

**COUNTY OF MENDOCINO
STANDARD SERVICES AGREEMENT
SCHOOL WAY BRIDGE VEGETATION AND EROSION MAINTENANCE**

This Agreement, dated as of May 16, 2017, is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY", and SHN Consulting Engineers & Geologists, Inc.; 335 S. Main St., Willits, CA 95490-3977, hereinafter referred to as the "CONSULTANT".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONSULTANT for its Vegetation monitoring and maintenance; and,

WHEREAS, CONSULTANT is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONSULTANT to provide the services described in Exhibit "A", and CONSULTANT accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services (A1 – A2)
- Exhibit B Payment Terms (B1 – B7)
- Exhibit C Insurance Requirements (C1)
- Exhibit D Disadvantaged Business Enterprise Information and Forms (D1 – D21)
- Exhibit E Required Federal Contract Provisions (E1 – E10)

Certain terms and provisions are required to be a part of this Agreement since COUNTY is utilizing federal funding to pay for the services of CONTRACTOR described in Exhibit "A". These terms and provisions are located in Exhibit "E" of this Agreement and, for the purposes of this Agreement only, shall control and supersede any provisions to the contrary located in the body of the Agreement.

The term of this Agreement shall be from June 1, 2017 through June 1, 2022.

The total compensation to CONSULTANT under this Agreement shall not exceed one hundred thirty-one thousand dollars (\$131,000.00), pursuant to the terms of this paragraph. Work under this Agreement is being funded through grants obtained by COUNTY from the Federal Highway Administration.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DEPARTMENT FISCAL REVIEW:

DEPARTMENT NAME: Mendocino County
Department of Transportation

Howard N. Dashiell 4/6/17
Howard N. Dashiell, Director DATE

Budgeted: Yes No

Budget Unit: 3041

Line Item: 2193

Grant: Yes No

Grant No.: FHWA E-76, BRLSZD-5910(102)

COUNTY OF MENDOCINO

By: John McCowen
JOHN MCCOWEN, Chair MAY 16 2017
BOARD OF SUPERVISORS

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: Kil Fish
Deputy MAY 16 2017

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: Kil Fish
Deputy MAY 16 2017

INSURANCE REVIEW:

RISK MANAGER

By: Alan D. Flora
ALAN D. FLORA, Risk Manager

SHN Consulting Engineers & Geologists, Inc.

By: Thomas M. Herman
Thomas M. Herman, PLS

NAME AND ADDRESS OF CONSULTANT:

SHN Consulting Engineers & Geologists, INC.

335 S. Main St.

Willits, CA 95490-3977

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

By: Mark K.
Deputy

FISCAL REVIEW:

By: Janette Rau
Deputy CEO/Fiscal

EXECUTIVE OFFICE REVIEW:

APPROVAL RECOMMENDED

By: Carmel J. Angelo
CARMEL J. ANGELO, Chief Executive Officer

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONSULTANT:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONSULTANT is an Independent Contractor. CONSULTANT is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONSULTANT nor for any obligations or liabilities incurred by CONSULTANT.

CONSULTANT shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONSULTANT shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which COUNTY may incur because of CONSULTANT's failure to pay such amounts.

In carrying out the work contemplated herein, CONSULTANT shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONSULTANT does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and County laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONSULTANT is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONSULTANT, withhold from payments to CONSULTANT hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** CONSULTANT shall indemnify, defend, and hold harmless the COUNTY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever including damages to property and injuries to, or death of persons, reasonable attorney's fees, expert fees and court costs occurring or resulting, or alleged to be occurring or resulting, to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connections with the CONSULTANT'S performance or its obligations under this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting, or alleged to be occurring or resulting, to any person, firm, or corporation for

damage, injury, or death arising out of or connected with the CONSULTANT'S performance of its obligations under this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of COUNTY. "CONSULTANT'S performance" includes CONSULTANT'S action or inaction and the action or inaction of CONSULTANT'S officers, employees, agents and subcontractors.

3. **INSURANCE AND BOND:** CONSULTANT shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **WORKERS' COMPENSATION:** CONSULTANT shall provide Workers' Compensation insurance, as applicable, at CONSULTANT 's own cost and expense and further, neither the CONSULTANT nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
5. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONSULTANT shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONSULTANT shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from any of CONSULTANT s failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with CONSULTANT's performance of this Agreement, CONSULTANT shall immediately notify Mendocino County Risk Manager's Office by telephone. CONSULTANT shall promptly submit to COUNTY a written report, in such form as may be required by COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONSULTANT's sub-contractor, if any; (3) name and address of CONSULTANT's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.
 - c. CONSULTANT further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.
6. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to CONSULTANT as provided in Exhibit "B" hereto as funding permits.
7. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONSULTANT.
8. **OWNERSHIP OF DOCUMENTS:** CONSULTANT hereby agrees to provide to a private, not-for-profit, successor and if there is none then assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings,

sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONSULTANT, the CONSULTANT's subcontractors or third parties at the request of the CONSULTANT (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONSULTANT shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONSULTANT agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONSULTANT hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONSULTANT's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

CONSULTANT shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the CONSULTANT and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the COUNTY harmless from any claims for infringement of patent or copyright arising out of such selection. The COUNTY's rights under this Paragraph 8 shall not extend to any computer software used to create such Documents and Materials.

9. CONFLICT OF INTEREST: The CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
10. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: COUNTY OF MENDOCINO

DEPARTMENT OF TRANSPORTATION
340 Lake Mendocino Drive
Ukiah, CA 95482
Attn: Howard Dashiell, Director

To CONSULTANT: SHN Consulting Engineers & Geologists, INC..
335 S. Main St.
Willits, CA 95490-3977
Attn: Thomas Herman

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

11. USE OF COUNTY PROPERTY: CONSULTANT shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
12. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: CONSULTANT certifies that it will comply with all federal and state laws pertaining to equal employment opportunity and that it shall not engage in any unlawful discrimination.
 - a. CONSULTANT shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Veteran's status, political affiliation, or any other non-merit factor.
 - b. CONSULTANT shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
 - c. If requested to do so by the COUNTY, CONSULTANT shall provide the COUNTY with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - e. The CONSULTANT shall include the provisions set forth in this paragraph in each of its subcontracts.
13. DRUG-FREE WORKPLACE: CONSULTANT and CONSULTANT's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONSULTANT nor CONSULTANT 's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to,

marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONSULTANT or any employee of CONSULTANT is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a County facility or work site, the CONSULTANT, within five days thereafter, shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.

14. ENERGY CONSERVATION: CONSULTANT agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
15. COMPLIANCE WITH LICENSING REQUIREMENTS: CONSULTANT shall comply with all necessary licensing requirements and shall obtain appropriate licenses and display the same in a location that is reasonably conspicuous, as well as file copies of same with the County Executive Office.
16. AUDITS; ACCESS TO RECORDS: The CONSULTANT shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONSULTANT.

The CONSULTANT shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the CONSULTANT in the performance of this Agreement. If such books and records are not kept and maintained by CONSULTANT within the County of Mendocino, California, CONSULTANT shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within County or shall pay to the COUNTY the reasonable, and necessary costs incurred by the COUNTY in inspecting CONSULTANT's books and records, including, but not limited to, travel, lodging and subsistence costs. CONSULTANT shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONSULTANT shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the COUNTY makes the final or last payment or within four (4) years after any pending issues between the COUNTY and CONSULTANT with respect to this Agreement are closed, whichever is later.

17. DOCUMENTS AND MATERIALS: CONSULTANT shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 8 of this Agreement. CONSULTANT's obligations under the preceding sentence shall continue for four (4) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONSULTANT shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the COUNTY's last payment to CONSULTANT under this Agreement.

18. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
19. **TERMINATION:** The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONSULTANT without cause at any time upon giving to the CONSULTANT prior written notice. In the event that the COUNTY should abandon, terminate or suspend the CONSULTANT's work, the CONSULTANT shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONSULTANT for its Professional Engineering Services shall not exceed \$131,000 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.
20. **NON APPROPRIATION:** If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONSULTANT. Upon termination, COUNTY shall remit payment for all products and services delivered to COUNTY and all expenses incurred by CONSULTANT prior to CONSULTANT'S receipt of the termination notice.
21. **CHOICE OF LAW:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
22. **VENUE:** All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
23. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
24. **ADVERTISING OR PUBLICITY:** CONSULTANT shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONSULTANT relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties.

26. **HEADINGS:** Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
27. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
28. **ASSURANCE OF PERFORMANCE:** If at any time the COUNTY has good objective cause to believe CONSULTANT may not be adequately performing its obligations under this Agreement or that CONSULTANT may fail to complete the Services as required by this Agreement, COUNTY may request from CONSULTANT prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONSULTANT's performance. CONSULTANT shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONSULTANT acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
29. **SUBCONTRACTING/ASSIGNMENT:** CONSULTANT shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.
- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. CONSULTANT shall use subcontractors identified in Exhibit "A" and shall not substitute subcontractors without COUNTY's prior written approval.
 - c. CONSULTANT shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONSULTANT and its subcontractors.
30. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 8), and Conflict of Interest (Paragraph 9), shall survive termination or expiration for two (2) years.
31. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
32. **PATENT AND COPYRIGHT INDEMNITY:** CONSULTANT represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("CONSULTANT Products") provided to COUNTY under this Agreement infringe any patent, copyright or other proprietary right. CONSULTANT shall defend, indemnify and hold harmless COUNTY of, from and against all losses, claims, damages, liabilities, costs expenses and

amounts (collectively, "Losses") arising out of or in connection with an assertion that any CONSULTANT Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party.

- a. COUNTY will: (1) notify CONSULTANT promptly of such claim, suit or assertion; (2) permit CONSULTANT to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable CONSULTANT to do so. CONSULTANT shall not agree without COUNTY's prior written consent, to any settlement, which would require COUNTY to pay money or perform some affirmative act in order to continue using the CONSULTANT Products.
- b. If CONSULTANT is obligated to defend COUNTY pursuant to this Section 32 and fails to do so after reasonable notice from COUNTY, COUNTY may defend itself and/or settle such proceeding, and CONSULTANT shall pay to COUNTY any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with COUNTY's defense and/or settlement of such proceeding.
- c. In the case of any such claim of infringement, CONSULTANT shall either, at its option, (1) procure for COUNTY the right to continue using the CONSULTANT Products; or (2) replace or modify the CONSULTANT Products so that that they become non-infringing, but equivalent in functionality and performance.
- d. Notwithstanding this Section 32, COUNTY retains the right and ability to defend itself, at its own expense, against any claims that CONSULTANT Products infringe any patent, copyright, or other intellectual property right.

33. OTHER AGENCIES:

Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The CONSULTANT is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the CONSULTANT elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.

[END OF GENERAL TERMS AND CONDITIONS]

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CONSULTANT AGREEMENT EXHIBIT A

COUNTY OF MENDOCINO AGREEMENT FOR ENGINEERING CONSULTANT SERVICES SCHOOL WAY BRIDGE VEGETATION AND EROSION MAINTENANCE DEFINITION OF SERVICES

CONSULTANT shall provide the following services:

The following is the proposed *Scope of Work* and understanding of the tasks required for Mendocino County Department of Transportation project number A0101VEG, the "School Way Bridge Vegetation and Erosion Maintenance".

It is understood that the services covered under this contract are to replant previously failed plantings, monitor and report the vegetation status to the North Coast Regional Water Quality Control Board, and repair and prevent any erosion within the limits of the contract. It is also understood that all work performed under this contract is considered to be performed by CONSULTANT, whether it be by CONSULTANT or a sub-CONSULTANT under contract to CONSULTANT. It is understood that the indirect cost rate for this multi-year contract will remain unchanged during the duration of the contract.

Scope of Work

Task 1. Conduct Onsite Evaluation, Site Inspection and Initial Project Communications

The initial site inspection will include a thorough evaluation of slope stability and erosion control issues at the site, mapping of existing erosion features, evaluation of existing vegetation cover including identification of native and non-native species, and set-up of the photo monitoring locations. This task also includes development of an existing conditions report and treatment recommendations plan. It is anticipated this task will coincide with the June 2017 monthly monitoring event. Costs for this task have been included with the Year 1 visual inspection and monitoring costs and reporting costs included in Attachment 1.

Task 2. Site Maintenance

It is anticipated that site maintenance requirements will be the highest during the first year and then slightly reduced during the subsequent years. It is also anticipated that additional vegetation and erosion control materials may need to be installed during the first year to comply with the project permit requirements. The maintenance costs for Year 1 include provisions for installing additional vegetation and erosion control materials at the site. Costs for this task have been included for each monitoring year listed on the cost spread sheet included as Attachment 1. We have also included the anticipated costs required to repair one major erosion event during the five year monitoring period.

Task 3. Visual Inspections and Monitoring

SHN will conduct monthly inspections during the winter months of December through April for each monitoring year. For Year 1, the required monthly inspections will occur in June and December 2017. We have also included costs during Year 1 to conduct two additional monthly monitoring events in the spring and fall. The spring and fall monthly monitoring events would be scheduled to coincide with the initial spring and fall maintenance activities at the site. For Years 2 through 5, the costs include provisions for five monthly inspections per year. The monthly inspections will be documented in monthly progress reports that will include photos taken at the designated photo monitoring locations and a brief summary of the current site conditions and recommended actions. Costs for this task have been included for each monitoring year listed on the cost spread sheet included as Attachment 1.

Task 4. Annual Reports

This task includes development of the annual reports for each monitoring year. The annual reports will include a compilation of all monthly progress reports, treatment recommendation plans, and any follow-up reporting. A draft version of each document will be submitted electronically for DOT review and comment by December 1st of each year. The final annual report will be submitted to DOT and the RWQCB by December 31st of each year. One paper and one electronic copy of each final document will be submitted for your files.

[END OF SCOPE OF WORK]

CONSULTANT AGREEMENT EXHIBIT B

COUNTY OF MENDOCINO
AGREEMENT FOR ENGINEERING CONSULTANT SERVICES
SCHOOL WAY BRIDGE VEGETATION AND EROSION MAINTENANCE

PAYMENT TERMS

1. COUNTY shall pay CONSULTANT for all work required in the satisfactory completion of this Agreement in accordance with Consulting Services Cost Estimate.
2. CONSULTANT's statement of charges shall be submitted to the COUNTY on a monthly basis.
3. Partial payments shall be made to the CONSULTANT by the COUNTY on a monthly basis in accordance with applicable charges for time-and-expense work that may be authorized by the COUNTY. In no event shall the amount paid to the CONSULTANT exceed the contract amount without prior written approval of the COUNTY.
4. Payments for work completed by CONSULTANT will be made by COUNTY within 30 days of receipt of CONSULTANT's invoice.
5. CONSULTANT agrees that the cost principles and procedures of Title 48, Part 31, Code of Federal Regulations, shall be used to determine the allowability of individual items of cost.
6. CONSULTANT agrees to adhere to Task 1.2.10 (Invoices) of Consultant Agreement Exhibit A.
7. The "fixed fee" in Consultant Agreement Exhibit E, *Mandatory Verbatim Language from Local Assistance Procedures Manual Exhibit 10-R (A&E Sample Contract Language)*, Article V.B., will be calculated from the total fee of the contract and invoiced as a pro rata of the direct costs and indirect costs for the current invoice and those of the entire contract.

SAMPLE INVOICE

(Provide a header with CONSULTANT's name, address and telephone number)

INVOICE

County of Mendocino
Department of Transportation
340 Lake Mendocino Dr
Ukiah, CA 95482
Attn: Nicolas Janopoporopulous
MCDOT Project No.: BXXXX
S Fork Ten Mile Ck Bridge Replacement on Camp One
Ten Mile Rd
Services Period: 1Apr15-30Apr15
Services Performed:

Invoice No.: 123
Date: 17 December 2015
Consultant Contract No.: C2F23
MCDOT Contract No.: 123456

Consultant Charges

Staff classification	Name	Hours	Unit Rate	Total
Project Manager	John Jones	1.00	\$25.65	\$25.65
Senior Engineer	etc.	1.87	\$15.65	\$29.27
Biologist				
Direct Cost Subtotal				\$54.92
Indirect Cost Rate				103.57% <u>\$56.88</u>
Direct and Indirect Costs Subtotal				\$111.80
Fixed Fee				<u>\$18.29</u>
				\$130.09

Reimbursables

Mileage		\$0.64
Shipping		<u>\$17.51</u>
Reimbursables Subtotal		\$18.15

(Your firm name) Invoice Total \$148.24

Subconsultant Charges

Subconsultant 1, Invoice 1	\$1,250.00
Subconsultant 1, Invoice 2	\$500.00
Subconsultant 2	\$250.00

Total Due This Invoice \$2,148.24

Billing Status

Contract Amount	Previously Invoiced	Amount of This Invoice	Invoiced to Date	Amount Remaining	Per Cent Invoiced
-----------------	---------------------	------------------------	------------------	------------------	-------------------

Signed: _____
Name



Consulting Engineers & Geologists, Inc.

Fee Schedule January 1, 2017

When accurate definition of the proposed work is not possible, an hourly charge out rate for determining compensation shall be used. Hourly charge rates include payroll costs, overhead, and profit. Hourly services are billed portal to portal and are subject to a 2-hour minimum. Current rates are as follows:

Hourly Charge Rates		
Position ¹	Hourly Rates	
Principal Engineer	\$ 135.00	- \$180.00
Principal Engineering Geologist	\$ 125.00	- \$155.00
Principal Surveyor	\$ 125.00	- \$155.00
Project Manager	\$ 85.00	- \$155.00
Senior Planner	\$ 100.00	- \$140.00
Senior Engineer	\$ 115.00	- \$150.00
Senior Geotechnical Engineer	\$ 125.00	- \$155.00
Senior Geologist	\$ 115.00	- \$145.00
Senior Surveyor	\$ 105.00	- \$135.00
Engineer	\$ 85.00	- \$120.00
Traffic Engineer	\$ 85.00	- \$140.00
Geologist	\$ 85.00	- \$115.00
Certified Industrial Hygienist	\$ 95.00	- \$140.00
Environmental Specialist	\$ 75.00	- \$130.00
Environmental Planner	\$ 75.00	- \$115.00
Staff Surveyor ³	\$ 75.00	- \$105.00
Assistant Engineer	\$ 75.00	- \$120.00
Survey Party Chief ³	\$ 75.00	- \$105.00
Junior Engineer	\$ 65.00	- \$ 90.00
Engineering Technician/Draftsperson ³	\$ 65.00	- \$ 90.00
Lab/Field Technician ³	\$ 65.00	- \$ 100.00
Survey Technician ³	\$ 65.00	- \$ 90.00
Technical Writer	\$ 55.00	- \$ 70.00
Clerical	\$ 50.00	- \$ 70.00
Expert Witness ^{2,4}	\$155.00	- \$255.00

1 Incidental expenses, i.e., lodging, meals, airplane tickets, etc., are billed at cost plus 15%.

2 Minimum daily charge is four hours.

3 Rates depend on the specific personnel assigned and if prevailing wage rates are required in the area of work.

4 Rates for Expert Witness are charged for preparation and testimony for both deposition(s) and trial(s).

Reimbursables

The following direct charges are charged in addition to the hourly charge rates set forth above.

Direct Charges:

CADD plots (black & white)	\$ 4.00/ea.
CADD plots (color)	\$ 20.00/ea.
Copies	\$.15/ea.
Equipment and other expenditures (required for projects)	Cost + 15%
Field office	Cost + 15%
Filing fees, telephone expense, etc.	Cost + 15%
Iron pipe, monuments, flagging, etc.	Cost + 15%
Mylars	\$ 2.50/sq. ft.
Services of other consultants	Cost + 15%
Stakes, hubs, lath, etc.	Cost + 15%
Subsistence, air travel, etc.	Cost + 15%
Vehicles	\$ 50.00/day

Field Testing and Equipment:

Anchor bolt tension testing	\$ 80.00/day plus operator
CO ₂ Meter	\$ 10.00/day
Concrete Compression Impact Hammer	\$ 25.00/day**
Core Drilling Machine	\$ 75.00/day + \$3.00/inch cored
Dissolved Oxygen Meter	\$ 53.00/day**
Expendable Supplies	\$ 40.00/day**
Fyrite Meter	\$ 33.00/day**
Generator	\$ 53.00/day**
Geophysical Equipment	By Quotation
Grundfos Controller & Pump	\$275.00/day
Hand Auger	\$ 33.00/day
Health & Safety Level D	\$ 35.00/day**
Health & Safety Level C	\$ 60.00/day**
High Pressure Controller	\$ 60.00/day**
Inclinometer	\$200.00/day*
LEL Meter	\$ 66.00/day**
Nuclear Density Testing	\$ 25.00/hour plus operator
Other equipment including drill rigs, backhoes, etc.	Cost + 15%
ORP Meter	\$ 15.00/day
OVA	\$132.00/day**
Peristaltic Pump	\$ 50.00/day**
pH/Conductivity Meter	\$ 53.00/day**
Pumps	\$ 45.00/day**
Quad (ATV)	\$150.00/day
Rebar Locafing Device	\$ 40.00/day plus operator

* 1/2 Day Minimum Charge.

+ 25% Weekly Discount, 40% Monthly Discount.

(1) If concrete is sampled and delivered to SHN lab by outside contractor, add \$5.00/ea. for processing and curing per ASTM C-31.

Reimbursables, Continued

Field Testing and Equipment, Continued:

Roto-hammer	\$ 50.00/day*+
Skidmore-Wilhelm Bolt Tension Calibration	\$ 50.00/day
Soil/Gas Purge Pumps	\$ 30.00/day*+
Soil Gas Probes	\$200.00/day*+
Torque Wrench (0 to 250 ft lbs)	\$ 25.00/day
Torque Wrench (250 to 1,000 ft lbs)	\$ 50.00/day
Turbidity Meter	\$ 26.00/day*+
Ultrasonic Test Device	\$ 20.00/hour plus operator
Vapor Extraction System	\$500.00/day*+
Water Level Data Logger	\$ 60.00/day*+
Water Level Meter	\$ 33.00/day*+
Well Point	\$ 50.00/day

Survey Equipment:

GPS Station	\$300.00/day*
Level	\$ 25.00/day*
Resource GPS	\$ 150.00/day*
Robotic Total Station	\$ 200.00/day
Total Station	\$ 7.50/hour
Total Station w/Data Collector	\$ 100.00/day
Toughbook	\$ 150.00/day*
Trimble GeoXT GPS Unit	\$ 150.00/day*

Laboratory Tests:

Asphalt Briquette Compaction	\$ 50.00/ea. ⁽¹⁾
Asphalt Bulk Specific Gravity	\$ 30.00/ea.
Asphalt Content by Nuclear Method	\$ 75.00/test
Asphalt Content Gauge Calibration	\$200.00/ea.
Asphalt Extraction (% Bitumen)	On Request
Asphalt (Hveem) Mix Design	On Request
Brass Tube (Liner)	\$ 5.00/ea.
Cleanness Value (CT 227)	\$ 75.00/ea.
Compaction Curves (ASTM D 1557 or Caltrans CT216):	
4-inch Mold	\$200.00/ea.
6-inch Mold	\$200.00/ea.
Check Point	\$ 75.00/ea.
Concrete Compressive Strength (CT 521 or ASTM C39)	\$ 25.00/ea. ⁽²⁾
Concrete Linear Shrinkage (3 Bars)	\$200.00
Concrete Moisture	\$ 25.00/test (floor test)
Consolidation Test	\$300.00/ea.
Direct Shear, per point: (ASTM D3080)	
Consolidated-Drained (CD)	\$145.00/point
Unconsolidated-Undrained (UU) (Modified ASTM)	\$115.00/point
Consolidated-Undrained (CU) (Modified ASTM)	\$130.00/point
Additional cycles (each)	\$ 65.00/ea.
Disposable Concrete Molds	\$ 2.00/ea.

* 1/2 Day Minimum Charge.

+ 25% Weekly Discount, 40% Monthly Discount.

(1) If asphalt is delivered to SHN lab unmixed, add \$75.00/ea. for processing and mixing per Caltrans CT304.

(2) If concrete is sampled and delivered to SHN lab by outside contractor, add \$5.00/ea. for processing and curing per ASTM C-31.

Reimbursables, Continued

Laboratory Tests, Continued:

Durability Index	\$ 75.00/ea.
Expansion Index	\$175.00/test
Fireproofing Density	\$ 50.00/ea.
Grout Compressive Strength	\$ 40.00/ea.
LA Rattler (abrasion resistance)	\$200.00/test
Liquid Limit	\$100.00/ea.
Masonry Block Compressive Strength	\$ 65.00/ea.
Masonry Block Linear Shrinkage	\$ 85.00/ea.
Masonry Block Prism Compressive Strength	\$125.00/ea.
Masonry Core Shear Test	\$ 50.00/core
Moisture Content	\$ 20.00/ea.
Moisture-Density Test	\$ 30.00/ea.
Particle Size Analysis (ASTM 422)	\$115.00/ea.
Percent Crushed Particles	\$125.00/ea.
Percent Entrained Air In Concrete	\$ 10.00/ea.
Percent Organics	\$ 50.00/ea.
Plastic Limit	\$ 50.00/ea.
Plasticity Index	\$150.00/ea.
R-Value	\$300.00/ea.
Rice Specific Gravity of Asphalt (ASTM D2041)	\$ 75.00/ea.
Sand Equivalent	\$ 50.00/ea.
Sawing Rocks and Concrete Cores	\$ 30.00/unit
Sieve Analysis--Coarse	\$ 50.00/ea.
Sieve Analysis--Fine	\$ 60.00/ea.
Sieve Analysis--Passing 200	\$ 45.00/ea.
Specific Gravity, Rock	\$ 45.00/ea.
Stabilometer of Premixed AC	\$ 75.00/ea.
Sulfate Soundness	\$ 80.00/cycle
Swell Test	\$ 55.00/point
Triaxial Compression	
Unconsolidated Undrained (TXUU) (ASTM D2850)	\$115.00/point
Consolidated Undrained (TXCU) (ASTM D4767)	\$385.00/point
Consolidated Drained (TXCD) (ACOE)	\$500.00/point
Consolidated Undrained (TXCU-3 stage) (ASTM D4767)	\$810.00/test
Consolidated Drained (TXCD-3 stage) (ACOE)	\$860.00/test
USDA Bulk Density Test	\$ 30.00/ea.
USDA Textural Suitability Test	\$ 60.00/ea.
Unconfined Compression	\$ 65.00/ea.
Unit Weight of Lightweight Concrete	\$ 50.00/unit

Notes:

All samples of soil or rock from physical testing are discarded 30 days after submission of final report unless prior arrangements are made. Samples of soil or rock submitted for testing for hazardous substances will be returned to the Client, who is responsible for proper disposal.

This fee schedule is subject to review and adjustment, as required.

Certain services may require prevailing wages or overtime at premium pay to SHN employees. In such circumstances, fees will be adjusted to reflect increased labor costs.

[END OF PAYMENT TERMS]

CONSULTANT AGREEMENT EXHIBIT C

COUNTY OF MENDOCINO

AGREEMENT FOR ENGINEERING CONSULTANT SERVICES

SCHOOL WAY BRIDGE VEGETATION AND EROSION MAINTENANCE

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONSULTANT for liability in excess of such coverage, nor shall it preclude COUNTY from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law.

CONSULTANT agrees to indemnify and hold harmless COUNTY, its elected or appointed officials, employees or volunteers against any claims, actions, or demands against them, or any of them, and against any damages, liabilities or expenses, including costs of defense and attorney's fees, for personal injury or death, or for the loss or damage to the property, or any or all of them, to the extent arising out of the performance of this Agreement by CONSULTANT.

CONSULTANT affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONSULTANT further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONSULTANT shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONSULTANT shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of CONSULTANT's and subcontractors' employees.

CONSULTANT shall furnish to COUNTY certificates of insurance with Automobile Liability/General Liability Endorsements evidencing at a minimum the following:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

[END OF INSURANCE REQUIREMENTS]

CONSULTANT AGREEMENT EXHIBIT D**COUNTY OF MENDOCINO
AGREEMENT FOR ENGINEERING CONSULTANT SERVICES
SCHOOL WAY BRIDGE VEGETATION AND EROSION MAINTENANCE
DISADVANTAGED BUSINESS ENTERPRISE INFORMATION AND FORMS**

CONSULTANT must give consideration to DBE firms as specified in 23 CFR 172.5(b), 49 CFR, Part 26, and Exhibit 10-I "Notice to Proposers Disadvantage Business Enterprise Information", below.

The various DBE-related documents will be due to COUNTY once the final contract amount has been agreed upon.

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

The Agency has established a DBE goal for this Contract of 0.0 %.

1. TERMS AS USED IN THIS DOCUMENT

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

2. AUTHORITY AND RESPONSIBILITY

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

3. SUBMISSION OF DBE INFORMATION

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

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

and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

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

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
 2. The proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

5. RESOURCES

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

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

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

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store,

warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

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

EXHIBIT 10-R A&E SAMPLE CONTRACT LANGUAGE

(Excerpted)

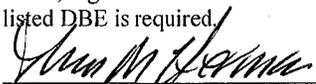
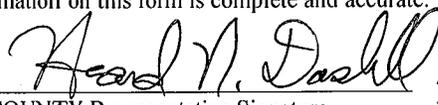
Article XX Disadvantaged Business Enterprises (DBE) Participation

- A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this contract is 0.0 %. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as COUNTY deems appropriate.
- D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting COUNTY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.

- I. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- j. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- k. If a DBE subconsultant is decertified during the life of the contract, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to COUNTY's Contract Administrator within 30 days.

EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: County of Mendocino, Department of Transportation 2. Contract DBE Goal %: 0.0%
 3. Project Description: SCHOOL WAY BRIDGE VEGETATION AND EROSION MAINTENANCE
 4. Project Location: School Way (CR 236) over Russian River (MP 0.87)
 5. Consultant Name: SHN Consulting Engineering & Geologists 6. Prime Certified DBE:

7. Description of Work, Services or Materials Supplied	8. DBE Certification Number	9. DBE Firm Contact Information	10. DBE %
COUNTY to Complete this Section		11. Total Claimed DBE Participation _____ %	
17. COUNTY Contract Number: <u>160004</u> 18. Federal-aid Project Number: <u>BRLSZD-5910(102)</u> 19. Proposed Contract Execution Date: <u>June 1, 2017</u> COUNTY certifies that all DBE certifications are valid and the 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.  12. Preparer's Signature 13. Date <u>4/12/17</u> Thomas M. Herman (707)459-4518 14. Preparer's Name (Print) 15. Phone Regional Principal 16. Preparer's Title		
 20. COUNTY Representative Signature 21. Date <u>4/6/2017</u>			
Howard Dashiell (707)234-2808 22. COUNTY Representative's Name (Print) 23. Phone			
Director of Transportation 24. COUNTY Representative Title			

Distribution: (1) Original – Included with consultant’s proposal to local agency.
 (2) Copy – COUNTY files

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. **COUNTY Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Location** - Enter the project location as it appears on the project advertisement.
4. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening etc.).
5. **Consultant Name** - Enter the consultant's firm name.
6. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
7. **Description of Services to be Provided** - 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.

COUNTY Section:

17. **COUNTY Contract Number** - Enter the COUNTY 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. **COUNTY Representative's Signature** - The person completing this section of the form for the COUNTY 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 COUNTY Representative.
22. **COUNTY Representative's Name** - Enter the name of the COUNTY 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. **COUNTY Representative Title** - Enter the position/title of the COUNTY Representative certifying the consultant's DBE commitment form.

INSTRUCTIONS – CONSULTANT CONTRACT AWARD DBE INFORMATION**Consultant Section**

1. **COUNTY** - Enter the name of the local or regional agency that is funding the contract.
2. **Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Location** - Enter the project location as it appears on the project advertisement.
4. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening etc).
5. **Consultant's Name** - Enter the consultant's firm name.
6. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
7. **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.

COUNTY Section

20. **Local Agency Contract Number** - Enter the COUNTY 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. **COUNTY Representative's Signature** - The person completing this section of the form for the COUNTY 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 COUNTY Representative.
25. **COUNTY Representative's Name** - Enter the name of the COUNTY 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. **COUNTY Representative Title** - Enter the position/title of the COUNTY Representative certifying the consultant's DBE commitment form.

EXHIBIT 15-H DBE INFORMATION —GOOD FAITH EFFORTS

DBE INFORMATION - GOOD FAITH EFFORTS

Federal-aid Project No. BRLSZD-5910(102) Bid Opening Date _____

The County of Mendocino established a Disadvantaged Business Enterprise (DBE) goal of 0.0 % for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the "COUNTY Bidder DBE Commitment" form indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening or the bidder made a mathematical error.

Submittal of only the "COUNTY Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions:

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates

- C. The items of work which the bidder made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

- E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

-
- F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

- G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download etc.):

Name of Agency/Organization	Method/Date of Contact	Results

- H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

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

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

EXHIBIT 17-O DISADVANTAGED BUSINESS ENTERPRISES (DBE) CERTIFICATION STATUS CHANGE

1. COUNTY Contract Number 160004	2. Federal-aid Project Number BRLSZD-5910(102)	3. Local Agency Mendocino County, Department of Transportation	4. Contract Completion Date
5. Contractor/Consultant SHN Consulting Engineering & Geologists	6. Business Address 335 S. Main St., Willits, CA 95490-3977	7. Final Contract Amount \$	13. Comments
8. Contract Item Number.	9. DBE Contact Information	10. DBE Certification Number	11. Amount Paid While Certified
			12. Certification/Decertification Date (Letter Attached)
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$

If there were no changes in the DBE certification of subcontractors/subconsultants, indicate on the form.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

14. Contractor/Consultant Representative's Signature	15. Contractor/Consultant Representative's Name	16. Phone	17. Date
I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED			
18. County Representative's Signature	19. County Representative's Name	20. Phone	21. Date

Distribution: Original – County files. Copy – Caltrans District Local Assistance Engineer (DLAE). Include with Final Report of Expenditures

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 – DISADVANTAGED BUSINESS ENTERPRISES (DBE) CERTIFICATION STATUS CHANGE

1. **COUNTY Contract Number** - Enter the COUNTY contract number or identifier.
2. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
3. **COUNTY** - Enter the name of the COUNTY that is funding the contract.
4. **Contract Completion Date** - Enter the date the contract was completed.
5. **Contractor/Consultant** - Enter the contractor/consultant's firm name.
6. **Business Address** - Enter the contractor/consultant's business address.
7. **Final Contract Amount** - Enter the total final amount for the contract.
8. **Contract Item Number** - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
9. **DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted contractors/consultants.
10. **DBE Certification Number** - Enter the DBE's Certification Identification Number.
11. **Amount Paid While Certified** - Enter the actual dollar value of the work performed by those subcontractors/subconsultants during the time period they are certified as a DBE.
12. **Certification/Decertification Date (Letter Attached)** - Enter either the date of the Decertification Letter sent out by the Office of Business and Economic Opportunity (OBEO) or the date of the Certification Certificate mailed out by OBEO.
13. **Comments** - If needed, provide any additional information in this section regarding any of the above certification status changes.
14. **Contractor/Consultant Representative's Signature** - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
15. **Contractor/Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
16. **Phone** - Enter the area code and telephone number of the person signing the form.
17. **Date** - Enter the date the form is signed by the contractor's preparer.
18. **COUNTY Representative's Signature** - A COUNTY Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
19. **COUNTY Representative's Name** - Enter the name of the COUNTY Representative signing the form.
20. **Phone** - Enter the area code and telephone number of the person signing the form.
21. **Date** - Enter the date the form is signed by the COUNTY Representative.

**EXHIBIT 10-K CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL
MANAGEMENT SYSTEM**

*(Note: If requesting to utilize the Safe Harbor Indirect Cost Rate submit Attachment 1 of
DLA-OB 13-07 "Safe Harbor Indirect Cost Rate for Consultant Contracts" found at
http://www.dot.ca.gov/hq/LocalPrograms/DLA_OB/DLA_OB.htm in lieu of this form.)*

Certification of Final Indirect Costs:

Consultant Firm Name: SHN Consulting Engineering & Geologists

Indirect Cost Rate: _____ *for fiscal period _____ (mm/dd/yyyy to mm/dd/yyyy)

*Fiscal Period Covered for Indirect Cost Rate developed (not the contract period).

Local Government: County of Mendocino

Contract Number: 160004

Project Number: BRLSZD-5910(102)

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

1. All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR, Part 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization and Indirect Cost Rates have been disclosed as of the date of proposal preparation noted above.

Certification of Financial Management System:

I, the undersigned, certify to the best of my knowledge and belief that our Financial Management System meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR of Title 49, CFR, Part 18.20 to the extent applicable to Consultant.

Certification of Dollar Amount for all A&E contracts:

I, the undersigned, certify that the approximate dollar amount of all A&E contracts awarded by Caltrans or a California COUNTY to this firm within the last three (3) calendar years for all State DOT and Local Agencies is \$ _____ and the number of States in which the firm does business is _____.

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are reasonable, allowable and allocable to the contract in accordance with the cost principles of the FAR of Title 48, CFR, Part 31. Allowable direct costs to a Government contract shall be:

1. Compliant with Generally Accepted Accounting Principles (GAAP) and standards promulgated by the Cost Accounting Standards Board (when applicable).
2. Compliant with the terms of the contract and is incurred specifically for the contract.

- 3. Not prohibited by 23 CFR, Chapter 1, Part 172 "Administration of Engineering and Design Related Service Contracts" to the extent requirements are applicable to Consultant.

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files.

Subconsultants (if applicable)

Proposed Contract Amount (or amount not to exceed if on-call contract): \$ _____

Prime Consultants (if applicable)

Proposed **Total** Contract Amount (or amount not to exceed if on-call contract): \$ _____

Prime, list all subconsultants and proposed subcontract dollar amounts (attach additional page if necessary):

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Consultant Certifying (Print Name and Title):

Name: _____

Title: _____

Consultant Certification Signature**: _____

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

Consultant Contact Information:

Email: _____

Phone number: _____

**An individual executive or financial officer of the consultant's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the Indirect Cost Rate proposal submitted in conjunction with the contract.

Note: Per 23 U.S.C. 112(b)(2)(B), Subconsultants must comply with the FAR Cost Principles contained in 48 CFR, Part 31. 23 CFR Part 172.3 Definitions state: Consultant means the individual or firm providing engineering and design related services as a party to the contract. Therefore, subconsultants as parties of a contract must complete a certification and send originals to A&I and keep copies in COUNTY Project Files.

- Distribution:**
- 1) Original to Caltrans Audits and Investigations
 - 2) Retained in COUNTY Project Files

EXHIBIT 10-P NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

- (1) 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.
- (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 undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. 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.

The prospective participant also agrees by submitting his/her proposal/bid that he/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.

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

CONSULTANT AGREEMENT EXHIBIT ECOUNTY OF MENDOCINO
AGREEMENT FOR ENGINEERING CONSULTANT SERVICES
SCHOOL WAY BRIDGE VEGETATION & EROSION MAINTENANCELOCAL ASSISTANCE PROCEDURES MANUAL
EXHIBIT 10-C CONSULTANT CONTRACT REVIEWER'S CHECKLIST

(Additional Material to Complete the Exhibit)

1. CONSULTANT shall sign all estimates and engineering data and shall sign and seal all plans and specifications furnished. The seal shall include the California registration number of the licensed professional in charge of the work.

MANDATORY VERBATIM LANGUAGE FROM**LOCAL ASSISTANCE PROCEDURES MANUAL
EXHIBIT 10-R (A&E SAMPLE CONTRACT LANGUAGE)**

For federally-funded projects, Article IV through Article XVII are required to be included in the contract verbatim. An allowed change is the term "LOCAL AGENCY" to "COUNTY". See additional information on Page 1 of this Agreement.

Article IV Performance Period

(A time must be set for beginning and ending the work under the contract. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the contract. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by CONSULTANT, they should be identified and incorporated into the contract.

- A. This contract shall go into effect on June 1, 2017, contingent upon approval by COUNTY, and CONSULTANT shall commence work after notification to proceed by COUNTY'S Contract Administrator. The contract shall end on June 1, 2022, unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on COUNTY until the contract is fully executed and approved by COUNTY.

Article V Allowable Costs and Payments

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

- B. In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee of \$131,000.00. The fixed fee is nonadjustable for the term of the contract, except in the event of a significant change in the scope of work and such adjustment is made by contract amendment.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- D. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, COUNTY shall have the right to delay payment or terminate this Contract in accordance with the provisions of Article VI Termination.
- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this contract.
- G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due COUNTY including any equipment purchased under the provisions of Article XI Equipment Purchase of this contract. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:

COUNTY OF MENDOCINO
DEPARTMENT OF TRANSPORTATION
340 Lake Mendocino Drive
Ukiah, CA 95482
Attn: Howard Dashiell, Director

- H. The total amount payable by COUNTY including the fixed fee shall not exceed \$131,000.00.
- I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by COUNTY's Contract Administrator.
- For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.
- J. All subcontracts in excess of \$25,000 shall contain the above provisions.

Article VI Termination

- A. COUNTY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.
- B. COUNTY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If COUNTY terminates this contract with CONSULTANT, COUNTY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to

COUNTY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

- C. The maximum amount for which the Government shall be liable if this contract is terminated is \$131,000.00dollars.

Article VII Cost Principles and Administrative Requirements

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to COUNTY.
- D. All subcontracts in excess of \$25,000 shall contain the above provisions.

Article VIII 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 8546.7; CONSULTANT, subconsultants, and COUNTY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and it's certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

Article IX 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 COUNTY's Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by 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 COUNTY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.
- D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR

audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by COUNTY contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by COUNTY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs

E. CONSULTANT Cost Proposal is subject to a CPA ICR Audit Work Paper Review by Caltrans' Audit and Investigation (Caltrans). Caltrans, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the COUNTY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

1. During a Caltrans' review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, COUNTY will reimburse the CONSULTANT at a provisional ICR until a FAR compliant ICR {e.g. 48 CFR, part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials Audit Guide; and other applicable procedures and guidelines} is received and approved by A&I. Provisional rates will be as follows:
 - a. If the proposed rate is less than 150% - the provisional rate reimbursed will be 90% of the proposed rate.
 - b. If the proposed rate is between 150% and 200% - the provisional rate will be 85% of the proposed rate.
 - c. If the proposed rate is greater than 200% - the provisional rate will be 75% of the proposed rate.
2. If Caltrans is unable to issue a cognizant letter per paragraph E.1. above, Caltrans may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
3. If the CONSULTANT fails to comply with the provisions of this Section E, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the provisional ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this provisional ICR will become the actual and final ICR for reimbursement purposes under this contract.
4. CONSULTANT may submit to COUNTY final invoice only when all of the following items have occurred: (1) Caltrans approves or rejects the original or revised independent CPA-audited ICR; (2) all work under this contract has been completed to the satisfaction of COUNTY; and, (3) Caltrans has

issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO COUNTY no later than 60 days after occurrence of the last of these items.

The provisional ICR will apply to this contract and all other contracts executed between COUNTY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

Article X Subcontracting

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between COUNTY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to COUNTY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from COUNTY'S obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by COUNTY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by COUNTY.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by COUNTY's Contract Administrator prior to the start of work by the subconsultant(s).

Article XI Equipment Purchase

- A. Prior authorization in writing, by COUNTY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by COUNTY's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit COUNTY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by COUNTY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

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

Article XII State Prevailing Wage Rates

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

Article XIII Conflict of Interest

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

Article XIV Rebates, Kickbacks or Other Unlawful Consideration (Verbatim)

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.

Article XV Prohibition Of Expending COUNTY State Or Federal Funds For Lobbying

(Include this article in all contracts where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the contract; delete this article and re-number the notification article which follows.)

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

1. No state, federal or COUNTY appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement
 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. 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. 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.

Article XVI Statement of Compliance

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

(For contracts with Federal funding, add paragraphs C & D)

- C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of

California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

- D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

Article XVII Debarment and Suspension Certification

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to COUNTY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

EXCERPTS FROM

EXHIBIT 10-R A&E SAMPLE CONTRACT LANGUAGE

Article XVIII Funding Requirements

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

Article XXI Contingent Fee

CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, 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.

Article XXVII Claims Filed by Local Agency's Construction Contractor

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

Article XXVIII Confidentiality of Data

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

Article XXIX National Labor Relations Board Certification

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

Article XXX Evaluation of Consultant

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

Article XXXI Retention of Funds

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