

## ATTACHMENT 2



# PROFESSIONAL SERVICES AGREEMENT

***PROJECT TITLE***

***Month, day, year***

**EL DORADO COUNTY TRANSPORTATION COMMISSION  
2828 Easy Street, Suite 1  
PLACERVILLE, CALIFORNIA 95667-3907  
530.642.5260  
[www.edctc.org](http://www.edctc.org)**

# **AGREEMENT**

This agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the EL DORADO COUNTY TRANSPORTATION COMMISSION, hereinafter referred to as "EDCTC" or the "Commission" and **COMPANY NAME**, a (*JURISDICTION* corporation) (*JURISDICTION* limited liability corporation) (*JURISDICTION* limited partnership) (*an individual doing business as*), hereinafter referred to as "CONSULTANT" or "CONTRACTOR."

## **TERMS OF AGREEMENT**

### **1) SERVICES TO BE PERFORMED BY CONSULTANT**

The Scope of Work is described below. Consultant will perform all services necessary to complete the Scope of Work. The Consultant will receive general direction from the EDCTC Executive Director.

#### **Scope of Work**

Tasks will include the following:

##### **General**

The Executive Director of EDCTC or their designee must approve the final form of each project deliverable prior to acceptance by EDCTC.

Any references herein to subconsultants are for convenience only and Consultant remains responsible for the performance of this Agreement and the Scope of Work.

##### **Specific**

***INSERT DETAILED LIST OF TASKS AND DELIVERABLES***

**MUST INCLUDE UNDER DELIVERABLES THE FOLLOWING LANGUAGE:**

**An Americans with Disabilities Act of 1994 (ADA) accessible electronic copy will be provided to EDCTC. *If applicable.***

In the event of any inconsistency between the Scope of Work and other terms and conditions of this Agreement, the Scope of Work shall control. EDCTC reserves the right to review and approve all work to be performed by Consultant in relation to this Agreement.

All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

### **2) PROJECT TIMETABLE**

Consultant shall complete the work in accordance with the following general timetable. As the project progresses, EDCTC may provide more specific dates within the general timetable:

## **Project Timetable**

A. **INSERT PROJECT TIMETABLE**

**B. Presentations**

Presentations to the EDCTC will be required. The meetings will occur at to-be-determined dates. Time is of the essence in this Agreement.

**C. Delays**

Consultants shall notify EDCTC in writing of any potential delay or interruption in the performance of all or any part of the work of this contract. If the work of this contract is interrupted by instances of unavoidable delay(s), informal negotiations between the parties to this contract will be used to adjust the delivery or performance dates of any work products or any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by the fault or negligence of the Consultant, or for which an adjustment is provided or excluded under any other term or condition of this contract.

**3) TERM OF AGREEMENT**

The term of the Agreement shall be from \_\_\_\_\_, 20\_\_ to \_\_\_\_\_, 20\_\_, subject to the rights of termination as set forth in Sections 6 and 7 of this Agreement.

**4) COMPENSATION AND METHOD OF PAYMENT****A. Cost Ceiling**

1. For services performed under this Agreement for the referenced fiscal years, EDCTC agrees to pay, and Consultant agrees to accept, as payment in full, the following professional fees:

**INSERT FUNDING SOURCE, NOT TO EXCEED AMOUNT**

In no instance shall EDCTC be liable for any payments or costs for work in excess of this amount, nor for any unauthorized or ineligible costs.

**B. Compensation**

1. Professional fees shall be billed on a monthly basis for all services rendered and in accordance with the Scope of Work and Project Budget. [*Alternative Language: EDCTC shall compensate consultant upon completion and acceptance of each task as described in the Scope of Work in Section 1 hereto.*]
    - a. The hourly rate must be billed at the rate shown in the Project Budget Exhibit "A". Increases to the hourly rate are not allowed.
    - b. Changes to staff must be approved by EDCTC prior to beginning work on the project.
2. Consultant will not charge for travel, phone, copying or other out-of-pocket expenses incurred with this engagement unless specified in the project budget dated \_\_\_\_\_, 20\_\_ ("**Project Budget/Rates of Compensation**"), attached hereto and incorporated herein as Exhibit "A." Backup documentation must be provided for all travel, phone, copying or other out-of-pocket expenses.

- a. Travel and subsistence (per diem) expenses of Consultant and Subcontractors claimed for reimbursement using funds administered through this agreement shall not exceed rates authorized to be paid to non-state employees under current State of California Department of Human Resources (Cal HR) rates or Caltrans Division of Accounting Travel Guide (<https://travelpocketguide.dot.ca.gov/>).
3. EDCTC shall pay for services only after receipt and approval of complete invoices indicating work performed and time spent. The consideration to be paid to Consultant, as provided in this Agreement, shall be in compensation for all of Consultant's expenses incurred in the performance of work under this Agreement, including travel and per diem, unless otherwise expressly so provided.

#### **D. Cost Principles**

1. Consultant agrees to comply with Title 2, CFR, part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable.
2. Consultant agrees that (a) the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 Contract Cost Principles and Procedures and 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be used to determine the allowability of individual project cost items. Every Consultant receiving Project funds as a contractor, subcontractor, or sub-grantee under this agreement shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
3. Consultant and subconsultants' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review.

Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 Contract Cost Principles and Procedures or 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards are subject to repayment by Consultant to EDCTC. Disallowed costs must be reimbursed to EDCTC within sixty (60) days unless EDCTC approves in writing an alternative repayment plan.

Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this subsection 4(C) above.

#### **E. Indirect Cost Rate (ICR)**

1. Prior to Consultant seeking reimbursement of indirect costs, Consultant must prepare an indirect cost rate (ICR) proposal in accordance with 48 CFR, Federal Acquisition

Regulations System, Chapter 1, Part 31 et seq. Contract Cost Principles and Procedures.

2. Material audit adjustments will require reimbursement to EDCTC and STATE if proposals are later found to have included costs that are unallowable as specified by law or regulation.

**E. Retention**

*Insert the following paragraph if there are "project" services. If ongoing services (i.e. legal services, accounting services) then this Section E should be removed.*

*EDCTC shall retain ten percent (10%) of the total contract amount until successful completion of the contract and project scope and the acceptance by EDCTC of all final deliverables.*

**5) RECORD RETENTION/AUDITS**

1. Consultant shall maintain all source documents, books and records connected with project for a minimum of three (3) years from the date of final grant payment to EDCTC or, if an audit is initiated within that timeframe, until audit resolution is achieved, whichever is later, and shall make all such supporting information available for inspection and audit by representatives of STATE, the Bureau of State Audits, or the Federal Government upon request. Copies will be made and furnished by EDCTC upon request at no cost to STATE. Scanned original documents in electronic form are suitable to meet this requirement.
2. Consultants and Subconsultants shall establish and maintain, an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Requests for Reimbursement which segregate and accumulate the costs of work elements by line item (i.e. direct labor, other direct costs, subrecipients/subcontractor, etc) and enable the determination of expenditures at interim points of completion, and provide support for reimbursement payment vouchers or invoices.
3. For the purpose of determining compliance with Title 2, California Government Code, Chapter 6.5, Article 2, Section 8546.7, in connection with the performance of EDCTC contracts and/or agreements with third parties, Consultants and Subconsultants shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts and/or agreements, including, but not limited to, the costs of administering those various contracts and/or agreements. All of the above referenced parties shall make such contracts and/or agreements available at their respective offices at all reasonable times during the three (3) years from the date of final grant payment to EDCTC or, if an audit is initiated within that timeframe, until audit resolution is achieved, whichever is later. STATE, the California State Auditor, or any duly authorized representative of STATE or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to the fulfillment of the contracts/ and/or agreements for audits, examinations, excerpts, and transactions, and RTPA shall furnish copies thereof if requested.

**6) TERMINATION FOR CONVENIENCE OF EDCTC**

EDCTC may terminate the whole or any part of this Agreement for the convenience of EDCTC and without cause at any time by giving a minimum of ten (10) days written notice to Consultant of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, collected data, and other materials shall, at the option of EDCTC, become its property. If this Agreement is terminated by EDCTC for convenience, Consultant shall be paid an amount for satisfactory services actually performed to the date of termination based upon an invoice provided by Consultant pursuant to Section 4 above.

**7) TERMINATION OF AGREEMENT FOR CAUSE**

A. EDCTC may, by written notice to Consultant, terminate the whole or any part of this Agreement for cause, including but not limited to any of the following:

1. If Consultant fails to perform the services called for by this Agreement within the time(s) specified herein or any extension thereof; or
2. If Consultant fails to perform the services called for by this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, or;
4. Consultant fails to maintain adequate staff to perform the services required under this agreement, or is dissolved or is under investigation for accounting irregularities by a local, state or federal regulatory body.

B. In the event EDCTC terminates this Agreement in whole or in part as provided in this Section 7, EDCTC may deny payment to Consultant or request reimbursement from Consultant for payments made and may procure, upon such terms and such manner as it may determine appropriate, services similar to those terminated.

C. If EDCTC issues a notice of termination under this Section 7:

1. Consultant shall immediately cease rendering services pursuant to this Agreement.
2. Consultant shall deliver to EDCTC copies of all Writings, whether or not completed, which were prepared by Consultant, its employees or its subcontractors, if any, pursuant to this Agreement. The term "Writings" shall include, but not be limited to, handwriting, computer files and records, drawings, blueprints, printing, photocopies, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including, letters, works, pictures, sounds, symbols computer data, or combinations thereof.

**8) FORCE MAJEURE**

Neither EDCTC nor Consultant shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God or of the public enemy, acts of government, in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather, or any similar cause beyond the reasonable control of EDCTC or Consultant.

**9) INTEREST OF OFFICIALS AND CONSULTANT**

- A. No officer, member, or employee of EDCTC, or other public official of the governing body of the locality or localities in which the work pursuant to this Agreement is being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the aforesaid work shall:
  - 1. Participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he has, directly or indirectly, any interest, or
  - 2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his tenure or for one year thereafter.
- B. No member of or delegate to the Congress of the United States of America shall be admitted to any share or part hereof or to any benefits to arise herefrom.
- C. Consultant hereby covenants that it has, at the time of the execution of this Agreement, no interest and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. Consultant further covenants that in the performance of this work, no person having any such interest shall be employed. Consultant shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with EDCTC's interest. Consultant shall immediately notify EDCTC of any and all potential violations of this Section upon becoming aware of the potential violation.

**10) COVENANT AGAINST CONTINGENT FEES**

Consultant warrants, by execution of this Agreement, 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 established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, EDCTC shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**11) SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties. Consultant shall not assign, delegate, or transfer the rights and duties under this Agreement or any part thereof without the prior written consent of EDCTC.

**12) CONSULTANTS AND SUBCONTRACTORS**

- A. Consultant shall not subcontract any portion of the work without the prior express written authorization of EDCTC. If EDCTC consents to a subcontract, Consultant shall be fully responsible for all work performed by the subcontractor.
  - 1. EDCTC reserves the right to review and approve any contract or agreement to be funded in whole or in part using funds provided under this Agreement.



2. Any contract or sub-contract shall require the Consultant and its subcontractors, if any, to:
  - (1) Comply with applicable State and Federal requirements that pertain to, among other things, labor standards, non-discrimination, the Americans with Disabilities Act, Equal Employment Opportunity, and Drug-Free Workplace, and *Office of Management and Budget 2 CFR 225 (A-87), Cost Principles for State, Local and Indian Tribal Governments.*
  - (2) Maintain at least the minimum State-required Workers' Compensation Insurance for those employees who will perform the work or any part of it.
  - (3) Maintain unemployment insurance and disability insurance as required by law, along with liability insurance in an amount that is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the Consultant or any subcontractor in performing work associated with this Agreement or any part of it.
  - (4) Retain all books, records, computer records, accounts, documentation, and all other materials pertaining to the performance of this Agreement for a period of three (3) years from the date of termination of this Agreement, or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.
  - (5) Permit EDCTC and/or its designees, upon reasonable notice, unrestricted access to any or all books, records, computer records, accounts, documentation, and all other materials pertaining to the performance of this Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.
  - (6) Comply with all applicable requirements of Title 49, Part 26 of the Code of Federal Regulations, as set forth in Section 29, Disadvantaged Business Enterprise Participation.

### 13) INDEPENDENT CONTRACTOR

In the performance of these services herein provided for, Consultant, including Consultant's employees and agents, shall act as and be an independent contractor and not an agent or employee of EDCTC. Consultant, its employees, agents, and sub-Consultants, shall have no power to bind or commit EDCTC to any decision or course of action, and shall not represent to any person or entity that they have such power. Consultant has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation, and discharge of all persons assisting Consultant in the performance of said services hereunder. Consultant shall be solely responsible for all matters relating to the payment of its employees, including but not limited to compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

**14) INSURANCE**

Consultant hereby warrants that it carries and shall maintain, at its sole cost and expense, in full force and effect during the full term of this Agreement and any extensions to this Agreement, the following described insurance coverage:

POLICY	MINIMUM LIMITS OF LIABILITY
(1) Workers' Compensation; Employer's Liability.	Statutory requirements for Workers' Compensation; \$ 1,000,000 Employers' Liability.
(2) Comprehensive Automobile: Insurance Services Office, form #CA 0001 (Ed 1/87) covering Automobile Liability, Code 1 (any auto).	Bodily Injury/Property Damage \$1,000,000 each accident.
(3) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).	\$1,000,000 per occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit, such limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
(4) Errors and Omissions/Professional Liability (errors and omissions liability insurance appropriate to the Consultant's profession as defined by EDCTC).	\$1,000,000 per claim.

A. Deductibles and Self-insured Retentions: Any deductibles or self-insured retentions over \$5,000 must be declared to and approved by EDCTC.

B. Required Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects EDCTC, its directors, officers, employees, and agents. Any insurance or self-insurance maintained by EDCTC, its directors, officers, employees or agents shall be in excess of Consultant's insurance and shall not contribute to it.
2. Any failure by Consultant to comply with reporting or other provisions of the policies including breaches of warrants shall not affect coverage provided to EDCTC, its directors, officers, employees, or agents.
3. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
4. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in

coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to EDCTC.

- C. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by EDCTC.
- D. Certificate of Insurance and Additional Insured Requirement: Consultant shall furnish to EDCTC an original Certificate of Insurance on a standard ACORD form, or other form acceptable to EDCTC, substantiating the required coverages and limits set forth above and also containing the following:
  - 1. Thirty (30) days prior written notice to EDCTC of the cancellation, non-renewal or reduction in coverage of any policy listed on the Certificate; and
  - 2. The following statement with respect to the Commercial General Liability policy: "EDCTC and its directors, officers, agents, employees, and volunteers are made additional insureds, but only insofar as the operations under this Agreement are concerned."
- E. Certified Copies of Policies: Upon request by EDCTC, Consultant shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.
- F. Consultant's Responsibility: Nothing herein shall be construed as limiting in any way the extent to which Consultant may be held responsible for damages resulting from Consultant's operations, acts, omissions, or negligence. Insurance coverage obtained in the minimum amounts specified above shall not relieve Consultant of liability in excess of such minimum coverage, nor shall it preclude EDCTC from taking other actions available to it under this Agreement or by law, including but not limited to, actions pursuant to Consultant's indemnity obligations.

## 15) DISPUTE: GOVERNING LAW AND FORUM

Any dispute not resolved by informal negotiation between the parties to this contract shall be adjudicated in the Superior Court of El Dorado County. This Agreement shall be administered and interpreted under the laws of the State of California.

## 16) SPECIFICATIONS

- A. All specifications, manuals, standards, etc., either attached to this Agreement or incorporated by reference, are deemed to be the issue in effect as of the date of this Agreement and are binding as to the performance of the work specified in this Agreement unless they are changed by written amendment of the Agreement modified in writing to incorporate such changes.
- B. All tasks hereunder are to be performed on a "best effort" basis with the full completion of all tasks as the goal which Consultant shall seek, with all due diligence, to attain. Any changes to tasks hereunder shall be mutually agreed to and include provisions for resulting schedule and cost adjustments.

**17) PUBLICATIONS**

- A. No report, information, or other data given to or prepared or assembled by Consultant pursuant to this Agreement, shall be made available to any individual or organization by Consultant without the prior written approval of EDCTC.
- B. Any and all reports published by Consultant pursuant to this Agreement shall acknowledge that it was prepared in cooperation with EDCTC.
- C. Articles, reports, or works reporting on the work provided for herein or on portions thereof which are published by Consultant shall contain in the forward, preface, or footnote, the following statement:

"The contents of this report reflect the views of the author who is responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of EDCTC. This report does not constitute a standard, specification, or regulation."

**18) HEADINGS**

The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.

**19) CONVICT LABOR**

In connection with the performance of work under this Agreement, Consultant agrees not to employ any person undergoing sentence of imprisonment.

**20) INDEMNIFICATION**

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

**21) OWNERSHIP OF DOCUMENTS; PERMISSION**

- A. Consultant agrees that all work products, including, but not limited to, original documents, methodological explanations, computer programs, drawings, designs, reports and other written materials generated in the performance of this Agreement shall belong to and become the sole property of EDCTC; provided that Consultant may retain file copies of said work products. The creation of additional copies of work products, not otherwise provided for herein, shall be the responsibility of EDCTC.
- B. Consultant represents and warrants that all materials used in the performance of this Agreement, including, without limitation, all computer software materials and all written materials, are either produced and owned by Consultant or that all required permissions

and license agreements have been obtained and paid for by Consultant and EDCTC is free to use, reuse, publish or otherwise deal with all such materials or work products except as otherwise specifically provided in this Agreement. Consultant shall defend, indemnify, and hold harmless EDCTC and its directors, officers, employees, and agents, from any claim, loss, damage, cost, liability, or expense to the extent of any violation or falsity of the foregoing representation and warranty.

- C. If Consultant is permitted copy rights, the Federal Highway Administration, Caltrans, and EDCTC shall have the royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, all work products generated in the performance of this Agreement for government purposes.

## 22) NOTICES

- A. Notices shall be sufficient hereunder if personally delivered to EDCTC or Consultant or if sent by the United States Postal Service postage prepaid, addressed as follows:

Woodrow Deloria, Executive Director  
 El Dorado County Transportation Commission  
 2828 Easy Street, Suite 1  
 Placerville, CA 95667  
 Phone: (530) 642-5260  
 E-mail: wdeloria@edctc.org

**INSERT CONTRACT ADMIN, COMPANY NAME, ADDRESS, ETC.**

- B. Nothing herein above shall prevent either EDCTC or Consultant from personally delivering any such notices to the other.

## 23) WAIVERS

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of EDCTC to enforce at any time the provisions of this Agreement or to require at any time performance by the Consultant of these provisions, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of EDCTC to enforce these provisions.

## 24) LITIGATION

Consultant shall notify EDCTC immediately of any claim or action undertaken by it or against it that affects or may affect this Agreement or EDCTC, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of EDCTC.

## 25) NATIONAL LABOR RELATIONS BOARD CERTIFICATION

Consultant, by signing this Agreement, does swear 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 which orders Consultant to comply with an order of the National Labor Relations Board (Public Contract Code § 10296).

## 26) AMERICANS WITH DISABILITIES ACT (ADA) of 1990

By signing this Agreement, Consultant assures EDCTC that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability. Consultant also assures EDCTC that it complies with the U.S. DOT implementing regulations 49 CFR parts 27, 37 and 38, as well as all applicable regulations and guidelines issued pursuant to the ADA.

## 27) DRUG-FREE CERTIFICATION

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

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

## 28) UNION ORGANIZING

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

- A. Consultant will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.
- B. Consultant will not meet with employees or supervisors on EDCTC or state property if the purpose of the meeting is to assist, promote or deter union organizing, unless the property is equally available to the general public for meetings.

## 29) POLITICAL REFORM ACT COMPLIANCE

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

Regulations § 18110, et seq.). Consultant agrees that any of its officers or employees deemed to be "consultants" under the Act by EDCTC, as provided for in the Conflict of Interest Code for EDCTC, shall promptly file economic disclosure statements for the disclosure categories determined by EDCTC, to be relevant to the work to be performed under this Agreement and shall comply with the disclosure and disqualification requirements of the Act, as required by law.

### **30) SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

### **31) INTEGRATION AND MODIFICATIONS**

This Agreement represents the entire understanding of EDCTC and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by EDCTC and Consultant.

### **32) SUBCONTRACTING**

A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between EDCTC and any Subconsultants, and no subagreement shall relieve the Consultant of its responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to EDCTC for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. The Consultant's obligation to pay its Subconsultants is an independent obligation from EDCTC's obligation to make payments to the Consultant.

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

C. Any subagreement entered into as a result of this Agreement, shall contain all the provisions stipulated in this entire Agreement to be applicable to Subconsultants unless otherwise noted.

D. Consultant shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the Consultant by EDCTC.

E. Any substitution of Subconsultants must be approved in writing by EDCTC's Contract Administrator in advance of assigning work to a substitute Subconsultant.

F. Prompt Progress Payment

Consultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed Consultant on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Consultant or subconsultant to a subconsultant, Consultant or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

#### G. Prompt Payment of Withheld Funds to Subconsultants

EDCTC shall hold retainage from Consultant and shall make prompt and regular incremental acceptances of portions, as determined by EDCTC of the contract work and pay retainage to Consultant based on these acceptances. Consultant or subconsultant shall return all monies withheld in retention from all subconsultants within 15 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by EDCTC. Any delay or postponement of payment may take place only for good cause and with EDCTC's prior written approval. Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant; deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant, deficient subcontract performance, or noncompliance by a subconsultant.

### 33) ASSIGNMENT

The contract will require the successful proposer to agree that by execution of the contract, or any subcontract awarded by the successful proposer, that proposer or any subcontractor offers and agrees to assign and thereby will assign to EDCTC all rights, title, and interest in and to all causes of action such proposer or subcontractor may have under section 4 of the Clayton Act (15 USC section 15) or under the Cartright Act (Chapter 2 or Part 2 of Division 7 of the Business and Professions Code, commencing with section 16700), arising from purchases of goods, services, or materials pursuant to this contract or subcontract. This assignment shall be made and shall become effective upon execution of the contract.



**34) COMPLIANCE WITH LAWS**

Consultant shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders and decrees. Consultant warrants and represents to EDCTC that Consultant shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession or are necessary and incident to the performance of the services and work Consultant performs under this Agreement. Consultant shall provide written proof of such licenses, permits, insurance and approvals upon request by EDCTC. EDCTC is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

**35) CAMPAIGN CONTRIBUTION DISCLOSURE**

Consultant has complied with the campaign contribution disclosure provisions of the California Levine Act (Government Code § 84308) and has completed the Levine Act Disclosure Statement attached hereto as Exhibit "C."

**36) COSTS AND ATTORNEYS' FEES**

If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and reasonable attorneys' fees.

**37) AUTHORITY**

Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.

**38) COUNTERPARTS**

This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

**39) DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITIES**

Consultant certifies and warrants that neither the Consultant firm nor any owner, partner, director, officer, or principal of Consultant, nor any person in a position with management responsibility or responsibility for the administration of funds:

- A. Is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency.
- B. Has within the three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

- C. Is presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commissions of any of the offenses enumerated in paragraph "b" above.
- D. Has within a three-year period preceding this Agreement, had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.
- E. Consultant shall complete the Debarment Certification Form, attached hereto as Exhibit D.

#### **40) PROHIBITION OF EXPENDING STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. Consultant certifies, to the best of his or her knowledge or belief, that:
  - 1. No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.
  - 2. If any funds other than Federally 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 any employee of a Member of Congress in connection with this Federal Agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this Agreement was entered into. Submission of this certification is a prerequisite for making or entering into this Agreement 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 Agreement 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.

#### **41) CERTIFICATES AND ASSURANCES**

- A. Consultant shall comply, as applicable, with the FHWA "Transportation Planning Process Certification" requirements in accordance with 23 CFR 450.334 and Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59; SAFETEA-LU) and its successors thereto. This certification is provided annually by FHWA and FTA. It may include but is not limited to:
  - I. 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart;

- II. In nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506 (c) and (d)) and 40 CFR part 93;
  - III. Title VI of the Civil Rights Act of 1964 and the Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794;
  - IV. Section 1101(b) of the SAFETEA-LU (Pub. L. 109-59) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;
  - V. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and 49 CFR parts 27, 37, and 38;
  - VI. 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;
  - VII. 23 CFR part 230, regarding the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;
  - VIII. The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
  - IX. Section 324 of title 23 U.S.C. regarding the prohibition of discrimination based on gender; and
  - X. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.
- B. If project is funded with Federal Transit Assistance funds, Consultant shall comply with the "Certifications and Assurances for FTA Assistance", including "Certifications and Assurances Required of Each Applicant" and the "Lobbying Certification" in compliance with 49 U.S.C. Chapter 53, published annually in EDCTC's OWP.

The 2019 FTA Certifications includes the following areas under "Assurances Required of Each Applicant:"

1. Authority of Applicant and its Representatives
2. Standard Assurances
3. Intergovernmental Review Assurance
4. Suspension and Debarment Certification
5. U.S. Office of Management and Budget Assurances in SF-424B and SF-424D

Consultant shall require its Subconsultant(s) to comply with these Certifications, and agrees to furnish documentation to EDCTC to support this requirement that all of its agreements with Subconsultant(s) contain provisions requiring adherence to this section in its entirety.

## 42) DISADVANTAGED BUSINESS ENTERPRISES (DBEs) PARTICIPATION

- A. EDCTC, Consultant, or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, EDCTC shows a contract goal for DBEs. Consultant shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

Consultant shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is Consultant's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies Consultant purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR26.55 defines "manufacturer" and "regular dealer."

This Agreement is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who enter into a federally-funded agreement will assist EDCTC in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this Agreement is \_\_\_\_\_%. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the Agreement. 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. Consultant can meet the DBE participation goal by either documenting commitments to DBEs to meet the Agreement goal, or by documenting adequate good faith efforts to meet the Agreement goal. An adequate good faith effort means that the Consultant must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If Consultant has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- D. Contract Assurance
- Under 49 CFR 26.13(b):

Consultant, subrecipient 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 26 in the award and administration of federal-aid contracts.

Failure by the 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 the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying Consultant from future proposing as non-responsible

E. Termination and Substitution of DBE Subconsultants

Consultant shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless Consultant or DBE subconsultant obtains EDCTC's written consent. Consultant shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from EDCTC. Unless EDCTC's consent is provided, the Consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid.

EDCTC authorizes a request to use other forces or sources of materials if Consultant shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
3. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
4. Listed DBE's work is unsatisfactory and not in compliance with the contract.
5. Listed DBE is ineligible to work on the project because of suspension or debarment.
6. Listed DBE becomes bankrupt or insolvent.
7. Listed DBE voluntarily withdraws with written notice from the Contract.
8. Listed DBE is ineligible to receive credit for the type of work required.
9. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
10. EDCTC determines other documented good cause.

Consultant shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise Consultant and EDCTC of the reasons why the use of other forces or sources of materials should not occur.

Consultant's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from Consultant to the DBE regarding the request.
3. Notices from the DBEs to Consultant regarding the request.

If a listed DBE is terminated or substituted, Consultant must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

F. Commitment and Utilization

EDCTC's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

EDCTC shall request Consultant to:

1. Notify EDCTC's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier subconsultant
  - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

If Consultant is a DBE Consultant, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify Consultant in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify Consultant in writing of the certification date. Consultant shall submit the notifications to EDCTC. On work completion, Consultant shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to EDCTC within 30 days of contract acceptance.

Upon work completion, Consultant shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the EDCTC within 90 days of contract acceptance. EDCTC will withhold \$10,000 until the form is submitted. EDCTC will release the withhold upon submission of the completed form.

In EDCTC's reports of DBE participation to Caltrans, EDCTC must display both commitments and attainments.

- G. A DBE is only eligible to be counted toward the Agreement goal if it performs a commercially useful function (CUF) on the Agreement. CUF must be evaluated on an Agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is

responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. 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 Consultant's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. If a DBE subconsultant is decertified during the life of the Agreement, 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 Agreement, the subconsultant shall notify Consultant in writing with the date of certification. Any changes should be reported to EDCTC's Contract Administrator within thirty (30) calendar days.
- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10<sup>th</sup> of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the Agency.
- M. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

#### **43) NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. The Consultant's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this Agreement, Consultant and its subconsultants shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment

against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by EDCTC to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- D. Consultant shall permit access by representatives of the Department of Fair Employment and Housing and EDCTC upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or EDCTC shall require to ascertain compliance with this clause.
- E. 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.
- F. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
- G. The Consultant, with regard to the work performed under this Agreement, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States 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.
- H. The Consultant shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. Consultant, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the EDCTC components of the DBE Program Plan, Consultant, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.



**44) PROMPT PAYMENT FROM EDCTC TO CONSULTANT**

EDCTC shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from Consultant on a professional service contract. If EDCTC fails to pay promptly, EDCTC shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, EDCTC shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by EDCTC as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to Consultant as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

**45) EDCTC CONTRACT ADMINISTRATOR**

**INSERT PROJECT MANAGER'S NAME**

Senior Transportation Planner  
El Dorado County Transportation Commission  
2828 Easy Street, Suite 1  
Placerville, CA 95667  
(530) 642- [REDACTED]

**INSERT EMAIL ADDRESS**

**46) FINAL PRODUCT**

Consultant will provide six hard copies and six electronic copies (on compact discs) of the final product to EDCTC. Final product must be consistent with deliverables identified in the approved scope of work. The final product is funded through the **INSERT FUNDING SOURCE** grant program. Therefore, the final product shall credit the **INSERT FUNDING AGENCY**'s financial participation on the cover or title page.

**47) CONTRACT CLOSEOUT**

Consultant must complete all work, submit all copies of the final product, all deliverable(s) no later than **INSERT DATE**. Time extensions are not allowed as grant funds lapse after **INSERT DATE**. Final invoice must be submitted to EDCTC by **INSERT DATE**.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

El Dorado County Transportation Commission

Consultant

\_\_\_\_\_  
Woodrow Deloria  
Executive Director

\_\_\_\_\_  
Name  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

Project Budget/Cost Proposal

## EXHIBIT B INVOICING AND ALLOWABLE CHARGES

This project is funded by a state program subject to review by Caltrans Audits and Investigations. The following are important items to note in this contract regarding invoicing and allowable charges:

- Section 4 B Compensation: Hourly Rates must be billed as shown on Exhibit "A" Project Budget. The rates will remain constant for the term of the contract.
- Section 4 B Compensation: Changes to staff assigned must be approved prior to the employee starting work on the project.
- The hourly rate for new staff assigned to the project must be consistent with the Exhibit "A" billing rates.
- Section 4 B Compensation: Documentation must be provided for all travel, phone, copying or other out-of-pocket expenses.
- Section 4 B Compensation: Travel expenses must not exceed the rates in the Caltrans Division of Accounting Travel Guide.
  - Mileage will be reimbursed at the IRS approved rate.
  - Travel by any means other than privately owned or company vehicle (i.e. Lyft, Uber, Zipcar, Rental, taxi) must be pre-approved.
  - Meals will be reimbursed based on the following:**
    - All meals must have a detailed receipt
    - Breakfast – Actual expense up to \$7 only if travel begins at or before 6:00 am
    - Lunch – Actual expense up to \$11 only if travel begins at or before 11:00 am
      - Lunch is not reimbursable on trips less than 24 hours
    - Dinner - Actual expense up to \$23 only if trip begins at or before 5:00 pm
    - No alcoholic beverages allowed
- Section 4 E Retention: Ten percent (10%) retention will be withheld from every invoice until project completion.
- Markup on subconsultant invoices is not allowed.

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Authorized Signature for Consultant

**EXHIBIT C**  
**LEVINE ACT DISCLOSURE STATEMENT**

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

Current Commissioners, and their alternates, of the EDCTC: (as of 3/6/23; check for current list)

John Clerici	John Hidahl	Jackie Neau	Lori Parlin
Michael Saragosa	Wendy Thomas	George Turnboo	David Yarbrough

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

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

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

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any EDCTC Commissioner(s) in the twelve (12) months following the award of the contract?

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

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

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

\_\_\_\_\_  
DATE

\_\_\_\_\_  
(SIGNATURE OF AUTHORIZED OFFICIAL)

\_\_\_\_\_  
(TYPE OR WRITE APPROPRIATE NAME, TITLE)

\_\_\_\_\_  
(TYPE OR WRITE NAME OF COMPANY)

**California Government Code Section 84308**

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

preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7. If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

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

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

**EXHIBIT D**

**DEBARMENT CERTIFICATION FORM**

The Consultant certifies that, neither the Consultant firm nor any owner, partner, director, officer, or principal of the Consultant, nor any person in a position with management responsibility or responsibility for the administration of federal funds:

- (a) Is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency;
- (b) Has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or
- (d) Has within a three-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

The Consultant further certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

By \_\_\_\_\_  
Authorized Signature for Consultant

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Consultant Firm Name and Type of Entity (*Corp., Partnership, Sole Proprietor*)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip Code

\_\_\_\_\_  
Area Code/Telephone Number and E-Mail Address