AGREEMENT FOR
ENGINEERING CONSULTING SERVICES

THIS AGREEMENT, entered into this _____ day of _____, 20_, by and between the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, herein called "COUNTY," and _____, a corporation whose address is _____, herein called 'ENGINEER."

The COUNTY department responsible for administering this AGREEMENT is the Department of Public Works, and all written communications hereunder with the COUNTY shall be addressed to the Director of Public Works.

WHEREAS, the COUNTY has need for special services and advice with respect to the work described herein; and

WHEREAS, ENGINEER warrants that it is specially trained, experienced, expert and competent to perform such special services;

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

ARTICLE 1. **SCOPE OF WORK.** ENGINEER shall, at its own cost and expense, provide all the services, equipment and materials necessary to complete the work described in the ENGINEER's Scope of Work, attached hereto as Exhibit A, and incorporated herein by this reference. All work shall be performed to the highest professional standard.

ARTICLE 2. **TIME FOR COMPLETION OF WORK.** No work shall be commenced prior to ENGINEER's receipt of the COUNTY's Notice to Proceed. All work shall be completed no later than _____, ____, 20____, provided, however, that extensions of time may be granted in writing by the Director of Public Works of San Luis Obispo County, which said extensions of time, if any, shall be granted only for reasons attributable

to inclement weather, acts of God, or for other cause determined in the sole discretion of the Director of Public Works of San Luis Obispo County to be good and sufficient cause for such extensions.

ARTICLE 3. PAYMENT FOR SERVICES.

A. **Compensation.**

1. COUNTY shall pay to ENGINEER as compensation in full for all work required by this Agreement a sum not to exceed the total Agreement amount of $_____. ENGINEER's compensation shall be based on actual services performed and costs incurred at the rates set forth for each task in the ENGINEER's Cost Proposal attached hereto as Exhibit B, and incorporated herein by this reference. Progress payments will be made as set forth below based on compensable services provided and allowable costs incurred pursuant to this Agreement.

2. When the Cost Proposal included cost estimates for one or more tasks, the ENGINEER shall obtain prior written approval for a revised task cost estimate from the COUNTY's Project Manager before exceeding any task cost estimate.

B. **Reports.** ENGINEER shall submit to the COUNTY, on a monthly basis, a detailed statement of all services performed and all work accomplished under this Agreement since the ENGINEER's last monthly statement, including the number of hours of work performed and the personnel involved. For the purpose of timely processing of invoices, the ENGINEER's invoices are not regarded as received until the monthly report is submitted. Any anticipated problems in performing any future work shall be noted in the monthly reports. The ENGINEER shall also promptly notify the County of any perceived need for a change in the scope of work or services.

C. **Invoices.** Billing invoices shall be based upon the ENGINEER's Cost Proposal attached hereto as Exhibit B. Invoices shall detail the work performed on each task and each project as applicable. Invoices shall follow a format based upon the Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due the COUNTY.

D. **Federal Acquisition Regulations.** ENGINEER understands and 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. The ENGINEER 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. Any costs for which payment has been made to ENGINEER 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 ENGINEER to COUNTY. Any subcontract entered into by ENGINEER relating to this Agreement, shall bind the subcontractor to all of the provisions of this paragraph by incorporating the provisions of this paragraph in any such subcontract, and substituting the name of the subcontractor in place of the word "ENGINEER" where it appears in this paragraph.

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

F. **ENGINEER's Assigned Personnel.** All work performed under this Agreement shall be performed by the ENGINEER's personnel indentified in the Organizational

Chart, attached hereto as Exhibit C, and incorporated herein by this reference. Any changes to this Organizational Chart must be approved in writing by the COUNTY's Project Manager.

ARTICLE 4. <u>ACCOUNTING RECORDS.</u>

A. ENGINEER shall maintain accounting records in accordance with generally accepted accounting principles. ENGINEER shall obtain the services of a qualified bookkeeper or accountant to ensure that accounting records meet this requirement. ENGINEER shall maintain acceptable books of accounts which include, but are not limited to, a general ledger, cash receipts journal, cash disbursements journal, general journal and payroll journal.

B. ENGINEER shall record costs in a cost accounting system which clearly identifies the source of all costs. Agreement costs shall not be co-mingled with other project costs, but shall be directly traceable to contract billings to the COUNTY. The use of worksheets to produce billings shall be kept to a minimum. If worksheets are used to produce billings, all entries should be documented and clearly traceable to the ENGINEER's cost accounting records.

C. All accounting records and supporting documentation shall be retained for a minimum of five (5) years or until any audit findings are resolved, whichever is later. ENGINEER shall safeguard the accounting records and supporting documentation.

D. ENGINEER shall make accounting records and supporting documentation available on demand to the COUNTY and its designated auditor for inspection and audit. Disallowed costs shall be repaid to the COUNTY. The COUNTY may require having the ENGINEER's accounting records audited, at ENGINEER's expense, by an accountant licensed by the State of California. The audit shall be presented to the County Auditor-Controller within thirty (30) days after completion of the audit.

E. The State, the State auditor, FHWA or any authorized representative of the Federal Government having jurisdiction under Federal law or regulations (including the basis of Federal Funding in whole or in part) shall have access to any book, record, any documents of the ENGINEER that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if

requested. The ENGINEER must also maintain records for five years from the date of final payment.

F. Any subcontract entered into by ENGINEER relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "ENGINEER" where it appears in this Article.

ARTICLE 5. NON-ASSIGNMENT OF AGREEMENT. Inasmuch as this Agreement is intended to secure the specialized services of the ENGINEER, ENGINEER may not assign, transfer, delegate or sublet any interest herein without the prior written consent of COUNTY and any such assignment, transfer, delegation, or sublease without the County's prior written consent shall be considered null and void.

ARTICLE 6. INSURANCE. ENGINEER, at its sole cost and expense, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable) and shall provide products/completed operations coverage for four (4) years following completion of ENGINEER's work under this Agreement and acceptance by the County. Any failure to comply with reporting provisions(s) of the policies referred to above shall not affect coverage provided to the County, its officers, employees, volunteers and agents. For purposes of the insurance policies required hereunder, the term "County" shall include officers, employees, volunteers and agents of the County of San Luis Obispo, California, individually or collectively.

A. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.** The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the County:

1. **COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").** Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage. (Occurrence Form CG 0001) with policy limits not less than the following:

$1,000,000 each occurrence (combined single limit);

$1,000,000 for personal injury liability;

$1,000,000 aggregate for products-completed operations; and

$1,000,000 general aggregate.

The general aggregate limits shall apply separately to ENGINEER's work under this Agreement.

2. **BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").** Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability Coverage, Code 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than One-million ($1,000,000) dollars for each accident, for bodily injury and/or property damage. Such policy shall be applicable to vehicles used in pursuit of any of the activities associated with this Agreement. ENGINEER shall not provide a Comprehensive Automobile Liability policy which specifically lists scheduled vehicles without the express written consent of County.

3. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC / EL").** This policy shall include at least the following coverages and policy limits:

a. Workers' Compensation insurance as required by the laws of the laws of the State of California; and

b. Employer's Liability Insurance Coverage B with coverage amount not less than one-million ($1,000,000) dollars each accident / Bodily Injury (herein "BI"); one-million ($1,000,000) dollars policy limit BI by disease; and, one-million ($1,000,000) dollars each employee BI disease.

4. **PROFESSIONAL LIABILITY INSURANCE POLICY ("PL").** This policy shall cover damages, liabilities, and costs incurred as a result of ENGINEER's professional errors and omissions or malpractice. This policy shall include a coverage limit of at least One-Million Dollars ($1,000,000) per claim, including the annual aggregate for all claims (such coverage shall apply during the performance of the services under this Agreement and for two (2) years thereafter with respect to incidents which occur during the performance of this Agreement). ENGINEER shall notify the County if any annual aggregate is eroded by more than seventy-five

percent (75%) in any given year.

B. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.** Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by ENGINEER and approved by the County before work is begun pursuant to this Agreement. At the option of the County, ENGINEER shall either reduce or eliminate such deductibles or self-insured retentions as respect the County, its officers, employees, volunteers and agents, or shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

C. **ENDORSEMENTS.** All of the following clauses and endorsements, or similar provisions, are required to be made a part of insurance policies indicated in parentheses below:

1. A "Cross Liability", "Severability of Interest" or "Separation of Insureds" clause (CGL & BAL);
2. The County of San Luis Obispo, its officers, employees, volunteers and agents are hereby added as additional insureds with respect to all liabilities arising out of ENGINEER's performance of work under this Agreement (CGL & BAL);
3. If the insurance policy covers an "accident" basis, it must be changed to "occurrence" (CGL & BAL)
4. This policy shall be considered primary insurance with respect to any other valid and collectible insurance County may possess, including any self-insured retention County may have, and any other insurance County does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL, BAL, & PL);
5. No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to County at the address set forth below (CGL, BAL, WC /EL & PL);
6. ENGINEER and its insurers shall agree to waive all rights of subrogation against the County, its officers, employees, volunteers and agents for any loss arising under this Agreement (CGL); and

7. Deductibles and self-insured retentions must be declared (All Policies).

D. **ABSENCE OF INSURANCE COVERAGE.** County may direct ENGINEER to immediately cease all activities with respect to this Agreement if it determines that ENGINEER fails to carry, in full force and effect, all insurance policies with coverage's at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered ENGINEER's delay and expense. At the County's discretion, under conditions of lapse, the County may purchase appropriate insurance and charge all costs related to such policy to ENGINEER.

E. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.** Prior to commencement of work under this Agreement, and annually thereafter for the term of this Agreement, ENGINEER, or each of ENGINEER's insurance brokers or companies, shall provide County a current copy of a Certificate of Insurance, on an Accord or similar form, which includes complete policy coverage verification, as evidence of the stipulated coverage's. All of the insurance companies providing insurance for ENGINEER shall have, and provide evidence of, a Best Rating Service rate of A-FSCVII or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

{Insert Project Mgr.}, Public Works Department
Room 207, County Government Center
San Luis Obispo CA 93408

ARTICLE 7. INDEMNIFICATION.

A. ENGINEER shall defend, indemnify and hold harmless the County, its officers, agents, and employees from any and all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities or other losses (hereafter, collectively "claims") that may be asserted by any person or entity, and that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the ENGINEER. The parties agree that, in addition to the ENGINEER's general and professional duties of care, the ENGINEER has a duty of care to act in a manner consistent with the terms of this

Agreement. The parties acknowledge that, in addition to whatever other acts or omissions may constitute negligence under applicable law, any act or omission of ENGINEER which constitutes a breach of any duty or obligation under, or pursuant to, this Agreement shall at a minimum constitute negligence, and may constitute recklessness or willful conduct if so warranted by the facts.

B. The preceding paragraph applies to any and all such claims, regardless of the nature of the claim or theory of recovery. For purposes of the paragraphs found in this Article 7 of the Agreement, 'ENGINEER" shall include the ENGINEER, and/or its agents, employees, subcontractors, or other independent contractors hired, by, or working under, ENGINEER.

C. It is the intent of the parties to provide the COUNTY the fullest indemnification, defense, and "hold harmless" rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Agreement and the remaining language shall be given full force and effect. Nothing contained in the foregoing indemnity provisions shall be construed to require ENGINEER to indemnify COUNTY against any responsibility or liability in contravention of Civil Code 2782 or 2782.8.

ARTICLE 8. <u>ENGINEER'S RESPONSIBILITY FOR ITS WORK.</u>

A. ENGINEER has been hired by the COUNTY because of ENGINEER's specialized expertise in performing the work described in the attached Scope of Work, Exhibit A. ENGINEER shall be solely responsible for such work. The COUNTY's review, approval and/or adoption of any designs, plans, specifications or any other work shall be in reliance on ENGINEER's specialized expertise and shall not relieve the ENGINEER of its sole responsibility for the work. The COUNTY is under no duty or obligation to review or verify the appropriateness, quality or accuracy of any designs, plans, specifications or any other work, including but not limited to, any methods, procedures, tests, calculations, drawings or other information used or created by ENGINEER in performing any work under this Agreement.

B. All information which ENGINEER receives from COUNTY should be independently verified by ENGINEER. ENGINEER should not rely upon such information unless it has

independently verified its accuracy. The only exception to the foregoing arises when the COUNTY has expressly stated in writing that certain information may be relied upon by the ENGINEER without the ENGINEER's independent verification. In such event, the ENGINEER is still obliged to promptly notify the COUNTY whenever the ENGINEER becomes aware of any information that is inconsistent with any information which the COUNTY has stated may be relied upon by the ENGINEER.

C. Pursuant to the provisions of this Article, the ENGINEER is responsible for all work under this Agreement, including the work performed by any subcontractors or any other independent contractors hired by, or working under, the ENGINEER.

ARTICLE 9. INSURANCE AND INDEMNIFICATION AS MATERIAL PROVISIONS. The parties expressly agree that the indemnification and insurance clauses in this Agreement are an integral part of the performance exchanged in this Agreement. The compensation stated in this Agreement includes compensation for the risks transferred to ENGINEER by the indemnification and insurance clauses.

ARTICLE 10. ENGINEER'S ENDORSEMENT ON REPORTS, ETC. ENGINEER shall endorse all reports, maps, plans, documents, materials, and other data in accordance with applicable provisions of the laws of the State of California.

ARTICLE 11. DOCUMENTS, INFORMATION, AND MATERIALS OWNERSHIP.

A. All documents, information and materials of any and every type prepared by the ENGINEER pursuant to this Agreement shall be the property of the COUNTY. Such documents shall include but not be limited to data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the ENGINEER in performing work under this Agreement, whether completed or in process. The ENGINEER shall assume no responsibility for the unintended use by others of any such documents, information, or materials on project(s) which are not related to the scope of services described under this Agreement.

B. ENGINEER understands and agrees that the applicable patent rights provisions described in 41 CFR 1-91, shall be used to determine rights to inventions

C. Any subcontract entered into by ENGINEER relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word “ENGINEER” where it appears in this Article.

ARTICLE 12. <u>TERMINATION OF AGREEMENT WITHOUT CAUSE.</u> COUNTY may terminate this Agreement at any time by giving the ENGINEER 20 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Other than payments for services satisfactorily rendered prior to the effective date of said termination, ENGINEER shall be entitled to no further compensation or payment of any type from the COUNTY.

ARTICLE 13. <u>TERMINATION OF AGREEMENT FOR CAUSE.</u> If ENGINEER fails to perform ENGINEER’s duties to the satisfaction of the COUNTY, or if ENGINEER fails to fulfill in a timely and professional manner ENGINEER’s obligations under this Agreement or if ENGINEER shall violate any of the terms or provisions of this Agreement or if ENGINEER, ENGINEER’s agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the COUNTY, then COUNTY shall have the right to terminate this Agreement effective immediately upon the COUNTY giving written notice thereof to the ENGINEER. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. ENGINEER shall be paid for all work satisfactorily completed prior to the effective date of such termination. If COUNTY's termination of the Agreement for cause is defective for any reason, including but not limited to COUNTY’s reliance on erroneous facts concerning ENGINEER’s performance, or any defect in notice thereof, this Agreement shall automatically terminate without cause on the twentieth day following the COUNTY’s written notice of termination for cause to the ENGINEER, and the COUNTY’s maximum liability shall not exceed the amount payable to ENGINEER under Article 12 above.

ARTICLE 14. COMPLIANCE WITH LAWS. ENGINEER shall comply with all Federal, State, and local laws and ordinances that are applicable to the performance of the work of this Agreement. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

ARTICLE 15. COVENANT AGAINST CONTINGENT FEES. ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working for ENGINEER, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percent, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, COUNTY shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 16. NONDISCRIMINATION. ENGINEER shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement. The ENGINEER's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the ENGINEER has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

ARTICLE 17. DISPUTES & CLAIMS.

A. Notice of Potential Claim. The ENGINEER shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the COUNTY, or for the happening of any event, thing, occurrence, or other cause, unless ENGINEER has provided the COUNTY with timely written Notice of Potential Claim as hereinafter specified. The written Notice of Potential Claim shall set forth the reasons for which the

ENGINEER believes additional compensation will or may be due, the nature of the cost involved, and, insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the COUNTY prior to the time that the ENGINEER shall have performed the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the COUNTY, or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. It is the intention of this paragraph that differences between the parties relating to this Agreement be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The ENGINEER hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written Notice of Potential Claim as herein required was filed with the COUNTY Director of Public Works.

B. Processing of Actual Claim. In addition to the above requirements for Notice of Potential Claim, a detailed, Notice of Actual Claim must be submitted in writing to the COUNTY on or before the date of final payment under this Agreement. All such claims shall be governed by the procedures set forth in section 20104.2 and 20104.4 of the Public Contract Code, except that the word “claim” as used in said sections shall be construed as referring to any claim relating to this Agreement. The ENGINEER shall not be entitled to any additional compensation unless ENGINEER has (1) provided the COUNTY with a timely written Notice of Actual Claim and (2) followed the procedures set forth in Public Contract Code section 20104.2 and 20104.4.

C. Claim is No Excuse. Neither the filing of a Notice of Potential Claim or of a Notice of Actual Claim, nor the pendency of a dispute or claim, nor its consideration by the COUNTY, shall excuse the ENGINEER from full and timely performance in accordance with the terms of this Agreement.

ARTICLE 18. ENGINEER IS AN INDEPENDENT CONTRACTOR. It is expressly understood that in the performance of the services herein provided, ENGINEER shall be, and is, an independent contractor, and is not an agent or employee of COUNTY. ENGINEER has and shall retain the right to exercise full control over the employment,

direction, compensation, and discharge of all persons assisting ENGINEER in the performance of the services rendered hereunder. ENGINEER shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with Social Security, withholding, and all other regulations governing such matters.

ARTICLE 19. <u>ENTIRE AGREEMENT AND MODIFICATION.</u> This Agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. ENGINEER shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Any changes increasing ENGINEER's compensation and/or benefits must be approved by the COUNTY's Board of Supervisors; any other changes may be signed by the County Director of Public Works on behalf of the COUNTY. ENGINEER specifically acknowledges that in entering into and executing this Agreement, ENGINEER relies solely upon the provisions contained in this Agreement and no others. If there is any conflict between the language in the body of this Agreement and any exhibits attached hereto, the body of this Agreement shall take precedence.

ARTICLE 20. <u>ENFORCEABILITY.</u> If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

ARTICLE 21. <u>WARRANTY OF ENGINEER.</u> ENGINEER warrants that ENGINEER and each of the personnel employed or otherwise retained by ENGINEER for work under this Agreement are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to.

ARTICLE 22. <u>SUBCONTRACTORS.</u>

A. Other than work designated in Exhibits A and B to be performed by other persons or entities, the ENGINEER shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted

without written authorization by the COUNTY. In the event the COUNTY provides written authorization for work to be performed by a subcontractor, the use of the words "subcontractor" and "subcontract" in this Article shall refer to such authorized subcontracting to a subcontractor of the first tier or any other tier.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the County and any subcontractors, and no subcontract shall relieve the ENGINEER of his/her responsibilities and obligations hereunder. The ENGINEER agrees to be as fully responsible to the COUNTY 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 ENGINEER. The ENGINEER's obligation to pay its subcontractors is an independent obligation from the COUNTY's obligation to make payments to the ENGINEER.

C. Any subcontract entered into by ENGINEER relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "ENGINEER" where it appears in this Article.

D. ENGINEER shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the ENGINEER by the COUNTY.

E. Any substitution of subcontractors must be approved in writing by the COUNTY's Project Manager in advance of assigning work to a substitute subcontractor.

F. For purposes of this Agreement, the term "subcontractor" includes subconsultants.

ARTICLE 23. <u>APPLICABLE LAW AND VENUE.</u> This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

ARTICLE 24. <u>NOTICES.</u> Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to the County at:

Mr. Paavo Ogren, Director
San Luis Obispo County
Department of Public Works
County Government Center, Room 207
San Luis Obispo, CA 93408

and to the ENGINEER:

_____
_____
_____
_____

ARTICLE 25. <u>COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS.</u> Pursuant to Government Code section 7550, if the total cost of this Agreement is over $5,000, the ENGINEER shall include in all final documents and in all written reports submitted a written summary of costs, which shall set forth the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such documentation or written report. The Agreement and subagreement numbers and dollar amounts shall be contained in a separate section of such document or written report.

ARTICLE 26. <u>CONFIDENTIALITY OF DATA.</u>

A. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which are designated confidential by the COUNTY and made available to the ENGINEER in order to carry out this Agreement, shall be protected by the ENGINEER from unauthorized use and disclosure, and shall not be made available to any individual or organization by ENGINEER without the prior written approval of COUNTY.

B. Permission to disclose information on one occasion, or public hearing held by the COUNTY relating to this Agreement, shall not authorize the ENGINEER to further disclose such information, or disseminate the same on any other occasion.

C. All information related to the construction estimate is confidential, and shall not be disclosed by the ENGINEER to any entity other than the COUNTY.

D. Any subcontract entered into by ENGINEER relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "ENGINEER" where it appears in this Article.

ARTICLE 27. RESTRICTIVE COVENANT. ENGINEER agrees that he will not, during the continuance of this Agreement, perform or otherwise exercise the services described in Exhibit A for anyone except for the COUNTY, unless and until said COUNTY waives this restriction.

ARTICLE 28. CERTIFICATIONS. A "Certification of Consultant" and a "Certification of Local Agencies Highway Department" are attached hereto as Exhibits D and E respectively, and are incorporated by reference and made a part of this Agreement. ENGINEER must properly complete, execute, and return these forms to COUNTY as a pre-condition to the execution of this Agreement.

ARTICLE 29. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION.

A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs."

B. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The ENGINEER or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The ENGINEER shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the ENGINEER 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 COUNTY deems appropriate.

C. The COUNTY has established an underutilized DBE (UDBE) goal, for this Agreement of %. The ENGINEER must meet the UDBE goal or document a good faith effort to meet the goal.

D. The "Notice to Proposers Disadvantaged Business Enterprise Information," "UDBE Commitment," "Good Faith Effort," "DBE Information," and "Proposer's List of Subcontractor" forms are attached hereto as Exhibits F, G, H, I and J respectively, and are hereby incorporated by reference and made part of this Agreement. ENGINEER must properly complete, execute, and return these forms to COUNTY as a pre-condition to the execution of this Agreement.

E. If a UDBE subcontractor is unable to perform, the ENGINEER must make a good faith effort to replace him/her with another UDBE subcontractor, if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Native Americans, Asian-Pacific Americans, or Women.

F. Any subcontract entered into by ENGINEER relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "ENGINEER" where it appears in this Article.

G. DBE Records (Applicable to both DBE and UDBE subcontractors)

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

2. Upon completion of all work under this Agreement, a summary of these records shall be prepared and submitted on the Caltrans form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," certified correct by the ENGINEER and shall be furnished to the COUNTY's Project Manager with the final invoice. Failure to provide the summary

of DBE payments with the final invoice will result in 25% of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the ENGINEER when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form is submitted to the COUNTY's Project Manager.

H. If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the ENGINEER in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the ENGINEER in writing with the date of certification. Any changes to the DBE certification status of any subcontractor should be reported to the COUNTY's Project Manager within 30 days.

ARTICLE 30. <u>QUALITY CONTROL AND QUALITY ASSURANCE.</u> The ENGINEER shall provide a description of its Quality Control procedure. The process shall be implemented for all facets of work and a QC-QA statement and signature shall be placed on all submittals to the COUNTY.

ARTICLE 31. <u>CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR.</u>

A. If claims are filed against the COUNTY by the COUNTY's construction contractor or any other third party that realtes in any way to any subject, plans, designs, or other work within the ENGINEER's Scope of Work under this Agreement, and additional information or assistance from the ENGINEER's personnel is requested by the COUNTY in order to evaluate or defend against such claims, ENGINEER agrees to cooperate with and provide timely response to any reasonale requests for information submitted to ENGINEER by the COUNTY relating to such claims. To the extent the information requeted by the COUNTY only seeks copies of documents or other factual information relating to work performed by ENGINEER, the ENGINEER will only be compensated for any clerical costs associated with providing the COUNTY the requested factual information.

B. ENGINEERs personnel that the COUNTY considers essential to assist in defending against such claims will be made available for consultation with the COUNTY

upon reasonable notice from the COUNTY. In the event the expert opinions of the ENGINEER's personnel is sought by the COUNTY through such consultantion or through testimony, and only in such event, such consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the ENGINEER's personnel services under this Agreement. In the event the testimony of any of ENGINEER's personnel are sought by another party, the ENGINEER reserves the right to charge other party a different rate for deposition or trial testimony.

C. Services of the ENGINEER's personnel in connection with the COUNTY'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 entered into by ENGINEER relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "ENGINEER" where it appears in this Article.

ARTICLE 32. <u>NATIONAL LABOR RELATIONS BOARD CERTIFICATION.</u> In accordance with Public Contract Code Section 10296, the ENGINEER 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 ENGINEER within the immediately preceding two-year period, because of the ENGINEER's failure to comply with an order of a federal court that orders the ENGINEER to comply with an order of the National Labor Relations Board.

ARTICLE 33. <u>EVALUATION OF CONSULTANT.</u> The ENGINEER's performance will be evaluated by the COUNTY. A copy of the evaluation will be sent to the ENGINEER for comments. The evaluation together with the comments shall be retained as part of the contract record.

ARTICLE 34. <u>DEBARMENT AND SUSPENSION CERTIFICATION.</u>

A. The ENGINEER's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the ENGINEER 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 in writing to the COUNTY, prior to ENGINEER's execution of this Agreement.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining ENGINEER responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

ARTICLE 35. <u>CONFLICT OF INTEREST.</u>

A. The ENGINEER shall disclose any financial, business, or other relationship with COUNTY that may be affected by the outcome of this Agreement, or any ensuing COUNTY construction project. The ENGINEER shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing COUNTY construction project, which will follow.

B. The ENGINEER 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 entered into by ENGINEER relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "ENGINEER" where it appears in this Article.

D. The ENGINEER hereby certifies that neither ENGINEER, nor any firm affiliated with the ENGINEER will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of one or more 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 Agreement shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement.

ARTICLE 36. <u>REBATES, KICKBACK, OR OTHER UNLAWFUL CONSIDERATION.</u> The ENGINEER warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its discretion; to terminate the Agreement 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 37. <u>NONLOBBYING CERTIFICATION.</u>

A. The ENGINEER certifies to the best of his/ 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 ENGINEER 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 ENGINEER shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. This form is attached hereto as Exhibit K and incorporated herein by this reference.

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 ENGINEER 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.

IN WITNESS THEREOF, COUNTY and ENGINEER have executed this Agreement on the day and year first hereinabove set forth.

IN WITNESS THEREOF, the parties hereto have executed this Agreement, and this Agreement shall become effective on the date shown signed by the County of San Luis Obispo.

COUNTY OF SAN LUIS OBISPO

Date:_____ By:_____
Chairperson of the Board
County of San Luis Obispo
State of California

ATTEST:

_____
County Clerk and Ex-Officio Clerk of the
Board of Supervisors, County of San Luis Obispo,
State of California

Date:_____

ENGINEER

Date:_____ By:_____

Title:_____

APPROVED AS TO FORM AND LEGAL EFFECT:
WARREN R. JENSEN
County Counsel

By:_____
Deputy County Counsel

Date:_____

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)

CERTIFICATION OF LOCAL AGENCY

I HEREBY CERTIFY that I am the Director of Public Works and Transportation of San Luis Obispo County, 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)

_____
PAAVO OGREN
Director of Public Works and Transportation

NOTICE TO PROPOSERS
DISADVANTAGED BUSINESS ENTERPRISE INFORMATION

The County has established an Underutilized DBE goal for this Agreement of 6.5%.

1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "Underutilized Disadvantaged Business Enterprise" or "UDBE." DBE classes that have been determined in the 2007 Caltrans Disparity Study to have a statistically significant disparity in their utilization in previously awarded transportation contracts. UDBEs include: African Americans, Native Americans, Asian-Pacific Americans, and Women.
- 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 proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

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

3. SUBMISSION OF UDBE AND DBE INFORMATION

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

A “Local Agency Proposer DBE Information (Consultant Contract)” (Exhibit 10-O2) form shall be included with the Request for Proposal. The purpose of the form is to collect data required under 49 CFR 26. For contracts with UDBE goals, this form collects DBE participation by DBEs owned by Hispanic American and Subcontinent Asian Americans males (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka). For contracts with no goals, this form collects information on all DBEs, including UDBEs. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

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

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

B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A UDBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:

1. The proposer is a UDBE and will meet the goal by performing work with its own forces.

2. The proposer will meet the goal through work performed by UDBE subcontractors, suppliers or trucking companies.

3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.

D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

F. The proposer shall list only one subcontractor for each portion of work as defined in their proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.

G. 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. 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 web site at: http://www.dot.ca.gov/hq/bep/.

- Click on the link in the left menu titled *Disadvantaged Business Enterprise*
- Click on *Search for a DBE Firm* link
- Click on *Access to the DBE Query Form* located on the first line in the center of the page
- Searches can be performed by one or more criteria
- Follow instructions on the screen

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

D. DBE Directory: If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered at: http://caltrans-opac.ca.gov/publicat.htm

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS DBE CREDIT, AND IF A DBE IS ALSO A UDBE, PURCHASES WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:

A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the 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 UDBE 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. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBES WILL COUNT TOWARDS DBE CREDIT, AND IF A DBE IS A UDBE, CREDIT WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Agreement, and there cannot be a contrived arrangement for the purpose of meeting the UDBE goal.

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. A 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. A 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. A 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

UDBE COMMITMENT (CONSULTANT CONTRACT)

NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM

LOCAL AGENCY: _____ LOCATION: _____

PROJECT DESCRIPTION: _____

PROPOSAL DATE: _____

PROPOSER'S NAME: _____

CONTRACT UDBE GOAL (%): _____

WORK ITEM NO.	DESCRIPTION OR SERVICES TO BE SUBCONTRACTED (or contracted if the proposer is a UDBE)	UDBE CERT NO. AND EXPIRATION DATE	NAME OF EACH UDBE (Must be certified at the time proposals are due - include UDBE address and phone number)	PERCENT PARTICIPATION OF EACH UDBE

For Local Agency to Complete:

Local Agency Proposal Number: _____

Federal-Aid Project Number: _____

Federal Share: _____

Proposal Date: _____

Total Claimed UDBE Commitment _____%

Local Agency certifies that the UDBE certifications have been verified and all information is complete and accurate/unless noted otherwise.

_____ _____ _____
Print Name Signature Date
Local Agenc Representative

(Area Code) Telephone Number: _____

_____
Signature of Proposer

_____
Date (Area Code) Tel. No.

_____
Person to Contact (Please Type or Print)

Local Agency Proposer UDBE Commitment (Consultant Contracts)
(Rev 6/27/09)

Distribution: (1) Original - Local agency files

INSTRUCTIONS
UDBE COMMITMENT (CONSULTANT CONTRACT)

PLEASE NOTE: It is the proposer's responsibility to verify that the UDBE(s) falls into one of the following groups in order to count towards the UDBE contract goal: 1) African Americans; 2) Asian-Pacific Americans; 3) Native Americans; 4) Women. This information must be submitted with your proposal. Failure to submit the required UDBE commitment will be grounds for finding the proposal nonresponsive.

A "UDBE" is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Native Americans, Asian-Pacific Americans, or Women.

The form requires specific information regarding the consultant contract: Local Agency, Location, Project Description, Proposal Date, Proposer's Name, and Contract UDBE Goal.

The form has a column for the Work Item Number and Description or Services to be subcontracted to UDBEs (or performed if the proposer is a UDBE). The UDBE prime contractors shall indicate all work to be performed by UDBEs including work to be performed by its own forces, if a UDBE. The UDBE shall provide a certification number to the Consultant and notify the Consultant in writing with the date of decertification if their status should change during the course of the contract. Enter UDBE prime consultant and subconsultant certification numbers.The form has a column for the Names of certified UDBEs to perform the work (must be certified on the date proposals are due and include UDBE address and phone number).

There is a column for the percent participation of each UDBE. Enter the Total Claimed UDBE Participation percentage of items of work submitted with proposal pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the UDBE, describe exact portion of time to be performed or furnished by the UDBE.) See "Notice to Proposers Disadvantaged Business Enterprise Information," to determine how to count the participation of UDBE firms. **Note**: If the proposer has not met the contract goal, the local agency must evaluate the proposer's good faith efforts to meet the goal in order to be considered for award of the contract.

Form must be signed and dated by the consultant submitting the proposal. Also list a phone number in the space provided and print the name of the person to contact.

GOOD FAITH EFFORT

The County of San Luis Obispo established an Underutilized Disadvantaged Business Enterprise (UDBE) goal of _____% for this project. The information provided herein shows that a good faith effort was made.

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

Publications	Dates of Advertisement

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

Names of UDBEs Solicited	UDBE Certification Number	Method and Date of Initial Solicitation	Follow Up Methods and Dates	Results of Follow Up

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

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

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

Item of Work	Name, address, and phone number of rejected UDBE	Reason for rejection of UDBE	Name, address, and phone number of selected firm	Price difference between UDBE and selected firm

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

_____

_____

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

_____

_____

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

Name of Agency/Organization	Method/Date of Contact	Results

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

_____

_____

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

EXHIBIT H

DBE INFORMATION (CONSULTANT CONTRACT)

NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM

LOCAL AGENCY: _____ LOCATION: _____

PROJECT DESCRIPTION: _____

TOTAL CONTRACT AMOUNT ($): _____

PROPOSER'S NAME: _____

WORK ITEM NO.	DESCRIPTION OR SERVICES TO BE SUBCONTRACTED (or contracted if the proposer is a DBE)	DBE CERT NO. AND EXPIRATION DATE	NAME OF EACH DBE (Must be certified at the time proposals are due - include DBE address and phone number)	DOLLAR AMOUN T OF EACH DBE

For Local Agency to Complete:

Local Agency Contract Number: _____

Federal-Aid Project Number: _____

Federal Share: _____

Contarct Award: _____

Local Agency certifies that the DBE certifications have been verified and all informations is complete and accurate.

_____ _____ _____

Print Name Signature Date

Local Agency Representative

(Area Code) Telephone Number: _____

Total Claimed DBE Participation

$_____

_____%

_____

Signature of Proposer

_____

Date (Area Code) Tel. No.

_____

Person to Contact (Please Type or Print)

For Caltrans Review:

_____ _____ _____

Print Name Signature Date

Caltrans District Local Assistance Engineer

Local Agency Proposer DBE Information (Consultant Conttarcts)
(Rev 6/27/09)

Distribution: (1) Copy - Fax or scan a copy to the Caltrans District Local Assistance Engineer (DLAE) within 15 days after contract execution. Failure to send a copy to the DLAE within 15 days after contract execution may result in deobligation of funds for this project.

(2) Original - Local agency files

EXHIBIT I

INSTRUCTIONS
DBE INFORMATION FORM (CONSULTANT CONTRACT)

The form requires specific information regarding the consultant or other contract: Local Agency, Location, Project Description, Total Contract Amount, Proposal Date, and successful Proposer's Name.

The form has a column for the Work Item Number and Description or Services to be Subcontracted to DBEs. The prime consultant shall indicate all work to be performed by DBEs including, if the prime consultant is a DBE, work performed by its own forces, if a DBE. The DBE shall provide a certification number to the prime consultant. Enter DBE prime consultant's and subconsultant's certification number. The form has a column for the Names of DBE certified contractors to perform the work (must be certified on or before the proposals are due and include DBE address and phone number).

Enter the Total Claimed DBE Participation dollar amount of items of work in the total DBE Dollar Amount column. (If 100% of item is not to be performed by the DBE, describe exact portion of time to be performed by the DBE.) See "Notice to Proposers Disadvantaged Business Enterprise Information," to determine how to count the participation of DBE firms.

Form must be signed and dated by the successful proposer at contract execution. Also list a phone number in the space provided and print the name of the person to contact.

EXHIBIT J

PROPOSER'S LIST OF SUBCONTRACTORS (DBE and NON-DBE)

The proposer shall list all subcontractors (both DBE and non-DBE) who supplied bids or quoted for this project, in accordance with Section 2-1.054 of the Standard Specifications and per Title 49, Section 26.11 of the Code of Federal Regulations. This listing is required in addition to listing subcontractors elsewhere in the proposal. Photocopy this form for additional firms.

Are all subcontractor's bids (quotes) received by your firm for this Project listed below? ☐ YES ☐ NO

Name of Firm Submitting Bid/Quote	Phone/ Fax	Description of Work Items	Certified DBE?	Firm Being Used?
1.	*Phone* *Fax*		☐ YES ☐ NO *If YES list DBE #:*	☐ YES ☐ NO
2.	*Phone* *Fax*		☐ YES ☐ NO *If YES list DBE #:*	☐ YES ☐ NO
3.	*Phone* *Fax*		☐ YES ☐ NO *If YES list DBE #:*	☐ YES ☐ NO
4.	*Phone* *Fax*		☐ YES ☐ NO *If YES list DBE #:*	☐ YES ☐ NO
5.	*Phone* *Fax*		☐ YES ☐ NO *If YES list DBE #:*	☐ YES ☐ NO
6.	*Phone* *Fax*		☐ YES ☐ NO *If YES list DBE #:*	☐ YES ☐ NO

Distribution: 1) Original – Local Agency File

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

EXHIBIT K

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

EXHIBIT K