

**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 more 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:**

**[\_\_Key Representative Name\_\_]**  
**[\_\_Key Representative Title\_\_]**  
**[\_\_Key Representative E-mail Address\_\_]**

**[\_\_Alameda CTC PM Name\_\_]**  
**[\_\_Alameda CTC PM Title\_\_]**  
**[\_\_Alameda CTC PM E-mail Address \_\_]**

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

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Commercial General Liability – \$1,000,000 combined single limit per occurrence with \$2,000,000 general aggregate, and \$1,000,000 Personal & Advertising Injury  | <input checked="" type="checkbox"/> Professional Liability – \$2,000,000   |
| <input checked="" type="checkbox"/> 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 | <input checked="" type="checkbox"/> Automobile Liability – \$1,000,000 combined single limit per occurrence            |
|  | <input checked="" type="checkbox"/> Umbrella Insurance – \$1,000,000   |
|  | <input checked="" type="checkbox"/> Deductible Maximum (all policies) – \$50,000 deductible or self-insured retention  |
|  | <input checked="" type="checkbox"/> Additional Insured – ALAMEDA CTC and its respective officers, employees and agents |

**Local Business Contract Equity Program Goals:**

- |  |   |                                |                                 |
|--|---|--------------------------------|---------------------------------|
| <input type="checkbox"/> If checked, <b>Article I, Section G</b> applies hereto. | <input type="checkbox"/> 70.0% LBE and 30.0% SLBE | <input type="checkbox"/> VSLBE | <input type="checkbox"/> Exempt |
|--|---|--------------------------------|---------------------------------|

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

- |  |                                   |
|--|-----------------------------------|
| <input type="checkbox"/> If checked, <b>Article I, Section H</b> applies hereto. | <input type="checkbox"/> ___% 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 subparagraph (i) of Article I, Section A, Paragraph 3(b) (Basis of Compensation) for annually updated indirect cost rates:

(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 (including prevailing wages, if applicable), employee benefits, overhead, and fee. The indirect cost rates (“ICRs”) established for this AGREEMENT shall be updated on an annual basis in accordance with the CONSULTANT’s annual accounting period and in compliance with the Federal cost principles.

The following replaces subparagraphs (vi) through (ix) at the end of Article I, Section A, Paragraph 3(b) (Basis of Compensation) for Federal and/or State funded contracts:

(vi) In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are identified in the approved Cost Proposal and in the executed Task Order.

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

(viii) After a project to be performed under this AGREEMENT 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, fees, 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.

(ix) 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 approved Cost Proposal.

(x) 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.

(xi) 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 AGREEMENT 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 and Other Capital Expenditures) of this AGREEMENT, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. 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

(xii) If the Basis of Compensation shall be made by Specific Rate of Compensation, progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred. If Basis of Compensation shall be made by Lump Sum by Task, progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Scope of Services under this AGREEMENT, ALAMEDA CTC shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article I, Section C (Termination).

(xiii) 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.

(xiv) 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 amendment.

(xv) If 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.

(xvi) Task Orders may not be used to amend the language (or the terms) of this AGREEMENT or to exceed the scope of work under this AGREEMENT.

(xvii) The total amount payable by ALAMEDA CTC for all Task Orders resulting from this AGREEMENT 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 AGREEMENT through Task Orders.

The following is added as a new paragraph at the end of **Article I, Section B** (Notice to Proceed) for Federal and/or State funded 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 prior to the expiration of the contract to cover the time needed to complete the Task Order in progress only. The maximum term shall not exceed five (5) years./

The following replaces **subparagraphs (a) through (b)** at the end of **Article I, Section C, Paragraph 1** (Termination) for Federal and/or State funded contracts:

(a) This AGREEMENT may be terminated by ALAMEDA CTC provided that ALAMEDA CTC provides not less than thirty (30) calendar days' written notice of intent to terminate.

(b) ALAMEDA CTC may temporarily suspend this AGREEMENT, at no additional cost to ALAMEDA CTC, provided that CONSULTANT is given written notice of temporary suspension. If ALAMEDA CTC gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination provided for in this section.

(c) Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to ALAMEDA CTC for damages sustained by ALAMEDA CTC by virtue of any breach of this AGREEMENT by CONSULTANT, and ALAMEDA CTC may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due ALAMEDA CTC from CONSULTANT is determined.

(d) In the event of termination, CONSULTANT shall be compensated in accordance with the terms of this AGREEMENT upon receipt of a valid and complete invoice from CONSULTANT, except as provided in this section. Upon termination, ALAMEDA CTC shall be entitled to all data, materials, information

and work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with **Article III, Section A, Paragraph 7**. The maximum amount for which ALAMEDA CTC shall be liable if this AGREEMENT 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 **Paragraph 7 of Article I, Section E (Insurance)**:

**7. Proof of Insurance.** CONSULTANT shall provide insurance certificates and policy endorsements (collectively, "PROOF OF INSURANCE") evidencing CONSULTANT's policies described in this **Article I, Section E** to ALAMEDA CTC within ten (10) calendar days of the execution of this AGREEMENT. Neither CONSULTANT nor any of its subconsultants shall perform any work under this AGREEMENT prior to ALAMEDA CTC's receipt of all required proof of insurance for CONSULTANT. Further, CONSULTANT shall provide PROOF OF INSURANCE for each subconsultant under this AGREEMENT not less than ten (10) calendar days prior to any work being performed by such subconsultant. All PROOF OF INSURANCE shall provide for not less than thirty (30) calendar days' prior written notice to ALAMEDA CTC and the Bay Area Air Quality Management District of any cancellation, non-renewal or material change of coverage in the policy or policies, and shall further provide that ALAMEDA CTC will not be responsible for any premiums or assessments on any policy. At least five (5) business days prior to the expiration date of any policy of insurance carried by CONSULTANT or any subconsultant as required by this AGREEMENT, CONSULTANT shall provide PROOF OF INSURANCE confirming that the policy has been extended or a replacement policy has been obtained. If any PROOF OF INSURANCE is not provided in a timely manner as provided in this **Paragraph 7**, ALAMEDA CTC shall withhold twenty-five percent (25%) of all payments made to CONSULTANT until such document(s) are provided to ALAMEDA CTC.

The following replaces **Paragraph 10 of Article III, Section A (General)** for Federal and/or State funded contracts:

**10. Audit Review Procedures.**

(a) Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT 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 AGREEMENT.

(d) CONSULTANT and subconsultant contracts, including cost proposals and Indirect Cost Rates ("ICRs"), may be 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 AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT to conform to the audit or review recommendations and approved by ALAMEDA CTC Project Manager. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT 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 AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

(e) CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by CALTRANS' Audits and Investigation ("A&I"). CALTRANS A&I, 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 AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

(i) During CALTRANS A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, CALTRANS A&I 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 A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, ALAMEDA CTC will reimburse the CONSULTANT at an accepted ICR until a Federal Acquisition Regulations ("FAR") 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 (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by CALTRANS.

Accepted rates will be as follows:

(1) If the proposed ICR is less than one hundred fifty percent (150%) – the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.

(2) If the proposed ICR is between one hundred fifty percent (150%) and two hundred percent (200%) – the accepted rate will be eighty-five percent (85%) of the proposed rate.

(3) If the proposed ICR is greater than two hundred percent (200%) – the accepted rate will be seventy-five (75%) of the proposed rate.

(ii) If CALTRANS A&I is unable to issue a cognizant letter per subparagraph (e)(i) above, CALTRANS A&I 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 A&I 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 A&I 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 accepted ICR that was established upon initial rejection of the ICR and set forth in subparagraph (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 AGREEMENT.

(iv) CONSULTANT may submit to ALAMEDA CTC a final invoice only when all of the following items have occurred: (1) CALTRANS A&I accepts or adjusts the original or revised independent CPA-audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction

of ALAMEDA CTC; and, (3) CALTRANS A&I 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 accepted ICR will apply to this AGREEMENT and all other agreements executed between ALAMEDA CTC and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

The following replaces **Paragraph 21 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.

The following are added as new **Paragraphs 23 and 24** to the end of **Article III, Section A (General)** for Federal and/or State funded contracts:

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

(a) No state, federal, ALAMEDA CTC or other 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 local, 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 or making of this AGREEMENT or with the extension, continuation, renewal, amendment, or modification of this 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress; in connection with this 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 Title 31, U.S. Code Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and not more than One Hundred Thousand Dollars (\$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 One Hundred Thousand Dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

**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 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) Any exceptions to this certification must be disclosed to ALAMEDA CTC. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency 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  
Deputy Executive 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 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.

**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, 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 the implementation of the 30-year Expenditure Plan. 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 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 (including prevailing wages, if applicable), employee benefits, overhead, and fee. The indirect cost rates ("ICRs") established for this AGREEMENT shall be fixed through the duration of this AGREEMENT as it may be extended.

(ii) If Basis of Compensation shall be made by Lump Sum by Task as identified on the first page of this AGREEMENT, the total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in the Scope of Services under this AGREEMENT. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum compensation will be negotiated between CONSULTANT and ALAMEDA CTC. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by ALAMEDA CTC.

(iii) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State of California or United States Government rates.

(iv) 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.

(v) CONSULTANT shall not commence performance of work or services until this AGREEMENT 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 AGREEMENT.

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

(vii) 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 AGREEMENT 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 AGREEMENT. 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

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

(ix) 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, except as otherwise provided under the Changes to Standard Form Agreement section 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, except as otherwise modified under the Changes to Standard Form Agreement section of this 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 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 the 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 of 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 Part 200 ("2 CFR 200").

(f) CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures shall be used to determine the allowability of individual items of cost. 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, 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 **subparagraphs (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.**

**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 this Section C. 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 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 this AGREEMENT.

**(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 written 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 written notice of its intent to so terminate the AGREEMENT. CONSULTANT shall deliver to ALAMEDA CTC all data, estimates, graphs, summaries, reports, plans, photographs and other visual data 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, officials, employees, and agents, from and against any and all liability, claims, suits, demands, losses, damages, costs and expenses, including, but not limited to, court costs and reasonable attorneys' and expert witness fees, (collectively "CLAIMS") arising out of, pertaining to, or relating to the negligence, recklessness, 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 are further described in this section.** Requests for waivers to any of the insurance requirements set forth in this AGREEMENT with respect to the CONSULTANT or any subconsultant shall be submitted in writing to ALAMEDA CTC prior to the start of work or costs incurred by the CONSULTANT or such subconsultant. ALAMEDA CTC will review any insurance exception requests and may 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 General Liability Insurance.** CONSULTANT shall carry occurrence-based Commercial 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 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, but shall not be limited to, (a) protection against claims arising from bodily and personal injury (including death resulting therefrom) and damage to property arising from work under this AGREEMENT performed by CONSULTANT, its agents, representatives, or employees, and (b) blanket contractual liability on all written contracts, including this AGREEMENT.

**2. Automobile Liability Insurance.** CONSULTANT shall carry and maintain occurrence-based 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 (ISO form CA 0001 covering any auto, code 1). 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 be, 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 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. Such policy shall include a contractual liability endorsement on all written contracts, including this AGREEMENT.

**5. Workers' Compensation Insurance.** 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 Insurance and Employer's Liability Insurance 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, provided 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.** CONSULTANT shall provide insurance certificates and policy endorsements (collectively, "PROOF OF INSURANCE") evidencing CONSULTANT's policies described in this **Article I, Section E** to ALAMEDA CTC within ten (10) calendar days of the execution of this AGREEMENT. Neither CONSULTANT nor any of its subconsultants shall perform any work under this AGREEMENT prior to ALAMEDA CTC's receipt of all required proof of insurance for CONSULTANT. Further, CONSULTANT shall provide PROOF OF INSURANCE for each subconsultant under this AGREEMENT not less than ten (10) calendar days prior to any work being performed by such subconsultant. All PROOF OF INSURANCE 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 that ALAMEDA CTC will not be responsible for any premiums or assessments on any policy. At least five (5) business days prior to the expiration date of any policy of insurance carried by CONSULTANT or any subconsultant as required by this AGREEMENT, CONSULTANT shall provide PROOF OF INSURANCE confirming that the policy has been extended or a replacement policy has been obtained. If any PROOF OF INSURANCE is not provided in a timely manner as provided in this **Paragraph 7**, ALAMEDA CTC shall withhold twenty-five percent (25%) of all payments made to CONSULTANT until such document(s) are provided to ALAMEDA CTC.

**8. Maintenance of Insurance.** If CONSULTANT fails to maintain all insurance required by this AGREEMENT, ALAMEDA CTC, at its option, may order the CONSULTANT to suspend work at CONSULTANT's expense until such time as CONSULTANT provides required documentation to ALAMEDA CTC as evidence that all required insurance policies are in effect. If any subconsultant fails to maintain all insurance required by this AGREEMENT, ALAMEDA CTC, at its option, may order the CONSULTANT to suspend work by said subconsultant at CONSULTANT's expense until such time as CONSULTANT provides required documentation to ALAMEDA CTC as evidence that all of the subconsultant's required insurance policies are in effect.

**9. Subconsultants' Insurance Requirements.** The provisions of this **Article I, Section E (Insurance)** are applicable to all subconsultants hereunder, regardless of tier and subcontract amount. As provided in **Paragraph 7** above, CONSULTANT shall provide PROOF OF INSURANCE for their subconsultants' insurance which meets the above specifications to ALAMEDA CTC, or evidence that the subconsultant(s) have been named in the CONSULTANT's applicable policy as additional insured(s) if said policy allows such addition, prior to such subconsultant performing any work under this AGREEMENT, and thereafter so long as such subconsultant is performing work under this AGREEMENT.

## **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.** CONSULTANT's signature affixed herein 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 Code of Regulations, Section 11102.

**3.** During the performance of the AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The CONSULTANT and its subconsultants shall take affirmative action to 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 (Government Code Section 12990 *et seq.*) and the applicable regulations promulgated thereunder (Title 2 California Code of Regulations Section 11000 *et seq.*) and the provisions of Government Code Sections 11135-11139.5. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth under California Code of Regulations Section 11000 *et seq.*, 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. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination.

4. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and ALAMEDA CTC upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to its books, records, accounts, and all other sources of information and its facilities as said Department or ALAMEDA CTC shall require to ascertain compliance with this clause.

5. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts under this AGREEMENT.

6. CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S. Code Section 2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

7. CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Section 21.5, including employment practices and the selection and retention of subconsultants.

8. 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 an 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. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section, if the section is applicable.

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

**(i)** This AGREEMENT is subject to 49 CFR Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”. Consultants who enter into a federally-funded agreement will assist CALTRANS or the Metropolitan Transportation Commission (“MTC”), as applicable, in a good faith effort to achieve California’s statewide 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.

**(iii)** CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, CONSULTANT must complete and submit DBE Information – Good Faith Efforts (Exhibit 15-H) to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

**(iv)** 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 U.S. Department of Transportation-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, which may include, but is not limited to:

- (1)** Withholding monthly progress payments;
- (2)** Assessing sanctions;
- (3)** Liquidated damages; and/or
- (4)** Disqualifying the contractor from future bidding as non-

responsible.

**(v)** Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this **Section H**.

**(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). 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.

**(ii)** CONSULTANT shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of CONSULTANT) pursuant to prior written authorization from ALAMEDA CTC.

**(iii)** A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a commercially useful function when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a 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.

**(iv)** 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.

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

**(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) calendar 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)" (Exhibit 17-F of the CALTRANS Local Assistance Procedures Manual at [www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter17/17f.pdf](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 forty-five (45) 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) calendar 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 and Deliverables.** Except as noted below, deliverables prepared by the CONSULTANT under the AGREEMENT, including but not limited to investigations, appraisals, inventories, studies, analyses, data estimates, 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 deliverables or services under the AGREEMENT have been 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.** 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.

**10. Audit Review Procedures.** Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT 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 AGREEMENT.

CONSULTANT and subconsultants' contracts, including cost proposals and ICRs, may be subject to audits or reviews such as, but not limited to, an AGREEMENT 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 AGREEMENT, 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 AGREEMENT, 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 AGREEMENT 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.

(a) CONSULTANT, in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of ALAMEDA CTC.

(b) ALAMEDA CTC is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the ALAMEDA CTC as to the designation of tasks to be performed and the results to be accomplished.

(c) Any third-party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds ALAMEDA CTC harmless from any and all claims that may be made against ALAMEDA CTC based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

**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 certifies that it has disclosed to ALAMEDA CTC any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise ALAMEDA CTC of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by ALAMEDA CTC's Conflict of Interest Code or State law.

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 or any subconsultant hereunder, nor any firm affiliated with CONSULTANT or any subconsultant hereunder, 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 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 AGREEMENT 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 and Other Capital Expenditures.** Prior authorization in writing by ALAMEDA CTC shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract equal to or greater than 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.

Prior authorization by ALAMEDA CTC must be received for the purchase of any item, service or consulting work not included in CONSULTANT's approved Cost Proposal which is equal to or greater than Five Thousand Dollars (\$5,000). Requests for authorization by ALAMEDA CTC must include three (3) competitive quotations, or the absence of bidding must be adequately justified.

Any equipment purchased with funds provided under the terms of this AGREEMENT 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 AGREEMENT, or if the AGREEMENT 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 regulation 2 CFR, Part 200 require a credit to Federal funds when participating equipment with a fair market value equal to or greater than Five Thousand Dollars (\$5,000) is credited to the project.

Any subcontract entered into as a result of this AGREEMENT shall contain the above provisions.

**20. Subconsultants.**

**(a)** Nothing contained in this AGREEMENT 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 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 fifteen (15) calendar days from receipt of each payment made to CONSULTANT by ALAMEDA CTC.

(d) Any substitution of subconsultant(s) must be approved in writing by ALAMEDA CTC in advance of assigning work to the substitute subconsultant(s).

(e) Subconsultants must be listed in **Appendix B** in order to be approved by ALAMEDA CTC for work under this AGREEMENT. A subconsultant not listed in **Appendix B** must be approved in writing by the ALAMEDA CTC Project Manager prior to beginning work under this AGREEMENT and engaged under written contract with CONSULTANT with provisions allowing CONSULTANT to comply with all requirements of this AGREEMENT.

(f) Any subcontract entered into as a result of this AGREEMENT, shall contain all of the provisions stipulated in this entire AGREEMENT to be applicable to subconsultants unless otherwise noted.

## **21. State of California's General Prevailing Wage Rates.**

(a) No consultant or subconsultant may be awarded an agreement containing public work elements unless registered with the Department of Industrial Relations ("DIR") pursuant to California Labor Code Section 1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments. CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages, and all federal, state, and local laws and ordinances applicable to the work. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT may be obtained from the Department of Industrial Relations website at [www.dir.ca.gov](http://www.dir.ca.gov).

### **(b) Payroll Records**

(i) Each consultant and subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code Section 1776 and as defined in Title 8 California Code of Regulations Section 16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the consultant or subconsultant in connection with the public work. Each payroll record shall contain a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Labor Code Section 1771, Section 1811, and Section 1815 for any work performed by his or her employees on the public works project.

(ii) The payroll records enumerated under subparagraph (i) above shall be certified as correct by CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by ALAMEDA CTC's representatives at all reasonable hours at the principal office of the CONSULTANT. CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative upon request.

**(2)** A certified copy of all payroll records enumerated in subparagraph (i) above, shall be made available for inspection or furnished upon request to a representative of ALAMEDA CTC, the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to ALAMEDA CTC, the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.

**(3)** CONSULTANT is required to forward any requests for certified payrolls to the ALAMEDA CTC Project Manager by both email and regular mail on the business day following receipt of the request.

**(iii)** Each consultant shall submit a certified copy of the records enumerated in subparagraph (i) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

**(iv)** Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by ALAMEDA CTC shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the consultant or subconsultant performing the work shall not be marked or obliterated. The public shall not be given access to certified payroll records by the CONSULTANT.

**(v)** CONSULTANT shall inform ALAMEDA CTC of the location of the records enumerated under subparagraph (i) above, including the street address, city and county, and shall, within five (5) business days, provide a notice of a change of location and address.

**(vi)** CONSULTANT or subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in subparagraph (i) above. In the event the CONSULTANT or subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to ALAMEDA CTC, forfeit One Hundred Dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalties shall be withheld by ALAMEDA CTC from payments then or subsequently due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a subconsultant to comply with this section.

**(c)** CONSULTANT is responsible for verifying compliance with certified payroll requirements.

**(d)** Penalty

**(i)** CONSULTANT and any of its subconsultants shall comply with Labor Code Section 1774 and Section 1775. Pursuant to Labor Code Section 1775, the CONSULTANT and any subconsultant shall each forfeit to ALAMEDA CTC a penalty of not more than Two Hundred Dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive.

**(ii)** The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence,



or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or subconsultant had knowledge of the obligations under the Labor Code. CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

**(iii)** In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by CONSULTANT or subconsultant.

**(iv)** If a worker employed by a subconsultant on a public works project is not paid the general prevailing per diem wages by the subconsultant, the prime consultant of the project is not liable for the penalties described above unless the prime consultant had knowledge of that failure of the subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime consultant fails to comply with all of the following requirements:

**(1)** The agreement executed between consultant and the subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

**(2)** CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the subconsultant to the employees by periodic review of the certified payroll records of the subconsultant.

**(3)** Upon becoming aware of the subconsultant's failure to pay the specified prevailing rate of wages to the subconsultant's workers, CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the subconsultant for work performed on the public works project.

**(4)** Prior to making final payment to the subconsultant for work performed on the public works project, CONSULTANT shall obtain an affidavit signed under penalty of perjury from the subconsultant that the subconsultant had paid the specified general prevailing rate of per diem wages to the subconsultant's employees on the public works project and any amounts due pursuant to Labor Code Section 1813.

**(v)** Pursuant to Labor Code Section 1775, ALAMEDA CTC shall notify CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a subconsultant has failed to pay workers the general prevailing rate of per diem wages.

**(vi)** If ALAMEDA CTC determines that employees of a subconsultant were not paid the general prevailing rate of per diem wages and if ALAMEDA CTC did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due to the subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by ALAMEDA CTC.

**(e)** Hours of Labor

Eight (8) hours labor constitutes a legal day's work. CONSULTANT shall forfeit, as a penalty to the ALAMEDA CTC, Twenty-Five Dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40)

hours in any one calendar week in violation of the provisions of the Labor Code, and in particular Sections 1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in Section 1815.

**(f)** Employment of Apprentices

**(i)** Where either the prime agreement or the subcontract exceeds Thirty Thousand Dollars (\$30,000), the CONSULTANT and any subconsultants thereunder shall comply with all applicable requirements of Labor Code Sections 1777.5, 1777.6 and 1777.7 in the employment of apprentices. 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 21**.

**(ii)** Consultants and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, consultants and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at [www.dir.ca.gov/das/](http://www.dir.ca.gov/das/), for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the agreement work. CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code Section 1777.7.

**(g)** CONSULTANT shall comply with all applicable California Labor Code provisions as set forth in Labor Code Sections 1720-1861, including but not limited to prevailing wage requirements as set forth above, registration with the Department of Industrial Relations (Labor Code Sections 1725.5 and 1771.1), employment of apprentices (Labor Code Sections 1777.5 to 1777.7), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1810 to 1815), and debarment of contractors and subcontractors (Labor Code Section 1777.1). CONSULTANT shall defend, indemnify and hold harmless ALAMEDA CTC and, if applicable, the SUNOL JPA, and their respective officers, employees and agents, from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with any of the foregoing.

**22. Public Contract Code.** CONSULTANT hereby certifies under penalty of perjury under the laws of the State of California and the United States that neither CONSULTANT nor any subconsultant and/or subcontractor hereunder, nor any firm affiliated with CONSULTANT or any subconsultant and/or subcontractor hereunder, is (i) potentially subject to rejection of any bid pursuant to the provisions of Public Contract Code ("PCC") section 10162; (ii) unable to truthfully sign a statement in the form required by PCC section 10232; (iii) suspended or potentially subject to suspension pursuant to PCC section 10285.1; (iv) ineligible to bid on a contract with a public entity for goods and services of \$1 million or more pursuant to PCC sections 2202-2208; or (v) not in compliance with any federal, state, and local laws and ordinances applicable to the work. CONSULTANT further represents and warrants that no portion of the work under this AGREEMENT shall be subcontracted to or otherwise performed by any subconsultant and/or subcontractor that meets any of the criteria set forth in subsections (i)-(v) above.

**APPENDIX A  
DETAILED SCOPE OF SERVICES**

A. Services

Detail based on the services to be furnished should be provided by CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Reference to standards for design or for work performance stipulated in AGREEMENT should be included. Describe acceptance criteria, and if the responsible CONSULTANT/Engineer shall sign all PS&E and engineering data furnished under the AGREEMENT including registration number.

B. Right of Way

State whether: ROW requirements are to be determined and shown by CONSULTANT; land surveys and computations with metes and bounds descriptions are to be made; and ROW parcel maps are to be furnished. CONSULTANT shall provide ROW services in accordance with the Caltrans Right of Way Manual, Caltrans guidelines, and applicable federal requirements (including the Uniform Act).

C. Surveys

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

D. Subsurface Investigations

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

E. Agency Obligations

All data applicable to the project and in possession of ALAMEDA CTC or another agency that are to be made available to CONSULTANT are referred to in the AGREEMENT. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.

F. Conferences, Site Visits, Inspection of Work

This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the ALAMEDA CTC, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

G. Checking Shop Drawings

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

H. Consultant Services During Construction

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

I. Documentation and Schedules

Agreements where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of ALAMEDA CTC, and if applicable, the State and FHWA; e.g. preparation of progress and final reports, PS&E, or similar evidence of attainment of the AGREEMENT objectives.

J. Deliverables and Number of Copies

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

**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 being 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/contracting-forms](http://www.alamedactc.org/contracting-forms), 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>		

**Notes:** 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	Budget
	Prime, Tier 1 or Tier 2 under [Subconsultant]	LBE, SLBE, VSLBE and/or DBE	
TBD – Optional Task(s)	--	--	
<b>TOTAL</b>			<b>,\$,###,###</b>
<b>DBE LBE Total</b>			%
<b>SLBE Total</b>			%
<p><b>Notes:</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 (%)	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 (%)
	Name or "Classification Maximum"		\$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. Classifications will be identified as "Classification Maximum" under the Personnel Name column, with the maximum Direct Salary Rate for that classification shown under the Title and/or Role column. Reimbursement shall be based on actual direct salary rates up to the maximum rate approved for each classification.
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	Tier	Description	Quantity	Unit	Unit Price	Total
1	Movement Counts, Inc.	Prime, Tier 1 or Tier 2 under [Subconsultant]	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

3	E.g., 123, LLC	Prime, Tier 1 or Tier 2 under [Subconsultant]	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/contracting-forms](http://www.alamedactc.org/contracting-forms):

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

**CONSULTANT PAYMENT REQUEST FORM**

Prime Consultant: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Contact Name: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

Alameda CTC Agreement No.: \_\_\_\_\_  
 Alameda CTC Agreement Term: MM/DD/YY to MM/DD/YY  
 Alameda CTC Project Manager: \_\_\_\_\_  
 Alameda CTC Project No.: \_\_\_\_\_  
 Alameda CTC Project Name: \_\_\_\_\_

Invoice No.: \_\_\_\_\_  
 Date of Invoice: \_\_\_\_\_  
 Payment Request No.: \_\_\_\_\_  
 Phase/Description: \_\_\_\_\_  
 Period (From - To): MM/DD/YY to MM/DD/YY  
 Final Invoice (YES/NO): \_\_\_\_\_

*Exhibit 17-F must be attached with the Final Invoice for contracts funded with federal funds.*

**CONSULTANT COSTS**

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

**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	% Expended 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
						\$0.00		\$0.00
						\$0.00		\$0.00
						\$0.00		\$0.00
<b>TOTAL TASK BREAKDOWN COSTS:</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>		<b>\$0.00</b>

**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**

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

---

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

**VENDOR COSTS FORM**

Prime Consultant: \_\_\_\_\_  
 Alameda CTC Project No.: \_\_\_\_\_  
 Alameda CTC Agreement No.: \_\_\_\_\_  
 Phase/Description: \_\_\_\_\_  
 Period (From - To): \_\_\_\_\_ MM/DD/YY to MM/DD/YY  
 Invoice No.: \_\_\_\_\_  
 Final Invoice (YES/NO): \_\_\_\_\_

Original Contract Amount \$0.00  
 Amendment No. 1 Amount: \_\_\_\_\_  
 Amendment No. 2 Amount: \_\_\_\_\_  
 Amendment No. 3 Amount: \_\_\_\_\_  
 Current Contract Amount: \$0.00  
 Previously Billed: \$0.00  
 Amount of this Invoice: \$0.00  
 Remaining Budget: \$0.00

**VENDOR COSTS**

Vendor Name	Vendor Tier	Certification					Original Vendor Contract Amount	Current Vendor Contract Amount	% Current Vendor Contract Amount	Previously Billed	Current Invoice	Current Retention (Held/Released)	Total Invoiced to Date	Total Retention to Date	Total Paid to Date	Remaining Amount	% Expended to Date
		L	S	V	D	W											
		X	X	X	X	X						\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
												\$0.00			\$0.00	0%	
<b>TOTAL</b>							\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	

**SUMMARY OF GOAL PARTICIPATION**

Vendor Name	Vendor Tier	Certification					Current Vendor Contract Amount	Total Paid to Date	LBE	SLBE	VSLBE	DBE	WDBE
		L	S	V	D	W							
		X	X	X	X	X		Actual To Date	Actual To Date	Actual To Date	Actual To Date	Actual To Date	
<b>TOTAL</b>							\$0.00	\$0.00	0.00%	0.00%	0.00%	0.00%	
<b>PROJECTED GOAL PER CURRENT VENDOR CONTRACT</b>							-	-	70.00%	30.00%	0.00%	0.00%	
<b>GOAL</b>							-	-	70.00%	30.00%	0.00%	0.00%	

Reviewer's Comments: \_\_\_\_\_

**Sub-Consultant Payment Record**

Vendor Name	Date of Last Payment	Total Paid to Date

**File:**  
 • Document Controls  
 • Project Controls

**Vendor Tier**  
 P = Prime Contractor  
 1 = Tier 1 Subconsultant  
 2 = Tier 2 Subconsultant  
 3 = Tier 3 Subconsultant

**Vendor Certification**  
 L = LBE  
 S = SLBE  
 V = VSLBE  
 D = DBE  
 W = WBE

**VENDOR CONTRACT INFORMATION FORM**

This form shall be submitted for each Contract or Contract Amendment, and resubmitted if there is any change to any of the vendor contract information.

Prime Consultant: \_\_\_\_\_  
 Alameda CTC Project No.: \_\_\_\_\_  
 Alameda CTC Agreement No.: \_\_\_\_\_  
 Phase/Description: \_\_\_\_\_

Vendor ID No.	Vendor Type	Vendor Tier**	Vendor Name	Vendor Address	City	State	Zip	Contact	Phone	Fax	E-mail	Certification Expiration (MM/DD/YY)				
												LBE	SLBE	VSLBE	DBE	WBE
												MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY

File:  
 • Document Controls  
 • Project Controls

Vendor Type  
 A = Agency  
 P = Professional Services  
 C = Construction  
 S = Supplier\*  
 O = Other

Vendor Tier\*\*  
 P = Prime  
 1 = Tier 1  
 2 = Tier 2  
 3 = Tier 3

\*Supplier is defined as a vendor providing goods or materials not chargeable as a direct expense.

\*\*Vendors lower than Tier 1 are only required to be listed if they are used to meet participation goals.

Alameda CTC Professional Services Agreement No. A##-00##  
**STAFF COSTS FORM FOR LABOR AND DIRECT EXPENSES**

Prime Consultant: \_\_\_\_\_  
 Alameda CTC Project No.: \_\_\_\_\_  
 Alameda CTC Agreement No.: \_\_\_\_\_  
 Period (From - To): MM/DD/YY to MM/DD/YY  
 Invoice No.: \_\_\_\_\_  
 Final Invoice (YES/NO): \_\_\_\_\_

**STAFF LABOR COST SUMMARY**

Employee Name	Title	Fully Burdened Billing Rate	This Period		Previously Billed		TOTAL	
			Hours	Cost	Hours	Cost	Hours	Total Cost
		\$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
		\$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
		\$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>SUBTOTAL</b>				<b>\$0.00</b>		<b>\$0.00</b>	<b>0.00</b>	<b>\$0.00</b>

**STAFF DIRECT EXPENSES\***

Vendor Name	Description	Invoice No.	Date	This Period	Previously Billed	TOTAL
						\$0.00
						\$0.00
						\$0.00
						\$0.00
						\$0.00
						\$0.00
						\$0.00
						\$0.00
						\$0.00
						\$0.00
						\$0.00
<b>SUBTOTAL</b>				<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

**TOTAL STAFF COSTS**

	This Period	Previously Billed	TOTAL
<b>TOTAL COST</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

Direct Expenses include, but are not 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

Reviewer's Comments:

File:

- Document Controls
- Project Controls

## **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/contracting-forms](http://www.alamedactc.org/contracting-forms) 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/contracting-forms](http://www.alamedactc.org/contracting-forms) 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 in which the costs were incurred and 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 in which the costs were incurred and 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 in which the costs were incurred. Supporting documentation must be attached, including daily time sheets for all work performed.

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/contract-equity](http://www.alamedactc.org/contract-equity). 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 costs 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/contract-equity](http://www.alamedactc.org/contract-equity). 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 AGREEMENT. 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.

Prevailing Wage Compliance – Use the check boxes to indicate compliance with State of California's General Prevailing Wage Rate requirements, if applicable.

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 have complied 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 15-H DBE Information - Good Faith Efforts

**EXHIBIT 10-O2 CONTRACT DBE COMMITMENT**

**EXHIBIT 15-H DBE INFORMATION - GOOD FAITH EFFORTS**