	2%	=	\$54.12	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year		Total Hours per Cost Proposal		Total Hours per Year	
Year 1	20.0%	*	5000	=	1000	Estimated Hours Year 1
Year 2	40.0%	*	5000	=	2000	Estimated Hours Year 2
Year 3	15.0%	*	5000	=	750	Estimated Hours Year 3
Year 4	15.0%	*	5000	=	750	Estimated Hours Year 4
Year 5	10.0%	*	5000	=	500	Estimated Hours Year 5
Total	100%		Total	=	5000	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)		Cost per Year	
Year 1	\$50.00	*	1000	=	\$50,000.00	Estimated Hours Year 1
Year 2	\$51.00	*	2000	=	\$102,000.00	Estimated Hours Year 2
Year 3	\$52.02	*	750	=	\$39,015.00	Estimated Hours Year 3
Year 4	\$53.06	*	750	=	\$39,795.30	Estimated Hours Year 4
Year 5	\$54.12	*	500	=	\$27,060.80	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$257,871.10	
Direct Labor Subtotal before Escalation				=	\$250,000.00	
Estimated total of Direct Labor Salary Increase				=	\$7,871.10	Transfer to Page 1

NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

Certification of Direct Costs:

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

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

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

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: _____ Title *: _____

Signature : _____ Date of Certification (mm/dd/yyyy): ____

Email: _____ Phone Number: _____

_____ Address: _____

*An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

ATTACHMENT 3 – 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. Please refer to the attachment for the complete statutory language.

Current members of the ACTC Board of Directors are:

Brian Oneto	John Plasse	Patrick Crew (alternate)
Richard Forster	Dominic Atlan	Dan Epperson (alternate)
Tim Murphy	Jon Colburn	Josie Cadieux-Faillers (alternate) (alternate)

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 Director(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 Director(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 Director(s) in the three months following the award of the contract?

YES NO

If yes, please identify the Director(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)

California Government Code Section 84308

- (a) The definitions set forth in this subdivision shall govern the interpretation of this section.
- (1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
 - (2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.
 - (3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.
 - (4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.
 - (5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.
 - (6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.
- (b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.
- (c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7. If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the

contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

- (d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.
- (e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

For more information, contact the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814, (916) 322-5660

ATTACHMENT 4 - NOTICE TO PROPOSERS DBE INFORMATION (LAMP EXHIBIT 10-I)

The Agency has established a DBE goal for this Contract of _____%

OR

The Agency has not established a goal for this Contract. However, proposers are encouraged to obtain DBE participation for this contract.

1. TERMS AS USED IN THIS DOCUMENT

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-O1 *Consultant Proposal DBE Commitment* must be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included with the Request for Proposal. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
 - 2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
 - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity Web site at: <http://www.dot.ca.gov/hq/bep/>.
 - 1. Click on the link titled *Disadvantaged Business Enterprise*;
 - 2. Click on Search for a DBE Firm link;
 - 3. Click on *Access to the DBE Query Form* located on the first line in the center of the page.

Searches can be performed by one or more criteria. Follow instructions on the screen.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

ATTACHMENT 5 - CONSULTANT PROPOSAL DBE COMMITMENT (LAMP EXHIBIT 10-01)

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

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION	%
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____	IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.		
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. _____ 20. Local Agency Representative's Signature 21. Date _____ 22. Local Agency Representative's Name 23. Phone _____ 24. Local Agency Representative's Title	_____ 12. Preparer's Signature 13. Date _____ 14. Preparer's Name 15. Phone _____ 16. Preparer's Title		

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

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

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

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

LOCAL AGENCY SECTION

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