AGREEMENT BETWEEN THE ALAMEDA COUNTY TRANSPORTATION COMMISSION

AND

[___COMPANY NAME___]

This AGREEMENT is entered into 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 (Appendix A):	[___Project/Services___] ("PROJECT")
Expiration Date of Agreement:	[___Month Date, Year___]
Not-to-Exceed Aggregate Amount:	[___Contract $ Amount___]

Basis of Compensation Method(s) (Appendix B):

☒ Specific Rate of Compensation ☒ Lump Sum by Task ☐ Retainer

Local Business Contract Equity Program Goals:

☐ If checked, **Appendix C, Section A** applies: 70.0% LBE and 30.0% SLBE

Disadvantaged Business Enterprise Goal:

☐ If checked, **Appendix C, Section B** applies: __._% DBE

ALAMEDA CTC and CONSULTANT Representatives and Notices: Representatives listed below maintain authority to represent and administer all matters relative to this AGREEMENT, or to a delegated representative for specific matters. Any notices or communications regarding this AGREEMENT shall be sent by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONSULTANT Representative:

[___Authorized Signatory Name___]
[___Authorized Signatory Title___]
[___Authorized Signatory Company___]
[___Authorized Signatory Mailing Address___]
[___Authorized Signatory E-Mail Address___]

CONSULTANT Project Manager:

[___Project Manager Name___]
[___Project Manager Title___]
[___Project Manager E-mail Address___]

ALAMEDA CTC Representative:

Tony Tavares
Executive Director
Alameda County Transportation Commission
1111 Broadway, Suite 800
Oakland, CA 94607
ttavares@alamedactc.org

ALAMEDA CTC Project Manager:

[___Alameda CTC PM Name___]
[___Alameda CTC PM Title___]
[___Alameda CTC PM E-mail Address ___]

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

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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.

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 to 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.

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. Effective as of May 31, 2024, the SUNOL JPA was terminated, and ALAMEDA CTC assumed responsibility for owning and operating the I-680 express lanes within Alameda County.

E. On November 2, 2010, voters approved the Measure F Alameda County Vehicle Registration Fee Program, which was expected to generate about $11 million per year through a $10 annual vehicle registration fee. The goal of the program is to sustain Alameda County's transportation network and reduce traffic congestion and vehicle-related pollution.

F. 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 augmented and extended the existing transportation sales tax (Measure B) and will 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.

G. 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.

H. CONSULTANT represents that it possesses the professional qualifications to provide such services.

I. ALAMEDA CTC wishes to engage CONSULTANT to perform certain professional services and CONSULTANT desires to perform such professional services.

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J. The Recitals set forth above are incorporated into and made a part of this AGREEMENT as if fully set forth, and the Parties acknowledge and agree that the Recitals are true and correct and are made for the purpose of inducing the Parties to enter into this AGREEMENT.

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

AGREEMENT

A. It is 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.

B. Scope of Services. ALAMEDA CTC contracts with CONSULTANT and CONSULTANT agrees to perform the scope of work described in **Appendix A**, and unless expressly specified elsewhere, shall include 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. CONSULTANT shall not perform any work or incur any costs under this AGREEMENT without a formal written notice to proceed (NTP) from ALAMEDA CTC.

C. Term. The term of this AGREEMENT shall begin upon its full execution and shall end on the expiration date shown on page one of this AGREEMENT, unless: (a) extended in writing by mutual agreement between the parties or (b) terminated earlier as provided below.

D. Representation of Professionalism and Warranty of Services. 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, in this AGREEMENT. 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.

E. 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.

(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.

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(c) **Damages/Compensation.** If ALAMEDA CTC terminates the AGREEMENT, either for cause or for convenience as set forth above, CONSULTANT will be compensated for that portion of the work which has been completed and accepted by ALAMEDA CTC, and for actual services performed through the date of termination. In the event of termination for cause, 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.

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. CONSULTANT shall be paid for all work performed and accepted by ALAMEDA CTC up through the date of termination, unless CONSULTANT is otherwise in default under this AGREEMENT.

3. **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.

F. Insurance and Indemnification.

1. **Insurance**. The insurance requirements for this AGREEMENT, including for coverage limits and additional insured, are described in **Appendix E**.

2. **Indemnification**.

(a) To the fullest extent permitted by law, CONSULTANT agrees to protect, defend, indemnify and hold harmless ALAMEDA CTC and, if applicable, 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, or willful misconduct of the CONSULTANT or its officers, employees, agents or subconsultants ("INDEMNITORS") in the performance of their services under the AGREEMENT, except such loss or damage which was caused by the sole negligence, or willful misconduct of ALAMEDA CTC, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.

(b) With respect to CONSULTANT's performance of design professional services as defined in Civil Code section 2782.8, CONSULTANT has no obligation to pay for any indemnitees' defense-related costs until a final determination of liability has been made. In no event shall CONSULTANT's cost to defend and indemnify pursuant to this subparagraph exceed CONSULTANT's proportionate percentage share of fault, unless one or more other liable parties is unable to pay its share of defense costs due to bankruptcy or dissolution, in which case ALAMEDA CTC and the other parties shall meet and confer regarding unpaid defense costs.

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3. **Acceptance of Insurance.** Acceptance of insurance required by this AGREEMENT does not relieve CONSULTANT from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by CONSULTANT's operations regardless if any insurance is applicable or not.

4. **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 to indemnify shall survive termination of this AGREEMENT for any cause.

G. Non-Discrimination and Statement of Compliance.

1. Upon the execution of this AGREEMENT, CONSULTANT signature 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.

2. 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 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 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.

3. 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.

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

5. 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.

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6. 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.

7. CONSULTANT and any subconsultant agree to never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin.

H. Compliance with all Laws. During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with all federal, state and local laws and regulations applicable to CONSULTANT'S performance, including, but not limited to, nondiscrimination statutes and authorities, licensing, employment and purchasing practices, wages, hours, and conditions of employment.

I. Qualified Small and Local Business Participation. Even if this AGREEMENT is not subject to the provisions of **Appendix C**, CONSULTANT is encouraged to utilize qualified 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.

J. 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.

K. 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.

L. 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 waive inconvenience of forum as an objection or defense to such venue.

M. 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.

N. 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 un-enforceability 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.

O. 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

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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.

P. 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 Joint Powers Authority 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 prior 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.

Q. Audit of Books and Records.

1. 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.

2. 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.

3. 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.

4. **Section Q** is applicable to all subconsultants hereunder.

R. 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.

1. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by ALAMEDA CTC of unresolved audit issues. The request for review will be submitted in writing.

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2. 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.

3. 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.

S. 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.

T. Independent Consultant.

1. In the performance of this AGREEMENT, CONSULTANT 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. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of ALAMEDA CTC.

2. 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 terms of its obligation hereunder, is only subject to the control or direction of ALAMEDA CTC as to the designation of tasks to be performed and the results to be accomplished.

3. Any third-party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT indemnifies and holds ALAMEDA CTC harmless from 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.

U. 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 this 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,

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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.

V. Conflict of Interest.

1. CONSULTANT warrants that CONSULTANT and/or CONSULTANT'S employees and/or their immediate families and/or Board of Directors and/or officers have no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any interest, direct or indirect, including separate contracts for the work to be performed hereunder, which conflicts with the rendering of services under this AGREEMENT, including conflict of interests as defined by California Government Code sections 1090 *et seq.* and 87100 *et seq.*. CONSULTANT shall employ or retain no such person while rendering services under this AGREEMENT. Services rendered by CONSULTANT'S associates or employees shall not relieve CONSULTANT from personal responsibility under this clause.

2. If either party becomes aware of an actual or apparent organizational conflict of interest during the term of this AGREEMENT, that party shall promptly notify the other in writing. CONSULTANT shall include in its notice the facts and circumstances giving rise to the conflict and proposed alternatives for addressing or eliminating it. CONSULTANT shall also notify ALAMEDA CTC of any actual or apparent organizational conflict related to political campaign activities by or involving its firm that may affect ALAMEDA CTC, its governing body, projects, programs, or delivery of projects and programs. If a conflict is disclosed by CONSULTANT or identified by ALAMEDA CTC, ALAMEDA CTC will consider the conflict and any proposed alternatives, meet with CONSULTANT, and determine the appropriate course of action. ALAMEDA CTC's determination shall be final.

W. 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.

X. Conflict of Employment. Employment by the CONSULTANT of any current officer, executive director or other employee of ALAMEDA CTC 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 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.

Y. 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.

Z. Equipment Purchase and Other Capital Expenditures.

1. 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

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($5,000) for supplies, equipment, or subconsultant services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

2. Prior authorization by ALAMEDA CTC must be received for the purchase of any item, service or consulting work not included in **Appendix B**, 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.

3. 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, based on 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.

AA. Any subcontract entered into because of this AGREEMENT shall contain the above provisions.**Subconsultants.** Subject to any required state or federal approval, CONSULTANT shall not subcontract any work under this AGREEMENT without the prior written consent of ALAMEDA CTC. If ALAMEDA CTC consents to the use of subconsultants, such consent shall not create any contractual relation between ALAMEDA CTC and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations under this AGREEMENT. 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, including, but not limited to, any verification that subconsultants maintain the necessary insurance meeting the requirements of this AGREEMENT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from ALAMEDA CTC's obligation to make payments to CONSULTANT.

BB. State of California's General Prevailing Wage Rates.

1. To the extent CONSULTANT'S services to be performed involve elements of public works, CONSULTANT will maintain current registration with the Department of Industrial Relations ("DIR") pursuant to California Labor Code Section 1725.5 throughout the entire term of this AGREEMENT, including any subsequent amendments. CONSULTANT shall comply with all 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.

2. Payroll Records

(a) If required, 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

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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:

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

(ii) 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.

(b) The payroll records enumerated under Section BB.2(a) 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:

(i) 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.

(ii) A certified copy of all payroll records enumerated in Section BB.2(a) 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.

(iii) 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.

(c) Each consultant shall submit a certified copy of the records enumerated in Section BB.2(a) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

(d) 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.

(e) CONSULTANT shall inform ALAMEDA CTC of the location of the records enumerated under Section BB.2(a) 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.

(f) CONSULTANT or subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in Section BB.2(a) 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.

SAMPLE

3. Consultant is responsible for verifying compliance with certified payroll requirements.

4. Penalty

(a) 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.

(b) 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.

(c) 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.

(d) 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:

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

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(e) 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.

(f) 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.

5. 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.

6. Employment of Apprentices

(a) 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 **Section BB**.

(b) 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, 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.

7. 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 its 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.

CC. 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

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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.

DD. Appendices. This AGREEMENT, including the following Appendices which are, by this reference, made a part of this AGREEMENT, constitutes the entire AGREEMENT between the parties 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:

Appendix A: Detailed Scope of Services
Appendix B: Project Cost Basis and Payment Methodology
Appendix C: Contract Equity Programs
Appendix D Consultant Payment Request and Progress Report Forms
Appendix E: Insurance Requirements
Appendix F: Required Certifications and Forms

[Signatures on following page]

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

CONSULTANT:

[___COMPANY NAME___]

By: _____
[___Authorized Signatory___] Date
[___Authorized Signatory's Title___]

No.: _____
CONSULTANT's Federal Tax ID

ALAMEDA CTC:

ALAMEDA COUNTY TRANSPORTATION COMMISSION

By: _____
Tony Tavares 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: _____
ALAMEDA CTC Counsel Date

SAMPLE

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.

Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the Finding of No Significant Impact, or the Caltrans District Director signs the Record of Decision (see Caltrans Local Assistance Procedures Manual Chapter 6: Environmental Procedures, and the Standard Environmental Reference).

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.

SAMPLE

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. See **Table A-1**.

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.

Table A-1: Project Schedule

Activity	Start and Completion Dates

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APPENDIX B
PROJECT COST BASIS AND PAYMENT METHODOLOGY

A. Compensation.

1. **Aggregate Amount**. The aggregate total of payments for work performed shall not exceed the amount shown on page one of this AGREEMENT, unless and until this AGREEMENT has been formally amended in writing. CONSULTANT acknowledges that some or all the compensation hereunder may be paid by or on behalf of ALAMEDA CTC.

2. **Basis of Compensation**. Compensation to the CONSULTANT will be based on the method identified on page one of this AGREEMENT. If compensation is based on Time and Materials, ALAMEDA CTC shall pay the CONSULTANT the amount of the Fixed Hourly Rates or Direct Expenses, or where rates are not shown, the applicable Salary Cost Factor shall be used. Compensation for expenses related to travel must be approved in writing, in advance, by ALAMEDA CTC.

(a) CONSULTANT will be reimbursed for hours worked at the hourly rates specified below. 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.

(b) 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.

(c) Reimbursement for travel AND subsistence costs shall not exceed the rates as specified below. CONSULTANT will be responsible for travel and subsistence costs more than allowable rates.

(d) When milestone cost estimates ARE included, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from ALAMEDA CTC before exceeding such estimate.

(e) 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.

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

(g) 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 **Appendix D**. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated in **Appendices B and D** and shall reference this AGREEMENT number and project title. Credits due ALAMEDA CTC that include any equipment purchased (Equipment Purchase) of this AGREEMENT, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be emailed to ALAMEDA CTC at the following address: AP@alamedactc.org.

SAMPLE

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

(i) 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.

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

(a) "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 below. Except as otherwise shown in below, Fixed Hourly Rates shall remain constant during the term of this AGREEMENT.

(b) "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.

(c) "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.

(d) "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.

(e) "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.

(f) "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 below. 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:

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

Therefore, as example:

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

(g) "Direct Expenses" mean the costs incurred on or directly for this AGREEMENT, other than Salary Costs and General Overhead Costs, which are included in below 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:

(i) Identifiable postage, delivery, and other mail costs.

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

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

(iv) Costs of travel and subsistence of personnel traveling in connection with this AGREEMENT, which are approved in advance by ALAMEDA CTC.

(v) Mileage at the CONSULTANT's current standard rate when 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.

(vi) Laboratory tests and analyses.

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

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

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

B. Invoices and Time of Payment.

1. CONSULTANT shall bill ALAMEDA CTC by submitting itemized invoices along with the payment request forms included in **Appendix D** along with supporting documentation as indicated in the ALAMEDA CTC Payment Request Procedures via email to AP@alamedactc.org. CONSULTANT shall submit invoices for ALAMEDA CTC showing amounts due with respect to services provided. Each itemized invoice shall include the following:

(a) Company name on the invoice, or, subject to reasonable approval by ALAMEDA CTC, a cover letter on company letterhead for each invoice;

(b) The invoice number;

(c) The invoice issuance date;

(d) The description of services provided or cost(s) incurred, including unit price, quantity or hours, and total amount due, each by Task;

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(e) Dates for the time period covered by the invoice;

(f) The number of this AGREEMENT for reference purposes;

(g) Payment request forms in **Appendix D**; and

(h) Separate invoices for each of CONSULTANT's vendors (including subconsultants or subcontractors) providing services during the period, regardless of tier and subcontract amount, with all such invoices in full compliance with the requirements of **subparagraphs (a)** through **(g)** above. Each invoice from CONSULTANT's vendors shall further indicate that the invoice is due and payable by CONSULTANT.

Upon receipt of a valid and complete invoice package from CONSULTANT for services rendered during the specified billing period, ALAMEDA CTC shall pay the properly invoiced amount within thirty (30) calendar days. ALAMEDA CTC, in its sole discretion, will determine whether an invoice is valid and complete and may request reasonable documentation for expense items. Payment for undisputed amounts that do not require additional documentation will be made in accordance with this section. Invoices must be legible, reproducible, and signed by CONSULTANT. Illegible, incomplete, or inaccurate invoices will be returned to CONSULTANT for clarification or completion.

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

(a) Compensation shall be based on the following as applicable and as described in this appendix: hours worked during the preceding month at the approved hourly rates, in addition to approved Direct Expenses, or work and/or deliverables provided during the preceding month at the approved lump sum costs.

(b) Direct Expenses must be approved by ALAMEDA CTC in writing, in advance of costs being incurred.

(c) 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.

(d) Travel and subsistence costs shall be approved by ALAMEDA CTC in advance of costs being incurred, and shall be the actual costs incurred, not to exceed the rates established by the California Department of Human Resources (CalHR) (www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx). Travel and subsistence costs for services subject to prevailing wage requirements shall be reimbursed at the minimum rates established by the California Department of Industrial Relations (www.dir.ca.gov/Public-Works/Prevailing-Wage.html).

(e) All costs must comply with the Federal cost principles set forth in 2 CFR part 200, subpart E.

C. Forms. The following forms, available at www.alamedactc.org/contracting-forms, are hereby made a part of the AGREEMENT and by this reference incorporated herein:

- Amendment Form B
- Task Order Template

SAMPLE

D. Project Cost Basis Tables.

Table B-1: Project Cost Basis

Task No.	Task Description	Task Budget
1		
2		
3		
4		
5		
6		
7		
8		
O1		
	TOTAL	

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 an Amendment Form B1 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 No. O1 will be authorized through the execution of one or more task orders.

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Table B-2: Consultant and Subconsultant Budget

Vendor	Tier	Certifications	Budget
*†	Prime, Tier 1, or Tier 2 under [Subconsultant]	LBE, SLBE, VSLBE and/or DBE	
TBD – Optional Task(s)	--	--	
		TOTAL	**$#,###,###**
		DBE LBE Total	[Do not include TBD$]##.#%
		SLBE Total	[Do not include TBD$]##.#%

Notes:

1. DBE LBE and SLBE breakdown shown represents all participation toward the goal(s) identified on page 1 of the AGREEMENT. The LBE and SLBE totals exclude any optional or on-call budget until such budget is authorized. CONSULTANT shall submit an Amendment Form B2 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.
2. An asterisk (*) by the name of the vendor listed above denotes vendors handling Personally Identifiable Information (as defined in this AGREEMENT).
3. An obelisk (†) by the name of the vendor listed above denotes vendors performing prevailing wage work or that have a subcontracted vendor performing prevailing wage work.

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Table B-3: Consultant and Subconsultant Fixed Hourly Rate Schedules

Vendor Name	Personnel Name	Job Title	Direct Salary Rate ($)	Fringe Rate (%)	Overhead Rate (%)	Indirect Cost Rate (%)	Profit Rate (%)	Fixed Hourly Rate ($) *Effective Period NTP-MM/DD/YY*	Fixed Hourly Rate ($) *Effective Period MM/DD/YY-MM/DD/YY*	Fixed Hourly Rate ($) *Effective Period MM/DD/YY-MM/DD/YY*	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%
			NBR	--	--	--	--	$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 an Amendment Form B3 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 denoted by "Classification Maximum" under the Personnel Name column, with the maximum Direct Salary Rate for that classification as shown. Reimbursement shall be based on actual direct salary rates up to the annual escalation rate and up to the maximum rate for each classification. Use of classifications and a Classification Maximum shall only apply to individuals not listed above.
2. The Fixed Hourly Rate shown represents maximum billing rate for the individual listed.
3. The profit and annual escalation rates may not exceed 8.0% and 3.0%, respectively, for the life of the AGREEMENT.
4. The rates, including multipliers (%), shown above will apply throughout the term of this AGREEMENT as it may be extended.
5. An obelisk (†) by the name of the individuals listed above denotes personnel subject to prevailing wage requirements. This AGREEMENT was advertised on MM/DD/YYYY, although not executed until MM/DD/YYYY, and the applicable federal prevailing wage determination date is MM/DD/YYYY. The applicable California Wage Determination for the project is YYYY-X (with applicable increases) and remains in effect for the duration of the project.
6. A diesis (‡) by the Vendor Name above denotes an Indirect Cost Rate with facilities capital cost of money applied.
7. "NBR" denotes a Negotiated Billing Rate for the individual. Notes 1 and 3 above do not apply to Negotiated Billing Rates. Classifications will be denoted by "Classification Maximum" under the Personnel Name column, with the maximum Fixed Hourly Rate for that classification as shown. Use of classifications and a Classification Maximum shall only apply to individuals not listed above.
8. A superscript letter "L" (^{L}) by the Vendor Name above denotes that such business has elected to propose a lower Indirect Cost Rate than the rate in its indirect cost rate schedule.

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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
	†						
						TOTAL	$5,952.00

Notes:

1. CONSULTANT shall submit an Amendment Form B4 and obtain ALAMEDA CTC's approval for any unit costs not listed above, prior to incurring costs.
2. An obelisk (†) by the name of the vendors listed above denotes line items subject to prevailing wage requirements.
3. Actual costs shall be competitively priced and supported with documentation (e.g., invoice).
4. List other Direct Expenses items with estimated costs. Costs must be competitive in their respective industries and supported with appropriate documentation.
5. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
6. Items such as special tooling will be reimbursed at actual cost with supporting documentation (e.g., invoice).
7. Items considered "tools of the trade" or included in the vendor's indirect cost rate are not reimbursable as other direct cost.
8. Travel-related costs shall be listed above, be pre-approved by the ALAMEDA CTC Project Manager, and shall comply with CalHR rules.
9. If mileage is claimed, the rate should be properly supported by the vendor'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.
10. If a vendor 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.

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Table B-5: Consultant Key Personnel

Vendor Name	Key Personnel Name	Key Personnel Title
Note: Any change in Key Personnel may be made only upon prior written approval by ALAMEDA CTC.		

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APPENDIX C
CONTRACT EQUITY PROGRAMS

A. LOCAL BUSINESS CONTRACT EQUITY PROGRAM

If the applicable box is checked on page one hereof, **Section A** of this appendix shall apply to this AGREEMENT.

1. CONSULTANT shall comply with all applicable provisions of ALAMEDA CTC's Local Business Contract Equity (LBCE) Program, which is available on the ALAMEDA CTC website at www.alamedactc.org/contract-equity which is incorporated here by this reference.

2. 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 one of this AGREEMENT.

3. If the CONSULTANT or any subconsultant is an LBE, an SLBE, and/or a VSLBE, the status for that entity shall be noted in **Appendix B**.

B. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM; OTHER FEDERAL REQUIREMENTS.

If the applicable box is checked on page one hereof, **Section B** of this appendix 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. The CALTRANS Local Assistance Procedures Manual Forms, available at https://dot.ca.gov, are made a part of and incorporated into the AGREEMENT by this reference.

1. **Disadvantaged Business Enterprise (DBE).** CONSULTANT, and any subconsultant, shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). In accordance with 49 CFR 26.13(b): CONSULTANT, or subconsultant, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the ALAMEDA CTC deems appropriate, which may include, but is not limited to:

   (a) Withholding monthly progress payments;

   (b) Assessing sanctions; and/or

   (c) Disqualifying Consultant from future proposing as non-responsible

2. **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 fifteen (15)-day period set forth in this AGREEMENT. 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,

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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. CONSULTANT must submit Caltrans LAPM Exhibit 9-P Prompt Payment Certification to ALAMEDA CTC by the 15th of the month following the month of any payment(s). If CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers, CONSULTANT must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

3. **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 fifteen (15) calendar days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by ALAMEDA CTC. 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 ALAMEDA CTC'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 3321 of the California Civil 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.

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APPENDIX D
CONSULTANT PAYMENT REQUEST AND PROGRESS REPORT FORMS

The following forms, available at www.alamedactc.org/contracting-forms, are hereby made a part of the AGREEMENT and by this reference incorporated herein:

A. Payment Request Forms

1. Consultant Payment Request Form
2. Vendor Costs Form
3. Vendor Contract Information Form
4. Staff Costs Form
5. Retention Release Request Form

B. Progress Report Template

1. 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.

2. CONSULTANT agrees that within fifteen (15) 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.

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

4. 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 that 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.

5. Subconsultant compensation and Direct Expenses 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**.

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6. If any subconsultant provides services pursuant to this AGREEMENT, the agreement with said subconsultant shall contain a clause to the effect that the provisions of **Paragraphs 3, 4** and **5** above shall apply to said subconsultant.

C. CONSULTANT's Identity and Personnel.

1. The person identified on page one as the CONSULTANT Project Manager will be the key person for the performance of services under this AGREEMENT. The CONSULTANT Project Manager and other individuals performing work under this AGREEMENT that are considered Key Personnel 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.

2. 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.

D. 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.

E. 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.

F. Evaluation of CONSULTANT. The CONSULTANT shall be evaluated against its ability to complete the work specified in **Appendix A** to the satisfaction of ALAMEDA CTC. 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.

G. 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.

H. 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 **Appendices B and 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

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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.

I. Extra Work. 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.

J. ALAMEDA CTC Expenditure Reporting Requirements

The 1986, 2000 and 2014 Transportation Expenditure Plans ("TEPs") and 2010 Vehicle Registration Fee ("VRF") Expenditure Plan require reporting related to expenditures of Measure B, Measure BB, and VRF revenues. The 2000 and 2014 TEPs include provisions for reporting expenditures to ALAMEDA CTC's Independent Watchdog Committee as a means of accountability.

For all services described in **Appendix A**, CONSULTANT shall bill ALAMEDA CTC by submitting itemized invoices along with the payment request forms included in **Appendix D** along with supporting documentation as indicated in the ALAMEDA CTC Payment Request Procedures via email to AP@alamedactc.org. Where applicable, CONSULTANT shall submit invoices for ALAMEDA CTC, showing amounts due with respect to services provided to the agency. Each itemized invoice shall include the following:

1. Company name on the invoice, or, subject to reasonable approval by Alameda CTC, a cover letter on company letterhead for each invoice;

2. The invoice number;

3. The invoice issuance date;

4. The description of services provided, or cost(s) incurred, including unit price, quantity or hours, and total amount due, each by Task;

5. Dates for the time period covered by the invoice;

6. The number of this Agreement for reference purposes;

7. Payment request forms in Appendix D; and

8. Separate invoices for each of CONSULTANT's vendors (including subconsultants or subcontractors) providing services during the period, regardless of tier and subcontract amount, with all such invoices in full compliance with the requirements of **Paragraphs 1** through **7** above. Each invoice from CONSULTANT's vendors shall further indicate that the invoice is due and payable by CONSULTANT.

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Payment requests from CONSULTANT will not be considered without the information required per the AGREEMENT. Deficient submittals will be returned to CONSULTANT for re-submittal. Payment request forms are available on the ALAMEDA CTC website at www.alamedactc.org/contracting-forms and are incorporated herein as if attached hereto. Any questions about properly filling out these forms should be directed to the ALAMEDA CTC Project Manager.

As required by the AGREEMENT, a monthly progress report delineating the status of the contract activities 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.

K. 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 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. Submissions should be emailed to AP@alamedactc.org.

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PAYMENT REQUEST 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.

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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 **Appendices B** (Project Cost Basis and Payment Methodology) and **D** (Consultant Payment Request and Progress Report Forms) of the AGREEMENT.

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.

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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.

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PAYMENT REQUEST 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.

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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.

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PAYMENT REQUEST 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. Requests regarding prior certification should be directed to certification@alamedactc.org.

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.

SAMPLE

PAYMENT REQUEST 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.

SAMPLE

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, 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

SAMPLE

- 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. 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

SAMPLE

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.

SAMPLE

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

REPORTING REQUIREMENTS

- Was the Caltrans LAPM Form 9-J Disadvantaged Business Enterprise (DBE) Commercially Useful Function (CUF) process followed for DBEs?
  - ☐ Yes, CONSULTANT provided written notice to ALAMEDA CTC PM at least 15 calendar days in advance of DBE performing work or supplying materials.
  - ☐ Yes, the initial evaluation and validation of DBE performance was completed and submitted to ALAMEDA CTC using the 9-J within 10 calendar days of DBE performing work or supplying materials under the AGREEMENT.
  - ☐ Yes, CONSULTANT continues to monitor all DBE performance of CUF and has or will submit quarterly evaluations and validations by the 5th of the month for the previous three months of work.
  - ☐ CONSULTANT did not identify any CUF deficiencies or inadequacies and denoted on the 9-J as such.
  - ☐ CONSULTANT did identify CUF deficiencies and/or inadequacies and denoted on the 9-J as such.
- Was the Caltrans LAPM Exhibit 9-P Prompt Payment Certification reporting process followed?
  - ☐ Yes, CONSULTANT submitted the 9-P to Alameda CTC PM by the 15th of the month following the month of any payment(s).

CONTRACT GOALS

- The following goal(s) apply:
  - ☐ LBCE Program Goals: 70.0% LBE and 30.0% SLBE
  - ☐ DBE Goal: __._% DBE

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- 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:

SAMPLE

APPENDIX E
INSURANCE REQUIREMENTS

Table F-1: Insurance Requirements

The following additional insured and minimum insurance coverage is required for this AGREEMENT:

- **Commercial General Liability** (including operations, products and completed operations)**:** $2,000,000 per occurrence for bodily injury, personal injury and property damage, or the full per occurrence limits of the policy, whichever is greater. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- **Workers' Compensation** as required by law, and **Employer's Liability:** $1,000,000 each accident, $1,000,000 for each employee for bodily injury by disease, and $1,000,000 overall limit for bodily injury by disease.
- **Professional Liability** (**as applicable**): $2,000,000 combined single limit per claim and in the aggregate. The policy shall remain in full force and effect for no less than 5 years following the completion of work under this AGREEMENT.
- **Automobile Liability:** $1,000,000 per accident for bodily injury and property damage..
- **Umbrella or Excess Liability Insurance:** $1,000,000
- **Deductible Maximum** (all policies): $50,000 deductible or self-insured retention.
- **Additional Insured**: ALAMEDA CTC and its respective officers, employees and agents.
- **Unmanned Aerial Vehicle Insurance** (**as applicable**; see **Paragraph 9**): $1,000,000 combined single limit per occurrence.
- **Cyber and Privacy Insurance** (**as applicable**; see **Paragraph 10**): $2,000,000 per incident with the aggregate limit twice the required limit to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information property of the ALAMEDA CTC that will be in the care, custody or control of CONSULTANT under this AGREEMENT.

1. Without limiting CONSULTANT'S obligation to indemnify ALAMEDA CTC, CONSULTANT must procure and maintain, for the duration of the AGREEMENT, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work under this AGREEMENT and the results of that work by CONSULTANT, CONSULTANT'S agents, representatives, employees or subcontractors. To the extent that CONSULTANT will be engaging the services of subcontractors in the performance of the work under this Agreement, CONSULTANT shall require all subcontractors to have Workers' Compensation, Commercial General Liability/Umbrella and/or Excess Liability, and Automobile Insurance in a form and amount deemed appropriate by the CONSULTANT for the work to be performed by the subcontractor.

2. **Minimum Scope of Insurance.** Coverage must be at least as broad as:

(a) Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).

(b) Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto).

(c) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

SAMPLE

3. If CONSULTANT maintains higher limits than the minimums shown above, ALAMEDA CTC is entitled to coverage for the higher limits maintained by CONSULTANT. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to ALAMEDA CTC. No representation is made that the minimums shown above are sufficient to cover the indemnity or other obligations of the CONSULTANT under this AGREEMENT.

4. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by ALAMEDA CTC. At the option of ALAMEDA CTC, either:

(a) The insurer will reduce or eliminate such deductibles or self-insured retentions with respect to ALAMEDA CTC, its officers, officials, agents, employees and volunteers; or

(b) CONSULTANT must provide a financial guarantee satisfactory to ALAMEDA CTC guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

5. **Other Insurance Provisions**

(a) The general liability and automobile liability policies must contain, or be endorsed to contain, the following provisions:

(i) The ALAMEDA CTC, its officers, officials, agents, employees, and volunteers must be included as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of CONSULTANT; and with respect to liability arising out of work or operations performed by or on behalf of CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or both CG 20 10 and CG 20 37 if later ISO revisions are used or the equivalent) to Consultant's insurance policy, or as a separate owner's policy. The insurance afforded to the additional insureds shall be at least as broad as that afforded to the first named insured.

(ii) For any claims related to work performed under this AGREEMENT, CONSULTANT'S insurance coverage must be primary insurance with respect to the ALAMEDA CTC, its officers, officials, agents, employees, and volunteers. Any insurance maintained by ALAMEDA CTC, its officers, officials, agents, employees, or volunteers is excess of CONSULTANT'S insurance and shall not contribute to it.

(b) If CONSULTANT'S services are technologically related, Professional Liability coverage shall include, but not be limited to claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations. The policy shall also include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the ALAMEDA CTC in the care, custody, or control of the CONSULTANT. If not covered under the CONSULTANT'S Professional Liability policy, such "property" coverage of the ALAMEDA CTC may be endorsed onto the CONSULTANT'S Cyber Liability Policy.

(c) Should any of the above described policies be cancelled prior to the policies' expiration date, CONSULTANT agrees that notice of cancellation will be delivered in accordance with the policy provisions.

6. **Waiver of Subrogation**

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(a) CONSULTANT agrees to waive subrogation which any insurer of CONSULTANT may acquire from CONSULTANT by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

(b) The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of ALAMEDA CTC for all work performed by CONSULTANT, its employees, agents and subcontractors.

7. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless otherwise acceptable to ALAMEDA CTC.

8. **Verification of Coverage**

(a) CONSULTANT must furnish ALAMEDA CTC with original certificates and endorsements effecting coverage required by this AGREEMENT.

(b) The endorsements must conform to ALAMEDA CTC'S requirements and be acceptable to ALAMEDA CTC.

(c) ALAMEDA CTC must provide the required certificates and endorsements shall not operate as a waiver of these insurance requirements.

(d) ALAMEDA CTC reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage described above at any time.

9. **Unmanned Aerial Vehicle (UAV) Insurance.** If CONSULTANT or any subconsultant, or anyone working on their behalf, utilizes any unmanned aircraft, aerial vehicle or drone (each a "UAV") as part of the services performed under this AGREEMENT, CONSULTANT or the applicable subconsultant shall carry and maintain, or cause the operator of the UAV to carry and maintain, occurrence-based UAV Insurance and maintain aggregate limits of liability equal to or greater than the minimum coverage for such insurance shown in this appendix. Such insurance shall name the additional insureds identified in the above table, along with any other permitting or responsible agency subsequently identified by ALAMEDA CTC. 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 any other 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 use of UAVs under this AGREEMENT, (b) protection against claims arising from violation of privacy injury arising from use of UAVs under this AGREEMENT, and (c) blanket contractual liability on all written contracts, including this AGREEMENT or the applicable subcontract. UAV Insurance may be provided under Commercial General Liability Insurance if such policy contains a separate endorsement for such UAV coverage. Any entity or individual who operates a UAV as part of performing services under this AGREEMENT must be properly certified and registered with the Federal Aviation Administration ("FAA") and follow all applicable FAA rules and regulations.

10. **Cyber and Privacy Insurance.** If CONSULTANT or any subconsultant, or anyone working on their behalf, is handling Personally Identifiable Information (as defined herein) as part of the services performed under this AGREEMENT, CONSULTANT or the applicable subconsultant shall maintain cyber risk coverages including network and internet security liability coverage, privacy liability coverage, first party privacy coverage, and media coverage. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information or information that can be linked to a specific individual, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other similar information (collectively, "Personally Identifiable Information"), stored or transmitted in electronic form. If such policy is

SAMPLE

written on a claims-made (rather than an occurrence) basis, CONSULTANT and such subconsultant shall maintain continuous coverage in effect for the term of this AGREEMENT and for at least one (1) year beyond the termination or completion of services.

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APPENDIX F
REQUIRED CERTIFICATIONS AND FORMS

Required forms:

Exhibit

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