

**AGREEMENT BETWEEN THE ALAMEDA COUNTY TRANSPORTATION COMMISSION**

**AND**

**[\_\_COMPANY NAME\_\_]**

This AGREEMENT is made and entered into by and between the **ALAMEDA COUNTY TRANSPORTATION COMMISSION**, a joint powers agency (“ALAMEDA CTC”), and **[\_\_COMPANY NAME\_\_]**, a **[\_\_Type of Entity\_\_]** with a place of business at **[\_\_Company Address\_\_]** (“CONSULTANT”).

**Date of Agreement:** **[\_\_Month Date, Year\_\_]**

**Date of ALAMEDA CTC Commission Approval:** **[\_\_Month Date, Year\_\_]**

**Services to be Performed, Pursuant to Article I, Section A, Paragraph 1 and Appendix A:** **[\_\_Project/Services\_\_]** (“PROJECT”)

**Term of Agreement, Pursuant to Article I, Section A, Paragraph 2:** **[\_\_Month Date, Year\_\_]** to **[\_\_Month Date, Year\_\_]**, with the right to extend the term by amendment for additional years of service up to a maximum period of five years.

**Compensation. The aggregate amount shall not exceed the amount listed here, pursuant to Article I, Section A, Paragraph 3:** **[\_\_Contract \$ Amount\_\_]**

**Basis of Compensation shall be made by the following method(s), as provided in morwe detail in Appendix B:**

- Specific Rate of Compensation
- Lump Sum by Task
- Retainer
- Other

**ALAMEDA CTC and CONSULTANT Representatives and Notices:** Representatives listed hereunder maintain authority to represent and administer all matters relative to this AGREEMENT, or to a delegated representative for specific matters. All notices hereunder and communications regarding interpretation of the terms of the AGREEMENT or changes thereto shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

**CONSULTANT:**  
**[\_\_Company Contact\_\_]**

**ALAMEDA CTC:**  
Arthur L. Dao  
Executive Director  
Alameda County Transportation Commission  
1111 Broadway, Suite 800  
Oakland, CA 94607

**CONSULTANT Key Representative (CONSULTANT Project Manager) Performing Services, Pursuant to Article I, Section A, Paragraph 5:**

**ALAMEDA CTC Project Manager:**

<b>[__Company Key Representative Name__]</b>	<b>[__Alameda CTC PM Name__]</b>
<b>[__Company Key Representative Title__]</b>	<b>[__Alameda CTC PM Title__]</b>
<b>[__Company Key Representative E-mail Address__]</b>	<b>[__Alameda CTC PM E-mail Address __]</b>

**Insurance. The following additional insured and insurance coverage is required for this AGREEMENT as further described in and pursuant to Article I, Section E:**

- Commercial or Comprehensive General Liability – \$1,000,000 combined single limit per occurrence with \$2,000,000 general aggregate, and \$1,000,000 Personal & Advertising Injury
- Workers’ Compensation as required by law, and Employer’s Liability – \$1,000,000 each accident, \$1,000,000 for each employee for bodily injury by disease, and \$1,000,000 overall limit for bodily injury by disease
- Professional Liability – \$2,000,000
- Automobile Liability – \$1,000,000 combined single limit per occurrence
- Umbrella Insurance – \$1,000,000
- Deductible Maximum (all policies) – \$50,000 deductible or self-insured retention
- Additional Insured – ALAMEDA CTC and its respective officers, employees and agents

**Local Business Contract Equity Program Goals:**

- If checked, **Article I, Section G** applies hereto.
- 70.0% LBE and 30.0% SLBE
- VSLBE
- Exempt

**Disadvantaged Business Enterprise (“DBE”) Goal and other federal matters:**

- If checked, **Article I, Section H** applies hereto.
- \_\_\_% DBE

**Appendices, Schedules and Signatures:** This AGREEMENT, including the Standard Form Agreement and all Appendices, constitutes the entire AGREEMENT between the parties hereto relating to the PROJECT and supersedes any previous agreement or understanding with respect to the PROJECT, and may only be changed by a written amendment executed by both parties. The following Appendices are hereby made a part of the AGREEMENT and by this reference incorporated herein:

- Appendix A:** Detailed Scope of Services
- Appendix B:** Project Cost Basis
- Appendix C:** Performance Measures
- Appendix D:** Consultant Payment Request and Progress Report Forms
- Appendix E:** Required Certifications and Forms

**Changes to Standard Form Agreement:** Notwithstanding anything to the contrary in the Standard Form Agreement, the following shall apply to this AGREEMENT:

The following replaces subparagraphs (v) through (viii) at the end of **Article I, Section A, Paragraph 3(b)** (Basis of Compensation) for Federal contracts:

(v) In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are identified in the cost proposal and in the executed Task Order.

(vi) Specific projects will be assigned to CONSULTANT through issuance of Task Orders.

(vii) After a project to be performed under this contract is identified by ALAMEDA CTC, ALAMEDA CTC 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 an ALAMEDA CTC Project Manager. The draft Task Order will be delivered to

CONSULTANT for review. 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 ALAMEDA CTC and CONSULTANT.

(viii) Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's Cost Proposal.

(ix) A Task Order is of no force or effect until returned to ALAMEDA CTC and signed by an authorized representative of ALAMEDA CTC. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by ALAMEDA CTC.

(x) CONSULTANT will be reimbursed within thirty (30) calendar days upon receipt by ALAMEDA CTC of itemized invoices. Invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted in accordance with **Article II, Section B**. 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 ALAMEDA CTC that include any equipment purchased under the provisions of **Article III, Section A, Paragraph 19** (Equipment Purchase) of this AGREEMENT, must be reimbursed by CONSULTANT prior to the expiration or termination of this contract. Invoices shall be mailed to ALAMEDA CTC at the following address:

Alameda County Transportation Commission  
Attn: Accounts Payable  
1111 Broadway, Suite 800  
Oakland, CA 94607

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

(xii) The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.

(xiii) The total amount payable by ALAMEDA CTC for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by contract amendment.

(xiv) If the CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

(xv) Task Orders may not be used to amend this AGREEMENT and may not exceed the scope of work under this AGREEMENT.

(xvi) The total amount payable by ALAMEDA CTC for all Task Orders resulting from this contract shall not exceed [\_\_\_Contract \$ 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.

The following is added as a new paragraph at the end of **Article I, Section B** (Notice to Proceed) for Federal contracts:

2. This AGREEMENT shall go into effect on [\_\_\_Month Date, Year\_\_\_], contingent upon approval by ALAMEDA CTC, and CONSULTANT shall commence work after notification to proceed by ALAMEDA CTC. The term of this AGREEMENT shall end on [\_\_\_Month Date, Year\_\_\_], unless extended by contract amendment. *[FOR ON-CALL CONTRACTS ONLY; OTHERWISE DELETE: 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 term of the AGREEMENT shall be extended by contract amendment.]*

The following replaces **Article I, Section C, Paragraph 1(b)** (Termination/Cancellation) for Federal contracts:

**(b) For Cause.**

**(i)** ALAMEDA CTC reserves the right to terminate this contract upon thirty (30) calendar days' written notice to CONSULTANT with the reasons for termination stated in the notice.

**(ii)** ALAMEDA CTC may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, ALAMEDA CTC may proceed with the work in any manner deemed proper by ALAMEDA CTC. If ALAMEDA CTC terminates this contract with CONSULTANT, ALAMEDA CTC shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to ALAMEDA CTC exceeds the funds remaining in the contract. In which case the overage shall be deducted from the sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon receipt of a valid and complete invoice from CONSULTANT, in accordance with the terms of this AGREEMENT.

The maximum amount for which ALAMEDA CTC shall be liable if this contract is terminated for cause shall be limited to that portion of the work which has been completed and accepted by ALAMEDA CTC, and for services performed to the date of termination, including a pro-rated amount of profit, if applicable, but no allowance for anticipated profit or unperformed services.

The following replaces **Article III, Section A, Paragraph 10** (Audit Review Procedures) for Federal contracts:

**10. 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 ALAMEDA CTC's Deputy Executive Director of Finance and Administration.

**(b)** Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by ALAMEDA CTC's Deputy Executive Director of Finance and Administration of unresolved audit issues. The request for review will be submitted in writing.

**(c)** Neither the pendency of a dispute nor its consideration by ALAMEDA CTC will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.

**(d)** CONSULTANT and subconsultant contracts, including cost proposals and Indirect Cost Rate (ICR), are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost

audit, an ICR Audit, or a Certified Public Accountant (CPA) ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by ALAMEDA CTC contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by ALAMEDA CTC at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

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

**(i)** During a CALTRANS' review of the ICR audit work papers created by the CONSULTANT's independent CPA, CALTRANS will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If CALTRANS identifies significant issues during the review and is unable to issue a cognizant approval letter, ALAMEDA CTC will reimburse the CONSULTANT at a provisional ICR until a Federal Acquisition Regulations System compliant ICR {e.g., 48 CFR, part 31; GAAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials Audit Guide; and other applicable procedures and guidelines} is received and approved by CALTRANS. Provisional rates will be as follows:

**(1)** If the proposed ICR is less than 150% – the provisional rate reimbursed will be 90% of the proposed rate.

**(2)** If the proposed ICR is between 150% and 200% – the provisional rate will be 85% of the proposed rate.

**(3)** If the proposed ICR is greater than 200% – the provisional rate will be 75% of the proposed rate.

**(ii)** If CALTRANS is unable to issue a cognizant letter per paragraph (e)(i) above, CALTRANS may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. CALTRANS will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.

**(iii)** If the CONSULTANT fails to comply with the provisions of subparagraph (e), or if CALTRANS is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the provisional ICR that was established upon initial rejection of the ICR and set forth in paragraph (e)(i) above for all rendered services.

In this event, this provisional ICR will become the actual and final ICR for reimbursement purposes under this contract.

(iv) CONSULTANT may submit to ALAMEDA CTC a final invoice only when all of the following items have occurred: (1) CALTRANS approves or rejects the original or revised independent CPA-audited ICR; (2) all work under this contract has been completed to the satisfaction of ALAMEDA CTC; and, (3) CALTRANS has issued its final ICR review letter. The CONSULTANT must submit its final invoice to ALAMEDA CTC no later than sixty (60) calendar days after occurrence of the last of these items.

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

The following replaces **Article III, Section A, Paragraph 20(d)** (Subconsultants) for Federal contracts:

(d) All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

The following is added as a new **paragraph 21** to the end of Article III, Section A (General):

**21. State of California's General Prevailing Wage Rates.** [The State of California's General Prevailing Wage Rates are not applicable to this contract.] [or] The State of California's General Prevailing Wage Rates are applicable to this contract.

(a) CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code Section 1770 *et seq.*, 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 paragraph.

(c) When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See [www.dir.ca.gov](http://www.dir.ca.gov).

(d) CONSULTANT's obligations (and/or its subconsultants' obligations, as applicable) under **Paragraph 21(a)** include, but are not limited to, payment of prevailing wage rates, employment of registered apprentices, submittal of certified payroll reports, and maintaining all required licenses and registrations.

The following are added as new **paragraphs 22-24** to the end of **Article III, Section A** (General) for Federal contracts:

**22. Prohibition of Expending ALAMEDA CTC, State or Federal Funds for Lobbying.** CONSULTANT certifies to the best of his or her knowledge and belief that:

(a) No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States (U.S.) 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.

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

(c) 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.

(d) 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 subrecipients shall certify and disclose accordingly.

### **23. Statement of Compliance.**

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

(b) During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and/or any rights exercised related to family care leave. CONSULTANT and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) *et seq.*) and the five (5) applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

(c) CONSULTANT shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

(d) CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall act in accordance with Title VI. Specifically, CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subconsultants, including

procurement of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. Department of Transportation's (USDOT's) Regulations, including employment practices when the AGREEMENT covers a program whose goal is employment.

**24. Debarment and Suspension Certification.**

(a) CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to ALAMEDA CTC.

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

(c) Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

(d) This **Paragraph 24** is applicable to all subconsultants hereunder.

**[Signatures on following page]**



IN WITNESS WHEREOF, ALAMEDA CTC and CONSULTANT have entered into this AGREEMENT on the day and year first above written.

**CONSULTANT:**

[\_\_COMPANY NAME\_\_]

By: \_\_\_\_\_  
[\_\_Company Representative\_\_] Date  
[\_\_Representative's Title\_\_]

\_\_\_\_\_  
CONSULTANT's Federal Tax ID No.

**ALAMEDA CTC:**

ALAMEDA COUNTY TRANSPORTATION COMMISSION

By: \_\_\_\_\_  
Arthur L. Dao Date  
Executive Director

Recommended:

By: \_\_\_\_\_  
[\_\_Name\_\_] Date  
Director of [\_\_Department\_\_]

Reviewed as to Budget/Financial Controls:

By: \_\_\_\_\_  
Patricia Reavey Date  
Deputy Executive Director  
of Finance and Administration

Approved as to Legal Form:

By: \_\_\_\_\_  
Wendel, Rosen, Black & Dean LLP Date  
ALAMEDA CTC Counsel

## STANDARD FORM AGREEMENT

### AGREEMENT RECITALS

**A.** The voters of Alameda County, pursuant to the provisions of the Bay Area County Traffic and Transportation Funding Act, Public Utilities Code Section 131000, *et seq.*, approved Measure B at the General Election held in November 1986, authorizing the collection of a one-half cent transaction and use tax over a fifteen (15)-year period to address major transportation needs and congestion in Alameda County and giving the Alameda County Transportation Authority (“ACTA”) the responsibility for the administration of the proceeds of the tax along with other funds. Although the 1986 tax expired in 2002, several capital projects will not be completed until 2013 or later (the “Transition Period”).

**B.** The voters of Alameda County, pursuant to the provisions of the Local Transportation Authority and Improvement Act, Public Utilities Code Section 180000, *et seq.*, approved the reauthorization of Measure B at the General Election held on November 7, 2000, authorizing the collection of a one-half cent transaction and use tax that will be collected for twenty (20) years beginning April 1, 2002 and giving the Alameda County Transportation Improvement Authority (“ACTIA”) responsibility for the administration of the proceeds of the tax along with other funds.

**C.** By resolutions adopted by the ACTA and ACTIA Boards on June 24, 2010, all of ACTA’s functions and responsibilities were assigned to, and accepted by, ACTIA. On that same date, by actions of the ACTIA Board and the Board of the Alameda County Congestion Management Agency (“ACCMA”), ACTIA and ACCMA took the final actions to create the ALAMEDA CTC, a joint powers authority, with all of ACTIA and ACCMA’s functions and responsibilities. Pursuant to resolutions adopted by the ACCMA and ACTIA Boards and the ALAMEDA CTC Commission, ACCMA and ACTIA were terminated as of the close of business on February 29, 2012, with ALAMEDA CTC designated as the successor entity. All of its predecessors’ functions and responsibilities have been assigned to, and accepted by, ALAMEDA CTC.

**D.** Pursuant to a joint powers agreement originally entered into by ACCMA, ACTIA and the Santa Clara Valley Transportation Authority and dated February 23, 2006, such entities created the Sunol Smart Carpool Lane Joint Powers Authority (“SUNOL JPA”) to own and operate Express Lanes on the I-680 Sunol Grade within Alameda and Santa Clara Counties.

**E.** On January 23, 2014, the ALAMEDA CTC approved the 2014 Transportation Expenditure Plan. The 30-year Expenditure Plan will expand Bay Area Rapid Transit District (BART), bus and rail services within Alameda County, keep transit fares affordable for youth, seniors, and people with disabilities, provide traffic relief on city streets and highways using new technology, improve air quality, and create good quality, local jobs. On November 4, 2014, Alameda County voters approved Measure BB (supported by the 2014 Transportation Expenditure Plan), which will augment and extend the existing transportation sales tax (Measure B) and provide nearly \$8 billion to fund implementation of the 30-year Expenditure Plan. The ALAMEDA CTC is responsible for administering the 2014 Transportation Expenditure Plan, including contract oversight, policy direction, financing, investment management, and coordinating projects with regional transit and transportation agencies and other project sponsors, as required.

**F.** ALAMEDA CTC requires the services of a qualified professional to provide services necessary for the implementation of the program or project identified on the first page of this AGREEMENT.

**G.** CONSULTANT represents that it possesses the professional qualifications and to provide such services.

**H.** ALAMEDA CTC wishes to engage CONSULTANT to perform those certain professional services and CONSULTANT desires to perform such professional services.

**NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

**AGREEMENT PROVISIONS**

ALAMEDA CTC hereby contracts with CONSULTANT and CONSULTANT hereby accepts such contract to perform the services upon the terms and subject to the conditions and in consideration of the payments set forth in this AGREEMENT. CONSULTANT promises, covenants and agrees to diligently pursue the work to completion in accordance with the schedule and under the terms and conditions set forth herein.

It is further understood and agreed that any subcontract entered into by CONSULTANT as a result of this AGREEMENT shall contain all of the relevant provisions and conditions of this AGREEMENT.

**ARTICLE I - GENERAL PROVISIONS**

**A. GENERAL.**

**1. Scope of Services.** The Scope of Services to be performed by CONSULTANT is described in **Appendix A**. Except as may be specified elsewhere in the AGREEMENT, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the work described in **Appendix A**.

**2. Term.** The term of this AGREEMENT shall be as stated on page one hereof, unless: (a) extended in writing by mutual agreement between the parties or (b) terminated earlier pursuant to **Article I, Section C**, below.

**3. Compensation.**

**(a) Aggregate Amount.** The aggregate total of payments for work performed under this AGREEMENT shall not exceed the amount shown on page one of this AGREEMENT, nor will CONSULTANT be obligated to perform additional services beyond the scope of this AGREEMENT or incur costs which would cause this amount to be exceeded, unless and until the AGREEMENT has been formally amended in writing. CONSULTANT acknowledges that some or all of the compensation hereunder may be paid by or on behalf of ALAMEDA CTC or the SUNOL JPA.

**(b) Basis of Compensation.** Compensation to the CONSULTANT pursuant to this AGREEMENT will be based on the method identified on page one of this AGREEMENT, as set forth in **Appendix B**, subject to the terms defined in **Article I, Section A, Paragraph 3(c)**. If compensation is based on Time and Materials, ALAMEDA CTC shall pay the CONSULTANT the amount of the CONSULTANT's Fixed Hourly Rates shown in **Appendix B**, or where rates are not shown, the applicable Salary Cost Factor shall be used, plus Direct Expenses, plus subconsultant fees and/or other outside services and facilities procured by the CONSULTANT, plus applicable sales or similar taxes. Compensation for expenses related to travel outside or from outside the San Francisco Bay Area must be approved in writing, in advance, by ALAMEDA CTC.

**(i)** CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal in **Appendix B**. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT unless otherwise approved in writing by ALAMEDA CTC.

**(ii)** Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

(iii) When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from ALAMEDA CTC before exceeding such estimate.

(iv) CONSULTANT shall not commence performance of work or services until this contract has been approved by ALAMEDA CTC, and notification to proceed has been issued by ALAMEDA CTC. No payment will be made prior to approval or for any work performed prior to approval of this contract.

(v) CONSULTANT will also be reimbursed for Direct Expenses as defined herein.

(vi) CONSULTANT will be reimbursed within thirty (30) calendar days upon receipt by ALAMEDA CTC of complete, itemized invoices submitted under the requirements herein. Invoices itemizing all costs are required for all work performed. Invoices shall be submitted in accordance with **Article II, Section B**. 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 and project title. Credits due ALAMEDA CTC that include any equipment purchased under the provisions of **Article III, Section A, Paragraph 19** (Equipment Purchase) of this AGREEMENT, must be reimbursed by CONSULTANT prior to the expiration or termination of this contract. Invoices shall be mailed to ALAMEDA CTC at the following address:

Alameda County Transportation Commission  
Attn: Accounts Payable  
1111 Broadway, Suite 800  
Oakland, CA 94607

(vii) Progress payments will be made monthly in arrears based on services provided and actual costs incurred.

(viii) Notwithstanding anything to the contrary in this AGREEMENT, if CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth, no payment will be made until the deliverable has been satisfactorily completed.

(c) **Definitions.** The following definitions shall govern the calculation of the CONSULTANT's compensation hereunder:

(i) "Fixed Hourly Rates" means the hourly rates which have been negotiated for most personnel working for the CONSULTANT and its subconsultants who will perform services under this AGREEMENT. Such rates include full compensation associated with such staff, including Direct Salaries, Salary Costs, General Overhead and Salary Cost Factor. Fixed Hourly Rates are calculated by multiplying the Direct Salaries by the Salary Cost Factor, or are established as Negotiated Billing Rates, all as set forth in **Appendix B**. Except as otherwise shown in **Appendix B**, Fixed Hourly Rates shall remain constant during the term of this AGREEMENT.

(ii) "Negotiated Billing Rates" means the Fixed Hourly Rates of compensation established by mutual agreement between the parties in lieu of calculation by Direct Salaries and Salary Cost Factors, paid to the CONSULTANT's and subconsultant's employees for work directly performed on this AGREEMENT, inclusive of all salary, payroll-related taxes, payments, premiums, benefits, and indirect general and administrative costs.

(iii) “Direct Salaries” means the amount of wages or salaries paid to the CONSULTANT’s and subconsultant’s employees for work directly performed in this AGREEMENT, exclusive of all payroll-related taxes, payments, premiums, and benefits, calculated on an hourly basis.

(iv) “Salary Costs” means the amount of wages or salaries paid to the CONSULTANT’s and subconsultant’s respective employees for work directly performed on this AGREEMENT, plus a percentage applied to all such wages or salaries to cover all payroll-related taxes, payments, premiums, and benefits.

(v) “General Overhead” means a percentage of Direct Salaries paid to the CONSULTANT’s and subconsultant’s respective employees on all projects necessary to cover those indirect general and administrative costs incurred by the CONSULTANT or its subconsultants during the period of performance of services. General Overhead will not change for the life of this AGREEMENT.

(vi) “Salary Cost Factor” means a factor applied to the Direct Salaries for CONSULTANT or an individual subconsultant to cover Salary Costs, General Overhead and profit. Salary Cost Factors for CONSULTANT and each individual subconsultant are shown in **Appendix B**. Salary Cost Factors will not change for the life of the AGREEMENT. The Salary Cost Factor is computed by aggregating (x) Salary Costs as a percentage of Direct Salaries and (y) General Overhead as a percentage of Direct Salaries, and multiplying this sum by the allowable profit, as follows:

$$\text{Salary Cost Factor} = (\text{Salary Costs as percentage of Direct Salaries} + \text{General Overhead as percentage of Direct Salaries}) \times (\text{Allowable Profit})$$

Therefore, as example:

$$\text{Salary Cost Factor} = (1.315 + 1.513) \times (1.05) = 2.97$$

(vii) “Direct Expenses” mean the costs incurred on or directly for this AGREEMENT, other than Salary Costs and General Overhead Costs, which are included on the cost proposal or otherwise approved in advance by ALAMEDA CTC and are reasonably necessary for the CONSULTANT’s performance under this AGREEMENT. Such Direct Expenses shall be computed on the basis of actual purchase price for items obtained from commercial sources and on the basis of current rates for items provided by the CONSULTANT. Direct Expenses may include, but not be limited to the following costs, to the extent directly related to work on this AGREEMENT:

(1) Premiums for special insurance required as a result of this AGREEMENT. The CONSULTANT shall obtain approval of ALAMEDA CTC prior to securing such special insurance.

(2) Identifiable communications expenses, including long-distance telephone, telegraph, cable, express charges, mail costs, and other communications costs.

(3) Any and all computer charges, services and costs related to work on the PROJECT by the CONSULTANT or its subconsultants.

(4) Printing, binding, plotting, and other reproduction costs.

(5) Costs of travel, meals and lodging, and subsistence of personnel traveling outside or from outside the San Francisco Bay Area in connection with this AGREEMENT, which are approved in advance by ALAMEDA CTC.

(6) Mileage at the CONSULTANT's current standard rate when the CONSULTANT's own automobiles are used. This mileage rate may be adjusted by the CONSULTANT on an annual basis but shall not be more than the IRS approved mileage rate.

(7) AGREEMENT-related automatic typing equipment and services.

(8) Field and laboratory tests and analyses.

(9) Special equipment and tools used for this AGREEMENT and not considered "tools of the trade".

(10) All costs associated with outside services and facilities (but not including rent for office space occupied by CONSULTANT team).

(11) All costs associated with records management including, but not limited to, the preparation of material for filming, equipment, and micro reproduction.

(12) Other direct costs and expenses incurred by the CONSULTANT on this AGREEMENT not specifically set forth herein, subject to ALAMEDA CTC's prior approval therefor.

#### 4. Invoices and Time of Payment.

(a) For all services described in **Article I** and **Appendix A**, CONSULTANT shall bill ALAMEDA CTC using the forms and instructions included in **Appendix D**. CONSULTANT shall submit an itemized invoice to ALAMEDA CTC which includes the following:

(i) The number of this contract for reference purposes;

(ii) Where applicable, separate statements for ALAMEDA CTC and the SUNOL JPA, showing amounts due with respect to services provided to the respective agency;

(iii) Dates for the time period covered by the invoice; and

(iv) Consultant Payment Request Form in **Appendix D**.

Upon receipt of a valid and complete invoice from CONSULTANT for services rendered during the specified billing period, ALAMEDA CTC shall pay the amount properly invoiced within thirty (30) calendar days. The determination of whether an invoice is valid and complete shall be made by ALAMEDA CTC in its sole discretion and ALAMEDA CTC shall retain the right to request reasonable documentation for certain expense items. In such instances, payment for all other amounts in the invoice for which additional documentation is not required will be made in accordance with this section. Invoices must be legible and reproducible. CONSULTANT shall prepare and submit separate invoices for ALAMEDA CTC and the SUNOL JPA, if applicable. Any invoices which are illegible, incomplete or inaccurate will be returned to CONSULTANT for clarification and/or completion. CONSULTANT's signature is required on all invoices.

(b) If ALAMEDA CTC disputes any portion of the amount due to CONSULTANT, it may, at its sole discretion, withhold payment up to one hundred fifty percent (150%) of the disputed amount. If any amount is wrongfully withheld or not paid to CONSULTANT on a timely basis, ALAMEDA CTC shall pay to CONSULTANT one and one-half percent (1.5%) per month for the improperly withheld amount for each month which payment is wrongfully withheld or not paid. In any action for the collection of amount withheld in violation of this provision, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

(c) CONSULTANT agrees that within ten (10) calendar days' receipt of payment from ALAMEDA CTC, CONSULTANT shall pay to its subconsultants all amounts due from such payment, subject to such legal requirements under federal or state law regarding withholding of disputed payments and applicable penalties.

(d) Final Payment shall be subject to the provisions of **Article I, Section A, Paragraph 4** with regard to ALAMEDA CTC's right to withhold disputed payments, and CONSULTANT's rights to one and one-half percent (1.5%) payment on wrongfully withheld or untimely payment.

(e) CONSULTANT agrees to comply with federal procedures in accordance with Title 2 Code of Federal Regulations 200 ("2 CFR 200").

(f) CONSULTANT agrees that the cost principles set forth in Title 2 CFR 200 shall be used to determine the allowability of individual cost items. Any costs for which payments have been made to CONSULTANT which are determined by subsequent audit to be unallowable under 2 CFR 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 *et seq.*, including but not limited to indirect costs reimbursed as part of, or otherwise included within, CONSULTANT's or its subconsultants' fully-burdened billing rates, are subject to repayment by CONSULTANT to ALAMEDA CTC. In such event, ALAMEDA CTC may at its option set-off such undue compensation by deducting such amount from payments then due to the CONSULTANT and subconsultants. Prior to making such deduction, ALAMEDA CTC shall give the CONSULTANT seven (7) calendar days' prior notice of its intent to set-off and allow CONSULTANT to make an alternative proposal with ALAMEDA CTC to refund the undue compensation. If, at the end of the notice period of seven (7) calendar days, CONSULTANT has not offered an alternative proposal acceptable to ALAMEDA CTC, ALAMEDA CTC may immediately thereafter exercise its right to set-off.

(g) Subconsultant compensation and direct costs directly attributable to the performance of the services required by this AGREEMENT shall be reimbursed either at a unit rate or at actual cost invoiced to CONSULTANT as specified on **Appendix B**. Costs not specifically identified on **Appendix B** will not be separately reimbursed but will instead be considered to be included in the Fixed Hourly Rates set forth on **Appendix B**.

(h) If any subconsultant provides services pursuant to this AGREEMENT, the agreement with said subconsultant shall contain a clause to the effect that the provisions of **Paragraphs (e), (f) and (g)** above shall apply to said subconsultant.

**5. CONSULTANT's Identity and Personnel.** The person identified on page one as the CONSULTANT's Key Personnel will be the key person for the performance of services under this AGREEMENT. CONSULTANT's additional key personnel who will work on the PROJECT are identified in **Appendix B**. Any addition or deletion of a firm (whether working as a joint venture partner or subconsultant), or any change in key personnel may be made only upon prior written approval by ALAMEDA CTC. CONSULTANT shall notify ALAMEDA CTC of any proposed change of ownership or fundamental structure in CONSULTANT's firm. Within thirty (30) calendar days of such notice, ALAMEDA CTC shall notify CONSULTANT whether ALAMEDA CTC will approve such changed firm or personnel to continue providing services under this AGREEMENT or whether ALAMEDA CTC will terminate this AGREEMENT. Nothing in this provision shall be construed to limit ALAMEDA CTC's right to terminate this AGREEMENT for cause or without cause as set forth in **Article I, Section C** of this AGREEMENT. Subcontracts between the CONSULTANT and any subconsultants will be subject to review and approval of ALAMEDA CTC's representative.

If CONSULTANT reassigns or reduces the commitment of any such key personnel, CONSULTANT shall provide a suitable replacement, subject to the approval of ALAMEDA CTC, and CONSULTANT shall

provide a reasonable number of unbilled hours of work for such replacement personnel to the extent required to bring the personnel up to speed.

**6. Preliminary Review of Work.** Where the CONSULTANT is required to prepare and submit reports, working papers, etc., to ALAMEDA CTC as products of the work described in Scope of Work, these documents shall be submitted in draft form, and opportunity provided for ALAMEDA CTC to review and request revisions, in a reasonable time interval but in all cases unless otherwise agreed to by ALAMEDA CTC at least five (5) business days prior to formal submission.

**7. Responsibility of CONSULTANT.** The CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under the AGREEMENT.

**8. Evaluation of CONSULTANT.** The CONSULTANT shall be evaluated against its ability to meet the Performance Measures specified in **Appendix C**. Neither ALAMEDA CTC's review, acceptance, nor payment for any of the services required under the AGREEMENT shall be construed to operate as a waiver of any rights under the AGREEMENT or of any cause of action arising out of the performance of the AGREEMENT, and the CONSULTANT shall be and remain liable to ALAMEDA CTC in accordance with applicable law for all damages to ALAMEDA CTC caused by the CONSULTANT's negligent performance of any of the services furnished under the AGREEMENT.

**9. Inspection of Work.** It is understood that authorized representatives of ALAMEDA CTC may inspect or review the CONSULTANT's work in progress at any reasonable time.

**10. Suspension, Delay, or Interruption of Work.** ALAMEDA CTC may suspend, delay, or interrupt the services of the CONSULTANT for the convenience of ALAMEDA CTC. In the event of force majeure or of such suspension, delay, or interruption, equitable adjustment will be made in the PROJECT schedule, commitment and cost of CONSULTANT's personnel and subconsultants, and CONSULTANT's compensation.

**B. NOTICE TO PROCEED.**

**1.** CONSULTANT shall not perform any work or incur any costs under this AGREEMENT without written direction from ALAMEDA CTC. CONSULTANT is advised that any recommendation for contract award is not binding on ALAMEDA CTC until the AGREEMENT is fully executed and approved by ALAMEDA CTC.

**C. TERMINATION/CANCELLATION.**

**1. Termination by ALAMEDA CTC.** ALAMEDA CTC may, by written notice to CONSULTANT, terminate the AGREEMENT in whole or in part, whether for ALAMEDA CTC's convenience or because of the failure of the CONSULTANT to substantially perform its duties and obligations under the AGREEMENT, in accordance with **Subparagraphs (a) and (b)** hereof. Upon receipt of such notice, the CONSULTANT shall deliver to ALAMEDA CTC all data, estimates, graphs, summaries, reports, plans, photographs and other visual data and such information and materials, whether in draft or final form, as may have been accumulated by the CONSULTANT in performing its services under the AGREEMENT, whether completed or in progress.

**(a) For Convenience.** If the termination is for the convenience of ALAMEDA CTC, ALAMEDA CTC shall give the CONSULTANT not less than seven (7) calendar days' prior written notice. The CONSULTANT shall be paid for authorized services performed to the date of termination, including a prorated amount of profits on such services actually performed, if applicable, but no amount shall be allowed for anticipated profit on unperformed services. In addition to payment for services performed, ALAMEDA CTC



shall pay the CONSULTANT the allowable costs incurred prior to termination, and other costs reasonably incurred by the CONSULTANT to implement the termination, such as, but not limited to, similar subcontract termination costs and related closeout costs, if any.

**(b) For Cause.** ALAMEDA CTC shall give the CONSULTANT seven (7) calendar days' prior notice of its intent to terminate the AGREEMENT for any material breach on the part of CONSULTANT. If, at the end of the notice period of seven (7) calendar days, the CONSULTANT has not commenced correction of its performance in a manner reasonably acceptable to ALAMEDA CTC, ALAMEDA CTC may immediately thereafter exercise its right of termination.

**2. Termination by CONSULTANT.** CONSULTANT may terminate this AGREEMENT if CONSULTANT determines that for professional reasons CONSULTANT cannot fulfill the terms of the AGREEMENT. CONSULTANT shall provide ALAMEDA CTC with not less than thirty (30) calendar days' prior notice of its intent to so terminate the AGREEMENT. CONSULTANT shall deliver to ALAMEDA CTC all data, estimates, graphs, summaries, reports, plans, and such information and materials as may have been accumulated by the CONSULTANT in performing its services under the AGREEMENT, whether completed or in progress, within five (5) business days of termination of the AGREEMENT.

**3. Damages/Compensation.** If ALAMEDA CTC terminates the AGREEMENT for cause pursuant to **Article I, Section C, Paragraph 1(b)** or if CONSULTANT terminates the AGREEMENT pursuant to **Article I, Section C, Paragraph 2**, the CONSULTANT will be compensated for that portion of the work which has been completed and accepted by ALAMEDA CTC, and for services performed to the date of termination including a pro-rated amount of profit, if applicable, but no allowance for anticipated profit or unperformed services. In such case, ALAMEDA CTC may take over the work and prosecute the same to completion by contract or otherwise, and the CONSULTANT shall be liable to ALAMEDA CTC for reasonable costs incurred by ALAMEDA CTC in making necessary arrangements for completion of the work by others. ALAMEDA CTC shall have the right to set off any such amounts it incurs in order to complete the work or otherwise related to CONSULTANT's termination against any payments owed to CONSULTANT for that portion of the work which has been completed and accepted by ALAMEDA CTC.

**4. Adjustments.** If, after notice of termination for failure to perform, it is determined by ALAMEDA CTC that the CONSULTANT had not so failed, and ALAMEDA CTC terminated the AGREEMENT, the termination shall be deemed to have been effected for the convenience of ALAMEDA CTC. In such event, adjustment shall be made as provided in **Article I, Section C, Paragraph 1(a)**.

**5. Remedy.** The rights and remedies of the parties provided in this section are cumulative and not exclusive, and are in addition to any and all other rights and remedies provided by law or other sections of this AGREEMENT.

**6. Waivers.** CONSULTANT, by executing the AGREEMENT, shall be deemed to have waived any and all claims for damages in the event of ALAMEDA CTC's termination for convenience as provided in **Article I, Section C, Paragraph 1**, except for justifiable costs of termination, as mutually agreed by ALAMEDA CTC and CONSULTANT.

#### **D. INDEMNIFICATION.**

**1. Duties.** CONSULTANT represents and maintains that it is skilled in the technical and/or professional practices necessary to perform the services, duties and obligations, expressed and implied, contained herein. Accordingly ALAMEDA CTC expressly relies upon CONSULTANT's representations regarding its skills and knowledge. The CONSULTANT shall perform all services and duties in conformance with and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

**2. Responsibilities.** CONSULTANT agrees to protect, defend, indemnify and hold harmless ALAMEDA CTC and, if applicable, the SUNOL JPA, the State of California acting by and through its Department of Transportation (“CALTRANS”), or other permitting or responsible agencies as identified by ALAMEDA CTC, and their respective officers, employees, and agents, from and against any and all liability, claims, suits, demands, losses, damages, costs and expenses (collectively “CLAIMS”) arising out of, pertaining to, or relating to the negligence, recklessness or willful misconduct of the CONSULTANT or its officers, employees, agents or subconsultants in the performance of their services under the AGREEMENT. In the event either ALAMEDA CTC or the SUNOL JPA is found by a court or arbitrator to be partially liable for a CLAIM, such responsible agency shall reimburse the CONSULTANT for its proportionate share of the reasonable costs of defense actually expended, based on its share of liability.

**E. INSURANCE.**

**The required coverage limits and additional insured for all insurance coverage required for this AGREEMENT are shown on page 2 hereof and is further described in this section.** Requests for waivers to such insurance requirements should be submitted in writing to ALAMEDA CTC. ALAMEDA CTC will review the insurance exception requests, and issue written approval of such waivers at its discretion. All policies will be issued by insurers with a current A.M. Best’s rating of A or better, with a Financial Size Category of VIII or better.

**1. Commercial or Comprehensive General Liability.** CONSULTANT shall carry Commercial or Comprehensive General Liability Insurance and maintain aggregate limits of liability equal to or greater than the minimum coverage for such insurance shown on page 2 of this AGREEMENT. Maintenance of said insurance shall extend throughout the entire term of this AGREEMENT. Such insurance shall name ALAMEDA CTC (and, if so directed by ALAMEDA CTC, the SUNOL JPA, CALTRANS, or other permitting or responsible agencies as identified by ALAMEDA CTC), and their respective officers, employees and agents, as additional insured. The policy shall include an endorsement providing that such insurance is primary and non-contributory with respect to any insurance or self-insurance that is carried and maintained by ALAMEDA CTC or additional insured. Such insurance shall include the following:

- (a) All operations including use of all vehicles.
- (b) Blanket contractual liability on all written contracts, including this AGREEMENT.
- (c) Personal injury (in lieu of, or in addition to, bodily injury).
- (d) Use of watercraft, where applicable.

**2. Automobile Liability Insurance.** CONSULTANT shall carry and maintain Automobile Liability Insurance with limits equal to or greater than the minimum coverage for such insurance shown on page 2 of this AGREEMENT for all automobiles owned, used or maintained by the CONSULTANT and its officers, agents and employees, including but not limited to owned, leased, non-owned and hired automobiles. Such insurance shall name ALAMEDA CTC (and, if so directed by ALAMEDA CTC, the SUNOL JPA, CALTRANS, or other permitting or responsible agencies as identified by ALAMEDA CTC), and their respective officers, employees and agents, as additional insured. The policy shall include an endorsement providing that such insurance is primary and non-contributory with respect to any insurance or self-insurance that is carried and maintained by ALAMEDA CTC or additional insured. Such automobile liability coverage may, but is not required to be, provided as part of the liability insurance described above.

**3. Umbrella Insurance.** CONSULTANT shall carry and maintain Umbrella Insurance with limits equal to or greater than the minimum coverage for such insurance shown on page 2 of this

AGREEMENT, providing excess limits over Employer's Liability, Automobile Liability and Commercial or Comprehensive General Liability Insurance.

**4. Professional Liability Insurance.** CONSULTANT shall carry and maintain Professional Liability insurance for errors and omissions in an amount equal to or greater than the minimum coverage shown on page 2 of this AGREEMENT. If such policy is written on a "Claims-Made" (rather than an "occurrence") basis, CONSULTANT shall maintain continuous coverage in effect for the Term of Agreement shown on page 1 of this AGREEMENT to at least three (3) years beyond the termination or completion of services or until expiration of any applicable statute of limitations, whichever is longer.

**5. Workers' Compensation.** CONSULTANT shall carry Workers' Compensation insurance as required by California Law, covering all work performed by CONSULTANT under the AGREEMENT, and all CONSULTANT's personnel performing services under the AGREEMENT. CONSULTANT shall carry Employer's Liability insurance in an amount equal to or greater than the minimum coverage shown on page 2 of this AGREEMENT, and any and all other coverage of the CONSULTANT's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation endorsement in favor of ALAMEDA CTC. Such Workers Compensation and Employers Liability may be waived, if, and only for as long as, CONSULTANT is a sole proprietor with no employees.

**6. Deductible.** A deductible or self-insured retention is permissible on all policies, providing that such deductible shall not exceed the amount shown on page 2 of this AGREEMENT. Further, if CONSULTANT's insurance policy includes a self-insured retention, nothing shall prevent any of the parties to this AGREEMENT from satisfying or paying the self-insured retention. If CONSULTANT's insurance policy states that the self-insured retention must be paid by a named insured as a precondition of the insurer's liability (or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers, do not serve to satisfy the self-insured retention), such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this AGREEMENT.

**7. Proof of Insurance.** Insurance certificates and policy endorsements and coverages evidencing the policies described in this **Article I, Section E** are to be furnished to ALAMEDA CTC within ten (10) calendar days of the execution of this AGREEMENT and shall provide for not less than thirty (30) calendar days' prior written notice to ALAMEDA CTC of any cancellation, non-renewal or material change of coverage in the policy or policies, and shall further provide ALAMEDA CTC will not be responsible for any premiums or assessments on any policy.

**8. Subconsultants' Insurance Requirements.** The provisions of **Article I, Section E (Insurance)** is applicable to all subconsultants and vendors hereunder, regardless of tier and subcontract amount. Subconsultants of the CONSULTANT providing services of a professional nature shall provide evidence of their own insurance which meets the above specifications to ALAMEDA CTC, or be named in the CONSULTANT's policy as additional insured if said policy of the CONSULTANT allows such addition. In the event a subconsultant, after using its best efforts, is unable to meet any insurance requirements of this **Article I, Section E** applicable to such subconsultant, ALAMEDA CTC, after examining the subconsultant's circumstances, may decide, in its sole discretion, to waive or modify any of the insurance specification requirements for such subconsultant.

## **F. GENERAL PRINCIPLES OF CONTRACT AND EMPLOYMENT EQUITY.**

**1.** The below **Sections G** and **H** each apply to this AGREEMENT only if the applicable box is checked on page 2 hereof. The following paragraphs of this **Section F** shall apply regardless of whether **Sections G** and **H** apply.

2. In connection with the execution of the AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, sex, gender, sexual orientation, gender identity, gender expression, age, religion, creed, national origin, ancestry, physical handicap, medical condition, genetic information, military/veteran status, or marital status. The CONSULTANT shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, creed, sex, gender, sexual orientation, gender identity, gender express, age, genetic information, military/veteran status, ancestry, physical handicap, medical condition, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination.

3. Even if this AGREEMENT is not subject to the provisions of **Section G** below, CONSULTANT is encouraged to utilize qualified Small Business Enterprise, Local Business Enterprise (“LBE”), Small Local Business Enterprise (“SLBE”) and Very Small Local Business Enterprise (“VSLBE”) subconsultants to perform a portion of the work described in **Appendix A**, and CONSULTANT shall report on such usage during the term of this AGREEMENT using applicable contract reporting forms.

#### **G. LOCAL BUSINESS CONTRACT EQUITY PROGRAM.**

1. If the applicable box is checked on page 2 hereof, all paragraphs of this **Section G** shall apply to this AGREEMENT.

2. CONSULTANT shall comply with all applicable provisions of ALAMEDA CTC’s Local Business Contract Equity (LBCE) Program, incorporated herein by reference as if attached hereto. ALAMEDA CTC shall provide a copy of the LBCE Program to CONSULTANT upon request.

3. In some instances, contracts may be exempt from goals pursuant to applicable provisions of ALAMEDA CTC’s LBCE Program. If this AGREEMENT is exempt from the LBCE Program, such exemption shall be noted on page 2 of this AGREEMENT.

4. If the CONSULTANT or any subconsultant is a Local Business Enterprise (“LBE”), a SLBE or a VSLBE, the status for that entity shall be noted in **Appendix B**.

#### **H. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM; OTHER FEDERAL REQUIREMENTS.**

1. If the applicable box is checked on page 2 hereof, all paragraphs of this **Section H** shall apply to this AGREEMENT.

##### **(a) Disadvantaged Business Enterprise (DBE) Participation.**

(i) This AGREEMENT is subject to Title 49 Code of Federal Regulations Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs” (“49 CFR 26”). CONSULTANTS who obtain DBE participation on this contract will assist CALTRANS or the Metropolitan Transportation Commission (“MTC”), as applicable, in meeting its respective federally mandated overall DBE goal.

(ii) The DBE goal for this AGREEMENT is as set forth on page 2 hereof. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Commitment (Exhibit 10-O2) attached hereto and incorporated as part of this AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

(iii) DBEs and other small businesses, as defined in 49 CFR 26, are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. CONSULTANT and its subconsultants, if any, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of USDOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy, as ALAMEDA CTC deems appropriate.

(iv) Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this **Paragraph 1**.

**(b) Performance of DBE Consultants and Other DBE Subconsultants.**

(i) A DBE firm may be terminated only with prior written approval from ALAMEDA CTC and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting ALAMEDA CTC consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).

(ii) 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.

(iii) 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, ALAMEDA CTC shall examine similar transactions, particularly those in which DBEs do not participate.

(iv) If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its agreement with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

**(c) Prompt Progress Payment to Subconsultants.**

If this AGREEMENT is subject to Section 7108.5 of the Business and Professions Code concerning prompt payment to subcontractors, CONSULTANT agrees that not later than seven (7) calendar days after receipt of payment from ALAMEDA CTC, CONSULTANT shall pay to its subconsultants all amounts due from such payment, unless otherwise agreed to in writing. In any event, whether or not Section 7108.5 is applicable, CONSULTANT shall pay its subconsultants all amounts due within the ten (10)-day period set forth in **Article I, Section A, Paragraph 4**. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with ALAMEDA CTC's prior written approval. Any violation of Section 7108.5 shall subject the violating CONSULTANT or subconsultants to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subconsultant performance, and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

**(d) Prompt Payment of Withheld Funds to Subconsultants.**

ALAMEDA CTC shall hold retainage, if any, from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by ALAMEDA CTC, of the contract work, and pay retainage to the CONSULTANT based on these acceptances. CONSULTANT or its subconsultants shall return all monies withheld in retention from all subconsultants, regardless of tier, within thirty (30) calendar days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) calendar 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 CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE subconsultants.

**(e) DBE Records.**

**(i)** CONSULTANT shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. If CONSULTANT is a certified DBE, CONSULTANT shall also show the date of work performed by CONSULTANT's forces along with the corresponding dollar value of the work.

**(ii)** 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 of the CALTRANS Local Assistance Procedures Manual at <http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter17/17f.pdf>), certified correct by the CONSULTANT or the CONSULTANT's authorized representative, and shall be furnished to ALAMEDA CTC 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 CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to ALAMEDA CTC.

**(f) DBE Certification and Decertification Status.** If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to ALAMEDA CTC within thirty (30) calendar days.

**ARTICLE II - SCOPE, REPORTING AND SCHEDULE**

**A. SCHEDULE OF WORK.**

**1.** CONSULTANT shall conform to **Appendices A and D**, except as otherwise modified by the AGREEMENT.

**B. PROGRESS REPORTING AND INVOICES; DEADLINES AND LIQUIDATED DAMAGES.**

1. CONSULTANT shall submit a monthly progress report to ALAMEDA CTC in accordance with **Appendix D**. Further, for any month during which CONSULTANT performs any task(s) or incurs any reimbursable costs with respect to the Scope of Services under this AGREEMENT, (i) CONSULTANT shall submit such monthly progress report in a form acceptable to ALAMEDA CTC which describes the work accomplished, and (ii) CONSULTANT shall submit a valid and complete invoice in accordance with **Article I, Section A, Paragraph 4** and **Appendix D**.

2. CONSULTANT shall submit each required monthly progress report and invoice to ALAMEDA CTC no later than thirty (30) calendar days following the last calendar day of the month covered by such progress report or invoice, as applicable, excepting work performed by subconsultants, which shall be invoiced no later than sixty (60) days following the last calendar month covered by such invoice. If any monthly progress report or invoice is not received by ALAMEDA CTC within forty-five (45) calendar days after the end of the covered month, CONSULTANT shall be liable to ALAMEDA CTC for liquidated damages in the amount of Fifty Dollars (\$50) for each business day following such forty-fifth (45th) calendar day until ALAMEDA CTC receives such progress report or invoice, as applicable. Such liquidated damages shall apply separately with respect to any late and outstanding invoice or progress report. Any such application of liquidated damages shall not affect the compensation owed by CONSULTANT to any of its subconsultants.

3. CONSULTANT shall be deemed to have waived the right to payment for services not invoiced within six (6) months of the date the services were performed. Any such waiver by CONSULTANT shall not affect the compensation owed by CONSULTANT to any of its subconsultants. For purpose of this provision the date of the invoice shall be the date of receipt by ALAMEDA CTC.

#### C. **EXTRA WORK.**

1. Unforeseen work will be classified as extra work when authorized by ALAMEDA CTC in writing. Further, CONSULTANT shall only perform any tasks described as optional in **Appendix A** upon written authorization from ALAMEDA CTC. In the absence of such written authorization by ALAMEDA CTC, CONSULTANT shall not be entitled to payment for such extra or optional work.

### ARTICLE III - GENERAL TERMS

#### A. **GENERAL.**

1. **No Third-Party Beneficiaries.** This AGREEMENT gives no rights or benefits to anyone other than ALAMEDA CTC and CONSULTANT and has no third-party beneficiaries, except the SUNOL JPA as specified herein.

2. **Legal Action.** All legal actions by either party against the other arising from this AGREEMENT, or for the failure to perform in accordance with the applicable standard of care, or any other cause of action, will be subject to the statutes of limitation of the State of California.

3. **Survival of Indemnities.** Notwithstanding the termination of this AGREEMENT and/or the breach of contract or warranty, fault, tort (including but not limited to torts based on negligence, statute or strict liability), the CONSULTANT's obligations of Indemnity set forth in **Article I, Section D** and any releases, limitations on indemnity, and any and all limitations on any remedies herein shall survive termination of this AGREEMENT for any cause, and **Article I, Section A, Paragraph 7** and **Article I, Section D** of this AGREEMENT shall take precedence over any conflicting provision of this AGREEMENT or any document incorporated into it or referenced by it.

4. **Jurisdiction and Venue.** The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. All legal actions arising

out of this AGREEMENT shall be brought in a court of competent jurisdiction in Alameda County, California and the parties hereto hereby waive inconvenience of forum as an objection or defense to such venue.

**5. Non Waiver.** Failure of ALAMEDA CTC to insist upon strict performance of any terms or conditions of this AGREEMENT, or failure or delay in exercising any rights or remedies provided herein or by law, or failure to properly notify CONSULTANT in the event of breach, or the acceptance of or payment for any services provided under this AGREEMENT shall not release CONSULTANT from the terms conditions, representations or obligations of this AGREEMENT, and shall not be deemed a waiver of any right of ALAMEDA CTC to insist upon strict performance or upon any of its rights or remedies as to any prior or subsequent default.

**6. Severability and Survival.** If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**7. Documents.** Except as noted below, deliverables prepared by the CONSULTANT under the AGREEMENT, such as photographs, reports, plans, graphics, drawings, tracings, quantities, specifications, proposals, sketches, diagrams and calculations, relative to the AGREEMENT shall become the property of ALAMEDA CTC upon their creation, whether or not the services under the AGREEMENT are completed. ALAMEDA CTC shall not be limited in any way in its use thereof at any time during or after the term of this AGREEMENT, provided that any such use not within the purposes of the AGREEMENT shall be at the sole risk of ALAMEDA CTC, and provided that ALAMEDA CTC shall indemnify CONSULTANT's employees and its subconsultants employees against any damages resulting from such use, including the release of this material to third parties for use not intended in the AGREEMENT. CONSULTANT is not authorized to seek or obtain a copyright on any deliverable prepared under this AGREEMENT.

**8. Confidentiality.** All ideas, memoranda, reports, specifications, plans, construction procedures, drawings, descriptions, and all other written information submitted to or created by the CONSULTANT in connection with the performance of the AGREEMENT shall be held confidential by the CONSULTANT and shall not, without the prior written consent of ALAMEDA CTC, be used for any purposes other than the performance of the services under this AGREEMENT. Nothing furnished to the CONSULTANT, which is otherwise known to the CONSULTANT or generally known in the related industry, shall be deemed confidential. The CONSULTANT shall not use ALAMEDA CTC's, ACTA's, ACTIA's, ACCMA's or the SUNOL JPA's name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other news medium without the express written consent of ALAMEDA CTC. CONSULTANT may use project technical information in the demonstration of expertise for purposes of describing project experience to others in the routine conduct of CONSULTANT's business with ALAMEDA CTC's prior written consent.

**9. Audit of Books and Records.** For the purpose of determining compliance with Public Contract Code 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500 *et seq.*, when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT and subconsultants shall maintain and make available to ALAMEDA CTC, its authorized agents including but not limited to representatives of the regional, state and federal governments, and their respective officers and employees, for inspection and audit, all work products, materials, data and records for examination, any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to ALAMEDA CTC, and shall furnish to ALAMEDA CTC, its agents, and employees, such other evidence or information as ALAMEDA CTC may require with respect to any such expense or disbursement charged by the CONSULTANT. CONSULTANT and any subconsultants hereunder shall establish and maintain an accounting system and records that properly accumulate and segregate incurred contract costs by task and subtask. The



accounting system of the CONSULTANT and all subconsultants hereunder shall conform to Generally Accepted Accounting Principles (GAAP), enable determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

The records described in this Section shall be retained by the CONSULTANT and subconsultants and made available for inspection by ALAMEDA CTC during the AGREEMENT period and for a period of three (3) years after this AGREEMENT is terminated, four (4) years after the fiscal year of the last expenditure, or until completion of any litigation, claim or audit, whichever is longest.

ALAMEDA CTC may, in its sole discretion, conduct a periodic audit, not more frequently than once every twelve (12) months, of the project costs under this AGREEMENT in accordance with generally accepted accounting practices, as set forth in **Article I, Section A, Paragraph 4(f)** of this AGREEMENT.

This **Paragraph 9** is applicable to all subconsultants hereunder, excluding subcontracts of Twenty-Five Thousand Dollars (\$25,000) or lesser amounts.

**10. Audit Review Procedures.** 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 ALAMEDA CTC's Deputy Executive Director of Finance and Administration.

Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by ALAMEDA CTC's Deputy Executive Director of Finance and Administration of unresolved audit issues. The request for review will be submitted in writing.

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

CONSULTANT and subconsultants' contracts, including cost proposals and indirect cost rates ("ICR"), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant ("CPA") ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48 CFR, Chapter 1, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by ALAMEDA CTC to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by ALAMEDA CTC at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

**11. Disputes and Arbitration.** All claims, counterclaims, disputes, and other matters in question arising out of, or relating to, this AGREEMENT or the breach thereof that are not disposed of by agreement may be decided by mediation and/or final, binding arbitration in accordance with the applicable rules and procedures of the American Arbitration Associations in effect at the date of execution of this AGREEMENT. Either ALAMEDA CTC or CONSULTANT may initiate a request for such mediation or arbitration, but consent of the other party to such procedure shall be a necessary precondition to mediation or arbitration. Neither the pendency of a dispute, nor its referral to arbitration will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

**12. Attorneys' Fees.** Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to recover reasonable expenses and attorneys' fees from the other party, including but not limited to expenses and fees attributable to arbitration pursuant to **Paragraph 11** above.

**13. Independent Consultant.** In the performance of the services to be provided hereunder, CONSULTANT is an independent contractor and is not an officer, employee, agent or other representative of ALAMEDA CTC.

**14. Solicitation.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure the AGREEMENT and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making the AGREEMENT. For breach or violation of this warranty, ALAMEDA CTC shall have the right to rescind the AGREEMENT without liability.

**15. Conflict of Interest.** CONSULTANT shall ensure that no member, officer or employee of ALAMEDA CTC or of a public body within Alameda County, during his/her tenure or for one (1) year thereafter, or member or delegate to the Congress of the United States, shall have any direct interest in the AGREEMENT or any direct or material benefit arising therefrom, as defined by California Government Code sections 1090 *et seq.* and 87100 *et seq.* Prohibited interests include interests of immediate family members, domestic partners, and their respective employers or prospective employers.

CONSULTANT shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this AGREEMENT. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to ALAMEDA CTC; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this AGREEMENT or some other agreement.

CONSULTANT shall not engage the services of any subconsultant or vendor on any work related to this AGREEMENT if the subconsultant or vendor, or any employee of the subconsultant or vendor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this AGREEMENT.

If, at any time during the term of this AGREEMENT, CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT shall immediately provide ALAMEDA CTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONSULTANT shall immediately notify ALAMEDA CTC of any organizational conflict of interest, whether actual or apparent, in connection with any political campaign activities engaged by or involving its firm that is, or may be, related to and/or otherwise impact: the ALAMEDA CTC, its governing body, its projects and programs and/or its delivery of such project and programs. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this AGREEMENT, ALAMEDA CTC becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance of the work hereunder, ALAMEDA CTC shall similarly notify CONSULTANT. In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by ALAMEDA CTC, ALAMEDA CTC will consider the conflict presented and any alternatives proposed and meet with CONSULTANT to determine an appropriate course of action. ALAMEDA CTC's determination as to the manner in which to address the conflict shall be final.

CONSULTANT shall disclose to ALAMEDA CTC any financial, business, or other relationship that may have an impact upon the outcome of this AGREEMENT, or any ensuing ALAMEDA CTC construction project. CONSULTANT shall also disclose all current clients who may have a financial interest in the outcome of this AGREEMENT, or any ensuing ALAMEDA CTC construction project.

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.

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

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

Failure to comply with this section may subject CONSULTANT or its subconsultant or vendor to damages incurred by ALAMEDA CTC in addressing organizational conflicts that arise out of work performed by such subconsultant or vendor, or to termination of this AGREEMENT for breach.

Any subcontract in excess of Twenty-Five Thousand Dollars (\$25,000) entered into as a result of this AGREEMENT shall contain all of the above provisions of this **Paragraph 15**.

**16. Rebate, Kickbacks, or Other Unlawful Consideration.** CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any ALAMEDA CTC employee. For breach or violation of this warranty, ALAMEDA CTC 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 AGREEMENT price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

**17. Conflict of Employment.** Employment by the CONSULTANT of any current officer, executive director or other employee of ALAMEDA CTC or the SUNOL JPA shall not be permitted even though such employment may be outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, for a period of one (1) year after leaving office or employment, no officer, executive director or other employee of ALAMEDA CTC or the SUNOL JPA shall, for compensation, act as agent or attorney for or otherwise represent the CONSULTANT by making any formal or informal appearance, or by making any oral or written communication before ALAMEDA CTC, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding or revocation of a permit, license, grant, entitlement or contract, or the sale or purchase of goods, services or property.

**18. Assignment or Transfer.** Services to be furnished hereunder shall be deemed to be professional services, and CONSULTANT shall have neither the right nor the power to assign, subcontract, transfer or otherwise substitute its interest in the AGREEMENT or its obligations hereunder without the prior written consent of ALAMEDA CTC.

**19. Equipment Purchase.** Prior authorization in writing by ALAMEDA CTC shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding Five Thousand Dollars (\$5,000) for supplies, equipment, or subconsultant services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding Five Thousand Dollars (\$5,000) prior authorization by ALAMEDA CTC; three (3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this contract is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two (2) years and an acquisition cost of Five Thousand Dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, ALAMEDA CTC shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit ALAMEDA CTC 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 ALAMEDA CTC procedures; and credit ALAMEDA CTC in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by ALAMEDA CTC and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by ALAMEDA CTC." Federal regulations require a credit to Federal funds when participating equipment with a fair market value greater than Five Thousand Dollars (\$5,000) is credited to the project.

Any subcontract in excess of Twenty-Five Thousand Dollars (\$25,000) entered into as a result of this AGREEMENT shall contain the above provisions.

## **20. Subconsultants.**

(a) Nothing contained in this contract or otherwise, shall create any contractual relation between ALAMEDA CTC and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to ALAMEDA CTC for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from ALAMEDA CTC's obligation to make payments to the CONSULTANT.

(b) CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by ALAMEDA CTC, except that which is expressly identified in the approved Cost Proposal.

(c) CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by ALAMEDA CTC.

(d) Except as may be specified elsewhere in the AGREEMENT, any subcontract in excess of Twenty-Five Thousand Dollars (\$25,000) entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

(e) Any substitution of subconsultant(s) must be approved in writing by ALAMEDA CTC prior to the start of work by the subconsultant(s).

**APPENDIX A**  
**DETAILED SCOPE OF SERVICES**

**APPENDIX B  
PROJECT COST BASIS**

**Conditions.** Project costs are based on the following conditions:

- Compensation shall be based on hours worked during the preceding month at the approved hourly rates, in addition to approved direct costs, as described in this appendix and **Article I, Section A, Paragraphs 3** (Compensation) and **4** (Invoices and Time of Payment).
- Direct costs must be approved by ALAMEDA CTC in writing, in advance of costs being incurred.
- Any request for an increase in any hourly rate listed herein is subject to approval by ALAMEDA CTC at its sole discretion prior to costs incurred, and such request must be submitted in writing to ALAMEDA CTC at least thirty (30) calendar days prior to the proposed effective date of such new rate.
- Travel and per-diem costs shall be approved by ALAMEDA CTC in advance of costs being incurred, and shall be charged in conformance with, and in amounts not to exceed those set by, the following (as applicable): Article III, Section A, Paragraph 21 (State of California’s General Prevailing Wage Rates); the current CALTRANS Travel Guide for Consultant and Contractor Travel for travel within California; the current United States (U.S.) General Services Administration and/or U.S. Department of Defense rates and allowances for travel outside of California and within the United States and its territories; or the current U.S. Department of State rates and allowances for foreign travel.
- All costs must comply with the Federal cost principles set forth in 2 CFR 200.

**Forms.** The following forms, available at [www.alamedactc.org/app\\_pages/view/10614](http://www.alamedactc.org/app_pages/view/10614), are hereby made a part of the AGREEMENT and by this reference incorporated herein:

- Contract Cost Basis Form C
- Task Order Template

**Table B-1: Project Cost Basis**

Task No.	Task Description	Task Budget
1		
2		
3		
4		
5		
6		
7		
8		
O1		
<b>TOTAL</b>		

**Note:** Task amounts shown above are estimated and there is no guarantee, either expressed or implied, that this dollar amount will be authorized under this AGREEMENT. CONSULTANT shall submit a Contract Cost Basis Form C1 and obtain ALAMEDA CTC’s approval, prior to incurring costs in excess of the applicable limit shown above for each task. In no event shall CONSULTANT incur any costs in excess of the total shown above, except as otherwise provided in an amendment to this AGREEMENT signed by both parties hereto. Specific budget for optional tasks under Task O1 will be authorized through the execution of one or more task orders.

**Table B-2: Consultant and Subconsultant Budget**

Vendor	Tier	Certification (LBE, SLBE, and/or VSLBE) (DBE)	Budget
	Prime, Tier 1 or Tier 2 under [Subconsultant]	DBE LBE, SLBE and/or VSLBE	
<b>TOTAL</b>			<b>,\$,###,###</b>
<b>DBE LBE Total</b>			%
<b>SLBE Total</b>			%
<p><b>Note:</b> DBE LBE and SLBE breakdown shown represents all participation toward the goal(s) identified on page 2 of the AGREEMENT. CONSULTANT shall submit a Contract Cost Basis Form C2 with supporting documents and obtain ALAMEDA CTC's approval for any vendor not listed above, prior to such vendor performing work and/or incurring costs.</p>			

**Table B-3: Consultant and Subconsultant Fixed Hourly Rate Schedule and Key Personnel**

Vendor Name	Personnel Name	Title and/or Role	Direct Salary Rate (\$)	Fringe Rate (%)	Accepted Overhead Rate (%)	Indirect Cost Rate (%)	Profit Rate (%)	Fixed Hourly Rate (\$) <i>Effective Period MM/DD/YY-MM/DD/YY</i>	Fixed Hourly Rate (\$) <i>Effective Period MM/DD/YY-MM/DD/YY</i>	Fixed Hourly Rate (\$) <i>Effective Period MM/DD/YY-MM/DD/YY</i>	Annual Escalation Rate (%)
			\$0.00	0.00%	0.00%	0.00%	0.00%	\$0.00	\$0.00	\$0.00	0.00%
			\$0.00	0.00%	0.00%	0.00%	0.00%	\$0.00	\$0.00	\$0.00	0.00%
			\$0.00	0.00%	0.00%	0.00%	0.00%	\$0.00	\$0.00	\$0.00	0.00%
			\$0.00	0.00%	0.00%	0.00%	0.00%	\$0.00	\$0.00	\$0.00	0.00%
			\$0.00	0.00%	0.00%	0.00%	0.00%	\$0.00	\$0.00	\$0.00	0.00%

**Notes:**

1. The Indirect Cost Rate identified for each firm will be applied to Direct Salary Rate to determine the Fixed Hourly Rate, including for any individuals not listed above. CONSULTANT shall submit a Contract Cost Basis Form C3 and obtain ALAMEDA CTC's approval for any individual not listed above, prior to such individual performing work and/or incurring costs. Certified payroll information will be required as supporting documentation.
2. The Fixed Hourly Rate shown represents maximum billing rate for the individual listed.
3. The profit and annual escalation rates may not exceed 8% and 3%, respectively.
4. The rates, including multipliers (%), shown above will apply throughout the term of this AGREEMENT as it may be extended.
5. An asterisk (\*) by the name of the individuals listed above denotes key personnel.

**Table B-4: Consultant and Subconsultant Unit Costs Schedule**

Task No.	Vendor Name	Description	Quantity	Unit	Unit Price	Total
----------	-------------	-------------	----------	------	------------	-------



1	Movement Counts, Inc.	72-hour continuous midweek video average daily traffic (ADT) counts; 4 midweek locations (2 EB/2WB) @ \$1,238 per location	4	Per Location	\$1,238.00	\$4,952.00
2	123, LLC	Travel	--	--	Actual Costs	\$1,000.00

**Notes:**

1. CONSULTANT shall submit a Contract Cost Basis Form C4 with supporting documents and obtain ALAMEDA CTC's approval for any unit costs not listed above, prior to incurring costs.
2. Actual costs shall be competitively priced and supported with documentation (e.g., invoice) and pre-approved by the ALAMEDA CTC Project Manager.
3. List other direct cost items with estimated costs. Costs must be competitive in their respective industries and supported with appropriate documentation.
4. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
5. Items such as special tooling will be reimbursed at actual cost with supporting documentation (invoice).
6. Items would be considered "tools of the trade" are not reimbursable as other direct cost.
7. Travel-related costs should be pre-approved by the ALAMEDA CTC Project Manager.
8. If mileage is claimed, the rate should be properly supported by the CONSULTANT'S calculation of its actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs and must not exceed the IRS-approved rate for the period.
9. If CONSULTANT proposes rental costs for a vehicle, it must demonstrate that this is its standard procedure for all of its contracts and that it does not own any vehicles that could be used for the same purpose.

**APPENDIX C**  
**PERFORMANCE MEASURES**

These performance measures shall be used during the course of the contract to evaluate CONSULTANT on deliverables and services performed:

- ...
-

**APPENDIX D**  
**CONSULTANT PAYMENT REQUEST AND PROGRESS REPORT FORMS**

The following forms are attached below and available at [www.alamedactc.org/app\\_pages/view/10614](http://www.alamedactc.org/app_pages/view/10614):

- A.** Consultant Payment Request Form
- B.** Vendor Costs Form
- C.** Vendor Contract Information Form
- D.** Staff Costs Form

**CONSULTANT PAYMENT REQUEST FORM**

FORM A

Prime Consultant: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Contact Name: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 E-mail: \_\_\_\_\_  
 Period (From - To): \_\_\_\_\_

Alameda CTC Project No.: \_\_\_\_\_  
 Alameda CTC Agreement No.: \_\_\_\_\_  
 Alameda CTC Project Manager: \_\_\_\_\_  
 Invoice No.: \_\_\_\_\_  
 Date of Invoice: \_\_\_\_\_  
 Payment Request No.: \_\_\_\_\_  
 Phase/Description: \_\_\_\_\_

**CONSULTANT COSTS**

Description	Approved Contract Budget	Billed This Period	Retention Held This Period	Previously Billed	Total Billed to Date	Remaining Task Budget
Consultant Charges					\$0.00	\$0.00
Direct Expenses					\$0.00	\$0.00
<b>TOTAL CONSULTANT COSTS:</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

**TASK BREAKDOWN**

Task No. (Per the Agreement)	Task Description	Approved Contract Task Budget	Billed this Period	Retention Held This Period	Previously Billed	Total Billed to Date	Remaining Task Budget
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
						\$0.00	\$0.00
<b>TOTAL TASK BREAKDOWN COSTS:</b>		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

**Consultant Project Manager's Certification**  
 I hereby certify that the information included in this Payment Request is true and accurate and that the claimed expenses have been paid as of the date of this request.

\_\_\_\_\_  
 Signature Date

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

**ALAMEDA CTC USE ONLY - Reviewer's Comments**

**Alameda CTC Approval**  
 I have reviewed that the supporting documents are accurate and complete, and I approve this invoice for payment.

\_\_\_\_\_  
 Signature Date







## **ALAMEDA CTC EXPENDITURE REPORTING REQUIREMENTS**

The 1986, 2000 and 2014 Transportation Expenditure Plans (TEPs) require reporting related to expenditures of Measure B and Measure BB revenues. The 2000 and 2014 TEPs include provisions for reporting expenditures to ALAMEDA CTC's Independent Watchdog Committee as a means of accountability. Contracting practices and policies for both Measure B and Measure BB require that capital expenditures be tracked at the individual vendor level including subconsultants and subcontractors.

Prime consultants and contractors that have agreements directly with ALAMEDA CTC with respect to Measure B and/or Measure BB programs or projects will be required to submit summaries of expenditures showing invoiced amounts for each individual vendor along with paid-to-date amounts for each attached to their invoices. In addition to invoices for current period billings showing expenditures segregated by vendor (i.e., prime consultants and subconsultants) vendors will be required to submit contract expenditures by phase and task. Payment Requests from vendors will not be considered without the information required in the contract. Deficient submittals will be returned to the vendor for re-submittal. Payment request forms are available on the ALAMEDA CTC website at [www.alamedactc.org/app\\_pages/view/10614](http://www.alamedactc.org/app_pages/view/10614) and are incorporated herein as if attached hereto. These forms may contain outdated references to ACTA and/or ACTIA (e.g., ACTA/ACTIA Contract No.). Any questions about properly filling out these forms should be directed to the ALAMEDA CTC Project Manager.

As required by the contract, a monthly Progress Report delineating the status of the contract shall be submitted. This report can be submitted with the Payment Request. If for some reason the Payment Requests are not submitted monthly, the Progress Report must still be submitted.



## **ALAMEDA CTC PAYMENT REQUEST PROCEDURE**

Payment of eligible costs is contingent upon meeting the terms indicated in the respective contract. The following procedures should be adhered to in order to expedite the payment process.

Each contract addresses the services to be provided, deliverables and compliance. The following procedures are provided to address these matters. In the event that unique conditions occur, contact the ALAMEDA CTC Project Manager identified on the first page of the AGREEMENT for assistance prior to submittal. Keep in mind that it is the goal of this process to allow ALAMEDA CTC to track the contract costs by task to track the business enterprise participation for each contract and provide adequate backup information to assure ALAMEDA CTC that the costs being submitted are eligible for payment.

Instructions and examples for each form follow.

Payment request forms are available at [www.alamedactc.org/app\\_pages/view/10614](http://www.alamedactc.org/app_pages/view/10614) and are incorporated herein as if attached hereto. Any questions regarding these forms and their use should be directed to the ALAMEDA CTC Project Manager.

**Payment request submission:** Payment requests must have the original signatures from an authorized manager, or the appropriate equivalent. Hard-copy submissions should be mailed to:

Alameda County Transportation Commission  
Attn: Accounts Payable  
1111 Broadway, Suite 800  
Oakland, CA 94607

**FORM A**  
**CONSULTANT PAYMENT REQUEST FORM INSTRUCTIONS**

The Consultant Payment Request Form is used to delineate costs summed up by Consultants Charges/Direct Expenses and by Task Breakdown.

Prime Consultant – The name of the Vendor as indicated on the contract between ALAMEDA CTC and the Vendor for which the Payment Request is being made.

Address – The address of the Vendor where correspondence and payments are to be sent.

Contact Name – Contact person for the Vendor to answer questions and coordinate processing of the requests.

Phone – Phone number of Vendor contact person.

E-mail – E-mail address of Vendor contact person.

Period (From – To) – The beginning date and ending date of the period for which payment is being requested.

ALAMEDA CTC Project No. – For Capital Projects, the ALAMEDA CTC Project No. as indicated on the contract. This information is not required for non-Capital Project Contracts.

ALAMEDA CTC Agreement No. – The number assigned to the contract between ALAMEDA CTC and the Vendor, under which the Payment Request is being made (i.e., AXX-XXXX or IXX-XXXX).

Project Manager – The name of the Project Manager assigned to the contract.

Invoice No. – The invoice number on the Vendor’s original invoice.

Date of Invoice – The date of the Vendor’s original invoice.

Payment Request No. – This number should be a consecutive number starting at “1”.

Phase/Description – Refer to the Payment Request Forms Legend in the contract.

**Consultant Costs**

Consultant Charges – “Approved Contract Budget” Identify the total amount(s) approved for Consultant Charges, excluding Direct Expenses, per the contract.

Consultant Charges – “Billed This Period” Identify the total amount of the Prime and Subconsultant costs included in this Payment Request.

Consultant Charges – “Previously Billed” The sum of the Consultant Charges billed in all previous invoices.

Consultant Charges – “Total Billed to Date” The sum of the Billed this Period and Previously Billed Columns. The Total Billed to Date is automatically calculated – verify data.

Consultant Charges – “Retention Held This Period” Allowable retainage held, if any.

Consultant Charges – “Remaining Budget” The Approved Contract Task Budget Amount less Total Billed to Date Amount.

Direct Expenses – “Approved Contract Budget” Identify the total amount(s) approved for Direct Expenses per the contract.

Direct Expenses – “Billed This Period” Identify the total amount of Prime and Subconsultant Direct Expenses included in this Payment Request. A direct expense is defined as the costs incurred on or directly for the contract other than salary costs and general overhead costs. Direct expenses shall be approved by ALAMEDA CTC in advance of costs being incurred, and shall be charged in accordance with Article I, Section A, Paragraph 3 (Compensation) and APPENDIX B (Project Cost Basis) of the AGREEMENT. Direct expenses shall include, but not be limited to, the following:

- Air Travel
- Car Rental
- Computer – Data Processing
- Computer – Word Processing
- Local Travel (Mileage)
- Color Copying
- Photocopying
- Postage/Delivery
- Reprographics/Printing
- Subsistence
- Telephone
- Special Equipment Rental

Direct Expenses – “Retention Held This Period” Allowable retainage held, if any.

Direct Expenses – “Previously Billed” The sum of the Direct Expenses billed in all previous invoices.

Direct Expenses – “Total Billed to Date” The sum of the Billed this Period and Previously Billed Columns. The Total Billed to Date is automatically calculated – verify data.

Direct Expenses – “Remaining Budget” The Approved Contract Task Budget Amount less Total Billed to Date Amount.

### **Task Breakdown**

Task No. – The task number assigned in the scope of work for the contract.

Task Description – The task description assigned in the scope of work for the contract.

Task Breakdown – “Approved Contract Budget” Identify the total amount approved for the corresponding task per the contract.

Task Breakdown – “Billed This Period” Identify the total amount of the charges by Task included in this Payment Request.

Task Breakdown – “Retention Held This Period” Allowable retainage held, if any, as applicable.

Task Breakdown – “Previously Billed” The sum of the Tasks billed in all previous invoices.

Task Breakdown – “Total Billed to Date” The sum of the Billed this Period and Previously Billed Columns. The Total Billed to Date is automatically calculated – verify data.

Task Breakdown – “Remaining Budget” The Approved Contract Task Budget Amount less Total Billed to Date Amount.

Consultant Project Manager’s Certification – This statement of trueness and accuracy must be certified by signature of the Vendor Contact Person. This must be signed by the Vendor’s Project Manager authorized by the contract.

Reviewer’s Comments – This box is for ALAMEDA CTC use only.

ALAMEDA CTC Approval – This is for ALAMEDA CTC use only for verification that the Payment Request has been reviewed for accuracy and completeness, and that it contains the pertinent back-up information.

**FORM B**  
**VENDOR COSTS INSTRUCTIONS**

Invoices should be processed on a monthly basis along with the required documentation. A completed Vendor Costs Form must be submitted for each contract being reported. Certain fields will automatically fill in through a link to Form A (Consultant Payment Request Form) if Form A has been completed.

Prime Consultant – The name of the Vendor as indicated on the contract between ALAMEDA CTC and the Vendor for which the Payment Request is being made.

ALAMEDA CTC Project No. – For Capital Projects, the ALAMEDA CTC Project No. as indicated on the contract. This information is not required for non-Capital Project Contracts.

ALAMEDA CTC Agreement No. – The number assigned to the contract between ALAMEDA CTC and the Vendor, under which the Payment Request is being made (i.e., AXX-XXXX or IXX-XXXX).

Phase/Description – Refer to the Payment Request Forms Legend in the contract.

Period (From – To) – The beginning date and ending date of the period for which payment is being requested.

Date Submitted – Date the form is submitted to ALAMEDA CTC for approval.

Original Contract Phase Amount – Amount of original contract entered into between ALAMEDA CTC and Vendor.

Amendment No. – Before the “:” list the Amendment Number (i.e., 1, 2, 3, etc.). After the “:” input the amount of the Amendment.

Current Contract Amount – The sum of the Original Contract Phase Amount plus any amendments made to the contract amount.

Previously Billed – Cumulative total of the amount previously billed.

Amount of This Invoice – Amount being requested for the period being reported. (Attach supporting documentation).

Remaining Budget – The sum of the Current Contract Phase Amount less Previously Billed less Amount of this Invoice.

Vendor Name – Name of company as indicated in the contract.

Vendor Tier – Refer to the Payment Request Forms Legend in the contract.

Certification – Refer to the Payment Request Forms Legend in the contract. Mark the appropriate box with an “X”. This is crucial for calculation of the formula in the “Actual to Date” columns.

Original Vendor Contract Amount – The amount listed in the original contract broken down by Vendor for a total amount not to exceed that listed in the original contract.

Current Vendor Contract Amount – The current contract amount is that amount listed in the contract with the subconsultant/subcontractor including all amendments, additional task orders, change orders and extra work.

Percent of Current Vendor Contract Amount – This percentage is based on each individual vendor’s percent of the total Current Contract Amount. This field is automatically calculated – verify data.

Previously Billed – The total amount invoiced by the Vendor in previous invoices.

Current Invoice – The total amount invoiced by the Vendor in the current invoice. Supporting documentation must be attached.

Total Invoiced-to-Date – Total amount previously billed plus the current invoice by Vendor as of the date of the invoice. This field is automatically calculated – verify data.

Total Paid-to-Date – Total amount paid to the Vendor by the date of the invoice.

% of Contract Invoices – Percentage of contract billed to date. Total Invoiced-to-Date divided by respective portion of Contract Amount. This field is automatically calculated – verify data.

### **Summary of Goal Participation**

No entries are necessary to this section of the form. The “Actual To Date” columns have a formula which will calculate the participation to date percentage by using, from the “Total Invoiced-to-Date” for the vendor against the “Total Invoiced-to-Date” grand total.

Vendor Name – Vendor names as listed in the table above. This information will automatically fill in through a link to table above.

Tier – Tier as listed in the table above. This information will automatically fill in through a link to table above.

### **Subconsultant Payment Record**

Vendor Name – Vendor names as listed in the table above. This information will automatically fill in through a link to table above.

Date Last Paid – Date of last payment made to Vendor either by Prime or by ALAMEDA CTC.

Amount Paid to Date – Total amount paid to date to the Vendor either by Prime or by ALAMEDA CTC.

Reviewer’s Comments – This box is for ALAMEDA CTC’s use only.

ALAMEDA CTC Approval – This is for ALAMEDA CTC use only for verification that the Request for Reimbursement has been reviewed for accuracy, is complete and contains the pertinent back-up information.

Phase Legend – Refer to the Payment Request Forms Legend in the contract.

Tier Legend – Refer to the Payment Request Forms Legend in the contract when completing the Tier field in the Vendor Costs Table.

Certification Legend – This describes the column headings for certifications. Refer to the Payment Request Forms Legend in the contract.

**FORM C**  
**VENDOR CONTRACT INFORMATION FORM INSTRUCTIONS**

Immediately after the award of any contract providing services to a given phase, a Vendor Contract Phase Information Form shall be submitted, with a copy of the contract being listed. If there is any change in any information provided regarding any Vendor, or if there is the addition of a Vendor to the project/contract as authorized by amendment, a revised Contract Information Form must be submitted for approval prior to the submittal of subsequent Payment Requests. Certain fields will automatically fill in through a link to Form A (Consultant Payment Request Form) if Form A has been completed.

Prime Consultant – The name of the Vendor as indicated on the contract between ALAMEDA CTC and the Vendor for which the Payment Request is being made.

ALAMEDA CTC Project No. – For Capital Projects, the ALAMEDA CTC Project No. as indicated on the contract. This information is not required for non-Capital Project Contracts.

ALAMEDA CTC Agreement No. – The number assigned to the contract between ALAMEDA CTC and the Vendor, under which the Payment Request is being made (i.e., AXX-XXXX or IXX-XXXX).

Phase/Description – Refer to the Payment Request Forms Legend in the contract.

Vendor ID No. – This section is to be left blank by the Vendor. Vendor numbers are assigned by ALAMEDA CTC.

Vendor Type – Refer to the Payment Request Forms Legend in the contract.

Vendor Tier – Refer to the Payment Request Forms Legend in the contract.

Vendor Name – Name of company as indicated on the contract.

Vendor Address/City/State/Zip – Address where correspondence and payments are sent to the Vendor.

Contact – Name of the contact person for the Vendor regarding the contract being reported.

Phone/Fax/E-mail – Phone number, fax number and e-mail address for the contact person for the Vendor regarding the contract being reported.

Other Business Name – This section is to be left blank by the Vendor. This section is solely for the use of ALAMEDA CTC.

ALAMEDA CTC Certification Expiration – List the date the LBE, SLBE, VSLBE, and/or DBE, WBE certification will expire. The current listing of ALAMEDA CTC-certified LBE, SLBE, and/or VSLBE firms can be obtained from the ALAMEDA CTC website at [www.alamedactc.org/app\\_pages/view/4543](http://www.alamedactc.org/app_pages/view/4543). Requests regarding prior certification should be directed to [certification@alamedactc.org](mailto:certification@alamedactc.org).

ALAMEDA CTC Approval – Once the form has been reviewed and approved by ALAMEDA CTC, a signed form will be returned to the Sponsor.

Vendor Type Legend – Refer to the Payment Request Forms Legend in the contract.

Vendor Tier Legend – Use the Vendor Tier Legend when completing the Tier field in the Vendor Contract Information Table. Refer to the Payment Request Forms Legend in the contract.

**FORM D**  
**STAFF COSTS INSTRUCTIONS**

Certain fields will automatically fill in through a link to Form A (Consultant Payment Request Form) if Form A has been completed.

Period – The beginning and ending dates for the period in which the cost were incurred.

Staff Labor Cost This Period – Hours worked at the hourly rates specified under Fully Burdened Billing Rate, for the period for which payment is being requested. The Cost is automatically calculated – verify data.

Staff Labor Cost Previously Billed – Hours worked at the hourly rates specified under Fully Burdened Billing Rate, for the period for which payment has previously been requested. The Cost is automatically calculated – verify data.

Staff Labor Cost Total – The sum of Staff Labor Cost This Period and Staff Labor Cost Previously Billed. The TOTAL is automatically calculated – verify data.

Staff Direct Expenses This Period – The Prime and Subconsultant Direct Expenses included in this Payment Request.

Staff Direct Expenses Previously Billed – The Prime and Subconsultant Direct Expenses included in all previously billed invoices.

Staff Direct Expenses Total – The sum of Staff Direct Expenses This Period and Staff Direct Expenses Previously Billed. The TOTAL is automatically calculated – verify data.

Total Staff Costs This Period – The sum of Staff Labor Cost This Period and Staff Direct Expenses This Period. The TOTAL COST is automatically calculated – verify data.

Total Staff Costs Previously Billed – The sum of Staff Labor Cost Previously Billed and Staff Direct Expenses Previously Billed. The TOTAL COST is automatically calculated – verify data.

Total Staff Costs Total – The sum of Total Staff Costs This Period and Total Staff Costs Previously Billed. The TOTAL COST is automatically calculated – verify data.



## PAYMENT REQUEST FORMS LEGEND

**Phase/Description Legend** – A separate report is required for each active phase if more than one phase is underway during the reporting period. Use one of the following for the Phase/Description field of Payment Request Forms as defined below:

- General Administration – This is used for non-Capital Project Contracts.
- Scoping – A phase set up specifically for projects without adequate definition to develop an overall project delivery plan for all phases. Scoping efforts, and costs, are typically authorized independently of other phases.
- Preliminary Engineering/Environmental Studies – This phase includes the engineering and planning efforts necessary to develop the project scope, including details, sufficient to support the assessment of impacts necessary to secure environmental approval and to develop a plausible schedule and cost estimate. These efforts may include conceptual engineering, preliminary engineering and technical studies.
- Final Design – This phase includes the detailed engineering required to prepare a final, signed set of plans, specifications and estimates (PS&E). Design work for Design-Build projects is not reported here.
- Right-of-Way Support – This phase includes the labor efforts required to acquire the rights of way necessary to advertise and construct the proposed improvements. These efforts include appraisals and legal support.
- Right-of-Way Capital – This phase includes the non-support costs incurred to acquire the rights of way necessary to advertise and construct the proposed improvements, including easements, title reports, insurance, etc. Labor costs associated with acquiring rights of way should be included in the Right-of-Way Support phase (described above).
- Utilities – This phase includes all costs associated with the protection and/or relocation of utilities necessary to advertise and construct the proposed improvements.
- Construction Capital – This phase includes non-support costs incurred as a result of a construction contract awarded for the actual construction of the proposed improvements. Labor costs associated with construction (other than labor costs incurred under the construction contract) should be included in the Construction Engineering phase (described below). Design-build projects should be reported under this phase.
- Construction Engineering – This phase includes the labor efforts required to administer the construction contract(s) including construction management, inspection, surveying and staking, and claims negotiations.
- Equipment Purchase – This phase includes all non-support costs incurred as result of procuring equipment necessary to realize the proposed improvements. Support costs related to developing specifications for equipment to be purchased should be included in the Final Design phase (described above). Support costs related to negotiating and administering the procurement of equipment should be included in the Construction Engineering phase (described above).

**Vendor Tier Legend** – All first tier subconsultants/subcontractors are to be listed. Lower tier subconsultants/subcontractors may be included only if they are used in goal achievement and only upon prior authorization from ALAMEDA CTC. All subconsultants/subcontractors shall be listed as indicated in the contract. Use one of the following for the Vendor Tier field of Payment Request Forms:

- P = Prime
- 1 = Tier 1 Subconsultant

- 2 = Tier 2 Subconsultant
- 3 = Tier 3 Subconsultant, etc.

**Certification Legend** – Certification for LBE, SLBE, and/or VSLBE shall be from ALAMEDA CTC as detailed in ALAMEDA CTC’s Local Business Contract Equity Program available on the ALAMEDA CTC website at [www.alamedactc.org/app\\_pages/view/4543](http://www.alamedactc.org/app_pages/view/4543). Certification for DBE will be from DBE certifying agencies, such as Caltrans and BART. Use one of the following for the Certification field of Payment Request Forms:

- L = LBE
- S = SLBE
- V = VSLBE
- D = DBE
- W = WBE

**Vendor Type Legend** – A “Supplier” is defined as a vendor providing goods or materials for the project that are not chargeable as a direct expense. Use one of the following for the Vendor Type field of Payment Request Forms:

- A = Agency
- P = Professional Services
- C = Construction
- S = Supplier

## **ALAMEDA CTC PROGRESS REPORTING PROCEDURE**

The Progress Report(s) shall be submitted for the contract (or each phase for contracts related to Capital Projects) on a monthly basis in accordance with the terms of the contract. The Progress Report is for record purposes and early problem identification is imperative to project success. Any problems on the project should be reported immediately, as they occur, to the ALAMEDA CTC Project Manager verbally and/or in writing. The Progress Report form is available from ALAMEDA CTC in DOC/DOCX format. Details for filling in the report are as follows:

Date – The date indicates the month(s) for which the information included in the report is valid.

Vendor – The name of the Vendor as indicated on the contract between ALAMEDA CTC and the Vendor for which the Payment Request is being made.

ALAMEDA CTC Project No. – For Capital Projects, the ALAMEDA CTC Project No. as indicated on the contract. This information is not required for non-Capital Project Contracts.

Phase/Description – Refer to the Payment Request Forms Legend in the contract.

Project Name – For Capital Projects, the project name is shown on the contract or as furnished by ALAMEDA CTC. For non-Capital Projects the services provided (i.e., Financial Services, Legal Services, etc.).

Status – Short statements indicating project progress, meetings, highlights and setbacks.

Actions – Information regarding formal actions or schedule milestones achieved.

Anticipated Actions – Discuss scheduled activities that begin during the next reporting period, items that may need further action, or any action that was not originally necessary but has become necessary.

Schedule Changes – Use the check boxes to indicate schedule status. If the schedule has been modified, a new schedule must be attached.

Scope Changes – Use the check boxes to indicate Project Scope Status. If the project scope has changed, updated information must be included.

Contract Goals – Use the check boxes to indicate contract goal utilization status. If the utilization toward the goal(s) is off track, updated information must be included.

Potential Claims – Use the check boxes to indicate the status of potential claims against the project.

Issues – Use the check boxes to indicate problem areas. It is important that these issues be pointed out early. The description of the problem shall be as detailed as necessary for its resolution.

**PROGRESS REPORT TEMPLATE**

DATE:	VENDOR:
ALAMEDA CTC PROJECT NO.:	PHASE/DESCRIPTION:
PROJECT NAME:	

STATUS

ACTIONS

ANTICIPATED ACTIONS

SCHEDULE CHANGES

- The project/contract remains on its published schedule.
- The revised project/contract schedule is attached for review and confirmation.

SCOPE CHANGES

- The project/contract scope is unchanged.
- The scope of the project/contract has been modified and is attached for review and confirmation (include CCOs over \$20,000 on construction and professional services contracts).

PREVAILING WAGE COMPLIANCE

- Yes, prevailing wage work applies and we are in compliance with related requirements, including submitting certified payroll records to the California Department of Industrial Relations (DIR) at least monthly (within a month after the end of the payroll period).
- No, there is no prevailing wage work performed:       This period       On this contract

CONTRACT GOALS

- The following program goal(s) apply:
  - LBCE Program Goals: 70.0% LBE and 30.0% SLBE
  - DBE Goal: \_\_.\_% DBE
- Is utilization toward the above goal(s) on track?
  - Yes.
  - No. If “No” is selected, please: (i) explain the basis for not being able to meet the goal(s), (ii) provide documentation of good faith efforts undertaken to meet the goal(s), and (iii) identify the means to achieve the goals, including detailing a timeline for implementation.

POTENTIAL CLAIMS

- There are no Notices of Potential Claim on file.
- We anticipate a claim regarding the following:
- There are presently \_\_\_ Notice(s) of Potential Claim on file. Those not previously forwarded are attached for review and comment.

ISSUES

- At this time we anticipate no issues on the project.
- We anticipate issues in the following area and would appreciate any assistance you could offer:
- We anticipate issues in the following area but do not feel we need your assistance at this time:

**APPENDIX E**  
**REQUIRED CERTIFICATIONS AND FORMS**

**Required forms:**

- Exhibit 10-O2 Consultant Contract DBE Commitment

**EXHIBIT 10-O2 CONTRACT DBE COMMITMENT**