Exhibit 10-A Pre-Award Audit Request Letter and Checklist

EXAMPLE PRE-AWARD AUDIT REQUEST LETTER AND CHECKLIST

Local Agency Letterhead

Department of Transportation
Audits and Investigations, MS 2
Attention: External Audit Manager
P.O. Box 942874
Sacramento, CA 94274-0001

Date:_____
(Federal Number)
(Project Description)
_____

Dear External Audit Manager:

Attached is a copy of the following information for proposed contract number _____ with (Consultant's Name, Address, Contact Name, Phone Number).

____Proposed contract between the local agency and the consultant

____Proposed cost proposal for prime consultant and all subcontractors

____Name of local agency contact person, phone number and fax number

The subcontractors proposed for this contract are as follows: (List all Subcontractors Name, Address, Phone Number).

Please arrange a pre-award evaluation and forward a copy of the written report to us. Services to be performed under this contract are (describe work to be performed).

The (Local Agency Name) understands that any work with costs incurred prior to the approval of the "Authorization to Proceed (E-76)" is not eligible for federal fund reimbursement.

Please notify us of the estimated completion date of the audit.

If you need further information, please contact (Name) at (Phone #).

Sincerely,

Signed _____
Title _____
Agency _____

Attachments: Proposed Contract
Draft Cost Proposal(s)
cc: DLAE

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Exhibit 10-B Suggested Evaluation Sheet

SUGGESTED EVALUATION SHEET*		
Criteria	Maximum Points	Rating
Understanding of the work to be done	25	
Experience with similar kinds of work	20	
Quality of staff for work to be done	15	
Capability of developing innovative or advanced techniques	10	
Familiarity with state and federal procedures	10	
Financial responsibility	10	
Demonstrated Technical Ability	10	
Total	100	

*For projects other than "Architectural & Engineering" services, as defined in Section 10.1, cost is one of the criteria, or may be the sole criterion. DBE participation by the consultant shall not be used as one of those criteria listed above.

The evaluation criteria and suggested maximum points shown above are not mandatory, but are reccomended in the interest of maintaining consistency among the hundreds of agencies utilizing federal and/or state funds.

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Exhibit 10-C Consultant Agreement Reviewers Checklist

CONSULTANT AGREEMENT REVIEWERS CHECKLIST

Date: _____
Agency Name: _____

_____

Federal or State Project Number: _____
Project Location: _____

_____

			Project File Location Tab/Page No.
I. SELECTION PROCEDURES ITEMS NEEDED FOR REVIEW			
A. DESCRIPTION OF NEED FOR CONSULTANT	☐ YES	☐ NO	_____
B. RECORDS OF PUBLICATION OF RFP OR RFQ	☐ YES	☐ NO	_____
C. SOLICITATION RECORDS	☐ YES	☐ NO	_____
D. INDEPENDENT COST ESTIMATE (FOR CONTRACTS OVER $100,000)	☐ YES	☐ NO	_____
E. EVALUATION CRITERIA	☐ YES	☐ NO	_____
F. DOCUMENTATION OF SELECTION	☐ YES	☐ NO	_____
G. PLAN TO MONITOR WORK	☐ YES	☐ NO	_____

II. CONSULTANT AGREEMENT

A. INTRODUCTION

1. Date of execution of agreement	Date: _____		
2. Names, addresses, identifying data of agreeing parties	☐ YES	☐ NO	_____
3. Location and description of project	☐ YES	☐ NO	_____
4. Name of Local Agency Contract Administrator	☐ YES	☐ NO	_____
5. Name of Consultant Project Manager	☐ YES	☐ NO	_____

B. AGREEMENT

1. Type of work to be done

a) Detailed Scope of Work	☐ YES	☐ NO	_____
b) Consultant services	☐ YES	☐ NO	_____
c) Right of Way	☐ YES	☐ NO	_____
d) Subsurface investigations	☐ YES	☐ NO	_____

e) Obligations of local agency to consultant	☐ YES	☐ NO	_____
f) Conferences, visits to site, inspection of work	☐ YES	☐ NO	_____
g) Checking of shop drawings	☐ YES	☐ NO	_____
h) Consultant services during construction	☐ YES	☐ NO	_____
i) Deliverables and number of copies	☐ YES	☐ NO	_____
j) Milestones and description of work for each	☐ YES	☐ NO	_____
2. Date of beginning of contract	☐ YES	☐ NO	_____
3. Payment methods	☐ YES	☐ NO	_____
4. Record retention (three years) and right to audit	☐ YES	☐ NO	_____
5. Contract Cost Principles and Procedures and Administrative Requirements (CFR 48, *Federal Acquisition Regulation System*, Chapter 1, Part 31 and CFR 49, Part 18)	☐ YES	☐ NO	_____
a) Covenants Against Contingent Fees Exhibit 10-D, (B6 [a])	☐ YES	☐ NO	_____
b) Design Standards - Exhibit 10-D, (B6 [b])	☐ YES	☐ NO	_____
c) Documentation - Exhibit 10-D, (B6 [c])	☐ YES	☐ NO	_____
d) Ownership of Documents - Exhibit 10-D, (B6 [d])	☐ YES	☐ NO	_____
e) Patent Rights - Exhibit 10-D, (B6 [e])	☐ YES	☐ NO	_____
f) Copyrights - Exhibit 10-D, (B6 [f])	☐ YES	☐ NO	_____
g) Changes in work - Exhibit 10-D, (B6 [g])	☐ YES	☐ NO	_____
h) Delays and Extensions - Exhibit 10-D, (B6 [h])	☐ YES	☐ NO	_____
i) Termination or Abandonment - Exhibit 10-D, (B6 [I])	☐ YES	☐ NO	_____
j) Remedies - Exhibit 10-D, (B6 [j])	☐ YES	☐ NO	_____
k) Disputes - Exhibit 10-D, (B6 [k])	☐ YES	☐ NO	_____
l) Responsibility for Claims and Liability - Exhibit 10-D, (B6 [l])	☐ YES	☐ NO	_____
m) General Compliance With Laws & Wage Rates - Exhibit 10-D, (B6 [m])	☐ YES	☐ NO	_____
n) Subcontracting, Assignment and Transfer - Exhibit 10-D, [B6 (n)]	☐ YES	☐ NO	_____
o) Consultant's Endorsement on Plans, etc. - Exhibit 10-D, (B6 [o])	☐ YES	☐ NO	_____
p) DBE Considerations, Exhibit 10-D, (B6 [p])	☐ YES	☐ NO	_____
q) Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information – Exhibit 10-O	☐ YES	☐ NO	_____
r) Nonlobbying Certification for Federal-aid Contracts Exhibit 10-P *	☐ YES	☐ NO	_____

s) Debarment and Suspension Certification – Exhibit 12-E, Attachment E * ☐ YES ☐ NO _____

t) Notice to Bidders/Proposers Disadvantaged Business Enterprise Information – Exhibit 10-I. ☐ YES ☐ NO _____

* Use form prepared for construction contracts

6. Insurance requirements ☐ YES ☐ NO _____
7. Ending date of contract:_____

C. CONCLUSIONS (ACCEPTED LEGAL EXPRESSION, ETC.) ☐ YES ☐ NO _____

D. SIGNATURES ☐ YES ☐ NO _____

E. CERTIFICATIONS OF CONSULTANT AND AGENCY - Exhibits 10 F & G ☐ YES ☐ NO _____

F. COST PROPOSAL - Exhibit 10-H ☐ YES ☐ NO _____

_____ _____
Contract Administrator **Date**

Distribution: All Projects: Original to the Caltrans DLAE , one copy for the Local Agency Project file

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Exhibit 10-D Consultant Agreement Outline

CONSULTANT AGREEMENT OUTLINE

A. INTRODUCTION

The introduction includes the following information:

1. **Date of Agreement**
2. **Names, Addresses and Other Data Identifying Agreeing Parties**

   State the complete name and address of each party to the agreement together with information with respect to whether the party is an individual, an agency of government, a partnership, or a corporation. If a corporation is one of the parties, show the State of Incorporatioand the location of the office, where the consultant's work will be available for inspection by local agency and state representatives. For the sake of brevity, a suitable short title, such as "State," "County," "Engineer" or "Consultant," is designated and defined for each of the parties and used throughout the remainder of the agreement.

3. **Location and Description of the Project.**

   State the location and description of the project as precisely, and as briefly as possible. Give the name of the project, if one exist. If major structures are to be included their approximate locations, lengths, and types, if known, are to be shown.

4. **Name of Contract Administrator**

   All (3 or 4) references to . . ."NEPA compliance not being complete until FHWA approves the CE, EA/FONSI or EIS/ROD". . . need to be expanded to read: "Compliance with the provisions of NEPA occurs only after FHWA signs the Categorical Exclusion (CE), Finding of No Significant Impact (FONSI) or Record of Decision (ROD) and all mitigation commitments have been fully incorporated (constructed and/or implemented) into the action." (Ref: 23 CFR 771.105 (d) Measures necessary to mitigate adverse impacts be incorporated into the action).

B. AGREEMENT

1. **Description of Work to be Done**

   a) Consultant Services

   Detail based on the services to be furnished by the consultant. Nature and extent verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. It also includes any milestones and due date of each milestone; description of the deliverables; form of the deliverables; and effort involved in each deliverable. Describes acceptance criteria. Environmental documents are not considered complete until final FHWA and/or state approval. A signed CE, FONSI, or published ROD is to be approved or completed by FHWA (see Chapter 6, "Environmental Procedures" of the *Local Assistance* Procedu*res Manual* [LAPM]).

   b) Right of Way

   State whether Right of Way requirements are to be determined and shown by the consultant; whether land surveys and computations with metes and bounds descriptions are to be made; and whether Right of Way plots are to be furnished.

c) Subsurface Investigations

State specifically whether or not the consultant has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of the consultant, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in Chapter 8 of "Caltrans' Environmental Handbook" Volume 2 *Cultural Resources*.

d) Surveys

State whether or not the consultant has the responsibility for performing preliminary or construction surveys.

e) Local Agency Obligations

All data applicable to the project referred to in the agreement and are in possession of the local agency or another agency, or government are to be made available to the consultant,. Any other assistance or services to be furnished to the consultant are to be stated clearly.

f) Conferences, Meetings, Visits to Site, Inspection of Work

The agreement provides for conferences as needed, visits to the site, and inspection of the work by representatives of the state or FHWA

g) Checking Shop Drawings

For agreements requiring the preparation of construction drawings, make provision for checking shop drawings.

h) Consultant's Services During Construction

The extent, if any of the consultant's services during the course of construction as material testing, construction surveys. etc., are specified in the agreement together with the method of payment for such services.

i) Number of Copies

The number of copies of papers or documents to be furnished, such as reports, brochures, sets of plans, specifications or Right of Way plots are specified. The type of media reports, plans, specifications, etc., are to be submitted. Provisions may be made for payment for additional copies.

2. Date of Beginning and Completion

Beginning and ending dates must be specified for work under the agreement. Usually the beginning date is a given number of days after a letter of notification has been sent to the consultant. 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 agreement. It is desirable that Critical Path Method (CPM) networks be prepared and incorporated into the contract by reference.

3. Payments

State the basis of payment for the services to be furnished. The services may be considered as a whole or by units. The agreement establishes a method of payment as the work progresses, or as each unit is completed; and for final settlement after all work is delivered, accepted, and approved. The agreement sets a maximum limit on the total amount payable. This also applies to all subcontracts in excess of $25,000.

4. Record Retention

The agreement states the period of time that the consultant's records shall be retained for inspection by the state, FHWA, or their duly authorized representatives. This time period must be at least three (3) years after final payment to the consultant by federal statue. This also applies to all subcontracts in excess of $25,000.

5. Cost Principles

The agreement must state that the Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., are the governing factors regarding allowable elements of cost. Also, the agreement must include the administrative requirements set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. This also applies to all subcontracts in excess of $25,000.

6. Miscellaneous Provisions

a) Covenant Against Contingent Fees

All agreements for consultant services in which federal funds are to participate shall contain the following clause:

> "The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant; to solicit or secure this agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this warranty, the local agency shall have the right to annul this agreement without liability, or at its discretion; to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee."

b) Design Standards

The agreement includes reference to the appropriate standards for design or other standards for work performance stipulated in the consultant agreement.

c) Documentation

Agreements, where appropriate, shall provide that the consultant document the results of the work to the satisfaction of the local agency, and if applicable, the state & FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the agreement objectives.

d) Ownership of Documents

The agreement provides that tracings, plans, specifications, and maps prepared, or obtained under the terms of the agreement be delivered to and become the property of the local agency. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under such agreement shall be made available upon request to the local agency without restriction or limitation on their use. When an agreement is for preliminary plans only, no commitment should be stated or implied that would constitute a limitation of the subsequent use of the plans, or ideas incorporated therein for preparation of construction plans.

e) Patent Rights

Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions shall be included in agreements as appropriate.

f) Copyrights

The local agency may permit copyrighting reports or other agreement products. If copyrights are permitted, the agreement shall provide that the FHWA and state shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use the work for government purposes.

g) Changes in Work

The agreement contains provisions that permit mutually acceptable changes in the scope, character, or complexity of the work; if such changes become desirable or necessary as the work progresses. A method should be established for making adjustments to the basis of payment, and to the time for performance of the work. Provision are made for special cases where it is essential that the extra work be performed immediately with execution of a supplemental agreement covering the changes as soon as possible.

h) Delays and Extensions

The agreement provides for an appropriate extension of time in case of unavoidable delays and for consideration of corresponding warranted adjustments in payment.

i) Termination or Abandonment

A procedure covering among other things, the ownership of work completed or partially completed, including the basis of payment, is established in the event of termination of the agreement prior to completion of the work. Conditions for termination due to default and circumstances beyond the control of the contractor are included.

j) Remedies

Provision(s) are included allowing administrative, contractual, or legal remedies for violation or breach of contract terms, citing appropriate sanctionsand penalties.

k) Disputes

The agreement provides for a procedure to resolve any dispute concerning a question of fact in connection with the work not settled by agreement between the parties. Such procedures should conform to the practice followed by the local agency in resolving disputes in other contractual matters.

l) Responsibility for Claims and Liability

The consultant shall be required to save harmless the local agency or other agency of government from all claims and liability due to his/her negligent acts, or the negligent acts of his/her subcontractors, agents or employees.

m) General Compliance with Laws and Wage Rates

The consultant shall be required to comply with all federal, state and local laws and ordinances applicable to the work. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

n) Subcontractors, Assignment and Transfer

Consultant services are considered to be a personal relationship between client and principal; therefore, agreements in which participating federal and/or state funds are furnished shall contain a clause expressly prohibiting the subcontracting, assignment, or transfer of any of the work except, as otherwise, provided for in the executed agreement. All contracts shall provide that subcontracts exceeding $25,000 in cost shall contain all required provisions of the prime contract.

o) Consultant's Endorsement on PS&E/Other Data

The responsible consultant/engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

p) Disadvantaged Business Enterprise Considerations

Consultants must give consideration to DBE firms as specified in 23 CFR 172.5(b), 49 CFR Part 26, and in Exhibit 10-I "*Notice to Bidders/Proposers Disadvantaged Business Enterprise Information*."

q) Insurance

The contract should provide for professional liability insurance and vehicle liability insurance limits. The contract should specify the reasonable amounts of such insurance, as required by the local agency. A method of verifying that the insurance is in effect should be included. Also, a method of notifying the local agency, if the specific insurance has been changed or cancelled should also be in the contract.

r) Signature Blocks

A signature block for each of the parties to the agreement should be provided.

C. CONCLUSION

The concluding clause may be any one of the many accepted legal expressions commonly used for that purpose.

D. SIGNATURE

E. CERTIFICATIONS

Exhibits 10-F "Certification of Consultant, Commisssions & Fees" and 10-G, "Certification of Agency" must be included as attachments to the contract and made a part of.

F. COST PRICE PROPOSAL

The consultant's and subconsultant(s) final cost proposal must be attached to the contract (see Exhibit 10-H "Sample Cost Proposal").

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Exhibit 10-E Sample Payment Clauses

SAMPLE PAYMENT CLAUSES*

COST-PLUS-FIXED FEE

The basis of payment for the services provided under this agreement shall be cost-plus-a-fixed fee.

1. The local agency shall reimburse the consultant for actual costs (including labor costs, employee benefits, overhead and other direct costs) incurred by the consultant in performance of the work, in an amount not to exceed $_____ exclusive of any fixed fee. Actual costs shall not exceed the estimated wage rates and other costs set forth in the consultant's proposal.
2. In addition to the costs referred to in paragraph 1 of this article, the local agency shall pay the consultant a fixed fee of $_____. Said fixed fee shall not be altered, unless there is a significant alteration in the scope, complexity, or character of the work to be performed which is documented as an amendment.
3. The Consultant shall be reimbursed for actual travel expenses incurred in the performance of this work, including the use of private vehicles at the rate of _____ cents per mile, while traveling away from consultant's headquarters, which is hereby designated as _____. In addition, consultant's personnel shall be reimbursed for per diem expenses at a rate not to exceed the currently authorized rates for state employees under State Department of Personnel Administration rules.
4. Total expenditures made under this agreement, including the fixed fee shall not exceed the sum of _____.

LUMP SUM

The basis of payment for the services provided under this agreement shall be lump sum.

1. Pursuant to satisfactory completion of this agreement, a lump sum payment of $_____,which includes all expenses incurred will be made to the consultant.
2. The above lump sum payment includes: salary, fringe benefits, overhead, profit, and all other expenses incurred by the consultant.

*The other methods of payment are not addressed here.

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Exhibit 10-F Certification of Consultant, Commissions & Fees

CERTIFICATION OF CONSULTANT

I HEREBY CERTIFY that I am the _____, and duly authorized representative of the firm of _____, whose address is _____ , and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, foror in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.

_____ _____
(Date) (Signature)

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Exhibit 10-G Certification of Local Agency

CERTIFICATION OF LOCAL AGENCY

I HEREBY CERTIFY that I am the _____ of the _____(local agency)_____ , and that the consulting firm of _____ ,or its representative has not been required (except as herein expressly stated), directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

(a) employ, retain, agree to employ or retain, any firm or person, or

(b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

_____ _____
(Date) (Signature)

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Exhibit 10-H Sample Cost Proposal

SAMPLE COST PROPOSAL (EXAMPLE #1)

Contract No._____ Date _____

Consultant _____

DIRECT LABOR

Classification	Name	Range	Hours	Initial Hourly Rate	Total
Project Manager	_____	_____	_____	@_____	$_____
Highway Engineer	_____	_____	_____	@_____	$_____
	_____	_____	_____	@_____	$_____
Bridge Engineer	_____	_____	_____	@_____	$_____
	_____	_____	_____	@_____	$_____
Technician	_____	_____	_____	@_____	$_____
Project Manager	_____	_____	_____	@_____	$_____
	_____	_____	_____	@_____	$_____
	_____	_____	_____	@_____	$_____
	_____	_____	_____	@_____	$_____

Subtotal Direct Labor Costs $_____
Anticipated Salary Increases $_____
Total Direct Labor Costs $_____

Fringe Benefits	Rate	Total
	_____%	$_____

Total Fringe Benefits $_____

Indirect Costs

Overhead	_____%	$_____
General and Administrative	_____%	$_____

Total Indirect Costs $_____

FEE (Profit) $_____

OTHER COSTS

Travel Costs	$_____
Equipment and Supplies (Itemize)	$_____
Other Direct Costs (Itemize)	$_____

Total Other Costs $_____

Subcontractor Costs (attach detailed cost estimate for each subcontractor) $_____

TOTAL COST $_____

SAMPLE COST PROPOSAL (EXAMPLE #2)

	Fringe Benefit %		Overhead %		General Administration %		Combined %
NORMAL		+		+		=	
OVERTIME		+		+		=	

FEE %

BILLING INFORMATION — CALCULATION INFORMATION

Name/Classification[1]	Hourly Billing Rates			Effective date of hourly rate		Actual/ average hourly rate[2]	% or $ increase	Hourly range for class
	Straight	OT(1.5x)	OT(2x)	From	To			

1. Names and classifications of team members at a level of _____ must be listed. FOR ALL OTHER EMPLOYEES USE CLASSIFICATIONS ONLY.

2. For named employees enter the actual hourly rate. For classifications only, list the average hourly rate for that classification.

EXHIBIT 10-I Notice to Bidders/Proposers Disadvantaged Business Enterprise Information

LOCAL AGENCY LETTERHEAD
(DATE)

NOTICE TO BIDDERS/PROPOSERS
DISADVANTAGED BUSINESS ENTERPRISE INFORMATION

1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "bidder" also means "proposer" or "offerer."
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements 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 Contractor should 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 bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

B. Bidders/Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

A "Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information" form will be included in the Agreement documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the bidder'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 contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. 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.

D. 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.

E. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.

F. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

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. Bidder/Proposer may call (916) 440-0539 for web or download assistance.

B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: http://www.dot.ca.gov/hq/bep/.

- Click on the link in the left menu titled Find a Certified Firm
- Click on Query Form link, located in the first sentence
- Click on Certified DBE's (UCP) located on the first line in the center of the page
- Click on Click To Access DBE Query Form
- Searches can be performed by one or more criteria
- Follow instructions on the screen
- "Start Search," "Requery," "Civil Rights Home," and "Caltrans Home" links are located at the bottom of the query form

C. How to Obtain a List of Certified DBEs without Internet Access

DBE Directory: If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

6. WHEN REPORTING DBE PARTICIPATION, MATERIAL OR SUPPLIES PURCHASED FROM DBES MAY COUNT AS FOLLOWS:

A. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent of the cost of the materials or supplies will count toward the DBE participation. 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 Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies toward DBE participation. 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 Agreement 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.

7. WHEN REPORTING DBE PARTICIPATION, PARTICIPATION OF DBE TRUCKING COMPANIES MAY COUNT AS FOLLOWS:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

EXHIBIT 10-J STANDARD AGREEEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION

STANDARD AGREEEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION

1. Subcontractors

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

B. Any subcontract in excess of $25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.

C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the Agency.

D. Any substitution of subcontractors must be approved in writing by the Agency’s Contract Manager in advance of assigning work to a substitute subcontractor.

2. Disadvantaged Business Enterprise (DBE) Participation

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

B. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

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

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3. Performance of DBE Contractors and other DBE Subcontractors/Suppliers

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

B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

5. Prompt Payment of Funds Withheld to Subcontractors

(Local agency to use either A,B, or C below; delete the other two.)

A. No retainage will be withheld by the Agency from progress payments due the prime contractor. Retainage by the prime contractor or subcontractors is prohibited, and no retainage will be held by the prime contractor from progress due subcontractors. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor or deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

B. No retainage will be held by the Agency from progress payments due the prime contractor. Any retainage held by the prime contractors or subcontractors from progress payments due subcontractors shall be promptly paid in full to subcontractors within 30 days after the subcontractor's work is satisfactorily completed. Federal law (49CFR26.29) 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 contractor or subcontractor 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 Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

C. The Agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30-days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor 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 contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

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

6. DBE Records

A. The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM-2402F (Exhibit 17-F in Chapter 17 of the LAP), certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 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 the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)"is submitted to the Contract Manager.

1) Prior to the fifteenth of each month, the Contractor shall submit documentation to the Agency's Contract Manager showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Agency's Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

(2) The Contractor shall also submit to the Agency's Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans"Monthly DBE Trucking Verification, CEM-2404(F) form provided to the Contractor by the Agency's Contract Manager.

7. DBE Certification and De-certification Status

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

When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:

A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. 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 Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. 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 Agreement, 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.

(Add the following to contracts which require trucking)

When Reporting DBE Participation, Participation of DBE trucking companies may count as follows:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.

B. The DBE must itself own and operate at least one fully licensed, insure, and operational truck used on the Agreement.

C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

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Exhibit 10-K Audit Disposition

AUDIT DISPOSITION

Date:_____

Agency Name: _____

Federal Project Number: _____

To document the disposition of the required pre-award (pre-negotiation) audit prescribed in 23 CFR 172, this form shall be completed for each consultant contract with participating state or federal-aid highway funds exceeding $250,000 and each contract under $250,000, where the consultant was previously identified as a "high-risk" recipient as described in 49 CFR Part 18.12.

(Check appropriate box)

Caltrans Performs Pre-award Audit

☐ Caltrans' Audits and Investigations performed the pre-award audit and informed the local agency of its findings. The local agency resolved any outstanding issues and found the consultant satisfactory.

Local Agency (or hired CPA) Performs Pre-award Audit

☐ Pre-award audit completed. Consultant found satisfactory.

☐ A courtesy copy of the completed pre-award audit was mailed to Caltrans' Audits and Investigations on (date).

_____
Signature of local agency financial/auditing officer

Title:_____

Distribution: 1) Caltrans, Audits and Investigations (original), DLAE, local agency project files
2) Project Files

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Exhibit 10-L Pre-Award Audit Notification Letter

PRE-AWARD AUDIT NOTIFICATION LETTER

Local Agency Letterhead

To: (External Audit Manager Name)
External Audit Manager
Caltrans, Audits & Investigations, MS 2
P.O. Box 942874
Sacramento, CA 94274-0001

Date:
Federal Number:
Project Description:

Dear (External Audit Manager Name):

We are executing the pre-award audit and have contracted with the CPA firm of _____ to perform the work. The audit will be conducted following Generally Accepted Government Auditing Standards. The audit procedures that the firm will be following are:

List or identify procedures ("Standard Audit Program Procedures," Exhibit 10-M in this chapter).

At the end of the pre-award audit, a copy of the audit report will be forwarded to your offices for review. Should you have any questions, please call (Telephone Number).

Sincerely,

Local Representative Name_____
Title_____
Agency_____

Attachments: Proposed Contract
Draft Cost Proposal(s)

cc: DLAE

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Exhibit 10-M Standard Audit Program Procedures

Pre-Award Audit
(Name of Contractor)
Sample-Audit Program

W/P No:_____
Audit No:_____
Contract No:_____
Auditor:_____
Reviewer:_____

ITEM No.		Auditor Init/date	WorkPaper Ref.
1	***PURPOSE*** The purpose of a pre-award evaluation is to provide the approving authority with professional advice on accounting and financial matters and to assist in the award and administration of proposed consultant contracts. It also alerts both the consultant and the approving authority to potential problems relative to the Consultant's basic agreement, cost/price proposal, procurement procedures, or cost accounting system.		
11	***SCOPE*** The examination shall include reviews of applicable laws and regulation, contract requirements, and Contractor's system of internal control. Audit tests of accounting records and such other auditing procedures considered necessary to meet the objectives will be conducted. Applications of audit procedures will be governed by the individual contract under audit.		
111	***STANDARDS*** The audit is to be conducted in accordance with generally accepted governmental auditing standards.		
1V	***APPLICABLE RULES AND REGULATIONS*** 1. Contract Provisions 2. CFR 48, Part 31-Federal Cost Eligibility 3. CFR 49, Part 18-Uniform Administrative Requirements		
V	***OBJECTIVES*** 1. To determine if the consultant agreement specifically provides for the following: • specific performance period • three-year record retention period and right to audit. • method of payment. • references to cost principles set forth in CFR 48, Chapter 1, Part 31 for allowability of individual items of cost; CFR 49, Part 18, for administrative procedures; and OMB Circular 1-110, for nonprofit subrecipients. 2. To determine if the Consultant's cost proposal contains a breakdown of the estimate for performing the work, and that the proposed costs are reasonable in relation to actual historic costs and estimating procedures. 3. To determine if the Consultant's cost accounting system is capable of accumulating and reasonable allocable, and allowable costs		

V1	***PRELIMINARY AUDITS STEPS*** 1. Review the proposed contract. a. Document your review and note any exceptions needed to be included on the audit report. 2. Review the permanent file. a. Ascertain the nature, timing, and extent of the last internal control and accounting system review 3. Review the cost proposal a. Determine if the Consultant's cost/price proposal contains a breakdown of the estimate for performing the work. b. Foot and extend cost data. a. Obtain missing cost proposal information, if necessary. b. Compare data with permanent file. Obtain updated cost information if necessary c. Comment on usual amounts unfavorable trends or differences between current and past costs d. Recalculate cost proposal in consideration of any audit exceptions 4. Determine scope of audit. a. Omit step 2 (field work) if: - a recent audit found the accounting system adequate, and the accounting system is adequate to accumulate and segregate additional contract costs b. If the accounting system has not recently been reviewed or does not appear to be able to take on additional contract costs discuss the nature timing and extent of audit procedures with superior 5. Prepare preliminary Audit Plan and Time Budget 6. Contact the Contract Administrator to inform him/her of the following: - Scheduled date of field work - Tentative completion date - Any anticipated problems etc additional contract costs. **Note**: The Contract Administrator should be kept abreast of all pertinent audit issues. Any problems in obtaining necessary information, etc., should be discussed with him/her immediately and documented in the work papers.		
V11	***AUDIT STEPS-FIELD WORK*** 1. Contact the Contractor and arrange a date for the audit. a. Inform the Contractor of the type of information, records, personnel needed, and arrange for work space. b. Request that the Contractor prepare schedules of the calculations of all billing rates such as overhead, fringe benefits, in-house direct cost billing rates, and any other rates used in billing. If possible, have these schedules sent to the auditor for review before the date of field work. c. Inquire whether the Contractor has been audited within the previous year by the DCAA or similar federal agencies, or has had an independent CPA review overhead, internal controls, or project costing systems. If so, obtain a copy of the audit report and/or review working papers for consideration when evaluating internal controls, overhead rates, etc.		

	- Prepare and send engagement letter to the Contractor to confirm the above discussion. Send a copy of the letter to the Contract Administrator. 2. Conduct an entrance conference with the Consultant to ensure coverage of the following: • Purpose, scope and objective of the pre-award evaluation. • Anticipated timeframe of audit fieldwork. • Whether the Consultant is familiar with CFR 48, Chapter 1, Part 31. If not, Consultant can obtain a copy of these regulations at: http://www.access.gpo.gov/nara/cfr/waisidx_05/48cfr31_05.html. • Intention to keep Consultant updated on audit progress, and to discuss all audit exceptions prior to issuance of an audit report. • Documentation of the entrance conference in the work papers.		
V111	***CONTROL STRUCTURE SURVEY*** 1. Review and evaluate the Contractor's internal control structure. a. Prepare or update a written narrative, flowchart and/or completed internal control questionnaire which adequately describes the accounting system including significant internal controls over contract costs, in order to adequately plan the audit and test the various applications. This understanding should include knowledge of the Contractor's control environment, accounting system and control procedures. Generally, the relevant policies and procedures pertain to a Contratcor's ability to record, process, summarize, and report contract and financial information ;and to ensure compliance with applicable laws and regulations. b. Selectively examine (test) the accounting records and underlying source documents only to the extent necessary; to determine if the system has the ability to accumulate and segregate reasonable, allocable, and allowable costs through the use of a cost accounting system. The following are some of the attributes which should ideally be found in such a system: • Chart of accounts (direct and indirect accounts). • Segregation of costs by contract, category of cost and milestone (if applicable). • Proper recording of direct and indirect costs. For example, separate accounts should be used for direct labor, indirect labor, vacation, holiday, sick leave,etc. • Consistent accounting treatment of costs in recording and reporting. • Ability to trace from invoices billed to job cost records and original, approved source documents to the general ledger. 2. Prepare a summary of the internal control structure and cost accounting system. The summary should include or reference to a control risk assessment and a finalized Audit Planning document. 3. Evaluation of cost/price data. a. Obtain source documents and/or other criteria used to establish the cost/price proposal.		

	4. Evaluate the propriety of direct labor costs. a. Select a representative sample of employee timesheets (cards) and test the hourly extension. b. Trace hours to the payroll journal and compare hourly rates paid to the rates submitted with the cost/price proposal. c. If applicable, compare proposed direct labor rates to prevaililng wage and union labor rates. d. If overtime is proposed, does the Consultant have procedures to ensure and document equitable overtime charges to government and nongovernment contracts? e. Prepare a labor rate analysis and comment on variances. 5. Analyze indirect cost rates (fringe benefits, overhead, general and administrative). a. Request written verification of an approved overhead rate, if available (DCAA or other qualified entity). b. Obtain a written breakdown /schedule of costs included in the rates. • Trace the indirect rate schedule to the general ledger. • Scan the indirect cost accounts in the general ledger for unallowable costs. • Test the Consultant's proposed rate, by comparing the individual items of cost for allowability and fair presentation with CFR 48, Chapter 1, Part 31. c. Schedule all disallowed costs. d. Recalculate the overhead rate and comment on variances. 6. Evaluate the propriety of other direct costs (materials, transportation, equipment, per diem, etc.) and Subcontrators. a. Determine the methods used to establish the cost of materials, transportation, and per diems, etc. b. Compare proposed rates, or costs with prevailing rates, or past experiences. c. Determine if direct costs are independent from the indirect cost pool. d. Schedule all costs which do not appear to meet the criteria established in CFR 48, Chapter 1, Subpart 31.2. 7. Evaluate the proposed fixed fee. As field work progresses, keep the Controller or other contact person aware of the findings or problems, as they arise. Resolve the matters if possible. Document these conversations in the work papers. 8. Evaluate the Contractor's financial capability – Ratio Analysis. 9. Prior to completion of field work, discuss all exceptions with the consultant ensuring coverage of: • scope and objectives of the pre-award audit • the condition, criteria, cause, effect, and recommendation for each exception noted.		

	. • Caltrans' review process and reporting procedures. • any questions, the Consultant may have. 10. Obtain a management representation letter.		
IX	***COMPLETION*** 1. Complete work papers to assure that they are properly headed, indexed, signed, dated, and cross-referenced. In addition, each work paper should include, or be reference to, a statement of purpose, source, analysis and conclusion. 2. Prepare an audit summary which documents the purpose, objectives, procedures, results/conclusions and recommendations. 3. Cross-reference all exceptions to the appropriate papers. 4. Prepare draft audit report. 5. If necessary, schedule a closeout conference with the Consultant to discuss any exceptions not discussed, or resolved as of completion of fieldwork. Also, if material findings are identified, the Contract Administrator should also be contacted. Document these conversation/conferences. 6. Complete audit assignment card. 7. Update the permanent file. 8. Submit completed work papers and draft audit report to supervisor for final review. 9. Prepare final report and distribute as follows: • Original – Requester • If Requester is headquarters, then: 1 copy- Headquarters Contract Office • If Requester is District, then: 1 copy - District Contract Officer or District Consultant Services or DLAE • 1 copy - Audit file (Section B) • 1 copy - Chronological File (Audit Reports Binder) • 1 copy - P# File (Audit Reports Binder) • 1 copy -Audit Office • 1 copy – Supervisor **Note:** A "cc" notation is needed on the final report for reports distributed outside of the Audits Office.		

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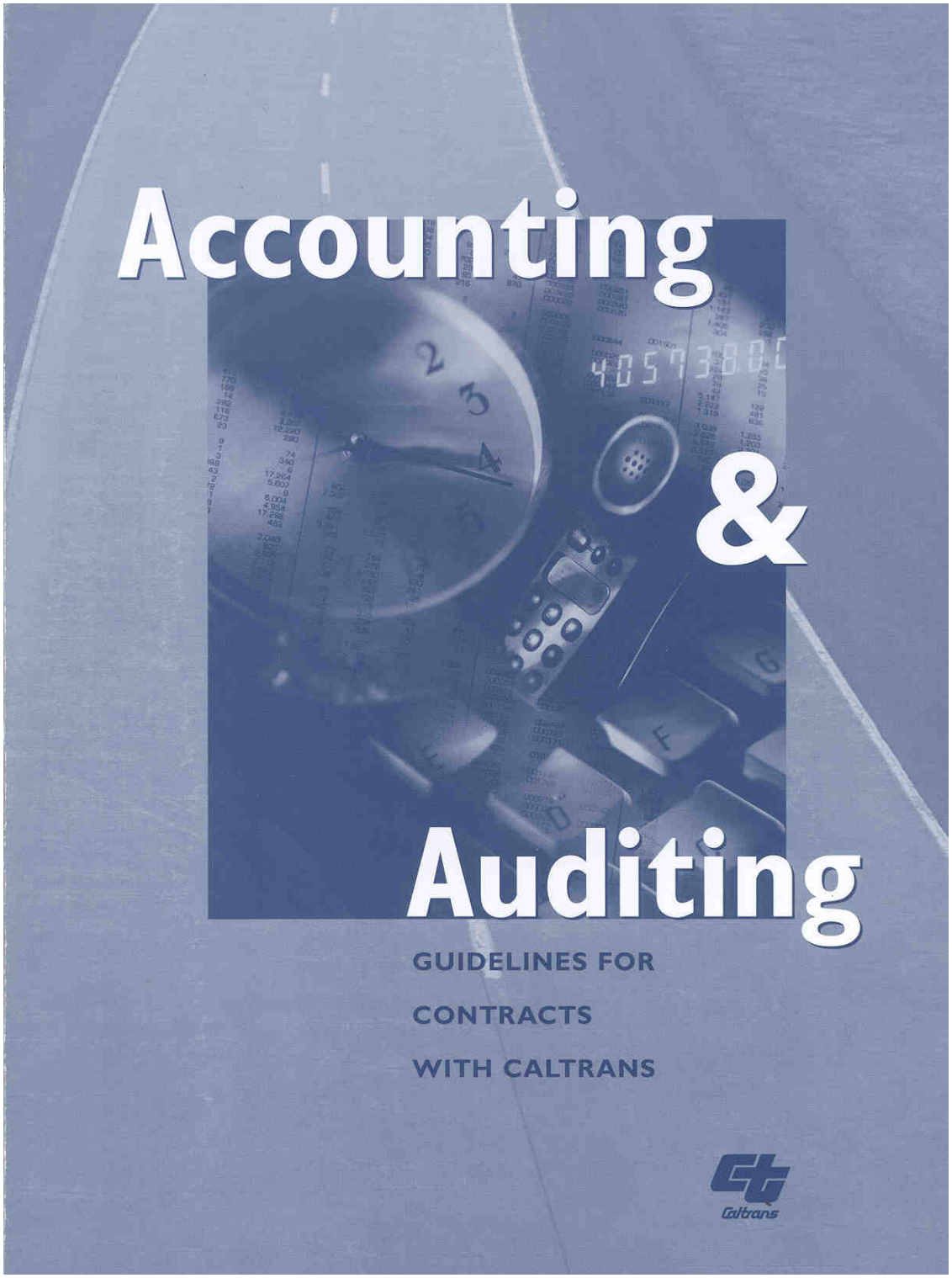
Exhibit 10-N Accounting & Auditing Guidelines for Contracts with Caltrans



INTRODUCTION

The purpose of this brochure is to outline for you, a potential contractor with the California State Department of Transportation (Caltrans), the basic elements of an adequate accounting system, and the types and objectives of audits that will be performed in relation to your contract. In order to successfully compete for a contract and meet the audit requirements, a contractor (whether a prime or subcontractor) must have a system of record keeping and internal control. Although a specific cost accounting system is not required, a contractor needs a system which will assure compliance with the terms of the agreement. A preaward audit will be preformed to assure you meet these requirements prior to contract execution. If your system is deficient, the contract will not be executed.

Caltrans reimburses, through your overhead rate, the costs attributable to establishing and maintaining a cost accounting system.

Staff time and other costs related to an audit performed of your contract are normally reimbursed through your overhead rate.

ACCOUNTING SYSTEM

Contractors (whether a prime or subcontractor) planning to contract with Caltrans must have an accounting system which meets the following objectives:

- The ability to record and report financial data in accordance with generally accepted accounting principles.
- A system of record keeping to ensure that costs billed to Caltrans are:
  - **a.** Supported by adequate documentation.
  - **b.** In compliance with the terms of the contract and applicable Federal and State regulations specified in the contract.
- A system of record keeping ideally includes the following:
  - **a. General ledger**
  - **b. Job cost ledger**
  - **c. Labor distributions**
  - **d. Time records**
  - **e. Subsidiary journals**
  - **f. Chart of accounts**
  - **g. Financial statements**
- The ability to accumulate and segregate reasonable, allocable (incurred solely for a project) and allowable (per terms of the contract) costs through the use of a cost accounting system. The following are some of the attributes which would ideally be found in such a system:
  - **a.** A chart of accounts which includes indirect and direct general ledger accounts. Indirect costs are not specifically identified to a project, for example, rent and/or utilities. Direct costs are specifically identified with a project, for example, drafting hours and/or design hours.
  - **b.** Segregation of costs by contract, category of cost and milestones (if applicable).
  - **c.** Proper recording of direct and indirect costs. For example, recording of labor costs should provide that non-project indirect hours be recorded on a time sheet and in the accounting records to an administration, vacation, sick leave or other indirect cost account/code. Direct project hours should be recorded on a time sheet and in the accounting records to a direct project cost account/code.

d. Consistent accounting treatment of costs in recording and reporting. For example, if travel expense is charged directly to a project, all travel expense incurred on any project should be considered a direct costs. As a result, project-related travel, whether reimbursable per the contract terms or not, should be included as a direct cost.

e. Ability to trace from invoices submitted to Caltrans to job cost records and original, approved source documents, for example, time sheets, vendor invoices, cancelled checks.

f. Ability to reconcile job cost records to the accounting records.

- Compliance with cost principles described in the Code of Federal Regulations 48, Federal Acquisition Regulations System (FAR), Chapter 1, Part 31. Information on how to obtain this regulation is described under "Audit Criteria" on the following page.
- Procedures to monitor and adjust projected overhead rates to actual rates.
- Controls to ensure that written approval is obtained prior to any changes to the contract.
- Procedures to retain accounting records and source documentation as required by the terms of the contract.
- A system of internal control which provides reasonable assurance that assets are protected; financial data, records and statements are reliable; and errors and irregularities are promptly discovered, reported and corrected. The elements of a system of internal control should include, but not be limited to, the following:

a. Separation of duties for proper protection of assets. Incompatible duties are those that place any person in a position to both perpetrate and conceal errors or irregularities in the normal course of business. For example, the person who writes checks should be different from the person who reconciles bank statements and the person who purchases goods should be different from the person who receives goods.

b. Limiting access to assets to only authorized personnel who require these assets in the performance of their assigned duties. For example, blank check stock should be locked in a safe when not in use.

c. Authorization and record keeping procedures which provide effective accounting control over assets, liabilities, revenues, and expenditures.

d. A system of practices to be followed in the performance of duties and functions. Such a system normally includes policies and procedures which establish the purpose and requirements of the accounting system. For example, timekeeping practices should ideally provide for the following:

- Time sheets be prepared, signed and dated by all employees.
- Time sheets be completed in non-erasable ink.
- Time sheet corrections be crossed out and initialed by the employee.
- Time sheets be signed by a supervisor as reviewed and retained on file as required by the contract.

e. Personnel with skills and training commensurate with their responsibilities.

f. A system of internal review. For example, bank reconciliations and travel expense claims should be reviewed, approved, and signed by a supervisor.

AUDITS

Contractors, whether a prime or subcontractor, performing under a negotiated contract with Caltrans are subject to the following audits.

- **Preaward Audits:** Prior to the award of a contract, Caltrans Audits and Investigations will conduct a preaward audit to determine if the contractor's accounting system is adequate to accumulate and segregate costs as detailed in the previous section and to determine if the proposed costs are reasonable. The audit alerts both the contractor and Caltrans management to problems relative to the contractor's cost proposal and cost accounting system. Due to time constraints in the award process, your cooperation in scheduling the preaward audit with short notice will expedite the execution of your contract.
- **Interim Audits:** Interim audits are performed on an as needed basis. During the preaward audit, if it is determined that the contractor's accounting system is new or minor deficiencies are noted, an interim audit is scheduled to determine that the system is functioning adequately to ensure that billed costs are supported and that any deficiencies were corrected. An interim audit may be requested by the contract administrator or by Caltrans management to address concerns during the course of the contract. Also, an audit manager may initiate an interim audit of a multi-year contract to ensure that costs reimbursed to date are allowable.
- **Post Audits:** Post audits of contracts are performed routinely after project completion. Post audits are performed to determine whether the costs claimed are allowable, allocable, reasonable, and in compliance with the Federal and State laws and regulations as well as the fiscal provisions stipulated in the contract. The examination includes reviews of applicable laws and regulations, the contract requirements and the contractor's internal control system. Audit tests of the contractor's accounting records and other auditing procedures considered necessary will also be performed. Applications of all audit procedures would also be governed by the individual contract under audit. Unsupported or unallowable costs are normally the result of weaknesses in the accounting system and will be reimbursed to Caltrans.

To provide contractors with a procedure for obtaining prompt and equitable resolution to a dispute arising from a post audit of a non-highway construction cost reimbursement contract, Caltrans has established an Audit Review Committee (ARC). Information explaining the ARC should be found in your contract and/or as an attachment to the post audit report.

AUDIT CRITERIA

For specific information regarding basic cost accounting systems and applicable State and Federal regulations, please see the following:

- **Code of Federal Regulations 48, Federal Acquisition Regulations System, Chapter 1, Part 31:** This regulation contains cost principles and procedures for the pricing of contracts/subcontracts and the determination, negotiation, or allowance of costs. Contact:

  Superintendent of Documents
  Government Printing Office
  Washington, DC 20402

  Washington, D.C. (202) 512-1800
  San Francisco (415) 512-2770
  Los Angeles (213) 239-9844

- **California State Administrative Manual:** A reference source for statewide policies, procedures, regulations and information. Contact:

  Office of State Publishing,
  Department of General Services.
  Call for order form: (916) 445-2295.

For review of the above references, contact your local library or the California State Library.

California State Library
Library and Courts Building
914 Capitol Mall, P.O. Box 942837
Sacramento, CA 94237-0001

Information: (916) 654-0261

For assistance in establishing an accounting system which will meet the objectives outlined in this brochure, you should contact an accountant and/or bookkeeper who is familiar with cost accounting systems.

Caltrans is an affirmative action employer. Equal opportunity is offered to all regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, age or sexual orientation. Contractors that contract with Caltrans are responsible for taking necessary and reasonable steps to achieve these same goals.

Exhibit 10-O Local Agency Proposer/Bidder-DBE (Consultant Contract) Information

Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information

This information shall be provided by the successful Proposer/Bidder with the award document.
.

☐**Preliminary Engr.** ☐ **Studies** ☐**Environmental Document** ☐**Prelim Design**

☐**Final Design Right of Way** ☐**Right of Way Engineering** ☐**Right of Way Utility Relocation**

☐**Construction** ☐**Constructiion Engineering** ☐**Construction Management**

AGENCY:_____ LOCATION:_____
PROJECT DESCRIPTION: _____
CONTRACT NUMBER:_____
FEDERAL-AID PROJECT NUMBER: _____
TOTAL CONTRACT AMOUNT: $_____
FEDERAL SHARE (For local agency to complete) : $_____
PROPOSAL/BID DATE: _____
PROPOSER'S/BIDDER'S NAME:_____

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED [2]	DBE Cert. No. AND EXPIRATION DATE	NAME OF DBEs [1] (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE

IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Copies of the DBE quotes are helpful. Names of the First-Tier DBE Subcontractors and their respective item(s) of work listed above shall be consistent with the names and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions.

1. Enter DBE prime and subcontractors certification number. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own DBE forces.

2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE.

Total Claimed Participation $_____ _____%

_____
Signature of Proposer/Bidder

_____
Date (Area Code) Tel. No.

_____
Person to Contact (Please Type or Print)

CT Bidder - DBE Information (Rev 4/28/06)

Distribution: (1) Copy - Fax immediately to the Caltrans District Local Assistance Engineer (DLAE) upon award.
(2) Copy - Include in award package to Caltrans District Local Assistance
(3) Original - Local Agency files

INSTRUCTIONS - LOCAL AGENCY PROPOSER/BIDDER-DBE (CONSULTANT CONTRACTS) INFORMATION FORM (Revised 10/05)

The form requires specific information regarding the consultant contract: Agency, Location, Project Descriptions, Contract Number (assigned by local agency), Federal Aid Project Number (assigned by Caltrans Local Assistance), Total Dollar Contract Amount, Proposal/Bid Date, and Proposer's/Bidder's Name.

The form has a column for the Contract Item Number (or Item No's) and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. The DBE should provide a certification number to the Contractor. Notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (include DBE address and phone number).

There is a column for the total DBE dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your proposal/bid pursuant to the Contract Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.)

Exhibit 10-O must be signed and dated by the person proposing/bidding. Also list a phone number in the space provided and print the name of the person to contact.

Exhibit 10-P Nonlobbying Certification For Federal-Aid Contracts

NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

(l) 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 or her bid or proposal 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 subrecipients shall certify and disclose accordingly.

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Exhibit 10-Q Disclosure of Lobbying Activities

DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action:

☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:

☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:

☐ a. initial
b. material change

For Material Change Only:
year_____ quarter_____
date of last report _____

4. Name and Address of Reporting Entity

☐ Prime ☐ Subawardee
Tier _____, if known

Congressional District, if known

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, if known

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable_____

8. Federal Action Number, if known:

9. Award Amount, if known:

10. a. Name and Address of Lobby Entity
(If individual, last name, first name, MI)

b. Individuals Performing Services (including address if different from No. 10a)
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

11. Amount of Payment (check all that apply)

$ _____ ☐ actual ☐ planned

12. Form of Payment (check all that apply):

☐ a. cash
☐ b. in-kind; specify: nature_____
value _____

13. Type of Payment (check all that apply)

☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e deferred
☐ f. other, specify _____

14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) if necessary)

15. Continuation Sheet(s) attached: Yes ☐ **No** ☐

16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Authorized for Local Reproduction

Standard Form - LLL

Federal Use Only:

Standard Form LLL Rev. 04-28-06

INSTRUCTIONS FOR COMPLETION OF SF-LLL, 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 and/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. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in Item 4. to influenced the covered federal action.
    (b) 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 (Ml).
11. 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.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. 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.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, 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. 06-04-90«ENDIF»

Exhibit 10-R A &E Sample Contract Language

(NOTE TO LOCAL AGENCY - BE SURE THAT YOUR LEGAL STAFF REVIEWS AND APPROVES ALL CONSULTANT CONTRACTS BEFORE EXECUTION. THIS CONTRACT LANGUAGE IS ONLY SUGGESTED LANGUAGE. MODIFY AS RECOMMENDED BY YOUR OWN LEGAL STAFF AND TO FIT YOUR PARTICULAR REQUIREMENTS AND PROJECT.)

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A&E SAMPLE CONTRACT LANGUAGE

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ARTICLE I INTRODUCTION

A. This contract is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the CONSULTANT is as follows:

_____

Incorporated in the State of (*NAME OF STATE*)
The Project Manager for the "CONSULTANT" will be *(NAME)*
The name of the "LOCAL AGENCY" is as follows:

_____

The Contract Manager for the LOCAL AGENCY will be (NAME)

B. The work to be performed under this contract is described in Article II entitled Statement of Work and the approved CONSULTANT's Cost Proposal dated *(DATE)*. The approved CONSULTANT's Cost Proposal is attached hereto (Attachment I) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.

C. The CONSULTANT agrees to indemnify and hold harmless the LOCAL AGENCY, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of the CONSULTANT. The CONSULTANT will reimburse the LOCAL AGENCY for any expenditure, including reasonable attorney fees, incurred by the LOCAL AGENCY in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of the CONSULTANT.

D. The CONSULTANT and the agents and employees of CONSULTANT, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the LOCAL AGENCY.

E. The LOCAL AGENCY may terminate this agreement 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, the LOCAL AGENCY may proceed with the work in any manner deemed proper by the LOCAL AGENCY. If the LOCAL AGENCY terminates this agreement with the CONSULTANT, LOCAL AGENCY shall pay CONSULTANT the sum due the CONSULTANT under this agreement prior to termination, unless the cost of completion to the LOCAL AGENCY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due the CONSULTANT under this agreement and the balance, if any, shall be paid the CONSULTANT upon demand.

F. Without the written consent of the LOCAL AGENCY, this agreement is not assignable by CONSULTANT either in whole or in part.

G. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

H. The consideration to be paid CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II STATEMENT OF WORK

(*INSERT APPROPRIATE STATEMENT OF WORK INCLUDING A DESCRIPTION OF THE DELIVERABLES*)

A Consultant Services

Detail based on the services to be furnished by the CONSULTANT. Nature and extent verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Include reference to the appropriate standards for design or other standards for work performance stipulated in the CONSULTANT agreement. Describe acceptance criteria, and if the responsible CONSULTANT/engineer shall sign all plans, specifications, and estimates (PS&E) and engineering data furnished under the contract including registration number. Environmental documents are not considered complete until final FHWA approval. A signed Categorical Exclusion (CE), Finding of No Significant Impact (FONSI) , or published Record of Decision (ROD) is to be approved or completed by FHWA (see Chapter 6, *Environmental Procedures* and the *Standard Environmental Reference* [SER]).

B Right of Way

State whether Right of Way requirements are to be determined and shown by the CONSULTANT, whether land surveys and computations with metes and bounds descriptions are to be made, and whether Right of Way plots are to be furnished.

C Subsurface Investigations

State specifically whether or not the CONSULTANT has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of the CONSULTANT, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in the SER.

D Local Agency Obligations

All data applicable to the project and in possession of the LOCAL AGENCY or another agency, or government that are to be made available to the CONSULTANT are referred to in the agreement. Any other assistance or services to be furnished to the CONSULTANT are to be stated clearly.

E Conferences, Visits to Site, Inspection of Work

The agreement provides for conferences as needed, visits to the site, and inspection of the work by representatives of the state, or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

F Checking Shop Drawings

For agreements requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by the CONSULTANT may be included in the contract fee, or provision may be made for separate payment.

G Documentation

Agreements where appropriate, shall provide that the CONSULTANT document the results of the work to the satisfaction of the LOCAL AGENCY, and if applicable, the state and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the agreement objectives.

H Number of Copies

The number of copies of papers or documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way plots are specified. Provision may be made for payment for additional copies.

ARTICLE III CONSULTANT'S REPORTS AND/OR MEETINGS

(Choose either Option 1 or Option 2.)

(Option 1 - Use paragraphs A & B below for standard contracts.)

A. The CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Manager to determine, if the CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

B. The CONSULTANT's Project Manager shall meet with the LOCAL AGENCY's Contract Manager, as needed, to discuss progress on the contract.

(Option 2 - Use paragraphs A & B below for on-call contracts.)

A. The CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY's Contract Manager and/or Project Coordinator to determine, if the CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

B. The CONSULTANT's Project Manager shall meet with the LOCAL AGENCY's Contract Manager or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE IV PERFORMANCE PERIOD

(A time must be set for beginning and ending the work under the agreement. Usually, the beginning date is a given number of days after a letter of notification has been sent to the CONSULTANT. 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 agreement. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by the CONSULTANT, they should be identified and incorporated into the contract.

(Choose either Option 1 or Option 2.)

(Option 1 - Use paragraphs A & B below for standard and on-call contracts.)

A. This contract shall go into effect on (DATE), contingent upon approval by the LOCAL AGENCY, and the CONSULTANT shall commence work after notification to proceed by the LOCAL AGENCY'S Contract Manager. The contract shall end on (DATE), unless extended by contract amendment.

B. The CONSULTANT is advised that any recommendation for contract award is not binding on the LOCAL AGENCY until the contract is fully executed and approved by the LOCAL AGENCY.

(Option 2 - Use paragraph C below in addition to paragraphs A & B above for on-call contracts.)

C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this contract, the terms of the contract may be extended by contract amendment.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

(Choose either Option 1, 2, 3, or 4.)

(Option 1 - Use paragraphs A through G below for standard contracts.)

A. The method of payment for this contract will be based on actual cost-plus-a-fixed fee. The LOCAL AGENCY will reimburse the CONSULTANT for actual costs (including labor costs, employee benefits,

travel, equipment rental costs, overhead and other direct costs) incurred by the CONSULTANT in performance of the work. The 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 the CONSULTANT be reimbursed for overhead costs at a rate that exceeds the LOCAL AGENCY's approved overhead rate set forth in the Cost Proposal. In the event, that the LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and contract is required, the contract time and/or actual costs reimbursable by the LOCAL AGENCY 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, the LOCAL AGENCY will pay the CONSULTANT a fixed fee of $(AMOUNT). 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, the CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Manager 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 the 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, the LOCAL AGENCY shall have the right to delay payment and/or terminate this Agreement 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. The CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the LOCAL AGENCY's Contract Manager of itemized invoices in triplicate. Invoices shall be submitted no later than 45-calendar days after the performance of work for which the 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 the LOCAL AGENCY including any equipment purchased under the provisions of Article XVI Equipment Purchase of this contract. The final invoice should be submitted within 60-calendar days after completion of the CONSULTANT's work. Invoices shall be mailed to the LOCAL AGENCY's Contract Manager at the following address:

(*LOCAL AGENCY/NAME OF CONTRACT MANAGER*)
(*ADDRESS*)

H. The total amount payable by the LOCAL AGENCY including the fixed fee shall not exceed $(Amount).

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 the LOCAL AGENCY's Contract Manager.

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.

(*Option 2- When specified rates of payment are to be made for certain items, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and reletter the remaining paragraphs. Adjust as necessary for items specific to your project*.)

A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to the CONSULTANT for the item as described, including but not limited to, any repairs, maintenance or insurance, and no further compensation will be allowed therefore.

B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be $(Amount) per (Insert time period, usually day). This rate shall be for a fully equipped vehicle, with radio and flashing yellow light (if needed), as specified in Article II of this agreement.

The specified rate to be paid for equipment shall be, as listed in Attachment (Insert Attachment Number).

C. The method of payment for this contract, except those items to be paid for on a specified rate basis, will be based on actual cost-plus-a-fixed fee. The LOCAL AGENCY will reimburse the CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by the CONSULTANT in performance of the work. The 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 Cost Proposal, unless additional reimbursement is provided for, by contract amendment. In no event, will the CONSULTANT be reimbursed for overhead costs at a rate that exceeds the LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, the LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and contract is required; the actual costs reimbursable by the LOCAL AGENCY may be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I," shall not be exceeded unless authorized by contract amendment.

D. In addition to the allowable incurred costs and specified rates of payment, the LOCAL AGENCY will pay the CONSULTANT a fixed fee of $(Amount). 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.

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

(Option 3 - Use paragraphs A through L below for on-call contracts.)

A. Specific projects will be assigned to the CONSULTANT through issuance of Task Orders (Attachment II).

B. After a project to be performed under this contract is identified by the LOCAL AGENCY, the LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to the CONSULTANT for review. The CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both the LOCAL AGENCY and the CONSULTANT.

C. The CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANTs Cost Proposal (Attachment Number). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee.

D. In addition, the CONSULTANT will be reimbursed for incurred direct costs other than salary costs, and other costs that are identified in the executed Task Order.

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

F. When milestone cost estimates are included in the approved Cost Proposal, the CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Manager before exceeding such estimate.

G. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.

H. The CONSULTANT shall not commence performance of work or services until this contract has been approved by the LOCAL AGENCY, and notification to proceed has been issued by the LOCAL AGENCY'S Contract Manager. No payment will be made prior to approval or for any work performed prior to approval of this contract.

I. A Task Order is of no force or effect until returned to the LOCAL AGENCY and signed by an authorized representative of the LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by the LOCAL AGENCY.

J. The CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by the LOCAL AGENCY'S Contract Manager of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45-calendar days after the performance of work for which the CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number, project title and Task Order number. Credits due the LOCAL AGENCY that include any equipment purchased under the provisions of Article XVI Equipment Purchase of this contract, must be reimbursed by the Consultant prior to the expiration or termination of this contract. Invoices shall be mailed to the LOCAL AGENCY's Contract Manager at the following address:

(NAME OF LOCAL AGENCY/ NAME OF CONTRACT MANAGER)
(*ADDRESS*)

K. The total amount payable by the LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.

L. The total amount payable by the LOCAL AGENCY for all Task Orders resulting from this contract, shall not exceed $ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through Task Orders.

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

(Option 4 - Use paragraphs A through E below for lump sum contracts.)

A. The method of payment for this contract will be based on lump sum. The total lump sum price paid the consultant will include compensation for all work and deliverables, including travel and equipment described in Article II Statement of Work of this contract. No additional compensation will be paid to the CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between the Consultant and the LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by contract amendment and approved by the LOCAL AGENCY.

B. Progress payments may be made monthly in arrears based on the percentage of work completed by the CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, the LOCAL AGENCY shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions of Article VI Termination.

C. The CONSULTANT shall not commence performance of work or services until this contract has been approved by the LOCAL AGENCY and notification to proceed has been issued by the LOCAL AGENCY'S Contract Manager. No payment will be made prior to approval of any work, or for any work performed prior to approval of this contract.

D. The CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by the LOCAL AGENCY'S Contract Manager of itemized invoices in triplicate. Invoices shall be submitted no later than 45-calendar days after the performance of work for which the CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this contract number and project title. Final invoice must contain the final cost and all credits due the LOCAL AGENCY that include any equipment purchased under the provisions of Article XVI Equipment Purchase of this contract. The final invoice should be submitted within 60-calendar days after completion of the CONSULTANT's work. Invoices shall be mailed to the LOCAL AGENCY's Contract Manager at the following address:

(*LOCAL AGENCY/NAME OF CONTRACT MANAGER*)
(*ADDRESS*)

E. The total amount payable by the LOCAL AGENCY shall not exceed $(Amount).

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

ARTICLE VI TERMINATION

The LOCAL AGENCY reserves the right to terminate this contract upon thirty (30)-calendar days written notice to the CONSULTANT with the reasons for termination stated in the notice.

ARTICLE VII 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 agreement were executed after that determination was made.

B. This agreement is valid and enforceable only, if sufficient funds are made available to the LOCAL AGENCY for the purpose of this contract. In addition, this agreement 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. The LOCAL AGENCY has the option to void the contract under the 30-day cancellation clause, or by mutual agreement to amend the contract to reflect any reduction of funds.

ARTICLE VIII CHANGE IN TERMS

A. This contract may be amended or modified only by mutual written agreement of the parties.

B. The CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the LOCAL AGENCY's Contract Manager.

C. There shall be no change in the CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract without prior written approval by the LOCAL AGENCY's Contract Manager.

ARTICLE IX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

(Use this Article when federal participating funds are used;incorporate Exhibits 10-I and 10-J as required.)

ARTICLE X COST PRINCIPLES

A. The CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

B. The CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to the LOCAL AGENCY.

ARTICLE XI CONTINGENT FEE

The CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the LOCAL AGENCY 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 XII 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; the CONSULTANT, subcontractors, and the LOCAL AGENCY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, the State Auditor, LOCAL AGENCY, FHWA, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the contract for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

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

ARTICLE XIII DISPUTES

(Choose either Option 1 or Option 2.)

(Option 1 - Use paragraphs A through D below for all contracts without PS&E submittal.)

A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the LOCAL AGENCY's Contract Manager and (Insert Department Head or Official), who may consider written or verbal information submitted by the CONSULTANT.

B. Not later than 30 days after completion of all work under the contract, the CONSULTANT may request review by the LOCAL AGENCY GOVERNING BOARD of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

C. Neither the pendency of a dispute, nor its consideration by the committee will excuse the CONSULTANT from full and timely performance in accordance with the terms of this contract.

(Option 2 - Replace Paragraph B, above, with the following for contracts requiring the submission of PS&E.)

B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, the CONSULTANT may request review by the LOCAL AGENCY GOVERNING BOARD of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

ARTICLE XIV AUDIT REVIEW PROCEDURES

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

B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the LOCAL AGENCY'S CHIEF FINANCIAL OFFICER of unresolved audit issues. The request for review will be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by the LOCAL AGENCY will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this contract.

ARTICLE XV SUBCONTRACTING

A. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the LOCAL AGENCY'S Contract Manager, except that, which is expressly identified in the approved Cost Proposal.

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

C. Any substitution of subconcontractors must be approved in writing by the LOCAL AGENCY's Contract Manager.

ARTICLE XVI EQUIPMENT PURCHASE

A. Prior authorization in writing, by the LOCAL AGENCY's Contract Manager shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding $5,000 for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

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

C. Any equipment purchased as a result of this contract is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of $5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the LOCAL AGENCY shall receive a proper refund or credit at the

conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the LOCAL AGENCY 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 LOCAL AGENCY procedures; and credit the LOCAL AGENCY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the LOCAL AGENCY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the LOCAL AGENCY."

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

ARTICLE XVII INSPECTION OF WORK

The CONSULTANT and any subcontractor shall permit the LOCAL AGENCY, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

ARTICLE XVIII SAFETY

(Use on all contracts regardless of funding source)

A. The CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. The CONSULTANT shall comply with safety instructions issued by the LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Section 591 of the Vehicle Code, the LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. The CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

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

(Add to all contracts, which may require trenching of five feet or deeper.)

D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

ARTICLE XIX INSURANCE

(Choose either Option 1 or Option 2.)

(Option 1 - for Contracts with a scope of services that may require the Consultant or subcontractor to work within the operating state or Local Agency Highway Right of Way; where there would be exposure to public traffic or construction Consultan operations.)

A. Prior to commencement of the work described herein, the CONSULTANT shall furnish the LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for the CONSULTANT with a combined single limit (CSL) of not less than one million dollars ($1,000,000) per occurrence.

B. The Certificate of Insurance will provide:

1. That the insurer will not cancel the insured's coverage without 30-days prior written notice to the LOCAL AGENCY.
2. That the LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this contract are concerned.
3. That the LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.

C. The CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, the CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the LOCAL AGENCY. In the event the CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, the LOCAL AGENCY may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

(Option 2 - For Contracts with a scope of services that will not require the Consultant or subconsultant to work within the operating State or LOCAL AGENCY Highway Right of Way where there would be exposure to public traffic or construction Consultant operations.)

The CONSULTANT is not required to show evidence of general comprehensive liability insurance.

ARTICLE XX OWNERSHIP OF DATA

A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in the LOCAL AGENCY; and no further agreement will be necessary to transfer ownership to the LOCAL AGENCY. The CONSULTANT shall furnish the LOCAL AGENCY all necessary copies of data needed to complete the review and approval process.

B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.

C. The CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the LOCAL AGENCY of the machine-readable information and data provided by the CONSULTANT under this agreement; further, the CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by the LOCAL AGENCY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by the CONSULTANT.

D. Applicable patent rights provisions described in 41 CFR 1-91, regarding rights to inventions shall be included in the Agreements as appropriate.

E. The CONSULTANT is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the LOCAL AGENCY of the machine readable information and data provided by the CONSULTANT under this agreement; further, the CONSULTANT is not liable for claims, liabilities or losses arising out of, or connected with, any use by the LOCAL AGENCY of the project documentation on other projects; for additions to this project, or for the completion of this project by others, except only such use as may be authorized, in writing, by the CONSULTANT.

F. The LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

G. 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 XXI CLAIMS FILED BY LOCAL AGENCY's CONSTRUCTION CONTRACTOR

A. If claims are filed by the LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from the CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with the LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. CONSULTANT's personnel that the LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the CONSULTANT's personnel services under this agreement.

C. Services of the CONSULTANT's personnel in connection with the LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this agreement in order to finally resolve the claims.

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

ARTICLE XXII CONFIDENTIALITY OF DATA

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

B. Permission to disclose information on one occasion, or public hearing held by the LOCAL AGENCY relating to the contract, shall not authorize the CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

C. The CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the LOCAL AGENCY's actions on the same, except to the LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

D. The CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the LOCAL AGENCY, and receipt of the LOCAL AGENCY'S written permission.

E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

(For PS&E contracts add paragraph F, below, to paragraphs A through E, above.)

F. All information related to the construction estimate is confidential, and shall not be disclosed by the CONSULTANT to any entity other than the LOCAL AGENCY.

ARTICLE XXIII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

ARTICLE XXIV EVALUATION OF CONSULTANT

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

ARTICLE XXV STATEMENT OF COMPLIANCE

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

ARTICLE XXVI DEBARMENT AND SUSPENSION CERTIFICATION

A. The CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the LOCAL AGENCY.

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.

ARTICLE XXVII STATE PREVAILING WAGE RATES

(Choose either Option 1 or Option 2.)

(Option 1 - For contracts where a portion of the work is to be performed are crafts affected by state labor laws, use paragraphs A and B.)

A. The CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 177, 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.

(Option 2 - Use only paragraph A below when all of the proposed work in the contract is performed by crafts not affected by state labor laws or are not contemplated for use.)

A. The State of California's General Prevailing Wage Rates are not applicable to this contract.
Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

ARTICLE XXVIII CONFLICT OF INTEREST

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

B. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

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

(Choose either Option 1 or Option 2 if appropriate.)

(Option 1 - Use paragraphs D & E below with paragraphs A, B and C above for PS&E contracts only.)

D. The CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

E. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

(Option 2 - Use paragraphs D, E & F below with paragraphs A, B and C above for Construction Contract Administration contracts only.)

D. The CONSULTANT hereby certifies that neither the CONSULTANT, its employees, nor any firm affiliated with the CONSULTANT providing services on this project prepared the Plans, Specifications, and Estimates for any construction project included within this contract.
An affiliated firm is one, which is subject to the control of the same persons through joint- ownership, or otherwise.

E. The CONSULTANT further certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT, will bid on any construction subcontracts included within the construction contract. Additionally, CONSULTANT certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract.

F. Except for subcontractors whose services are limited to materials testing, no subcontractor who is providing service on this contract shall have provided services on the design of any project included within this contract.

ARTICLE XXIX REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY 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 XXX PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

(Include this article in all contracts where federal funding will exceed $100,000. If less than $100,000 in federal funds will be expended on the contract; delete this article and re-number the notification article which follows.)

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

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

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

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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

ARTICLE XXXI NOTIFICATION

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

CONSULTANT:

_____*(CONSULTANT)*_____
_____*(NAME)*_____, Project Manager
_____*(ADDRESS)*_____
_____

LOCAL AGENCY:

___(*LOCAL AGENCY)*_____
_____*(NAME)*_____, Contract Manager
_____*(ADDRESS)*_____
_____

Retention

ARTICLE XXXII AGREEMENT

The two parties to this agreement, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this agreement constitutes the entire agreement which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this agreement as evidenced by the signatures below.

ARTICLE XXXIII SIGNATURES

(Name of CONSULTANT)	(Name of LOCAL AGENCY)
__(Signature)_____	__(Signature)_____
(Name of Signer)	(Name of Signer)

DATE:_____

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Exhibit 10-S Consultant Performance Evaluation

(Name of Agency)
Consultant Performance Evaluation

Section I The purpose of this form is to provide historical data to *Agency* staff when selecting consultants. File No. _____

1. PROJECT DATA	2. CONSULTANT DATA
1a. Project (include title, location, and Activity/CIP No.)	2a. Consultant Name and Address
1b. Brief Description of Project (design, study, etc.)	2b. Consultant's Manager
1c. Budgeted Cost for Project: $_____	2c. Phone: (_____) _____

3. *AGENCY* DEPARTMENT/SECTION RESPONSIBLE

3a. Department (include section and division)	3b. Agency Project Manager (name & phone)

4. CONTRACT DATA (Engineering Services)

4a. Contract No.: _____ Termination date: _____ Base Fee: $ _____
Agreement date: _____ Date terminated: _____ Contingency: $ _____

4b. Amendments $ _____ (Total Value) / # _____ (Initiated by Agency) $ _____ (Total Value) / # _____ (Initiated by Consultant)

4c. Change Orders $ _____ (Total Value) / # _____ (Initiated by Agency) $ _____ (Total Value) / # _____ (Initiated by Consultant)

4d. Total Fee per Agreement (4a. + 4b. + 4c.) $ _____ Total Fee Paid $ _____
(Do not include Contingency listed in 4a.)

4e. Type of Services (Design, study, etc.)

4f. Historical Record of Key Submittal Dates (enter date or n/a if not applicable)

	Preliminary	30%	70%	90%	100%	Final
Per Agreement						
Delivery Date						
Acceptance Date						

4g. Notice To Proceed _____ (date)

4h. Number of Days _____ (number)

4i. Actual Number of Days _____ (number)

4j. Reason for Change Orders: (Indicate total for each reason)

Errors/Omissions	$	% of Base Fee	%
Unforeseen Conditions	$	% of Base Fee	%
Changed Scope	$	% of Base Fee	%
Changed Quantities	$	% of Base Fee	%
Programmed Task Options	$	% of Base Fee	%

5. OVERALL RATING (Complete Section II on reverse, include comments as appropriate.)

		Outstanding	Above Average	Average	Below Average	Poor	N/A
5a.	Plans/Specifications accuracy						
5b.	Consistency with budget						
5c.	Responsiveness to County Staff						
5d.	Overall Rating						

6. AUTHORIZING SIGNATURES

6a. Agency Design Team Leader _____ Date: _____

6b. Agency Project Manager _____ Date: _____

6c. Agency Public Works Manager _____ Date: _____

6d. Consultant Representative _____ Date: _____

SEE REVERSE SIDE

Section II **SPECIFIC RATINGS**

PLANS/SPECIFICATIONS ACCURACY	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
Plans/Specifications clear and concise						
Plans/Specs Coordination						
Plans/Specs properly formatted						
Code Requirements covered						
Adhered to Agency Standard Drawings/Specs						
Drawings reflect existing conditions						
As-Built Drawings						
Quality Design						
Change Orders due to design deficiencies are minimized						

RESPONSIVENESS TO STAFF	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
Timely Responses						
Attitude toward Client and review bodies						
Follows directions and chain of responsibility						
Work product delivered on time						
Timeliness in notifying Agency of major problems						
Resolution of field problems						

CONSISTENCY WITH BUDGET	Outstanding	Above Avg.	Avg.	Below Avg.	Poor	N/A
Reasonable Agreement negotiation						
Adherence to fee schedule						
Adherence to project budget						

Section III **EXPLANATIONS AND SUPPLEMENTAL INFORMATION**
(Attach additional documentation as needed)

Item _____ : _____

Item _____ : _____

Item _____ : _____

Item _____ : _____

Item _____ : _____

Item _____ : _____

* Indicates supporting documentation attached.