

AGREEMENT FOR OAK TREE MITIGATION SERVICES FOR THE COLE CREEK AT SODA
BAY RD BRIDGE REPLACEMENT PROJECT (14C-0127) AND THE HIGHLAND CREEK AT
HIGHLAND SPRINGS RD BRIDGE REPLACEMENT PROJECT (14C-0125)
IN LAKE COUNTY, CALIFORNIA

This Agreement is made and entered into this _____ day of _____, 2017, by and between the COUNTY of Lake, hereinafter referred to as "COUNTY", and Hanford ARC, hereinafter referred to as "CONSULTANT".

WHEREAS, COUNTY has identified a need to mitigate for the loss of oak trees resulting from the replacement of the Cole Creek Bridge at Soda Bay Road (14C-0127) and the replacement of the Highland Creek Bridge at Highland Springs Road (14C-0125); and

WHEREAS, oak mitigation services including mitigation plan development and implementation will be required for the above-mentioned bridge replacement projects, hereinafter referred to as "PROJECT"; and

WHEREAS, CONSULTANT is a licensed contractor in the State of California and is qualified and willing to provide said services.

NOW, THEREFORE, it is mutually agreed by the parties as follows:

I.
SCOPE OF SERVICES

- A. CONSULTANT shall perform the services described in Exhibit "A", attached hereto and incorporated herein by this reference hereinafter called Scope of Work. In the event of a conflict between this Agreement and Exhibit "A", the provisions of this Agreement shall control.
- B. Time of Beginning and Completion of Services: Work on the PROJECT shall begin no later than five (5) calendar days after CONSULTANT's receipt of a COUNTY issued Notice to Proceed. CONSULTANT shall perform services within the times or by the dates provided in Exhibit "A", which by reference is made a part hereof, except that, if applicable, the schedule may be adjusted to reflect any delay in issuance of the Notice to Proceed, or other delay factors not subject to CONSULTANT control.

II.
COUNTY'S RESPONSIBILITIES

The COUNTY's responsibilities will include the payment for the CONSULTANT's services and the time period within which payment must be made. Additionally, the COUNTY may agree to provide certain information, documents, work space, and/or materials.

- A. COUNTY Furnished Data: COUNTY will provide to CONSULTANT all data in COUNTY's possession relating to CONSULTANT's services on the PROJECT.
- B. Access to Facilities and Property: COUNTY will make its facilities accessible to CONSULTANT as required for CONSULTANT's performance of its services. COUNTY will be responsible for all acts of COUNTY's personnel.
- C. Advertisements, Permits, and Access: Unless otherwise agreed to in the Scope of Services, COUNTY will obtain, arrange and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for CONSULTANT's services.
- D. Timely Review: COUNTY will examine CONSULTANT's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as COUNTY deems appropriate; and render in writing decisions required by COUNTY in a timely manner.

- E. Prompt Notice: COUNTY will give prompt written notice to CONSULTANT whenever COUNTY observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or of any defect in the work of CONSULTANT.
- F. Environmental Clearances: COUNTY will be responsible for all environmental clearances.
- G. Asbestos or Hazardous Substances and Indemnification: If asbestos or hazardous substances in any form are encountered or suspected, CONSULTANT will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.

If asbestos is suspected, CONSULTANT will if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated.

To the maximum extent permitted by law, COUNTY will indemnify CONSULTANT and CONSULTANT's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation or dispute resolution expenses arising out of or relating to the presence, discharge, release, or escape of hazardous substances, contaminants, or asbestos on, under, or from the PROJECT.

III. CONSULTANT'S REPORT AND/OR MEETINGS

- A. The CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the COUNTY's Project Manager to determine if the CONSULTANT is performing to expectations or is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so remedies can be developed.
- B. The CONSULTANT's Project Manager shall meet with the COUNTY's Project Manager as needed to discuss progress on the project(s).

IV. SUBCONTRACTOR/DBE PARTICIPATION

A. Subcontractors

1. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Agency and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the Agency for the acts and omissions of its subcontractors 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 the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the Agency's obligation to make payments to the Contractor.
2. 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 subcontractors.
3. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the Agency.
4. Any substitution of subcontractors must be approved in writing by the Agency's Contract Manager in advance of assigning work to a substitute subcontractor.

B. Disadvantaged Business Enterprise (DBE) Participation

1. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Proposers who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

2. If the contract has a DBE goal, the Consultant must meet the DBE goal by committing DBE participation or document a good faith effort to meet the goal. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
3. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Consultant 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 the local agency deems appropriate.
4. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

C. Performance of DBE Consultant and other DBE Subconsultants/Suppliers

1. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing; and other relevant factors.
2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
3. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

D. Prompt Payment of Funds Withheld to Subcontractors

1. The Agency shall hold retainage from the prime consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime consultant, or subconsultant, shall return all monies withheld in retention from a subconsultant within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subconsultant performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime consultant and subconsultants.
2. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

E. DBE Records

1. The Consultant shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
2. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25% of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to the Contract Manager.

F. DBE Certification and Decertification Status:

If a DBE sub-consultant is decertified during the life of the Agreement, the decertified sub-consultant shall notify the Consultant in writing with the date of decertification. If a sub-consultant becomes a certified DBE during the life of the Agreement, the sub-consultant shall notify the Consultant in writing with the date of certification. Any changes should be reported to the Agency's Contract Manager within 30 days.

**V.
PREVAILING WAGE**

- A. The CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all federal, state, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this contract if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

**VI.
COMPENSATION AND TERMS OF PAYMENT**

Payment to CONSULTANT will be made as follows:

- A. **Invoices and Time of Payment:** Monthly invoices will be issued by CONSULTANT for all services performed under this Agreement. Invoices shall reference the project title and include a detailed breakdown of work items and unit costs by task and project site with a summary of all work completed to date and the cost of work remaining. Undisputed invoices shall be paid within 30 days of receipt. Each invoice will include a 5% retention amount.

Invoices shall be mailed to the Contract Manager, Fred Pezeshk, at the following address:

County of Lake
Public Works Department
255 N. Forbes Street, Room 309
Lakeport, California 95453
Attn: Fred Pezeshk

Upon satisfactory completion of services enumerated in ARTICLE I herein, the final payment of any balance will be due upon receipt of the final invoice. The final invoice should be submitted within 60-calendar days after completion of the CONSULTANT's work.

- B. **Interest:** Interest at the rate of 1-1/2% per month, or that permitted by law if lesser, will be charged on all past-due amounts starting thirty (30) days after receipt of invoice and required documentation. Payments will first be credited to interest and then to principal.

In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. COUNTY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.

If COUNTY fails to make payment in full to CONSULTANT for services within sixty (60) days of the date due for any uncontested billing, CONSULTANT may, after giving seven (7) days written notice to COUNTY, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, CONSULTANT will have no liability to COUNTY for delays or damages caused COUNTY because of such suspension of services.

- C. **Compensation:** The method of payment for this contract will be based on actual cost plus a fixed fee. COUNTY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work set forth in Exhibit "A". Direct Costs for Sub Consultants will be billed as actual costs. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.

CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds COUNTY's approved overhead rate set forth in the Cost Proposal. In the event, that COUNTY determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time or actual costs reimbursable by COUNTY shall be adjusted by contract amendment to accommodate the changed work.

For all services CONSULTANT shall be paid in accordance with the budget set forth in Exhibit "B", provided however that the total payments to CONSULTANT shall not exceed \$203,522.75 for the Cole Creek Site, \$138,924.22 for Highland Creek Site, and a total of \$342,446.97 without prior written authorization by COUNTY and formal Amendment to this Agreement.

Cole Creek Site.....	\$203,522.75
Highland Creek Site.....	\$138,924.22

In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee of \$7,161.92 for the Cole Creek Site and \$4,772.73 for the Highland Creek Site. The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.

**VII.
TERM**

This Agreement shall commence on the date hereinabove entered into and shall terminate on December 31, 2024, unless earlier terminated as hereinafter provided. This term may be extended an appropriate period of time in case of unavoidable delays and for consideration of corresponding warranted adjustments in payment by modification of this agreement as hereafter provided.

**VIII.
DUE PERFORMANCE - DEFAULT**

Each party to this Agreement undertakes the obligation that the other's expectation of receiving the

performance due under the terms of this Agreement will not be impaired. Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default. If the party in default does not cure the default within ten (10) days of the date of that notice (i.e. the time to cure) then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure shall be in writing executed by both parties and must specify the reason(s) for the extension and the date the extension of time to cure expires.

Notice given under this provision shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

IX. **TERMINATION**

This Agreement may be terminated as follows:

- A. By mutual written consent of the parties; or
- B. By COUNTY or Director of Public Works upon thirty (30) days written notice to CONSULTANT.

Upon termination prior to the full and satisfactory completion of CONSULTANT's performance under this Agreement, COUNTY shall not be liable to pay CONSULTANT the total compensation set forth in Article VI of this Agreement, but CONSULTANT shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the CONSULTANT covered by this Agreement. Upon termination of this contract, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this contract will automatically be vested in the COUNTY, and no further agreement will be necessary to transfer ownership to the COUNTY.

X. **INSURANCE**

CONSULTANT shall not commence work under this Agreement until he has obtained all the insurance required herein, certificates of insurance have been submitted to COUNTY, and said insurance has been approved by COUNTY. The certificates of insurance shall contain a provision that coverage afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given to COUNTY, ten (10) days' notice if cancellation is due to nonpayment of premium.

CONSULTANT shall not allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been obtained.

Any failure of CONSULTANT to maintain the insurance required by this provision, or to comply with any of the requirements of this provision, shall constitute a material breach of the entire Agreement. COUNTY shall not be responsible for any premiums or assessments on the policy.

Certificates evidencing the issuance of the following insurance shall be filed with COUNTY within ten (10) days after the date of execution of this Agreement by CONSULTANT and prior to commencement of work hereunder.

- A. **Compensation Insurance.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Workers' Compensation Insurance and Employer's Liability Insurance as required by the State of California, for all employees to be engaged in work. In any case of such work sublet, CONSULTANT shall require subcontractor similarly to provide Employer's Liability Insurance and Workers' Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by CONSULTANT's Workers' Compensation Insurance and Employer's Liability Insurance. Employer's Liability Insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

- B. **Commercial General Liability.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, upon himself and his employees at all times during the course of this Agreement, Commercial General Liability Insurance (Occurrence Form CG 0001) for bodily injury, personal injury, and broad form property damage, in an amount of not than One Million dollars (\$1,000,000.00) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverages: Personal and advertising injury, Premises-operations, Products and completed operations, Blanket contractual, and Independent CONSULTANT's liability. If such policy includes an aggregate limit, such aggregate limit shall be at least double the per occurrence limit required herein.
- C. **Automobile Liability Insurance.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased, and non-owned vehicles used in connection with CONSULTANT's business in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit coverage per occurrence.
- D. **Professional Liability Insurance.** CONSULTANT shall procure and maintain, at CONSULTANT's own expense during the term hereof, Professional Liability Insurance for protection against claims arising out of the performance of services under this Agreement caused by errors, omissions, or other acts for which CONSULTANT, its employees, subcontractors, and agents, are liable. Said insurance shall be written with limits of not less than One Million Dollars (\$1,000,000.00). If said insurance is written on a "claims made" form, insurance shall be maintained and evidence of insurance must be provided for at least one (1) year after completion of the work under this Agreement.
- E. **Subcontractors.** CONSULTANT shall include all subcontractors as insured under the aforesaid policies or shall furnish separate certificates and endorsements to the COUNTY for each subcontractor which shall be subject to review and approval by COUNTY. All insurance coverages for subcontractors shall be subject to each of the requirements hereinabove and contain the additional insured endorsements required of CONSULTANT described with particularity hereinbelow.
- F. **Additional Insured Endorsement.** The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The COUNTY, its officers, officials, employees, and designated agents are to be covered as additional insureds and shall be added in the form of an endorsement to CONSULTANT's insurance on Form CG 20 10 11 85. CONSULTANT shall not commence work under this Agreement until he has had delivered to COUNTY the Additional Insured Endorsements required herein. This provision is not intended to extend to construction contractors contracted by the COUNTY to perform the work of improvement.

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

- G. **Other Insurance Provisions.** For any claims related to the work performed under this Agreement by CONSULTANT, the CONSULTANT's insurance coverage shall be primary insurance as to the COUNTY, its officers, officials, employees, designated agents and appointed volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, designated agents or appointed volunteers shall be in excess of the CONSULTANT's insurance and shall not contribute with it.

Any deductibles or self-insured retentions must be declared to and approved by COUNTY. At the option of COUNTY, either CONSULTANT shall reduce or eliminate such deductibles or self-insurance retentions as they apply to COUNTY or CONSULTANT shall provide a financial guarantee satisfactory to COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense and defense-related expenses.

Insurance coverage required of CONSULTANT under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A: VII.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the CONSULTANT for liability in excess of such coverage, nor shall it preclude COUNTY from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of COUNTY to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

If any insurance coverage required by this Agreement is provided on a "Claims Made", rather than "occurrence" form, CONSULTANT agrees to maintain required coverage for a period of three years after the expiration of this Agreement (hereinafter, "Post Agreement Coverage") and any extensions thereof. CONSULTANT may maintain the required Post Agreement Coverage by renewal or purchase of prior acts or tail coverage. This subprovision is contingent upon Post Agreement Coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for Post Agreement Coverage shall be deemed to be reasonable.

COUNTY shall include a provision in its contract with the general contractor hired to perform the work of improvement a provision requiring that the general contractor and all of its subcontractors maintain general liability insurance of not less than \$1,000,000 and that such insurance include the COUNTY, its officers, officials, employees, designated agents, appointed volunteers and the CONSULTANT, as additional insureds.

XI. INDEMNIFICATION - HOLD HARMLESS

Each Party shall indemnify and hold the other harmless against all actions, claims, demands, and liabilities and against all losses, damage, cost, expenses, and attorney's fees, that arise out of, pertain to, or relate to its own negligent acts and/or omissions, recklessness, or willful misconduct which caused said claim, demand, liability, loss, damage, cost expense, and/or attorney's fees. This provision shall not extend to any claim, demand, liability, loss, damage, cost, expenses, and/or attorney's fees covered by the insurance of either party. CONSULTANT's liability hereunder shall be limited by the COUNTY to the amount of the available coverage under CONSULTANT's insurance coverage as described in Section X. herein.

CONSULTANT's obligations under this Section shall survive the termination of the Agreement.

XII. CONSULTANT'S WARRANTIES

CONSULTANT hereby makes the following representations and warranties:

- A. **Standard of Care.** CONSULTANT represents that it is specially trained, licensed, experienced, and competent to perform all the services, responsibilities, and duties specified herein and that such services, responsibilities, and duties shall be performed, whether by CONSULTANT or designated subcontractors, in a manner according to generally accepted practices of the engineering profession.

If COUNTY determines that any of CONSULTANT's work is not in accordance with such level of competency and standard of care, COUNTY, in its sole discretion, shall have the right to do any or all of the following: (a) require CONSULTANT to meet with COUNTY to review the quality of the work and resolve matters of concern; (b) require CONSULTANT to correct the work at no additional charge to generally accepted standards and practices of the engineering profession; (c) terminate this Agreement pursuant to the provisions of Article IX; or (d) pursue any and all other remedies at law or in equity.

Assigned Personnel:

1. CONSULTANT shall assign only competent personnel to perform work hereunder. In the event that at any time COUNTY, in its sole discretion, desires the removal of any person or persons

assigned by CONSULTANT to perform work hereunder, CONSULTANT shall remove such person or persons immediately upon receiving written notice from COUNTY.

2. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by COUNTY to be key personnel whose services were a material inducement to COUNTY to enter into this Agreement. CONSULTANT shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of COUNTY. With respect to performance under this Agreement, CONSULTANT shall employ the key personnel identified in Exhibit "A".
3. In the event that any of CONSULTANT's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of CONSULTANT's control, CONSULTANT shall be responsible for timely provision of adequately qualified replacements.

B. Non-Discrimination in Employment. CONSULTANT shall, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, creed religion, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age. During the performance of this Contract, Consultant and its sub-consultant 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 sub-consultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and sub-consultants 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 Contract by reference and made a part hereof as if set forth in full. Consultant and its sub-consultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

- C. Adherence to Applicable Disability Law.** CONSULTANT shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.). California Government Code Sections 12920 et seq., and all related state and local laws.
- D. HIPAA Compliance.** CONSULTANT will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.
- E. Safety Responsibilities.** CONSULTANT will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. CONSULTANT agrees that in the performance of work under this Agreement, CONSULTANT will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.
- F. Interest of CONSULTANT.** CONSULTANT hereby covenants that he has, at the time of the execution of this Agreement, no interest, direct or indirect, and that he shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this work, no person having such interest shall be employed.

- G. **Covenant Against Contingent Fees.** The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- H. **Laws to be observed.** CONSULTANT will comply with all laws, regulations, orders, and decrees applicable to the PROJECT. Indemnify and defend the COUNTY against any claim or liability arising from the violation of a law, regulation, order, or decree by CONSULTANT or your employees. Immediately report to the Contract Manager a discrepancy or inconsistency between the Contract and a law, regulation, order, or decree.

If the COUNTY incurs any fines or penalties because of CONSULTANT's failure to comply with a law, regulation, order, or decree, the COUNTY will deduct the amount of the fine or penalty.

Immediately notify the Contract Manager, if a regulatory agency requests access to the job site or to records. Submit a list of documents provided to the agency and issued enforcement actions.

XIII. **ASSIGNMENT**

CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of COUNTY, except that claims for money due or to become due the CONSULTANT from COUNTY under this Agreement may be assigned by the CONSULTANT to a bank, a trust company, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to the COUNTY. Any attempt at assignment of rights under this Agreement except for those specifically consented to by both parties or as stated above shall be void.

XIV. **INDEPENDENT CONSULTANT**

It is specifically understood and agreed that, in the making and performance of this Agreement, CONSULTANT is an independent CONSULTANT and is not an employee, agent or servant of COUNTY. CONSULTANT is not entitled to any employee benefits. COUNTY agrees that CONSULTANT shall have the right to control the manner and means of accomplishing the result contracted for herein.

CONSULTANT is solely responsible for the payment of all federal, state, and local taxes, charges, fees, or contributions required with respect to CONSULTANT and CONSULTANT's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security, and payroll tax withholding).

XV. **MODIFICATION**

- A. This Agreement may only be modified by a written amendment thereto, executed by both parties. However, matters concerning scope of services which do not affect the agreed price may be modified by mutual written consent of CONSULTANT and COUNTY executed by Director of Public Works.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the COUNTY's Project Manager.
- C. There shall be no change in the CONSULTANT's Project Manager or members of the project team, as listed in the Cost Proposal which is a part of this contract, without prior written approval by the COUNTY's Project Manager.

XVI.
ATTORNEYS FEES AND COSTS

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

XVII.
OWNERSHIP OF DATA

- A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this contract will automatically be vested in the COUNTY, and no further agreement will be necessary to transfer ownership to the COUNTY. The CONSULTANT shall furnish the COUNTY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. The CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the COUNTY of the machine-readable information and data provided by the CONSULTANT under this agreement; further, the CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with, any use by the COUNTY of the project documentation on other projects, for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by the CONSULTANT.
- D. Applicable patent rights provisions described in 41 CFR 1-91, regarding rights to inventions shall be included in the Agreements as appropriate.
- E. CONSULTANT may copyright reports or other agreement products. FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.
- F. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

XVIII.
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 contract pursuant to Government Code 10532, the CONSULTANT, subcontractors and the COUNTY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract. The state, the State Auditor, the COUNTY, FHWA or any duly authorized representative of the federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

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

XIX.
JURISDICTION AND VENUE

This Agreement shall be construed in accordance with the laws of the State of California and the parties

hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. CONSULTANT waives any right of removal it might have under California Code of Civil Procedure Section 394.

XX.
NO THIRD-PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.

XXI.
SEVERABILITY

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

XXII.
NON-APPROPRIATION

In the event COUNTY is unable to obtain funding at the end of each fiscal year for professional engineering services required during the next fiscal year, COUNTY shall have the right to terminate this Agreement, without incurring any damages or penalties, and shall not be obligated to continue performance under this Agreement. To the extent any remedy in this Agreement may conflict with Article XVI of the California Constitution or any other debt limitation provision of California law applicable to COUNTY, CONSULTANT hereby expressly and irrevocably waives its right to such remedy.

XXIII.
CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by the COUNTY's construction contractor relating to work performed by CONSULTANT's personnel and additional information or assistance from the CONSULTANT's personnel is required in order to evaluate or defend against such claims, CONSULTANT agrees to make its personnel available for consultation with the COUNTY's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that the COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the COUNTY. Consultation or testimony will be reimbursed at the same rates, including travel costs, that are being paid for the CONSULTANT's personnel services under this Agreement.
- C. Services of the CONSULTANT's personnel in connection with the COUNTY's construction contractor claims will be performed pursuant to a written supplement, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.
- D. Any subcontract in excess of \$25,000, entered into as a result of this contract, shall contain all of the provisions of this Article.

XXIV.
CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which is designated confidential by the COUNTY and made available to the CONSULTANT in order to carry out this contract, shall be protected by the CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion or public hearing held by the COUNTY relating to the contract, shall not authorize the CONSULTANT to further disclose such information or disseminate the same on any other occasion.

- C. The CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the COUNTY's actions on the same, except to the COUNTY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings, or in response to questions from a Legislative committee.
- D. The CONSULTANT shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this contract without prior review of the contents thereof by the COUNTY and receipt of the COUNTY's written permission.
- E. Any subcontract, entered into as a result of this contract, shall contain all of the provisions of this Article.
- F. All information related to the construction estimate is confidential and shall not be disclosed by the CONSULTANT to any entity, other than the COUNTY.

XXV.

NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

XXVI.

INSPECTION OF WORK

The CONSULTANT and any subCONSULTANTs shall permit the COUNTY, State and the FHWA to review and inspect the project activities at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

XXVII.

NON-DISCRIMINATION

- A. During the performance of this Agreement, CONSULTANT and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, nation origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. CONSULTANTs and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. CONSULTANTs and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900.0 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a party hereof as if set forth in full. CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- B. The CONSULTANT shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.
- C. CONSULTANT shall comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR 21 through Appendix C and 23 CFR 710.405(b) are applicable to this contract by reference.
- D. For this contract the consultant shall comply with the requirements of form FHWA-1273 as attached herewith as Exhibit "C".

XXVIII.
DISPUTES

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

XXIX.
SAFETY

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

XXX.
SUBCONTRACTING

- A. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the COUNTY's Contract Manager, except that, which is expressly identified in the approved Cost Proposal.
- B. 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 subcontractors.
- C. Any substitution of subcontractors must be approved in writing by the COUNTY's Contract Manager.

XXXI.
STATEMENT OF COMPLIANCE

The CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

XXXII.

DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, 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 COUNTY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

XXXIII.

CONFLICT OF INTEREST

- A. The CONSULTANT shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this contract, or any ensuing COUNTY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing COUNTY construction project, which will follow.
- B. The 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 contract, shall contain all of the provisions of this Article.
- D. The CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

XXXIV.

REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

XXXV.

PROHIBITION OF EXPENDING COUNTY STATE OR FEDERAL FUNDS FOR LOBBYING

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

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, 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.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

XXXVI.
COST PRINCIPLES

- A. The 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 allowability of cost individual items.
- B. The CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq. are subject to repayment by CONSULTANT to the COUNTY.

XXXVII
CONTINGENT FEE

The 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 the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the COUNTY has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

XXXVIII.
AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by the COUNTY's CHIEF FINANCIAL

OFFICER.

- B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the COUNTY's CHIEF FINANCIAL OFFICER of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by the COUNTY will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this contract.
- D. 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 LOCAL AGENCY 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 LOCAL AGENCY 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.

XXXIX.
EQUIPMENT PURCHASE

- A. Prior authorization in writing, by the COUNTY's Contract Manager shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in the CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by the COUNTY's Contract Manager; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit the COUNTY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the 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 COUNTY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY.
- D. All subcontracts in excess \$25,000 shall contain the above provisions.

XL.
EVALUATION OF CONSULTANT

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

XLIII.
ADDITIONAL PROVISIONS

This Agreement shall be governed by the laws of the State of California. It constitutes the entire Agreement between the parties regarding its subject matter. This Agreement supersedes all proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties related to the subject matter of this Agreement.

COUNTY and CONSULTANT have executed this Agreement on the day and year first written above.

COUNTY OF LAKE:

CONSULTANT:

Chair, Board of Supervisors



Mark Cederborg, Vice President / Secretary
Hanford Applied Restoration & Conservation

ATTEST: CAROL J. HUCHINGSON
Clerk of the Board
of Supervisors

APPROVED AS TO FORM:
ANITA L. GRANT
County Counsel

By: _____

By:  _____



Project Schedule/Work Plan

(revised 9/20/17)

FALL 2017

- 1) **(TASK 1.1 & TASK 1.2) Kick-off meeting and project management.** The Hanford team will attend a kick-off meeting with the County and Caltrans. The meeting would follow the format as proposed in the Project Approach section of this proposal. Throughout the following work plan, the Hanford ARC team would provide adequate project management oversight to coordinate, track, and communicate with all project staff/resources. **The County and Hanford ARC team leader Will Johnson have already performed an introductory phone conference, regarding revised proposal guidelines and revised cost proposal specifications.**
- 2) **(TASK 2) Select Highland Creek site(s) and develop oak mitigation plans for both Highland Creek and Cole Creek.** Early investigative work and field tests/surveys are intended to inform and hone design decisions and project approaches. A portion of the Cole Creek mitigation site has already been identified within the Cole Creek Bridge construction footprint. We will further investigate site conditions to inform planting design by conducting a soils investigation and laboratory analysis of one composite soil sample, and by mapping suitable planting areas. At Highland Creek, we have identified several sites within 1 mile of the Highland Creek Bridge that will be further examined to select the optimum site(s) for planting oak trees. The examination will include a soils investigation, a laboratory analysis of one composite soil sample, mapping of existing native trees and shrubs, and mapping of suitable planting areas. After the Highland Creek site has been selected, our team will finalize two conceptual designs and prepare two oak mitigation plans, one for Cole Creek Bridge mitigation project and one for Highland Creek Bridge mitigation project. Assuming that the County and CDFW concur with the site selection and the consolidated mitigation approach, this task should take approximately 4-6 weeks.
- 3) **(TASK 3) Mobilization, site preparation (clearing/layout).** Hanford ARC would prepare planting areas by clearing non-native plants, performing minor re-grading to accommodate water tank placement, importing small-diameter drain rock to serve as water tank foundations/pads, and performing some general clearing for access of trucks, equipment and personnel. Hanford ARC would also implement supplemental erosion control best management practices ("BMPs") such as hand-broadcasting native seed mix, installing silt fence, wattles, etc. as needed, during the course of the construction/installation phase. Debris and non-native weeds would be hauled off-site in order to maintain a functional and clean work area.
- 4) **(TASK 3) Plant installation.** Our work plan assumes that oak trees are sourced from a local native plant nursery and of local genetic origin, delivered/provisioned to each site by Hanford ARC. Alternatively, if clean nursery stock oak trees are unavailable (see above Project Approach section), our work plan could include installation of acorns. Plants will likely have a constructed water retention/earthen basin, with mulch applied in a 36" diameter and 4" depth around each plant. Each planting hole could receive amendments (e.g., fertilizer packets, mycorrhizal supplement) to facilitate establishment in nutrient-poor soil conditions. Holes will be dug and hole walls will be "roughened" to facilitate the natural expansion of tree roots over time. For each tree Hanford ARC will construct browse control/protection cages (comprised of 2 heavy-duty steel T-posts, with a 4' diameter circular cage, 2" x 4" rectangular openings welded wire mesh 48" high, with UV-resistant plastic zip-ties to secure in place (to facilitate tree growth and expansion, and to limit herbivory).



- 5) **(TASK 3) Irrigation installation.** Hanford ARC will install an irrigation system for each site(s), with lateral PVC mainlines aboveground. Hanford ARC will work with H. T. Harvey on designs that assumes some minor trenching/excavation for placement of valves (but most of the infrastructure will be aboveground for ease of maintenance, etc.). The irrigation designs will likely include a water tank (5,000-gallon minimum - 10,000-gallon maximum) for each site that services the plants, via gasoline-powered booster pumps. The crew could install/remove the gasoline pump upstream of the plantings for each watering event. Drip line would be 1/2" poly/plastic hose, with two, 2- gallon-per-hour emitters minimum installed in-line for each tree. A water truck/tender will fill water tanks at semi-regular intervals, using a water source (hydrant, etc.) nearby the site(s).

WINTER 2017/18 to WINTER 2020/21

- 6) **(TASK 3) 3 years of plant establishment/maintenance.** Post-installation, after acceptance of installation from County and as-built submittal, Hanford ARC would maintain plants with semi-regular watering (manual, gasoline-powered pump with water tanks), replenishment of mulch for weed suppression and water retention, and hand-weeding (to remove competitive pressure from non- native plants). Hanford ARC would perform monthly maintenance/weeding and bi-weekly watering (i.e., every other week) from April – November (8 months) for each year of establishment. Water would be delivered to on-site tanks via 2,000- or 4,000-gallon water truck (every 4 watering events or so, if a 10,000-gallon tank were installed). A maintenance crew would water plants, remove debris/litter, mow, etc. in support of the trees' survival/success. Hanford ARC assumes the purchase, provision and installation of a water meter/backflow preventer at a hydrant or other water source nearby the sites.

FALL 2018 to FALL 2022

- 7) **(TASK 3) 5 years of plant survivorship monitoring, surveys, and reporting.** Post-installation, H. T. Harvey would prepare an as-built/baseline report for each site for submittal to CDFW. H. T. Harvey would provide annual monitoring of the sites starting the first year after planting for a period of 5 years, in order to assess survivorship and to ensure CDFW/contract success criteria are met. Thus, this annual monitoring will take place in 2018, 2019, 2020, 2021, and 2022. H. T. Harvey would provide a single annual report combined for both sites that details the condition of the sites and provides recommendations to Hanford ARC regarding weeding, watering and other maintenance operations. This report would be provided to the County for review, and subsequently submitted to CDFW to document site progress towards success criteria.

FALL 2020 or JANUARY/FEBRUARY 2021

(After Year 3 annual monitoring report is completed and reviewed)

- 8) **(TASK 3) Replacement Planting** – Our approach incorporates a significant overplanting effort during initial construction, therefore we expect replacement planting to be highly unlikely, unless there is a severe drought, fire, vandalism, etc. However, if replacement plants are needed to meet goals, the Hanford ARC team is prepared to prescribe and install additional plants or prescribe an alternative approach (as described in Project Approach section).

Project Understanding & Approach

(revised 9/20/17)

Hanford Applied Restoration & Conservation ("Hanford ARC") and its team members (H. T. Harvey & Associates ("H. T. Harvey") and Basin Research Associates) understand that the Lake County Department of Public Works seeks a professional and qualified firm or firms to provide Oak Tree Mitigation Services at Cole Creek and Highland Creek in association with recent construction projects (Soda Bay Road Bridge 14C0127 replacement and Highland Creek Bridge 14C0125 replacement). We understand that the County is essentially requesting proposals for Cole Creek and Highland Creek as **separate projects** and that they will be tracked, built, monitored, invoiced for, etc. completely separately for the entire duration/timeframe of contract. However, our overall cost proposal assumes that both projects will be contracted and implemented simultaneously. If only one project is to be contracted or built we reserve the right to revisit our cost estimates.

The services of the Hanford ARC team will be all-inclusive and incorporate the team's collective/combined knowledge and expertise in regards to the following areas:

- California Department of Fish and Wildlife ("CDFW") requirements and procedures;
- Ecological monitoring, vegetation and soil surveys, data collection, and report writing;
- Cultural resource assessments, documentation, and monitoring;
- Oak mitigation plan development;
- Revegetation design in remote areas;
- Techniques in habitat restoration, planting, irrigation, and weed management;
- Adaptive management during on-going maintenance.

Our team brings technical prowess and scientific expertise in mitigation plan development, implementation, and monitoring through completion. Our approach includes establishing a solid baseline understanding of the project at the onset by accumulating a wide breadth of resources/information to draw upon, providing us a reliable and sound framework upon which the successful mitigation project can be built.

Our team has combined experience spanning decades and our firms have worked throughout California on a diverse array of habitat restoration, construction, and mitigation projects, in a wide variety of California ecotypes. The breadth of clients and types of projects is a testament to our team's highly qualified and specialized workforce. Our team is passionate about the work we perform, about the restoration process, and end result that the work achieves.

During the construction phase, our team will employ a minimal tool policy which limits the degree of disturbance on the land, and facilitates native recruitment and success. Control techniques for weeds and methodology/type for revegetation and watering will be adaptive and best-suited for each project site's specific field conditions. This is especially relevant given that the sites have been altered by previous construction activities, and will need to be amended/restored in order to support revegetation efforts.

Our approach to the work will accomplish the tasks outlined by the Lake County Public Works Department on Page 2 of the Request for Proposals ("RFP") dated June 20, 2017.



TASK 1 – Project Initiation & Management

TASK 1.1 – Kick-Off Meeting

The Hanford ARC team will first investigate and obtain pertinent existing information from local, state, and federal agencies regarding the project sites' history, cultural sensitivity, ecological context, etc. Surveys will supplement the information gathering. Once the team determines that sufficient background information has been gathered, our lead project manager will initiate a Kick-Off Meeting (Task 1.1) with the County, Caltrans, appropriate members of the team. The meeting will serve both to present information and to discuss our specific project approach for delivering a successful project.

TASK 1.2 – Project Management

Hanford ARC would assign a full-time team project manager (Will Johnson, Hanford ARC) for both the team and overall project (individual teams would provide respective managers as well). The team manager's duties would include:

- Tracking project progress;
- Invoicing and budget management. Project budget would be closely monitored by Hanford ARC, with input from team members. Monthly progress reports would include a summary of work performed, upcoming work tasks, and comments or recommendations about the broader schedule of work;
- Scheduling;
- Day-to-day tasking of staff (either Hanford ARC or other team members) with various items of the scope (mapping, weed control, meetings, etc.);
- Coordinating and communicating with the County;
- Maintaining an updated record of all work completed at each site; and
- Maintaining comprehensive record of budget information and staff hours.

The team project manager would maintain effective communication with County. This communication would include scheduling field meetings at the onset of operations and at recurring intervals (as necessary) to review field conditions and progress, as well as providing weekly telephone or email updates to the County. Our team would regularly communicate ways to increase efficiency, efficacy or accuracy in the wider context of the project (e.g., adopting alternate or inventive methods based on changing conditions, prioritizing, etc.).

The Hanford ARC team members would be made well aware of the hierarchy of communication and management prior to work. The team project manager would provide the County with a project staff directory so that the flow of communication is seamless from office to field – a critical component of managing this project. Transparent communication between the “consultant efforts” (i.e. natural and cultural resource monitoring, reporting, etc.) and “contractor efforts” (planting, weeding, construction, etc.) within the team would better inform future management decisions. Internally, our team would closely communicate and share technical information – e.g., weed coverage for sites, weed control progress, access, rare plant or environmental considerations, phenology/timing, etc.

The project would have a full-time field superintendent assigned (Patrick Downs, Hanford ARC). The superintendent's role is to serve as the link between the Hanford ARC team project management and field operations – the superintendent would closely monitor on-site work, provide quality control,



schedule and task foremen/laborers, order materials, rent equipment, etc. Patrick would be assisted by a full-time crew leader, knowledgeable in the safe and effective use of tools and managing the crew's time and tasks. The crew leader would have a strong background in proper planting techniques, irrigation installation and maintenance, native plant identification, and the appropriate and effective means for controlling weeds. The crew would be provided environmental sensitivity and rare/endangered plant identification training by H. T. Harvey at the onset of work, and cultural resource sensitivity training would be provided by Basin Research Associates. Additionally, all field crews would be well-versed in field first aid, given the rough terrain, inclement weather, or other wildland conditions that they could encounter while working on this project.

H. T. Harvey and Basin Research Associates would provide equivalent management or field supervision for oversight of their scopes of work.

TASK 2 – Select Highland Creek Site & Develop Oak Mitigation Plans for Both Highland Creek and Cole Creek

The foundation of any successful oak planting effort relies first and foremost on a thorough site analysis. In general, desirable sites for planting have good native soils that support oak trees, and should include selection criteria as they relate to potentially enhancing ecological benefit of expanding the existing riparian corridor(s).

On July 11, 2017 our team conducted site assessments at the Highland Creek and Cole Creek bridge construction sites. Our assessment revealed that the soils at the Highland Creek site are extremely compacted and of a gravely texture that renders them unsuitable for planting and very difficult to amend to make them suitable. Similarly, the soils at the Cole Creek bridge construction site are also very compacted and difficult to plant; however, we understand that the County still wants to plant some oaks at this site. We propose to plant up to 20 oaks at the Cole Creek bridge construction site. The remainder of the oak plantings for both bridge projects' mitigation will be planted on County property along Highland Creek, near the Highland Creek bridge. This approach of "consolidated mitigation" for multiple project has been implemented by the design team on many projects, with the approval of CDFW.

On September 16, 2017 our team investigated potential mitigation planting sites along Highland Creek (per Attachment A provided by Mr. Scott Hornung of the County on September 7, 2017) to identify and map a suite of alternate sites that appear suitable and of sufficient size to accommodate the required plantings (see Attachment B). H. T. Harvey examined these potential areas and assessed them for characteristics that will influence revegetation design, including: site soils, landscape position (aspect, shade/sun, slope, etc.), hydrology and drainage, access, existing vegetation and debris, available space for planting, etc. We are very confident that from this suite of sites we can select a fully suitable area in which to accommodate the consolidated mitigation planting.

The first order of work, once under contract, is to work with the County to ensure that the proposed planting site or sites along Highland Creek are acceptable from a property, right-of-way, and use perspective. Concurrently, we will contact CDFW to confirm the consolidated mitigation approach. We then will conduct focused site assessments at the preferred site(s), as described below. Our cost estimate is based on the reasonable assumption that CDFW will accept consolidated mitigation at the sites we have preliminarily identified along Highland Creek (Attachment B).

We propose to conduct focused assessments to inform site design at the preferred Highland Creek site(s) and the Cole Creek site:

- a. Dig soil pits and obtain representative soil samples at the Cole Creek and Highland Creek sites (even with multiple sites to be considered we believe that a single sample will be adequately representative of Sites 1-3 shown in Attachment B. Site 5 is considered unlikely to be chosen due to steep slopes);
- b. Conduct soils lab analyses;
- c. Assess site access;
- d. Assess site hydrology;
- e. Map proposed limits of existing vegetation to remain;
- f. Confirm limits and acreage of suitable planting areas.

Per the County, and provided materials, the Hanford ARC team assumes the following necessary mitigation plantings need to be completed:

Cole Creek	Highland Creek
<ul style="list-style-type: none"> - 14 trees original removed. - Replace removed trees at 4:1 = 56 plantings. - Add 10 for contingency purposes. - Grand total = 66 plantings. 	<ul style="list-style-type: none"> - 9 trees originally removed. - Replace removed trees at 4:1 = 36 plantings. - Add 10 for contingency purposes. - Grand total = 46 plantings.

Per these calculations, the Hanford ARC team will design/construct the following planting areas: one at the Cole Creek construction footprint, and one or more along Highland Creek as shown in Attachment B.

Our project budget assumes mitigating Cole Creek at 4:1 (56 trees) and Highland Creek at 4:1 (36 trees), for a combined sub-total of 92 oak trees. Also, as a contingency, up to 20 additional trees (10 for Cole Creek and 10 for Highland Creek) would be planted to ensure that the projects achieve their 75% plant survival success criterion, for a grand total planting of **112 oak trees total for both Cole Creek and Highland Creek.** That number of trees would occupy an approximately 0.40-acre planting area, split between Cole Creek and one or more, to-be-determined suitable area(s) along Highland Creek.

Site design will be led by H. T. Harvey team members Dan Stephens (H. T. Harvey Principal Ecologist), Charles McClain (Senior Restoration Ecologist), and Karen Verpeet (Senior Restoration Landscape Architect), in very close collaboration with Hanford ARC. We will also confer closely with Basin Research Associates (the Hanford ARC team's Cultural Resource Consultant) to avoid disturbance of cultural resources to the extent feasible. Our team will implement cultural resource mitigation measures as needed, during both site surveys and assessments (test pits) and construction (excavating planting holes). H. T. Harvey will develop a basic planting approach including species, nursery stock size (or acorns), planting pit size and soil amendments, on-center spacing (usually 14–16 ft. for oaks), irrigation demand and schedule, browse protection, and planting layout. The planting approach will then be carefully assessed by Hanford ARC for feasibility, cost control, ease of maintenance and other practical considerations. H. T. Harvey will then revise the design as needed, and if required, once again review with Hanford for practicality assessment.

Once the team finalizes the conceptual design, including final selection of alternative off-site planting location along Highland Creek, H. T. Harvey will prepare an Oak Mitigation Plan for both Cole Creek and Highland Creek separately, that describes the trees removed, mitigation approach and replanting ratio, mitigation site assessment, basis of design, planting design (text and graphic), schedule, maintenance



and monitoring plans, and remedial action plans. H. T. Harvey will submit draft mitigation plans to the County for review prior to submitting them to CDFW on the County's behalf. The plans will be revised based on any comments received from CDFW and a final version of each document will be prepared for resubmittal.

In addition to preparing Oak Mitigation Plans for approval by CDFW, H. T. Harvey's Landscape Architect and staff will prepare internal planting plans showing planting layout and spacing, species, and planting notes and details as needed for implementation by Hanford ARC.

TASK 3 – Installation, Maintenance, and Monitoring and Reporting

The Hanford ARC team will implement all aspects of the final CDFW-approved Oak Mitigation Plans, including installation, maintenance, and monitoring and reporting for CDFW. Monitoring data will be collected and used to evaluate the success of the mitigation sites. Information from the monitoring programs will provide feedback to direct necessary maintenance and potential remedial measures to ensure the success of the mitigation. The mitigation sites will be **maintained over a 3-year plant establishment period (2018-2020)** and monitored annually over a **5-year monitoring period (2018-2022)**, assuming the site meets the Year 3 performance criteria. Performance and final success criteria will be based on percent tree survival. During the first 2 years, all dead plants will be replaced (100% survival criterion). In Year 3, tree survivorship will be 75%, in accordance with the project permits. Additionally, trend characteristics will be monitored to aid in the assessment of the sites' progress, including tree health and vigor and natural recruitment. Site maintenance will be included in the performance criteria because of the critical importance of proper maintenance during the plant establishment period. Site maintenance monitoring will assess plant replacement, weed control, irrigation, and foliage protection maintenance. Photo-documentation of the mitigation sites will be conducted annually from a number of fixed locations. Photographs also will be taken to record any event that may significantly affect the success of the mitigation, such as flood, fire, or vandalism. The locations of photo-documentation points will be selected when the as-built plans are developed for the sites. Each year of required monitoring, H. T. Harvey will prepare a draft monitoring report for County review. Once any revisions have been incorporated, we will submit the monitoring report to CDFW on the County's behalf.

The technical approach to installation, construction and plant establishment would center on established minimal impact/disturbance control techniques. Hanford ARC would preserve existing native vegetation and ecosystem functions as best as possible. This is especially relevant where non-native or invasive plants occur in the vicinity of listed, rare, or endangered species; our team will rely on the careful planning and methodical approach to controlling weeds and maintain planted trees. Hanford ARC crews will take certain care to avoid disturbing volunteer or recruiting native oaks and/or vegetation, as these could enhance mitigation site success over time.

Sites would be constructed consecutively (i.e., Cole Creek would be built first, followed by Highland Creek, or vice versa). Plants would be installed, with browse control cages, mulch, etc. Once plants were fully installed, an irrigation system would be installed. The Hanford ARC team would then request County sign-off to begin the plant establishment and monitoring period(s).

Archaeological monitoring for the project will focus on the inspection of ground disturbing construction associated with the revegetation. Caltrans has mandated full time monitoring by both an Archaeologist and a Native American representative(s) during revegetation ground disturbance at the Cole Creek Bridge.



It is assumed that the Monitoring Archaeologist will have the authority to temporarily halt construction operations within the project to determine if significant or potentially significant prehistoric or historic period cultural resources are present and if they will be adversely affected by continuing construction. Work may be redirected to other locations at least 50 feet outside of the find area.

The evaluation and mitigation of any unexpected discoveries will be dealt with on a task order basis since the presence and/or extent of these resources cannot be predicted based on the current information available for the project. Treatment of any cultural materials will be in consultation with Caltrans and the County of Lake in accordance with the MOA/ESA previously developed for the project.

Monitoring will be conducted by a Monitoring Archaeologist with appropriate experience. His/her field vehicle will be suitably equipped with sufficient archaeological equipment and supplies to be able to respond to any unanticipated discoveries.

Basin Research will provide a Monitoring Closure Report commensurate with the monitoring results at the completion of ground disturbing construction. We have assumed two short format reports for negative results at each project site.

Our team recognizes the potential for weed propagules and pathogens to be spread during habitat restoration operations. We enact measures to protect against the introduction and spread of weeds and pathogens (e.g., *Phytophthora ramorum* [sudden oak death]) into restoration sites and wildlands, especially in coastal California where the risk of invasion and disease are high. We have found that the best management practices ("BMPs") to mitigate for these risks include working when conditions are dry, to the extent feasible; removing dirt, mud, root clods and other debris from equipment; sanitizing tools, boots, and gear with bleach solutions, alcohol, or peroxides before arriving at and before moving between distinct/isolated areas; and educating our staff and managers about these issues. All equipment will arrive on site clean and free of mud, seeds, and other debris. Hanford ARC will power wash and clean vehicle undercarriages, wheel wells, and tires prior to start of work. Hanford ARC will also have on-hand multiple stiff-bristle brooms for drivers to adequately dislodge mud, vegetation, debris or dirt as necessary. Hanford ARC supervisors will perform thorough inspections of vehicle wheel wells, tire tread, and undercarriage prior to entering or exiting the site. Additionally, Hanford ARC will assign vehicles to the project specifically. We will also carefully assess the safest method for obtaining clean (i.e., pathogen free) plant materials; if a reliable source of clean oak nursery stock is not found, an option would be to use acorns. Plants will originate from acorns collected in Lake County in the general vicinity of the mitigation sites, to the extent feasible.

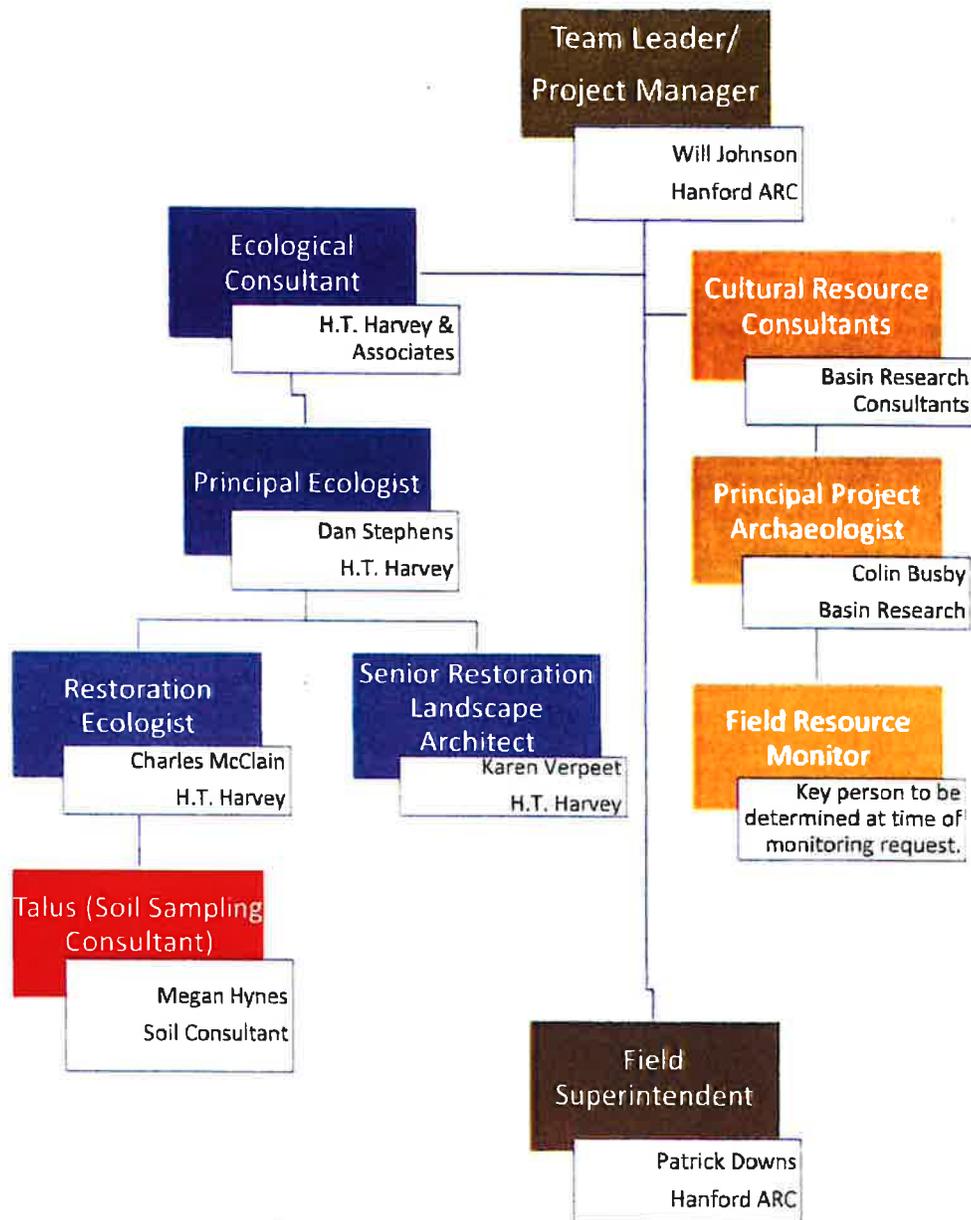
The following table provides a breakdown of individual team member's responsibilities.

	Hanford Applied Restoration & Conservation (habitat restoration contractor)	H. T. Harvey & Associates (ecological consultant)	Basin Research Associates (cultural resource consultant)



<p>Installation</p>	<p>Install plants, browse protection cages and soil amendments. - Install irrigation system. - Perform audits and pressure-tests.</p>	<p>Monitor installation/construction for ecological purposes. - Prepare biological as-built report. - Establish photo-documentation points.</p>	<p>Monitor installation/construction for cultural resource purposes. - Prepare reports. - Conduct photo-documentation.</p>
<p>Plant establishment & site maintenance (3 years)</p>	<p>Conduct maintenance. - Install replacement plants.</p>	<p>Conduct surveys/mapping for weed populations and/or sensitive resource issues during annual monitoring (see below).</p>	
<p>Monitoring and Reporting (5 years)</p>	<p>Provide maintenance summary to H. T. Harvey for incorporation in the annual monitoring report (3 out of 5 years)</p>	<p>Monitor survivorship, plant health and vigor, and natural recruitment (all 5 years). - Conduct photo-documentation. - Write annual monitoring reports and submit them to CDFW.</p>	

KEY PERSONNEL – COLE & HIGHLAND CREEK OAK PLANTING MITIGATION



This organizational chart represents the Key Individuals/Personnel to be assigned to this project from design to completion.



Potential Oak Planting Areas
 Lake County - Oak Mitigation (B998)
 September 2017

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 1 of 2

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Consultant Hanford ARC Contract No. Cole Creek Date 10/25/17

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Project Manager	Will Johnson	204	\$ 75.00	\$ 15,300.00
Superintendent	Patrick Downs	204	\$ 75.00	\$ 15,300.00
Laborer (Class 3)	"Construction"	393	\$ 56.57	\$ 22,232.01
Laborer (Class 4)	"Plant Establishment"	322	\$ 49.33	\$ 15,884.26
Driver/Operator	"Construction/Plant Establishment"	47	\$ 74.65	\$ 3,508.55

LABOR COSTS

a) Subtotal Direct Labor Costs \$ 72,224.82
 b) Anticipated Salary Increases (see page 2 for sample) \$ 1,915.16
 c) TOTAL DIRECT LABOR COSTS [(a) + (b)] \$ 74,139.98

FRINGE BENEFITS

d) Fringe Benefits (Rate: 0.00%) e) TOTAL FRINGE BENEFITS
 [(c) x (d)] \$ 0.00

INDIRECT COSTS

f) Overhead (Rate: 20.00%) g) Overhead [(c) x (f)] \$ 14,827.99
 h) General and Administrative (Rate: 18.00%) i) Gen & Admin [(c) x (h)] \$ 13,345.19
 j) TOTAL INDIRECT COSTS [(e) + (g) + (i)] \$ 28,173.18

FEE (Profit)

q) (Rate: 7.00%) k) TOTAL FIXED PROFIT [(c) + (j) x (q)] \$ 7,161.92

OTHER DIRECT COSTS (ODC)

Description	Unit(s)	Unit Cost	Total
l) Travel/Mileage Costs (supported by consultant actual costs)		\$	\$ 0.00
m) Equipment Rental and Supplies (itemize)	1	\$ 20,070	\$ 20,070.00
n) Permit Fees (itemize), Plan sheets (each), Test Holes (each), etc.		\$	\$ 0.00
o) Subconsultant Costs (attach detailed cost proposal in same format as prime consultant estimate for each subconsultant)	1	\$ 73,977.67	\$ 73,977.67

p) TOTAL OTHER DIRECT COSTS [(l) + (m) + (n) + (o)] \$ 94,047.67

TOTAL COST [(c) + (j) + (k) + (p)] \$ 203,522.75

NOTES:

- Employees subject to prevailing wage requirements to be marked with an *.
- ODC items should be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost.
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 2 of 2

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
(SAMPLE CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant Hanford ARC Contract No. Cole Creek Date 9/8/17

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

Direct Labor <u>Subtotal per Cost Proposal</u> \$ 72,224.82	Total Hours per Cost Proposal <u>1170</u>	=	Avg Hourly Rate \$ 61.73	5 Year Contract Duration Year 1 Avg Hourly Rate
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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	<u>\$ 61.73</u>	+	<u>3.50%</u>	=	<u>\$ 63.89</u>	<u>Year 1 Avg Hourly Rate</u>
Year 2	<u>\$ 63.89</u>	+	<u>3.50%</u>	=	<u>\$ 66.12</u>	<u>Year 2 Avg Hourly Rate</u>
Year 3	<u>\$ 66.12</u>	+	<u>3.50%</u>	=	<u>\$ 68.43</u>	<u>Year 3 Avg Hourly Rate</u>
Year 4	<u>\$ 68.43</u>	+	<u>3.50%</u>	=	<u>\$ 70.82</u>	<u>Year 4 Avg Hourly Rate</u>

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	<u>50.0%</u>	*	<u>1,170</u>	=	585	<u>Estimated Hrs Year 1</u>
Year 2	<u>25.0%</u>	*	<u>1,170</u>	=	293	<u>Estimated Hrs Year 2</u>
Year 3	<u>25.0%</u>	*	<u>1,170</u>	=	293	<u>Estimated Hrs Year 3</u>
Year 4	<u>0.0%</u>	*	<u>1,170</u>	=	0	
Year 5	<u>0.0%</u>	*	<u>1,170</u>	=	0	
Total	<u>100%</u>			=	1,170	

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	<u>\$ 61.73</u>	*	<u>585</u>	=	\$ 36,112.05	<u>Estimated Hrs Year 1</u>
Year 2	<u>\$ 63.89</u>	*	<u>293</u>	=	\$ 18,687.83	<u>Estimated Hrs Year 2</u>
Year 3	<u>\$ 66.12</u>	*	<u>293</u>	=	\$ 19,340.10	<u>Estimated Hrs Year 3</u>
Year 4	<u>\$ 68.43</u>	*	<u>0</u>	=	\$ 0.00	
Year 5	<u>\$ 70.82</u>	*	<u>0</u>	=	\$ 0.00	
Total Direct Labor Cost with Escalation				=	\$ 74,139.98	
Direct Labor Subtotal before Escalation				=	\$ 72,224.82	
Estimated total of Direct Labor Salary Increase				=	\$1,915.16	Transfer to Page 1
					74,139.98	

NOTES:

- 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.
- 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)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.

Exhibit 10-H Cost Proposal

Actual Cost-Plus-Fixed Fee or Lump sum (Firm Fixed Price) contracts
(Design, Engineering and Environmental Studies)

Consultant Hanford ARC
Subconsultant H. T. Harvey & Associates Contract No. _____ Date October 23, 2017

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
<u>Principal</u>	Dan Stephens	24	\$ 95.19	2284.62
<u>Senior Associate Ecologist</u>	Karen Verpeet	24.5	\$ 53.61	1313.34
<u>Senior Ecologist 1</u>	Charles McClain	302.5	\$ 37.26	11271.03
<u>Ecologist 2</u>		0	\$ 34.78	0.00
<u>Ecologist 1</u>	Rachel Visscher	36	\$ 29.33	1055.77
<u>Field Biologist 2</u>		0	\$ 25.24	0.00
<u>Senior GIS Analyst</u>	Mark Lagarde	4.75	\$ 47.84	227.22
<u>GIS Analyst</u>		14.5	\$ 30.03	435.39
<u>Senior Technical Editor</u>	Heather Ogston	22.75	\$ 37.74	858.59
<u>Technical Support</u>	Maureen Marcotte	16.75	\$ 28.25	473.19

LABOR COSTS

a) Subtotal Direct Labor Costs \$ 17,919.16
 b) Anticipated Salary Increases (see page 2 for sample) \$810.73
c) TOTAL DIRECT LABOR COSTS [(a) + (b)] \$ 18,729.89

FRINGE BENEFITS

d) Fringe Benefits (Rate: 104.00%)
e) TOTAL FRINGE BENEFITS [(c) x (d)] \$ 19,479.08

INDIRECT COSTS

f) Overhead (Rate: 101.00%)
 g) Overhead [(c) x (f)] \$ 18,917.19
 h) General and Administrative Included in Overhead Rate
 i) Gen & Admin [(c) x (h)] \$ _____NA_____
j) TOTAL INDIRECT COSTS [(g) + (i)] \$ 18,917.19

FIXED FEE (Profit)

n) Rate: 10.00%
k) TOTAL PROFIT [(c) + (e) + (j)] x (q) \$ 5,712.62

OTHER DIRECT COSTS (ODC)

	Unit(s)	Unit Cost	Total
Travel/Mileage Costs (supported by consultant actual costs)	1872	0.535	\$ 1,001.52
Per Diem	1	162	\$ 162.00
Other (soils lab)	1	270	\$ 270.00
			\$ 1,433.52

p) TOTAL OTHER DIRECT COSTS [(l) + (m) + (n) + (o)] \$ 1,433.52

TOTAL COST [(c) + (e) + (j) + (k) + (p)] \$ 64,272.30

NOTES

- Employees subject to prevailing wage requirements to be marked with an *
- ODC items should be based on actual costs and supported by historical data and other documentation
- ODC items that would be considered "tools of the trade" are not reimbursable
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate
- Travel related costs should be pre-approved by the contracting agency. The rates should not exceed the State Department of Personnel Administration (DPA) requirements

Exhibit 10-H Cost Proposal

Page 2 of 2

Actual Cost-Plus-Fixed Fee or Lump Sum (Firm Fixed Price) Contracts
 (Sample Calculations for Anticipated Salary Increases)

Subconsultant H. T. Harvey & Associates Contract No. _____ Date October 23, 2017

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
\$ 17,919.16	445.75	\$40.20	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 2 Avg Hourly Rate
Year 2 \$40.20	3%	Year 2 Avg Hourly Rate \$41.41
Year 3 \$41.41	3%	Year 3 Avg Hourly Rate \$42.65
Year 4 \$42.65	3%	Year 4 Avg Hourly Rate \$43.93
Year 5 \$43.93	3%	Year 5 Avg Hourly Rate \$45.25
Year 6 \$45.25	3%	Year 6 Avg Hourly Rate \$46.60

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 48.48%	445.5	216 Estimated Hours Year 1
Year 2 13.36%	445.5	59.5 Estimated Hours Year 2
Year 3 9.54%	445.5	42.5 Estimated Hours Year 3
Year 4 9.54%	445.5	42.5 Estimated Hours Year 4
Year 5 9.54%	445.5	42.5 Estimated Hours Year 5
Year 6 9.54%	445.5	42.5 Estimated Hours Year 6
Total 100%	Total	445.5

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 \$40.20	216	\$8,683.20 Estimated Hours Year 1
Year 2 \$41.41	59.5	\$2,463.66 Estimated Hours Year 2
Year 3 \$42.65	42.5	\$1,812.55 Estimated Hours Year 3
Year 4 \$43.93	42.5	\$1,866.92 Estimated Hours Year 4
Year 5 \$45.25	42.5	\$1,922.93 Estimated Hours Year 5
Year 6 \$46.60	42.5	\$1,980.62 Estimated Hours Year 6
Total Direct Labor Cost with Escalation		\$18,729.89
Direct Labor Subtotal before escalation		\$ 17,919.16
Estimated total of Direct Labor Salary Increase		\$810.73 Transfer to Page 1

NOTES:

- 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.
- 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.)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 1 of 2

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

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Consultant Basin Research Associates Contract No. Cole Date 9/5/17

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Principal	Colin Busby, PhD	20	\$ 55.00	\$ 1,100.00
Archaeologist	S. Guedon, C. Canzonieri, Staff (MA)	49	\$ 31.25	\$ 1,531.25
Research Scientist	Donna Garaventa, PhD	2	\$ 48.50	\$ 97.00
Graphics/GIS	Melody Tannan	8	\$ 35.00	\$ 280.00
Admin	Staff	2	\$ 25.75	\$ 51.50

LABOR COSTS

a) Subtotal Direct Labor Costs \$ 3,059.75
 b) Anticipated Salary Increases (see page 2 for sample) \$ 0.00
 c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]** \$ 3,059.75

FRINGE BENEFITS

d) Fringe Benefits (Rate: 39.00%) e) **TOTAL FRINGE BENEFITS**
 [(c) x (d)] \$ 1,193.30

INDIRECT COSTS

f) Overhead (Rate: 68.00%) g) Overhead [(c) x (f)] \$ 2,080.63
 h) General and Administrative (Rate: 26.50%) i) Gen & Admin [(c) x (h)] \$ 810.83
 j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)]** \$ 4,084.77

FEE (Profit)

q) (Rate: 10.00%) k) **TOTAL FIXED PROFIT [(c) + (j) x (q)]** \$ 714.45

OTHER DIRECT COSTS (ODC)

Description	Unit(s)	Unit Cost	Total
l) Travel/Mileage Costs (supported by consultant actual costs)	810	\$ 0.54	\$ 437.40
m) Equipment Rental and Supplies (itemize)		\$	\$ 0.00
n) Permit Fees (itemize), Plan sheets (each), Test Holes (each), etc.	7	\$ 147.00	\$ 1,029.00
o) Subconsultant Costs (attach detailed cost proposal in same format as prime consultant estimate for each subconsultant)		\$	\$ 0.00
p) TOTAL OTHER DIRECT COSTS [(l) + (m) + (n) + (o)]			\$ 1,466.40

TOTAL COST [(c) + (j) + (k) + (p)] \$ 9,325.37

NOTES:

- Employees subject to prevailing wage requirements to be marked with an *.
- ODC items should be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost.
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 2 of 2

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
(SAMPLE CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant Basin Research Associates Contract No. Cole Date 9/5/17

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

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
_____	_____	=	_____	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	_____	+	0.00%	=	_____
Year 2	_____	+	0.00%	=	_____
Year 3	_____	+	0.00%	=	_____
Year 4	_____	+	0.00%	=	_____

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	0.0%	*	_____	=	0 _____
Year 2	0.0%	*	_____	=	0 _____
Year 3	0.0%	*	_____	=	0 _____
Year 4	0.0%	*	_____	=	0 _____
Year 5	0.0%	*	_____	=	0 _____
Total	0%		_____	=	_____

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	_____	*	0	=	\$ 0.00 _____
Year 2	_____	*	0	=	\$ 0.00 _____
Year 3	_____	*	0	=	\$ 0.00 _____
Year 4	_____	*	0	=	\$ 0.00 _____
Year 5	_____	*	0	=	\$ 0.00 _____
Total Direct Labor Cost with Escalation				=	\$ 0.00
Direct Labor Subtotal before Escalation				=	
Estimated total of Direct Labor Salary Increase				=	0.00

Transfer to Page 1

NOTES:

- 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.
- 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)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 1 of 2

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

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Consultant Talus Soil Consulting Contract No. Cole Creek Date 9/5/17

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Soil Consultant	Meagan Hynes	1	\$ 150.00	\$ 150.00
			\$	\$ 0.00
			\$	\$ 0.00
			\$	\$ 0.00
			\$	\$ 0.00
			\$	\$ 0.00

LABOR COSTS

a) Subtotal Direct Labor Costs \$ 150.00
 b) Anticipated Salary Increases (see page 2 for sample) \$ 0.00
c) TOTAL DIRECT LABOR COSTS [(a) + (b)] \$ 150.00

FRINGE BENEFITS

d) Fringe Benefits (Rate: 0.00%) e) TOTAL FRINGE BENEFITS [(c) x (d)] \$ 0.00

INDIRECT COSTS

f) Overhead (Rate: 0.00%) g) Overhead [(c) x (f)] \$ 0.00
 h) General and Administrative (Rate: 0.00%) i) Gen & Admin [(c) x (h)] \$ 0.00
j) TOTAL INDIRECT COSTS [(e) + (g) + (i)] \$ 0.00

FEE (Profit)

q) (Rate: 0.00%) **k) TOTAL FIXED PROFIT [(c) + (j)] x (q)] \$ 0.00**

OTHER DIRECT COSTS (ODC)

Description	Unit(s)	Unit Cost	Total
l) Travel/Mileage Costs (supported by consultant actual costs)		\$	\$ 0.00
m) Equipment Rental and Supplies (itemize)		\$	\$ 0.00
n) Permit Fees (itemize), Plan sheets (each), Test Holes (each), etc.	2	\$ 115.00	\$ 230.00
o) Subconsultant Costs (attach detailed cost proposal in same format as prime consultant estimate for each subconsultant)		\$	\$ 0.00

p) TOTAL OTHER DIRECT COSTS [(l) + (m) + (n) + (o)] \$ 230.00

TOTAL COST [(c) + (j) + (k) + (p)] \$ 380.00

NOTES:

- Employees subject to prevailing wage requirements to be marked with an *.
- ODC items should be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost.
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 2 of 2

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
(SAMPLE CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant Talus Soil Consulting Contract No. Cole Creek Date 9/5/17

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

Direct Labor Subtotal per Cost Proposal \$ 150.00	Total Hours per Cost Proposal <u>1</u>	=	Avg Hourly Rate \$ 150.00	5 Year Contract Duration Year 1 Avg Hourly Rate
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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	\$ 150.00	+	0.00%	=	_____	_____
Year 2	_____	+	0.00%	=	_____	_____
Year 3	_____	+	0.00%	=	_____	_____
Year 4	_____	+	0.00%	=	_____	_____

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	0.0%	*	_____	=	0	_____
Year 2	0.0%	*	_____	=	0	_____
Year 3	0.0%	*	_____	=	0	_____
Year 4	0.0%	*	_____	=	0	_____
Year 5	0.0%	*	_____	=	0	_____
Total	0%		_____	=		

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	\$ 150.00	*	0	=	\$ 0.00	_____
Year 2	_____	*	0	=	\$ 0.00	_____
Year 3	_____	*	0	=	\$ 0.00	_____
Year 4	_____	*	0	=	\$ 0.00	_____
Year 5	_____	*	0	=	\$ 0.00	_____
	Total Direct Labor Cost with Escalation			=	\$ 0.00	
	Direct Labor Subtotal before Escalation			=	\$ 150.00	
	Estimated total of Direct Labor Salary Increase			=	0.00	Transfer to Page 1

NOTES:

- 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.
- 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)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: County of Lake 2. Contract DBE Goal: 0%
 3. Project Description: Oak Tree Mitigation Services at Cole Creek & Highland Creek (COLE CREEK)
 4. Project Location: Near Bridges 14C0127 & 14C0125, Lake County
 5. Consultant's Name: Hanford Applied Restoration & Conservation ("Hanford ARC") 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	0 %
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.  12. Preparer's Signature 13. Date <u>10/25/17</u> <u>WILL JOHNSON</u> 14. Preparer's Name 15. Phone <u>707-766-4905</u> <u>PROJECT MANAGER</u> 16. Preparer's Title		
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 _____			

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.

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: County of Lake 2. Contract DBE Goal: 0%
 3. Project Description: Oak Tree Mitigation Services at Cole Creek & Highland Creek Sites (COLE CREEK ONLY)
 4. Project Location: Near Bridges 14C0127 & 14C0125, Lake County
 5. Consultant's Name: Hanford ARC 6. Prime Certified DBE: 7. Total Contract Award Amount: \$203,522.75
 8. Total Dollar Amount for ALL Subconsultants: \$73,977.67 9. Total Number of ALL Subconsultants: 3

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Local Agency to Complete this Section			\$0
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____			14. TOTAL CLAIMED DBE PARTICIPATION 0%
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.
23. Local Agency Representative's Signature	24. Date	 15. Preparer's Signature	16. Date <u>10/25/17</u>
25. Local Agency Representative's Name	26. Phone	17. Preparer's Name <u>WILL JOHNSON</u>	18. Phone <u>707-766-4905</u>
27. Local Agency Representative's Title		19. Preparer's Title <u>PROJECT MANAGER</u>	

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

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INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENTCONSULTANT SECTION

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

LOCAL AGENCY SECTION

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

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 1 of 2

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

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Consultant Hanford ARC Contract No. Highland Creek Date 10/25/17

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Project Manager	Will Johnson	136	\$ 75.00	\$ 10,200.00
Superintendent	Patrick Downs	136	\$ 75.00	\$ 10,200.00
Laborer (Group 3)	"Construction"	262	\$ 56.57	\$ 14,821.34
Laborer (Group 4)	"Plant Establishment"	215	\$ 49.33	\$ 10,605.95
Driver/Operator	"Construction/Plant Establishment"	31	\$ 74.65	\$ 2,314.15

LABOR COSTS

a) Subtotal Direct Labor Costs \$ 48,141.44
 b) Anticipated Salary Increases (see page 2 for sample) \$ 1,265.71
 c) TOTAL DIRECT LABOR COSTS [(a) + (b)] \$ 49,407.15

FRINGE BENEFITS

d) Fringe Benefits (Rate: 0.00%)
 e) TOTAL FRINGE BENEFITS [(c) x (d)] \$ 0.00

INDIRECT COSTS

f) Overhead (Rate: 20.00%)
 g) Overhead [(c) x (f)] \$ 9,881.43
 h) General and Administrative (Rate: 18.00%)
 i) Gen & Admin [(c) x (h)] \$ 8,893.28
 j) TOTAL INDIRECT COSTS [(e) + (g) + (i)] \$ 18,774.71

FEE (Profit)

q) (Rate: 7.00%)
 k) TOTAL FIXED PROFIT [(c) + (j)] x (q) \$ 4,772.73

OTHER DIRECT COSTS (ODC)

Description	Unit(s)	Unit Cost	Total
l) Travel/Mileage Costs (supported by consultant actual costs)		\$	\$ 0.00
m) Equipment Rental and Supplies (itemize)	1	\$ 13,380	\$ 13,380.00
n) Permit Fees (itemize), Plan sheets (each), Test Holes (each), etc.		\$	\$ 0.00
o) Subconsultant Costs (attach detailed cost proposal in same format as prime consultant estimate for each subconsultant)	1	\$ 52,589.63	\$ 52,589.63

p) TOTAL OTHER DIRECT COSTS [(l) + (m) + (n) + (o)] \$ 65,969.63

TOTAL COST [(c) + (j) + (k) + (p)] \$ 138,924.22

NOTES:

- Employees subject to prevailing wage requirements to be marked with an *.
- ODC items should be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost.
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 2 of 2
ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
(SAMPLE CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant Hanford ARC Contract No. Highland Creek Date 9/20/17

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

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration
<u>\$ 48,141.44</u>	<u>780</u>		= \$ 61.71	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	<u>\$ 61.71</u>	+	<u>3.50%</u>	=	<u>\$ 63.86</u>	Year 1 Avg Hourly Rate
Year 2	<u>\$ 63.86</u>	+	<u>3.50%</u>	=	<u>\$ 66.09</u>	Year 2 Avg Hourly Rate
Year 3	<u>\$ 66.09</u>	+	<u>3.50%</u>	=	<u>\$ 68.40</u>	Year 3 Avg Hourly Rate
Year 4	<u>\$ 68.40</u>	+	<u>3.50%</u>	=	<u>\$ 70.79</u>	Year 4 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	<u>50.0%</u>	*	<u>780</u>	=	390	Estimated Hrs Year 1
Year 2	<u>25.0%</u>	*	<u>780</u>	=	195	Estimated Hrs Year 2
Year 3	<u>25.0%</u>	*	<u>780</u>	=	195	Estimated Hrs Year 3
Year 4	<u>0.0%</u>	*	<u>780</u>	=	0	
Year 5	<u>0.0%</u>	*	<u>780</u>	=	0	
Total	<u>100%</u>			=	780	

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	<u>\$ 61.71</u>	*	<u>390</u>	=	\$ 24,066.90	Estimated Hrs Year 1
Year 2	<u>\$ 63.86</u>	*	<u>195</u>	=	\$ 12,452.70	Estimated Hrs Year 2
Year 3	<u>\$ 66.09</u>	*	<u>195</u>	=	\$ 12,887.55	Estimated Hrs Year 3
Year 4	<u>\$ 68.40</u>	*	<u>0</u>	=	\$ 0.00	
Year 5	<u>\$ 70.79</u>	*	<u>0</u>	=	\$ 0.00	
	Total Direct Labor Cost with Escalation			=	\$ 49,407.15	
	Direct Labor Subtotal before Escalation			=	\$ 48,141.44	
	Estimated total of Direct Labor Salary Increase			=	\$1,265.71	transfer to Page 1
					49,407.15	

NOTES:

- 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.
- 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)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.

Exhibit 10-H Cost Proposal

Actual Cost-Plus-Fixed Fee or lump sum (Firm Fixed Price) contracts
(Design, Engineering and Environmental Studies)

Consultant Hanford ARC
Subconsultant H. T. Harvey & Associates, Contract No. _____ Date October 23, 2017

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
<u>Principal</u>	Dan Stephens	16	\$ 95.19	1523.08
<u>Senior Associate Ecologist</u>	Karen Verpeet	16.4	\$ 53.61	879.13
<u>Senior Ecologist 1</u>	Charles McClain	201.6	\$ 37.26	7511.54
<u>Ecologist 2</u>		0	\$ 34.78	0.00
<u>Ecologist 1</u>	Rachel Visscher	24	\$ 29.33	703.85
<u>Field Biologist 2</u>		0	\$ 25.24	0.00
<u>Senior GIS Analyst</u>	Mark Lagarde	3.2	\$ 47.84	153.08
<u>GIS Analyst</u>		9.6	\$ 30.03	288.26
<u>Senior Technical Editor</u>	Heather Ogston	15.2	\$ 37.74	573.65
<u>Technical Support</u>	Maureen Marcotte	11.2	\$ 28.25	316.40

LABOR COSTS

a) Subtotal Direct Labor Costs	\$ 11,948.99	
b) Anticipated Salary Increases (see page 2 for sample)	\$548.35	
c) TOTAL DIRECT LABOR COSTS [(a) + (b)]	\$	12,497.34

FRINGE BENEFITS

d) Fringe Benefits (Rate: 104.00%)		e) TOTAL FRINGE BENEFITS [(c) x (d)]	\$ 12,997.23
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INDIRECT COSTS

f) Overhead (Rate: 101.00%)		g) Overhead [(c) x (f)]	\$ 12,622.31
h) General and Administrative Included in Overhead Rate		i) Gen & Admin [(c) x (h)]	\$ NA
		j) TOTAL INDIRECT COSTS [(g) + (i)]	\$ 12,622.31

FIXED FEE (Profit)

n) Rate: 10.00%		k) TOTAL PROFIT [(c) + (e) + (j) x (q)]	\$ 3,811.69
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OTHER DIRECT COSTS (ODC)

	Unit(s)	Unit Cost	Total
Travel/Mileage Costs (supported by consultant actual costs)	1248	0.535	\$ 667.68
Pet Dicm	1	108	\$ 108.00
Other (soils lab)	1	180	\$ 180.00
			\$ 955.68
p) TOTAL OTHER DIRECT COSTS [(l) + (m) + (n) + (o)]			\$ 955.68
TOTAL COST [(c) + (e) + (j) + (k) + (p)]			\$ 42,884.26

NOTES

- Employees subject to prevailing wage requirements to be marked with an *
- ODC items should be based on actual costs and supported by historical data and other documentation
- ODC items that would be considered "tools of the trade" are not reimbursable
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate
- Travel related costs should be pre-approved by the contracting agency. The rates should not exceed the State Department of Personnel Administration (DPA) requirements

Exhibit 10-H Cost Proposal

Page 2 of 2

Actual Cost-Plus-Fixed Fee or Lump Sum (Firm Fixed Price) Contracts
 (Sample Calculations for Anticipated Salary Increases)

Subconsultant H. T. Harvey & Associates Contract No. _____ Date October 23, 2017

1. Calculate average hourly rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	Avg Hourly Rate	5 Year Contract Duration
\$ 11,948.99	/ 297.2	= \$40.21	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 2	\$40.21	3%	=	\$41.41	Year 2 Avg Hourly Rate
Year 3	\$41.41	3%	=	\$42.65	Year 3 Avg Hourly Rate
Year 4	\$42.65	3%	=	\$43.93	Year 4 Avg Hourly Rate
Year 5	\$43.93	3%	=	\$45.25	Year 5 Avg Hourly Rate
Year 6	\$45.25	3%	=	\$46.61	Year 6 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	48.45%	297.2	144	Estimated Hours Year 1
Year 2	13.32%	297.2	39.6	Estimated Hours Year 2
Year 3	9.56%	297.2	28.4	Estimated Hours Year 3
Year 4	9.56%	297.2	28.4	Estimated Hours Year 4
Year 5	9.56%	297.2	28.4	Estimated Hours Year 5
Year 6	9.56%	297.2	28.4	Estimated Hours Year 5
Total	100%	Total	297.2	

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	\$40.21	144	= \$5,789.55	Estimated Hours Year 1
Year 2	\$41.41	39.6	= \$1,639.89	Estimated Hours Year 2
Year 3	\$42.65	28.4	= \$1,211.37	Estimated Hours Year 3
Year 4	\$43.93	28.4	= \$1,247.71	Estimated Hours Year 4
Year 5	\$45.25	28.4	= \$1,285.14	Estimated Hours Year 5
Year 6	\$46.61	28.4	= \$1,323.69	Estimated Hours Year 5
Total Direct Labor Cost with Escalation			= \$12,497.34	
Direct Labor Subtotal before escalation			= \$ 11,948.99	
Estimated total of Direct Labor Salary Increase			= \$548.35	Transfer to Page 1

NOTES:

- 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.
- 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.)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 1 of 2

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

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Consultant Basin Research Associates Contract No. Highland Date 9/5/17

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Principal	Colin Busby, PhD	20	\$ 55.00	\$ 1,100.00
Archaeologist	S. Guedon, C. Canzonieri, Staff (MA)	49	\$ 31.25	\$ 1,531.25
Research Scientist	Donna Garaventa, PhD	2	\$ 48.50	\$ 97.00
Graphics/GIS	Melody Tannam	8	\$ 35.00	\$ 280.00
Admin	Staff	2	\$ 25.75	\$ 51.50

LABOR COSTS

a) Subtotal Direct Labor Costs \$ 3,059.75
 b) Anticipated Salary Increases (see page 2 for sample) \$ 0.00
c) TOTAL DIRECT LABOR COSTS [(a) + (b)] \$ 3,059.75

FRINGE BENEFITS

d) Fringe Benefits (Rate: 39.00%)
e) TOTAL FRINGE BENEFITS [(c) x (d)] \$ 1,193.30

INDIRECT COSTS

f) Overhead (Rate: 68.00%)
 g) Overhead [(c) x (f)] \$ 2,080.63
 h) General and Administrative (Rate: 26.50%)
 i) Gen & Admin [(c) x (h)] \$ 810.83
j) TOTAL INDIRECT COSTS [(e) + (g) + (i)] \$ 4,084.77

FEE (Profit)

q) (Rate: 10.00%)
k) TOTAL FIXED PROFIT [(c) + (j)] \$ 714.45

OTHER DIRECT COSTS (ODC)

Description	Unit(s)	Unit Cost	Total
l) Travel/Mileage Costs (supported by consultant actual costs)	<u>810</u>	<u>\$0.54</u>	<u>\$437.40</u>
m) Equipment Rental and Supplies (itemize)		<u>\$</u>	<u>\$0.00</u>
n) Permit Fees (itemize), Plan sheets (each), Test Holes (each), etc.	<u>7</u>	<u>\$147.00</u>	<u>\$ 1,029.00</u>
o) Subconsultant Costs (attach detailed cost proposal in same format as prime consultant estimate for each subconsultant)		<u>\$</u>	<u>\$0.00</u>

p) TOTAL OTHER DIRECT COSTS [(l) + (m) + (n) + (o)] \$ 1,466.40

TOTAL COST [(c) + (j) + (k) + (p)] \$ 9,325.37

NOTES:

- Employees subject to prevailing wage requirements to be marked with an *.
- ODC items should be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost.
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 2 of 2

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
(SAMPLE CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant Basin Research Associates Contract No. Highland Date 9/5/17

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

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal	=	Avg Hourly Rate	5 Year Contract Duration 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	_____	+	0.00%	=	_____	_____
Year 2	_____	+	0.00%	=	_____	_____
Year 3	_____	+	0.00%	=	_____	_____
Year 4	_____	+	0.00%	=	_____	_____

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	0.0%	*	_____	=	0	_____
Year 2	0.0%	*	_____	=	0	_____
Year 3	0.0%	*	_____	=	0	_____
Year 4	0.0%	*	_____	=	0	_____
Year 5	0.0%	*	_____	=	0	_____
Total	0%		_____	=	_____	_____

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	_____	*	0	=	\$ 0.00	_____
Year 2	_____	*	0	=	\$ 0.00	_____
Year 3	_____	*	0	=	\$ 0.00	_____
Year 4	_____	*	0	=	\$ 0.00	_____
Year 5	_____	*	0	=	\$ 0.00	_____
	Total Direct Labor Cost with Escalation			=	\$ 0.00	_____
	Direct Labor Subtotal before Escalation			=	_____	_____
	Estimated total of Direct Labor Salary Increase			=	0.00	Transfer to Page 1

NOTES:

- 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.
- 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)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 1 of 2

ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Consultant Talus Soil Consulting Contract No. Highland Creek Date 9/5/17

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Soil Consultant	Meagan Hynes	1	\$ 150.00	\$ 150.00
			\$	\$ 0.00
			\$	\$ 0.00
			\$	\$ 0.00
			\$	\$ 0.00

LABOR COSTS

a) Subtotal Direct Labor Costs \$ 150.00
 b) Anticipated Salary Increases (see page 2 for sample) \$ 0.00
 c) TOTAL DIRECT LABOR COSTS [(a) + (b)] \$ 150.00

FRINGE BENEFITS

d) Fringe Benefits (Rate: 0.00%) e) TOTAL FRINGE BENEFITS [(c) x (d)] \$ 0.00

INDIRECT COSTS

f) Overhead (Rate: 0.00%) g) Overhead [(c) x (f)] \$ 0.00
 h) General and Administrative (Rate: 0.00%) i) Gen & Admin [(c) x (h)] \$ 0.00
 j) TOTAL INDIRECT COSTS [(e) + (g) + (i)] \$ 0.00

FEE (Profit)

q) (Rate: 0.00%) k) TOTAL FIXED PROFIT [(c) + (j)] x (q) \$ 0.00

OTHER DIRECT COSTS (ODC)

Description	Unit(s)	Unit Cost	Total
l) Travel/Mileage Costs (supported by consultant actual costs)		\$	\$ 0.00
m) Equipment Rental and Supplies (itemize)		\$	\$ 0.00
n) Permit Fees (itemize), Plan sheets (each), Test Holes (each), etc.	2	\$ 115.00	\$ 230.00
o) Subconsultant Costs (attach detailed cost proposal in same format as prime consultant estimate for each subconsultant)		\$	\$ 0.00
p) TOTAL OTHER DIRECT COSTS [(l) + (m) + (n) + (o)]			\$ 230.00

TOTAL COST [(c) + (j) + (k) + (p)] \$ 380.00

NOTES:

- Employees subject to prevailing wage requirements to be marked with an *.
- ODC items should be based on actual costs and supported by historical data and other documentation.
- ODC items that would be considered "tools of the trade" are not reimbursable.
- ODC items should be consistently billed directly to all clients, not just when client will pay for them as a direct cost.
- ODC items when incurred for the same purpose, in like circumstances, should not be included in any indirect cost pool or in overhead rate.

EXHIBIT 10-H SAMPLE COST PROPOSAL (EXAMPLE #1) Page 2 of 2
ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM FIXED PRICE) CONTRACTS
(SAMPLE CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

Consultant Talus Soil Consulting Contract No. Highland Creek Date 9/5/17

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
\$ 150.00	1		\$ 150.00	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	\$ 150.00	+	0.00%	=	_____	_____
Year 2	_____	+	0.00%	=	_____	_____
Year 3	_____	+	0.00%	=	_____	_____
Year 4	_____	+	0.00%	=	_____	_____

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	0.0%	*	_____	=	0	_____
Year 2	0.0%	*	_____	=	0	_____
Year 3	0.0%	*	_____	=	0	_____
Year 4	0.0%	*	_____	=	0	_____
Year 5	0.0%	*	_____	=	0	_____
Total	0%		_____	=		

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	\$ 150.00	*	0	=	\$ 0.00	_____
Year 2	_____	*	0	=	\$ 0.00	_____
Year 3	_____	*	0	=	\$ 0.00	_____
Year 4	_____	*	0	=	\$ 0.00	_____
Year 5	_____	*	0	=	\$ 0.00	_____
	Total Direct Labor Cost with Escalation			=	\$ 0.00	
	Direct Labor Subtotal before Escalation			=	\$ 150.00	
	Estimated total of Direct Labor Salary Increase			=	0.00	Transfer to Page 1

NOTES:

- 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.
- 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)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1 Local Agency County of Lake 2 Contract DBE Goal 0%
 3 Project Description: Oak Tree Mitigation Services at Cole Creek & Highland Creek (HIGHLAND CREEK)
 4 Project Location: Near Bridges 14C0127 & 14C0125, Lake County
 5 Consultant's Name: Hanford Applied Restoration & Conservation ("Hanford ARC") 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			
17 Local Agency Contract Number: _____ 18 Federal-Aid Project Number: _____ 19 Proposed Contract Execution Date: _____	11. TOTAL CLAIMED DBE PARTICIPATION		0%
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.
_____ 20 Local Agency Representative's Signature	_____ 21 Date	 12 Preparer's Signature	<u>10/25/17</u> 13 Date
_____ 22 Local Agency Representative's Name	_____ 23 Phone	<u>WILL JOHNSON</u> 14 Preparer's Name	<u>707-766-4905</u> 15 Phone
_____ 24 Local Agency Representative's Title	<u>PROJECT MANAGER</u> 16 Preparer's Title		

DISTRIBUTION Original - Included with consultant's proposal to local agency

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INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENTCONSULTANT 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.

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1 Local Agency County of Lake 2 Contract DBE Goal: 0%
 3 Project Description Oak Tree Mitigation Services at Cole Creek & Highland Creek Sites (HIGHLAND CREEK)
 4 Project Location Near Bridges 14C0127 & 14C0125, Lake County
 5 Consultant's Name Hanford ARC 6 Prime Certified DBE 7 Total Contract Award Amount: \$138,924.22
 8 Total Dollar Amount for ALL Subconsultants, \$52,589.63 9 Total Number of ALL Subconsultants: 3

10. Description of Work, Service, or Materials Supplied	11 DBE Certification Number	12 DBE Contact Information	13 DBE Dollar Amount
Local Agency to Complete this Section			\$0
20. Local Agency Contract Number: _____		14. TOTAL CLAIMED DBE PARTICIPATION	0%
21. Federal-Aid Project Number: _____			
22. 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.		_____ 10/25/17 15 Preparer's Signature 16 Date	
23. Local Agency Representative's Signature	24. Date	WILL JOHNSON 707-766-4905 17 Preparer's Name 18. Phone	
25. Local Agency Representative's Name	26. Phone	PROJECT MANAGER 19 Preparer's Title	
27. Local Agency Representative's Title			

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

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INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENTCONSULTANT SECTION

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

LOCAL AGENCY SECTION

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

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1. b.(2) or 1. b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

- d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more -- as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them 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 under a public transaction; 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;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.