



# REQUEST FOR PROPOSAL

RFP No. ROA20161043

*for*

## Alameda County Safe Routes to School Project for Unincorporated Areas

**Alameda County SLEB Provisions Apply**

*Proposers not meeting the definition of a small or emerging local business must commit to subcontracting with at least one County certified SLEB for at least 20% of the contract amount (see pg. 5 for more information).*

**Mandatory Pre-Proposal Meeting**

**October 17, 2016 at 11:00 am**  
399 Elmhurst Street, Hayward 94544  
*Auditorium*

**Response Due**

**October 31, 2016 by 2:00 pm**  
399 Elmhurst St, Room 113, Hayward, CA 94544

Alameda County Public Works Agency  
399 Elmhurst St, Hayward, CA 94544

Issued: October 7, 2016



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## **ATTACHMENTS**

- A. RFP and Addendum Acknowledgement Form
- B. Iran Contracting Act Compliance Certification Form
- C. Exceptions and Amendments Form
- D. Standard Agreement
  - 1. Appendix A – General Requirements
  - 2. Appendix B – Billing and Payment Method
  - 3. Appendix C – Insurance Requirements
  - 4. Appendix D – Debarment & Suspension Certificate
  - 5. Appendix E – Contract Compliance Reporting
  - 6. Appendix F – Vendor First Source Agreement Form
- E. Small Local Emerging Business (SLEB) Partnering Information Form

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## I. Need for Professional Services

### A. Agency Seeking Services

Alameda County Public Works Agency (ACPWA) is the division of Alameda County government responsible for developing, operating, and maintaining public works infrastructure projects, such as county roadways. The County maintains 480 miles, including pedestrian and bicycle facilities that serve local elementary, middle, and high schools. Providing safe routes to school is one of Alameda County's highest priorities. Since the last bicycle and pedestrian plan update; the County has completed safe routes to school capital projects; received safe routes to school grant funding for design and/or construction; participated in numerous community activities that promote bicycle and pedestrian safety; and worked collaboratively with law enforcement agencies, school districts, public health agency, community groups, and other local jurisdictions to improve biking and walking throughout the Alameda County Unincorporated Areas.

ACPWA performs its functions with a dedicated team of program managers, professional engineers, skilled technicians and other talented support staff. Sometimes numerous, large and/or complex projects require the agency to supplement its staff with the additional expertise and resources of specialized consultants. When this is the case, ACPWA seeks competitive proposals for services by issuing a request for proposal (RFP).

With this RFP, ACPWA seeks the professional services of consultants who can provide:

#### **Alameda County Safe Routes to School Project Support**

The most current supporting information and addenda for this and other RFPs can be found on the ACPWA business webpage: [www.acgov.org/pwa/business/services.htm](http://www.acgov.org/pwa/business/services.htm).

It is the responsibility of a Proposer to be familiar with all of the specifications, terms and conditions of the RFP—including those contained in addendums. By the submission of a Proposal, the Proposer certifies, that if awarded a contract, it will make no claim against the County based upon ignorance of conditions or misunderstanding of the requirements.

Any questions regarding this RFP should be submitted in writing, preferably by email, and delivered to the contact person listed below by the date and time specified as the *Deadline for Questions* on the *Schedule of Events* ([Section III-E](#)).

Contact: Anita Franklin, Administrator

E-mail: [anita@acpwa.org](mailto:anita@acpwa.org)

Phone: 510-670-5569

Address: Alameda County Public Works Agency  
399 Elmhurst Street, Hayward, 94544

ACPWA reserves the right to amend or cancel this RFP, or to reject any one or all proposals at its discretion.

**B. Scope of Work**

The Public Works Agency is establishing an Alameda County Safe Routes to School Project for 28 schools in the unincorporated areas of Alameda County. The goal of the Project is to reduce the number of pedestrian and bike injuries and fatalities at all elementary, middle, and high schools located within the unincorporated areas of Alameda County. The Project will be developed beginning January 1, 2017. Implementation of the Alameda County Safe Routes to School Project will occur during the 2017-18 and 2018-19 calendar school years.

The Alameda County Public Works Agency is seeking to obtain the services of a well-qualified consultant/firm, or a consultant team with experienced sub-consultants who are experts in their respective fields to develop, implement, staff, and conduct the Alameda County Safe Routes to School Project for unincorporated areas of Alameda County. The Consultant will need to provide engineering technical expertise to identify traffic safety problems and issues, and recommend and implement appropriate countermeasures for engineering, education, and enforcement. The Consultant will also be responsible for conducting school traffic engineering assessments developing recommended countermeasures, and administering any approved traffic safety education program. In developing the Safe Routes to School Project, the Consultant shall will and comply with all applicable Local, State of California Department of Transportation (Caltrans), and Federal design guidelines and requirements.

The Scope of Work consists of the following tasks:

**Task 1. Consultant Start-Up: Planning Meeting Review****Task 2. Project Coordination / Safe Routes to School Project****Task 3. Goals, Objectives, and Performance Measures****Task 4. Data Collection****Task 5. Identification of Problems and Deficiencies****Task 6. Development of Recommended Safety Improvements****Task 7. Implementation****Task 8. Program Evaluation & Data Management****Task 9. Development of GIS Data and Maps****Task 1. Consultant Start-Up: Planning Meeting Review**

The Consultant will attend a start-up meeting in tandem with the Notice to Proceed, at which the County and the Consultant will finalize the scope of work, project budget and project schedule. The Consultant will complete Caltrans Exhibit 22-R ATP Non-Infrastructure Project Work Plan and submit to the County for review and submitting to Caltrans for approval. Caltrans Exhibit 22-R ATP Non-Infrastructure Project Work Plan is required and must be approved by Caltrans staff before proceeding with the project.

*Deliverables:*

1. *Signed Professional Services Agreement, including finalized Scope of Work, Project Budget, and Project Schedule.*
2. *Completed Caltrans Exhibit 22-R ATP Non-Infrastructure Project Work Plan (Staff Costs, Equipment, Supplies/Materials, Incentives, etc.)*
3. *Kick-off meeting notes.*

**Task 2. Project Coordination / Safe Routes to School Project**

The Consultant will develop a comprehensive Safe Routes to School SRTS Project to reduce school area pedestrian and bicycle injuries and fatalities which should include education, engineering, and enforcement strategies. If needed, the Consultant shall obtain appropriate authorization from the school districts and school principals to conduct traffic studies and programs on campuses. The Consultant will meet with the County on monthly basis to coordinate projects or as needed.

The Consultant will meet with the Technical Advisory Committee before key project milestones quarterly to gather input and coordinate implementation on the Safe Routes to School Project. The Technical Advisory Committee shall consist of representatives from the school districts, school staff, parents, Alameda County Health Department, Alameda County Sheriff's Department, California Highway Patrol, and the Alameda County Public Works Agency. The Consultant will prepare the agenda, and develop and make presentations and record the meeting notes.

*Deliverables:*

1. *Progress reports (via email);*
2. *Documentation of Technical Advisory Committee Meetings (10-12), community meetings, school district meetings and school site meetings.*
3. *SRTS Program Presentations and meeting notes.*

**Task 3. Goals, Objectives, and Performance Measures**

The County and the Consultant will develop project goals, objectives, and performance measures for SRTS Project with input from the Technical Advisory Committee. The performance measures will be used to monitor and evaluate the effectiveness of the project.

*Deliverable:*

1. *Develop and provide a list of project goals, objectives, and performance measures with input from the County staff, the Technical Advisory Committee, and other key stakeholders.*

**Task 4. Data Collection**

The Consultant shall collect information necessary to review and evaluate existing conditions for each school site. This will likely include travel modes, roadway, sidewalk, and bicycle facilities, obstacles to biking and walking, accident histories, traffic volumes (e.g. vehicle, pedestrian, bicyclist, etc.) The Contractor shall:

- Provide data that is requested in the Active Transportation Program, such as school enrollment, school boundary map, percentage of students receiving Free Reduced Meal Program, health risk data, bike/walk percentage, mode share, bicycle and pedestrian accidents, TIMS data, etc.
- Identify existing conditions, such as traffic volumes, bicycle and pedestrian facilities, traffic controls, and traffic calming measures.
- Note planned or recently completed bicycle and pedestrian projects
- Identify existing school safety groups, SRTS activities, Safety Task Force, and/ or other student/parent leaders (champions) at the school.
- Conduct sample SRTS parent surveys and sample student in-class tallies

The Contractor shall identify methods for gathering, such as reviewing existing data, conducting surveys, performing school site assessments.

The Project will include project monitoring and data collection, as well as deliverables (shown below) that will contribute to the concurrent updating of the Alameda County Bicycle and Pedestrian Master Plan.

*Deliverable:*

1. *Existing Conditions Report (school information, traffic data, school access, circulation, etc.)*

**Task 5. Identification of Problems and Issues**

The Consultant will identify problems and issues at each school by examining the existing conditions, school site traffic safety assessment, community input, and parent surveys, etc. The Consultant will compile a list of problems and deficiencies for each school site. The Consultant will establish a prioritized list of issues and prepare a map showing the critical locations.

The Consultant will conduct school site traffic safety assessments to identify and evaluate the safety issues around the public schools in the Alameda County Unincorporated Areas. Participants in the site assessments may include parents, staff, students, and County planners and engineers, traffic safety officers, and local elected officials. The Consultant will also conduct traffic safety analysis to evaluate existing conditions at schools and in school districts to help maximize the effectiveness of available funding.

*Deliverables:*

1. *School Site Traffic Safety Assessment and Analysis at 28 schools*
2. *Report on the identification of the problems and deficiencies at each school.*

**Task 6. Development of Recommended Safety Improvements**

Based on the existing condition report, the Consultant will identify and develop feasible recommendations for engineering, education, and enforcement. These recommendations should be feasible and be implemented in the 2017-18 and 2018-19 school calendar years. These recommendations will be based on the evaluation of the existing conditions, community input, and the data analysis. The recommendations for engineering should provide an appropriate list of short-term and long-term countermeasures to be implemented at each school. The recommendations for education should provide strategies for traffic safety education, including traffic safety curriculum and activities that engage students in learning about traffic safety. The recommendations for enforcement should include traditional and innovative strategies to address safety concerns.

The Consultant with County and relevant stakeholders will develop safety countermeasures based on existing conditions and opportunities to reduce biking and walking accidents. In addition, promote biking and walking as viable modes to get to and from school. The consultant is required to prepare for each school site assessments within a ¼ mile radius of each school. The consultant is also required to identify near, mid, and long term safety countermeasures that make walking and bicycling safer. The school site assessment will identify strategies for reducing collisions and severe injuries, increasing walking or biking to school, and/or any other indicators suggested by the Consultant.

The consultant shall conduct the following tasks:

- Perform school walk audit that includes input from school administrators, teachers, parents, and students in identifying issues.
- Make recommendations to County and school administrators for school safety improvements that address concerns related to walking and bicycling to school.
- Develop short-term, mid-term and long-term countermeasures for engineering, education, and enforcement program.
- Identify existing and future bicycle and pedestrian facilities such as bicycle parking and pedestrian amenities.
- Take findings and recommendations from the existing conditions report and walk audits and develop school site improvement plans for increasing safety and improving traffic circulation.
- Consider various countermeasures to resolve various traffic safety issues. Countermeasures may include engineering, education and enforcement strategies.
- Develop education programs to improve traffic safety and awareness. Traffic safety curriculum and activities shall be developed for elementary schools, middle schools, and high schools.
- Conduct an engineering analysis in the form school site assessments, bring engineering experts to assist the community in evaluating streets and identifying improvements for walking and biking to school.
- Establish enforcement programs reinforce legal and respectful walking, bicycling, and

driving behaviors, and partner with law enforcement officials to improve traffic safety around schools.

- Provide clear and concise maps to identify and improve walking and biking routes to school.
- Identify partners and existing organizations to support Alameda County Safe Routes to School Project for Unincorporated Areas and related services.
- Develop school traffic safety resources to help schools implement activities and sustain the program.

*Deliverables:*

1. *Report on recommended short-term, med-term, and long-term safety countermeasures for each school to safe routes to school;*
2. *Recommend engineering, education, and enforcement countermeasures for 28 schools*

### **Task 7. Implementation**

The Consultant will develop and implementation plan that applies the countermeasures to address the problems and deficiencies identified in the analysis.

- Develop three lists of recommended safety improvements appropriate for elementary schools, middle schools, and high schools.
- Review and analyze, modify, and prioritize countermeasures for each school
- Provide assistance with implementing the recommended countermeasures with the input from PWA, school district, public health, and law enforcement.
- Develop strategies to resolve issues that can be addresses through engineering, education, and enforcement.
- Prepare a two-year schedule for executing the engineering, education, and enforcement strategies at each of the schools.
- Work with the school staff to administer traffic safety education programs

*Deliverables:*

1. *Strategic plan for implementing the SRTS project*
2. *Monthly reports on school the implementation of school activities*
3. *Quarterly reports on the implementation of engineering and enforcement projects*
4. *Conduct traffic safety education programs at 28 schools*

### **Task 8. Program Evaluation & Data Management**

The Consultant will monitor and evaluate progress and effectiveness of the program by working with all schools to identify objectives that are specific to each individual school's needs, helping schools conduct surveys to assess the baseline number of students biking and walking to school, and monitoring progress over time. This data effort should be coordinated with other data collection efforts occurring as part of the Bicycle and Pedestrian Plan Update, as well as regularly occurring Bicycle and Pedestrian Counts.

The consultant is required to conduct the following evaluations:

1. Pre-SRTS Program Report of Existing Conditions
2. Pre and Post-SRTS Program Student In-Class Travel Tallies to be conducted twice per school year.
3. Pre and Post-SRTS Program Parent Surveys to be conducted annually, over a two-year period of time.
4. Post-SRTS Program Report of Program Outcomes.

The Consultant will be responsible for printing, distribution, collection of data entry, analysis, and associated survey tasks. Consultant will be responsible for entering all survey results online at [www.saferoutesdata.org](http://www.saferoutesdata.org) and aggregating and analyzing all survey results from parents and subsequently uploading them to [www.saferoutesdata.org](http://www.saferoutesdata.org). Standardized travel tally and parent survey forms are available on Safe Routes to School National website, <http://www.saferoutesinfo.org/data-central/data-collection-forms> and must be integrated in the data collection process.

*Deliverables:*

1. *Annual evaluations of Pre and Post-SRTS Program student in-class travel tallies;*
2. *Annual Pre and Post-SRTS Program parent surveys;*
3. *Post-Program report analyzing the results of the program, including count data:*
  - a. *This will allow the data to be more easily coordinated with data collected as part of the Bicycle and Pedestrian Master Plan Update.*
4. *SRTS Project Final Report*

**Task 9. Development of GIS Data and Maps**

The Consultant will need to gather or create GIS data regarding pedestrian and traffic conditions, including volume, speed, and collision data. This data will be used throughout the process to systematically monitor and analyze conditions before, during, and after the project, and will provide for visualization of conditions for the Consultants, County staff, and the public as needed.

*Deliverable:*

1. *All GIS data and maps collected/generated throughout the project will be in an electronic (geodatabase and/or desktop illustration program) format. The County will work with the Consultant on the format accuracy and projection.*

Other Related Tasks

- Perform traffic counts (manually, by machine, and/or by video recording)
- Prepare technical reports
- Attend public meetings and prepare presentations

Tasks which include planning and/or design efforts must be performed in accordance with the latest editions of the following guides, manuals, standards and regulations, wherever applicable, unless otherwise directed by ACPWA:

- [Alameda County Neighborhood Traffic Calming Program](#)
- [Alameda County Bicycle and Pedestrian Master Plan for Unincorporated Areas](#)
- [Alameda County Standard Details/Design Guidelines](#)
- [Alameda County Engineering Design Guidelines](#)
- [Caltrans Highway Design Manual](#)
- [Caltrans Standard Plans and Specifications](#)
- [California Manual on Uniform Traffic Control Devices \(MUTCD\)](#)
- [AASHTO "Green Book" – A Policy on Geometric Design of Highways and Street](#)
- [AASHTO – Roadside Design Guide](#)
- [Americans with Disabilities Act Accessibility Standards](#)
- [California Access Compliance Reference Materials](#)

The above list is not intended to be comprehensive; documents and requirements may change throughout the contract term.

### **C. Schedule of Work**

Following a contract award by the County Board of Supervisors, the ACPWA Road Program Manager will be authorized to negotiate scope of work for Alameda County Safe Routes to School project as needed. Note that ACPWA does not guarantee any minimum need for services, and the Road Program Manager has no obligation to approve any scope of work.

When a mutually agreeable scope of work, including a schedule, has been derived, the Road Program Manager can then issue a Notice to Proceed. The Consultant should be especially aware that work can only proceed and be compensated in accordance with the scope authorized by the Road Program Manager in a written Notice to Proceed.

Work is expected to progress and conclude in accordance with the agreed upon schedule specified in a Notice to Proceed.

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## II. Proposal Requirements

### A. Minimum Qualifications

To qualify for consideration, a consultant must possess adequate resources to perform all of the work needed to complete the likely project tasks listed in [Section I-C](#). This includes possessing the required licensing, experience, and software. Additionally, provisions of Alameda County's Small Local and Emerging Business (SLEB) Program applies.

**LICENSING:** All civil engineering work must be performed under the responsible charge of a California registered professional civil engineer in accordance with the California [Professional Engineers Act](#). All traffic engineering work must be performed under the responsible charge of a California registered Traffic Engineer. Any land surveying work must be performed under the responsible charge of a California registered professional land surveyor or qualified civil engineer in accordance with the California [Professional Land Surveyors' Act](#).

**EXPERIENCE:** The staff of a qualified consulting firm must have substantial experience with local school traffic safety projects, particularly with respect to public engagement, data gathering, analysis and reporting, strategizing solutions, and project planning and design.

**SOFTWARE:** The software utilized by any potential consultant and its team must produce deliverables that are fully compatible with software applications owned by or freely available to ACPWA. The deliverables should require no modification or conversion. Software applications currently employed by ACPWA are:

- Operating System: Windows 7 and 10 Enterprise
- Word Processing, Spreadsheets, Presentations, et cetera: Microsoft Office Pro Edition 2012
- CADD: AutoCAD Civil 3D 2014
- GIS: ArcView
- Traffic Signal Software: Synchro Studio (version 8 or later)

Alternative software can be proposed, but its acceptability will be at the sole discretion of ACPWA. A qualified consultant is expected to minimally possess and maintain a professional level of proficiency with respect to all software products. Expert proficiency is desired for CADD programs.

**SLEB:** As part of its effort to foster the growth of small and local emerging businesses, Alameda County has created a Small Local Emerging Business (SLEB) Program. The program requires that for Architectural/Engineering Services agreements over \$25,000 either the prime consultant must be a certified SLEB or at least 20-percent of the contract amount must be allocated to a certified SLEB sub-consultant. For additional SLEB information, see Section 25 of the Standard Agreement (Attachment D) and the program's webpage: <https://www.acgov.org/auditor/sleb>.

A 5-percent proposal preference is awarded to respondents who are certified by the County as a local business. An additional 5-percent proposal preference is awarded to respondents whose business is also certified by the County as small or emerging.

**B. Mandatory Pre-Proposal Meeting**

To be eligible to submit a proposal, a representative of the Proposer's firm must be present at the pre-proposal meeting held at the date, time and location specified in the 'Schedule of Events' ([Section III-E](#)). Only one mandatory pre-proposal meeting is scheduled, so ensuring attendance is critical.

This meeting will be held primarily to provide an opportunity for small, local, and emerging businesses to network with larger firms for possible partnering on this project.

Meeting notes, including a list of attendees, will be issued as an RFP addendum following the meeting.

**C. Written Proposal****1. Content**

The Proposal is expected to be straightforward, clear, concise, and specific to the information requested; it should not include general marketing material.

Proposers must not qualify their proposals or modify required forms.

The proposal must be organized and divided into the following sections:

- a) Firm(s)
- b) Staff
- c) Experience
- d) Example 1
- e) Example 2
- f) Forms

At a minimum, the required sections must include the information listed below. This information, together with any other information the Proposer deems worthy, must be presented within the limits of the maximum pages specified.

**a) FIRM(S)** [*Limit to two pages*]

- Prime Consulting Firm's Name
- Firm's Address

## Staff Authorized to Contractually Obligate Firm

- Name
- Title
- Signature
- Phone Number
- e-mail address

Staff Contact Managing/Coordinating this Proposal  
(if other than the authorized person above)

- Name
- Title
- Signature

- Phone number
- e-mail address

Name and address of all proposed sub-consulting firm(s) (if any)

For each firm, prime and sub(s), provide a description that includes: Business type, SLEB certification status, history, current size, focus and suitability for the described possible needs. If the prime consulting firm is not a current certified SLEB, explain how the required 20-percent contract value assignment for SLEB certification will be met.

In addition to the two allowed pages for the description of the firm(s), include any needed additional pages to describe any litigation in connection with the firm's past projects. Briefly describe the nature of the litigation and the result.

**b) STAFF**

Provide the names and titles of the professional/technical staff to be utilized for the potential work. Include organizational reporting relationships, years of experience, license numbers, years with the firm, and the city of the office in which the individual will work. Also include individual resumes in this section.

**c) EXPERIENCE** *[Limit content to 10-pages]*

In this section the Proposer should describe relevant experience of the firm(s) and staff that demonstrate successful accomplishments similar to those project tasks listed in Section 1-B. A majority of Section 1-B tasks must be clearly represented in past experience. Recent and local experience is preferable. A demonstration of the ability to coordinate SRTS projects; develop goals, objectives, and performance measures; collect data; identify problems and deficiencies; develop recommended safety improvements; implement and administer SRTS project; evaluate program; manage data; and develop GIS data and maps in past projects is also desirable. Projects listed as evidence of relevant experience should include contact information for the client representative who can verify satisfactory performance and results.

**d) EXAMPLE 1: School Traffic Safety Study**

Provide one representative example of a recently completed School Traffic Safety Study, preferably for a site located in Alameda County.

**e) EXAMPLE 2: School Safety Traffic Plan**

Provide one representative example of a recently completed Site Assessment Plan that was prepared for a location within, or nearby, Alameda County.

**f) FORMS**

In this section, include the following completed forms:

- RFP and Addendum Acknowledgement Form (Attachment A)
- Iran Contracting Act Compliance Certification Form (Attachment B) – *Prime only*
- Exceptions and Amendments Form (Attachment C) – *only if applicable*
- Current SLEB Certification Letter(s) from AC Auditor-Controller – *Prime and/or subs*

NOTE: A Fee Schedule that includes the billable hourly rates of staff is not to be included as part of the initial written response. It will be requested at the time of invitation for an oral presentation/interview.

**2. Format**

The written submission must include one original and four copies in an 8½ x11 format. An exact duplicate, electronic copy must also be submitted on a read-only CD or USB-drive in a single PDF file. A PDF file created with searchable text is required.

The original Proposal must be unbound (or provided in an operable three ring binder), printed on plain white paper, and clearly identified as the original.

To support environmental sustainability, it is recommended that printed copies be double-sided and consist of a minimum 30% post-consumer recycled content paper. Satisfying this recommendation will not impact the evaluation or scoring of the proposal.

Printed Proposals must include physical dividers with labeled tabs between each section. Proposals in PDF form should have a bookmark link for the start of each section.

**3. Submission**

The RFP response must be submitted in its entirety within one securely-sealed, sufficiently-sized, envelope or box and received by ACPWA by the deadline stated in the *Schedule of Events* ([Section III-E](#)). No part of any response will be accepted via email or fax. Unsealed or late responses will be rejected.

ACPWA's timestamp will be the official record of receipt.

In person deliveries should plan extra time for searching and/or paying for limited available parking.

Proposals must be addressed and delivered as indicated below:

Proposers Name

Return Address

*SEALED PROPOSAL – DO NOT OPEN WITH REGULAR MAIL*

To: Anita Franklin  
Alameda County Public Works Agency  
399 Elmhurst St  
Hayward, CA 94544

Contents: Proposal for On-Call Traffic Engineering Services

Only one proposal will be accepted from any one person, corporation, or partnership. For purposes of this requirement, “partnership” shall mean, and is limited to, a legal partnership formed under one or more of the provisions of the California or other state’s Corporations Code or an equivalent statute.

The County reserves the right to reject any proposal, but all qualifying proposals shall remain open to acceptance and are irrevocable for a period of 180 days.

All costs associated with the preparation and submission of the written proposal shall be fully borne by the Proposer. All submitted materials become the property of the County and will not be returned.

Every proposal received will become part of public record and will not be treated as proprietary. Each proposal will be open to public inspection following the award of the contract.

#### **D. Oral Presentation/Interview**

Following an evaluation of the written proposals, at least three of the highest scoring proposers will be invited to participate in an oral presentation/interview process. The process will likely include a written exercise.

Participants must submit a sealed fee schedule at that time of the interview. Additional details will be provided to those who are invited to participate. For advanced planning purposes, the oral presentation/interviews can be expected to occur approximately 10 days after the deadline to submit a written proposal, as reflected in the *Schedule of Events* ([Section III-E](#)).

At the interview, the selection committee will expect the Consultant team to present its relevant staff members and their qualifications. The project manager and key staff persons who will be working on the project on a daily basis must be present for the interview/presentation. The presentation will be followed by a question and answer period by the selection team.

All costs associated with the preparation for, the travel to, and attendance of an oral presentation/ interview shall be fully borne by the Proposer.

### III. Process of Selection

#### A. Selection Committee

Prior to evaluating proposals, a consultant selection committee will be formed. It will be composed of ACPWA staff and possibly others having expertise in traffic engineering. The committee will score and recommend a consultant in accordance with the evaluation criteria described in the next section. The evaluation of the proposals and of the proposing firms shall be within the sole judgment and discretion of the committee. Proposers shall neither contact nor lobby evaluators during the evaluation process. Any attempt to contact and influence members of the selection committee may result in disqualification of the Proposer.

#### B. Evaluation Criteria

The criteria listed in the table below will be used to rank the firms.

Criteria	Weight (%)
<p>Technical Competence</p> <p><i>Technical competence to perform the work specified in the Scope of Work. Factors to be considered: Traffic Safety Engineering and Safe Routes to School planning experience, knowledge of best practices in developing Safe Routes to School, familiarity with Alameda County Public Works Agency road projects, establishing priorities for Safe Routes to School project implementation, ability to prepare School Safety Site Assessments maps for Alameda County unincorporated areas, and the commitment of key personnel.</i></p>	30
<p>Record of Past Performance</p> <p><i>Past record of performance as determined from all available information, including direct communication by the County with proposer's former clients. Factors to be considered: cost control, work quality, and completion of work on schedule.</i></p>	10
<p>Capability to Meet Schedule</p> <p><i>Capability under current workload to perform the work within the project schedule and subsequent revisions. Factors to be considered: project manager experience, technical expertise of staff, size of staff assigned to the project, and availability of staff.</i></p>	10
<p>Approach to Work</p> <p><i>Adequacy of proposed method of accomplishing the project work specified in the Scope of Work. Ability to meet project schedule; work with County staff; suggest charts and graphics that illustrate</i></p>	40

<i>key findings; review, edit, and provide insightful knowledge that enhances the plan. Factors to be considered: work methodology; management methodology; activity coordination methodology, incorporation of best practices, and innovative solutions to complex issues.</i>	
<b>Presentation</b> <i>Substance and quality of written proposal (a narrative that is clearly, concisely, and logically conveyed with proper grammar). Oral presentation (demonstration of competent public speaking).</i>	10
<b>SUB-TOTAL</b>	<b>100</b>
<b>Evaluation Preference for Respondent's SLEB Credential*</b>	<b>Weight (%)</b>
Local Business <i>Respondent (prime consultant) is certified by Alameda County as a local business.</i>	5
Small, Local or Emerging, Local Business <i>Respondent (prime consultant) who, in addition to being certified as local, is certified by Alameda County as a small or emerging business.</i>	5
<b>SUB-TOTAL</b>	<b>10</b>
<b>TOTAL</b>	<b>110</b>

*\*Preferential credit is not provided for SLEB credentials held only by proposed subcontractors.*

At least three of the highest scoring proposers will be invited to participate in an oral presentation/interview. Points previously awarded for the written proposal may be adjusted higher or lower based on the Proposers' performance and the impression of the selection committee during the oral presentation/interview. The proposer with the highest score following the oral presentation/interviews will be the preferred proposer with whom a negotiated agreement will be sought.

### **C. Notice of Recommendation to Award**

At the conclusion of the contract negotiation process, ACPWA will notify all proposers by e-mail and certified mail of the contract award recommendation, if any. The announcement will be titled 'Notice of Recommendation to Award.' It will provide the name of the proposer being recommended for contract award and the names of all other parties that submitted proposals.

At the conclusion of the proposal evaluation process, debriefings for unsuccessful proposers will be scheduled and provided upon written request. A debriefing will generally be restricted to discussion of a proposer's unsuccessful proposal. However, it may include, at the discretion of ACPWA, review of the successful proposer's proposal with redactions as appropriate. Under no circumstances will any discussion be conducted with regard to the successful proposer's contract negotiations.

The submitted proposals will be made available upon request following the conclusion of contract negotiations with the preferred Proposer and no later than five calendar days before the contract is to be considered for award by the Board of Supervisors.

#### **D. Protest/Appeals Process**

ACPWA prides itself on the establishment of fair and competitive contracting procedures and the commitment made to adhering to those procedures. The following is provided in the event that proposers wish to protest the process or the recommendation to award a contract for this project once the Notice of Recommendation to Award has been issued. Protests submitted prior to issuance of the Notice of Recommendation to Award will not be accepted by the County.

1. Any protest by any proposer regarding any other proposal must be submitted in writing to Art Carrera, Road Program Manager, Alameda County Public Works Agency, 399 Elmhurst St, Hayward, CA 94544, before 5:00 p.m. of the fifth business day following the date of issuance of the Notice of Recommendation to Award, not the date received by the protester. A protest received after 5:00 p.m. is considered received as of the next business day.
  - a. The protest must contain a complete statement of the reasons and facts for the protest.
  - b. The protest must refer to the specific portions of all documents that form the basis for the protest.
  - c. The protest must include the name, address, email address, fax number and telephone number of the person representing the protesting party.
  - d. ACPWA will transmit a copy of the protest to all proposers as soon as possible after receipt of the protest.
2. Upon receipt of a written protest, the Road Program Manager, or designee will review and evaluate the protest and issue a written decision. The Road Program Manager, may, at his discretion, investigate the protest, obtain additional information, provide an opportunity to settle the protest by mutual agreement, and/or schedule a meeting(s) with the protesting proposer and others (as appropriate) to discuss the protest. The decision on the protest will be issued at least ten (10) business days prior to the Board hearing.

The decision will be communicated by e-mail or fax, and certified mail, and will inform the proposer whether or not the recommendation to the Board of Supervisors in the Notice of Recommendation to Award is going to change. A copy of the decision will be furnished to all proposers affected by the decision. As used in this paragraph, a proposer is affected by the decision on a proposal protest if a decision on the protest could have resulted in the proposer not being the apparent successful proposer on the RFP.

3. The decision of the Road Program Manager on the protest may be appealed to the Auditor-Controller's Office of Contract Compliance (OCC) located at 1221 Oak St., Room 249, Oakland, CA 94612, Fax: (510) 272-6502. The proposer whose proposal is the subject of the protest, all proposers affected by the Road Program Manager decision on the protest, and the protestor have the right to appeal if not satisfied with the Road Program Manager decision. All appeals to the Auditor-Controller's OCC shall be in writing and submitted within five (5) business days following the issuance of the decision by the Road Program Manager, not the date received by the appellant. An appeal received after 5:00 p.m. is considered received as of the next business day. An appeal received after the fifth business day following the date of issuance of the decision by the Road Program Manager shall not be considered under any circumstances by the Auditor-Controller OCC.
  - a. The appeal shall specify the decision being appealed and all the facts and circumstances relied upon in support of the appeal.
  - b. In reviewing protest appeals, the OCC will not re-judge the proposal(s). The appeal to the OCC shall be limited to review of the procurement process to determine if the contracting department materially erred in following the RFP/RFQ or, where appropriate, County contracting policies or other laws and regulations.
  - c. The appeal to the OCC also shall be limited to the grounds raised in the original protest and the decision by the Road Program Manager. As such, an appellant is prohibited from stating new grounds for a protest in its appeal. The Auditor-Controller (OCC) shall only review the materials and conclusions reached by the Road Program Manager, and will determine whether to uphold or overturn the protest decision.
  - d. The Auditor's Office may overturn the results of a proposal process for ethical violations by ACPWA staff, selection committee members, subject matter experts, or any other County staff managing or participating in the competitive process, regardless of timing or the contents of a proposal protest.
  - e. The decision of the Auditor-Controller's OCC is the final step of the appeal process. A copy of the decision of the Auditor-Controller's OCC will be furnished

to the appellant, the proposer whose proposal is the subject of the protest, and all proposers affected by the decision.

4. The County will complete the protest/appeal procedures set forth in this paragraph before a recommendation to award a contract is considered by the Board of Supervisors.
5. The procedures and time limits set forth in this paragraph are mandatory and are each proposer's sole and exclusive remedy in the event of a proposal protest. A proposer's failure to timely complete both the proposal protest and appeal procedures shall be deemed a failure to exhaust administrative remedies. Failure to exhaust administrative remedies, or failure to comply otherwise with these procedures, shall constitute a waiver of any right to further pursue the proposal protest, including filing a government code claim or legal proceedings.

#### E. Schedule of Events

EVENT	DATE • TIME • LOCATION
Issuance of Request for Proposal	Friday, October 7, 2016
<b>Mandatory Pre-Proposal Meeting</b>	<b>Monday, October 17, 2016 at 11:00 am</b> Alameda County Public Works Agency 399 Elmhurst Street, Hayward 94544 <i>Auditorium</i>
Deadline for Questions	Wednesday, October 19, 2016 by 2:00 pm
Issuance of Final RFP Addendum	Monday, October 24, 2016
<b>Written Proposal Due</b>  * * * IMPORTANT * * * Follow all submission requirements stipulated in <a href="#">Section II-C-3</a>	<b>Monday, October 31, 2016 by 2:00 pm</b> Alameda County Public Works Agency 399 Elmhurst St, Hayward 94544 <i>Deliveries will be received and time stamped at the reception desk.</i>
Written Proposal Evaluation Period	Friday, November 4, 2016
Oral Presentation/Interviews	Tuesday, November 15, 2016
Identify Preferred Proposal(s) and Negotiate Agreement with Proposer(s)	Friday, November 18, 2016
Notice of Recommendation to Award	Tuesday, November 22, 2016
Protest Deadline	Tuesday, November 29, 2016
Contract Consideration and Anticipated Award by Board of Supervisors	Tuesday, December 13, 2016

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## IV. Terms and Conditions for Agreement

Prior to acting upon this opportunity, qualifying proposers should review all applicable County, State, and Federal policies, terms and conditions that normally apply to projects of the type described herein.

The contract terms and conditions presented may differ from those actually incorporated based on contract negotiations or changes in policy or law that might occur prior to executing a final agreement.

### A. General: Standard Professional Services Agreement

ACPWA's Standard Professional Services Agreement is provided here as Attachment D. Potential proposers should familiarize themselves with its provisions (particularly the insurance requirements):

1. Definitions
2. Term of Agreement
3. Services Consultant Agrees to Perform
4. Compensation (*see the Agreement's Appendix B for invoicing requirements*)
5. Maximum Costs
6. Qualified Personnel
7. Representations
8. Indemnification and General Liability
9. Liability of County
10. Independent Contractor; Payment of Taxes, and Other Expenses
11. Insurance (*see the Agreement's Appendix C for specific coverage requirements*)
12. Suspension of Services
13. Termination of Agreement for Cause
14. Termination of Agreement for Convenience
15. Conflicts of Interest/Other Agreements
16. Proprietary or Confidential Information of County; Publicity
17. Notice to the Parties
18. Ownership of Results/Work for Hire
19. Audit and Inspection Records
20. Subcontracting/Assignment/County Employees
21. Non-Discrimination, Equal Employment Opportunity, and Business Practices
22. Drug-Free Workplace Policy
23. Compliance with Americans with Disabilities Act
24. Debarment and Suspension (*see Appendix D for the required certification form*)
25. Small, Local, and Emerging Business (SLEB) Participation
26. First Source Program
27. Disputes
28. Agreement Made in California; Venue
29. Compliance with Laws
30. Construction
31. Miscellaneous
32. Entire Agreement; Modification of Agreement
33. Labor Code Requirements

In addition, potential proposers should review the agreement's Appendices for supplementary requirements, including the County's contract compliance reporting requirements (*Appendix E*).

Additional County policy requirements can be found at the webpages below:

1. *Alameda County's General Policy Requirements*  
[www.acgov.org/gsa/departments/purchasing/policy/genreqs.htm](http://www.acgov.org/gsa/departments/purchasing/policy/genreqs.htm)
2. *Alameda County's General Environmental Requirements*  
[www.acgov.org/gsa/departments/purchasing/policy/envIRON.htm](http://www.acgov.org/gsa/departments/purchasing/policy/envIRON.htm)

## **B. Project Specific**

Specific terms and conditions presented in this section will supplement or supersede those of the standard agreement.

### **1. Contract Term and Renewal**

The contracts that may be awarded as a result of this RFP are expected to span a period of three years. By mutual agreement this period may be extended for an additional year at agreed prices with all other terms and conditions remaining the same.

### **2. Pricing**

A total, not-to-exceed, price will be designated for this contract and it will be the maximum price the County will pay including taxes and other charges.

All negotiated fees will remain firm for the initial term of the contract. Any price increases or decreases for subsequent contract terms may be negotiated between the Consultant and the County only after the completion of the initial term.

Price quotes shall include any and all payment incentives available to the County.

Federal and State minimum wage laws apply. The ACPWA has no requirements for living wages.

**Prevailing Wages:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

**Department of Industrial Relations Registration:** A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, (unless it is registered at time of bid submission), or engage in the performance of any contract for public work, as defined in this chapter, unless registered and qualified to perform public work

pursuant to Section 1725.5. However, for federally-funded projects, it is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

### **C. Exceptions and Amendments**

Proposers who wish to request exceptions or amendments to this RFP or associated documents must complete the Exceptions and Amendments Form (Attachment C) and submit it with the Proposal. The County is under no obligation to accept any exceptions and such exceptions may be a basis for proposal disqualification.

\* \* \* END OF REQUEST FOR PROPOSAL \* \* \*

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## **ATTACHMENTS**

- A. RFP and Addendum Acknowledgement Form
- B. Iran Contracting Act Compliance Certification Form
- C. Exceptions and Amendments Form
- D. Standard Agreement
  - 1. Appendix A – General Requirements
  - 2. Appendix B – Billing and Payment Method
  - 3. Appendix C – Insurance Requirements
  - 4. Appendix D – Debarment & Suspension Certificate
  - 5. Appendix E – Contract Compliance Reporting
  - 6. Appendix F – Vendor First Source Agreement Form
- E. Small Local Emerging Business (SLEB) Partnering Information Form

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## ATTACHMENT A – RFP and Addendum Acknowledgement

The County of Alameda is soliciting proposals from qualified firms to furnish its requirements per the specifications, terms and conditions contained in the above referenced RFP. This Proposal Acknowledgement must be completed, signed by a responsible officer or employee, dated and submitted with the proposal response. Obligations assumed by such signature must be fulfilled.

1. **Preparation of proposals:** (a) All proposal responses must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed in ink by person signing proposal. No alterations or changes or any kind shall be permitted to Exhibits attached herein unless indicated otherwise in writing. Responses that do not comply shall be subject to rejection in total.
2. **Award:** (a) Unless otherwise specified by the proposer or the RFP gives notice of an all-or-none award, the County may accept any item or group of items of any proposal. (b) Proposals are subject to acceptance at any time within thirty (30) days of opening, unless otherwise specified in the RFP/SOQ. (c) A valid, written purchase order mailed, or otherwise furnished, to the successful proposer within the time for acceptance specified results in a binding contract without further action by either party. The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of California.
3. **Patent indemnity:** Firms who do business with the County shall hold the County of Alameda, its officers, agents and employees, harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright or other proprietary right, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract or purchase order.
4. **California Government Code Section 4552:** In submitting a proposal to a public purchasing body, the proposer offers and agrees that if the proposal is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the proposer for sale to the purchasing body pursuant to the proposal. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the proposer.
5. **Addendum Acknowledgement:** The Proposer has verified that the following is a complete list of addenda issued prior to the submittal deadline. Receipt of the following addenda is hereby acknowledged and all changes have been incorporated in the Proposal. Failure to acknowledge will cause the Proposal to be considered non-responsive.

Addendum No. \_\_\_\_, dated \_\_\_\_\_      Addendum No. \_\_\_\_, dated \_\_\_\_\_  
 Addendum No. \_\_\_\_, dated \_\_\_\_\_      Addendum No. \_\_\_\_, dated \_\_\_\_\_

The undersigned acknowledges receipt of above referenced RFP and/or Addenda and offers and agrees to furnish the articles and/or services specified on behalf of the firm indicated below, in accordance with the specifications, terms and conditions of this RFP Acknowledgement.

Firm:
Address:
State/Zip
What advertising source(s) made you aware of this RFP?

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Print Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Title: \_\_\_\_\_

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**ATTACHMENT B – IRAN CONTRACTING ACT COMPLIANCE CERTIFICATE**  
(for contracts of \$1,000,000 or more)

**COUNTY OF ALAMEDA**

**The Iran Contracting Act (ICA) of 2010**

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A person who “engages in investment activities in Iran” is defined in either of two ways:

1. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of bidding or proposing for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to bid or submit a proposal or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

FIRM NAME: \_\_\_\_\_

PRINCIPAL: \_\_\_\_\_ TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

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**ATTACHMENT C – Exceptions and Amendments**

**Proposer’s Name:** \_\_\_\_\_

In the table below, list any requests for exceptions and amendments to the RFP and associated documents, and then submit this sheet with the proposal.

The County is under no obligation to accept any exceptions and such exceptions may be a basis for proposal disqualification.

Reference to:			Description
Page No.	Section	Item No.	
p. 18	D	1.d.	Consultant takes exception to...

\*Print additional pages as necessary

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**ATTACHMENT D – Standard Professional Services Agreement**

**Professional Services Agreement**

**with**

**(CONSULTANT NAME)**

**for the**

**SERVICES**

**FOR**

**Contract No. \_\_\_\_\_**

*For Information Only*

For Information Only

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**County of Alameda**

**AGREEMENT BETWEEN**

**COUNTY OF ALAMEDA AND (CONSULTANT)**

This Agreement is made this (Day) of \_\_\_\_\_, 2015, in the City of Oakland, State of California, by and between (CONSULTANT NAME), (CONSULTANT ADDRESS), hereinafter referred to as “Consultant” and the County of Alameda, a political subdivision of the State of California, hereinafter referred to as “County.”

**AGREEMENT**

**1. Definitions**

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

**Agreement** This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices “A”, “B”, “C”, “D”, “E”, and “F” attached hereto.

**CONSULTANT** (Consultant)

**COUNTY** County of Alameda

**LOCAL AGENCY** County of Alameda

**Project** The COUNTY’s project – (Project Title) - as further described in Appendix “A”, Scope of Services.

**Services** All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.

**Subconsultants** Consultant’s consultants, subconsultants, contractors and subcontractors, of any tier.

**2. Term of Agreement**

All work comprising the Services shall be deemed performed under this Agreement. The contract period will be from (Day, Month, Year) through (Day, Month, Year).

**3. Services Consultant Agrees to Perform**

3.1 Consultant shall perform all Services described in Appendix “A”, “Services to be Provided by Consultant”, attached hereto and incorporated by reference as though fully set forth herein.

3.2 Consultant shall complete all Services required by this Agreement within the times specified in the Milestone Schedule in Appendix “A”. Consultant agrees that the Milestone Schedule includes reasonable allowances for completion of the Services, including all time required for County’s review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Project and the Services. Consultant shall achieve its scheduled Milestones (as shown on the Milestone Schedule) unless an excusable event causes delay (excusable delay), and unless Consultant gives written notice of the

excusable event and requests a time extension within ten days of the occurrence of the excusable event. (Excusable events shall be limited to acts of neglect by County or County's agents or consultants when acting at County's direction, breaches of this Agreement by County, Acts of God such as fire, flood, earthquake, or epidemic, or delay by a construction contractor during the construction phase of the Project, or any other circumstances beyond Consultant's reasonable control). If the period of excusable delay caused by an excusable event concurs with a Consultant-caused or other nonexcusable delay, County may (but shall not be required to) grant a time extension without compensation.

- 3.3 Consultant may recover extra costs resulting from excusable delay upon showing that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services, (ii) were incurred by Consultant as a direct result of the delay and not otherwise within Consultant's scope of Services, and (iii) are documented to the County's satisfaction. (For example, and not by way of limitation, contract punch list and final inspection Services, whenever performed, and Services related to correcting deficiencies in Consultant's work, shall be within Basic Services and not entitle Consultant to extra costs or Additional Services.)
- 3.4 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Consultant shall apply such additional manpower and resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of critical importance in the performance of this Agreement.

#### 4. Compensation

- 4.1 County shall pay Consultant compensation according to the Compensation Schedule established in Appendix "B". Payments to Consultant shall be made in monthly payments on or before the last day of each month for Services properly invoiced by the Consultant which have been properly performed as of the last day of the immediately preceding month and is due under Appendix "B".
- 4.2 County shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project, until County receives all deliverables required under Appendix "A" for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant has partially completed one or more deliverables due during a payment period, and if Consultant demonstrates diligent progress thereon, then County may make a partial progress payment based upon Consultant's percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon County.
- 4.3 County will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). County will make payment for questioned amount(s) upon County's receipt of any requested documentation verifying the claimed amount(s) and County's determination that the amount is due under the terms of this Agreement. County shall advise Consultant, in writing, within 15 days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of County including, without limitation, Consultant's transmittal of all deliverables to County required by Appendix "A".
- 4.4 Invoices furnished by Consultant under this Agreement must be in a form acceptable to County. All amounts paid by County to Consultant shall be subject to audit by County. Payment shall be made by County to Consultant at the address stated hereinabove.
- 4.5 County may set off against payments due Consultant under this Agreement any sums that County determines that Consultant owes to County because of Consultant's errors, omissions, breaches of this Agreement, delays or other acts which caused County monetary damages. Prior to exercising such right, County must demand and attend mediation pursuant to Section 27.3 of this Agreement, to be attended by County, Consultant, and any applicable insurance carriers; such mediation to occur within 30 days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the County's demand, then the Alameda County Superior Court may upon application by any party make such selection for the parties. If a party other than County refuses to mediate under this Section, then County shall have satisfied its obligations under this Section.

## 5. Maximum Costs

- 5.1 County's obligation hereunder shall not at any time exceed the amount approved by the Board of Supervisors for payment to the Consultant pursuant to the terms of this Agreement.
- 5.2 Except as may be provided by applicable law governing emergency conditions, County has not authorized its employees, officers and agents to request Consultant to perform Services or to provide materials, equipment and supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the County amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.
- 5.3 County shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

## 6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, County shall direct all communications to Consultant through (Consultant's Project Manager's full name and address); and Consultant shall direct all communications to County through County Project Engineer.
- 6.2 Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with County's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at County's request, shall be supervised by Consultant.
- 6.3 Consultant agrees that all professional personnel assigned to the Project will be listed in its proposal, Appendix "A", attached hereto and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel are not bound by personal employment contracts to Consultant. Consultant agrees that reassignment of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of County. Any costs associated with reassignment of personnel shall be borne exclusively by Consultant.
- 6.4 Consultant agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Consultant shall not charge County for the cost of training or "bringing up to speed" replacement personnel. County may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant's cost.

## 7. Representations

- 7.1 Consultant represents that it has reviewed Appendix "A", "Services to be Provided by Consultant", and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix "B", Payments to Consultant, and within the times specified in the Milestone Schedule.
- 7.2 Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Consultant also represents that it has reasonable knowledge of all applicable building codes, laws, regulations and ordinances.
- 7.3 Consultant represents that it and its subconsultants have specialized expertise in engineering services similar to those intended for the Project. Consultant agrees that the Services shall be performed in a manner that conforms to the standards of engineering practice observed by a specialist in performing services similar to the Services. Consultant agrees that for a period of one year after the completion of the Services or at the final acceptance of the construction resulting from the Services, whichever is later, it will re-perform or replace any part or all of the Services deemed by County to be defective and/or not meeting the above standard.

7.4 The granting of any progress payment by County, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of County or any other governmental entity, shall in no way waive or limit the obligations in this Section 7 or lessen the liability of Consultant to re-perform or replace unsatisfactory Services to the extent required by Section 7.3 above, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

## **8. Indemnification and General Liability**

- 8.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), Consultant shall indemnify and hold harmless the County, its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, losses, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expenses, liabilities of every kind, nature and description (including, without limitation, incidental special and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise from, or are brought for, or on account of any loss of cost arising out of, pertaining to, relating to or resulting from Consultant's negligence, recklessness, or willful misconduct in connection with the performance of any work performed under this Contract by the Consultants as a design professional; provided that this duty shall not apply to injuries or damages for which the County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence, recklessness or willful misconduct.
- 8.2 Consultant shall defend (with legal counsel reasonably acceptable to the County), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by County, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.
- 8.3 County shall include a provision in the construction contract with the general contractor on the Project requiring the general contractor to indemnify Consultant for damages resulting from the negligence of the general contractor and its subcontractors. County shall also include a provision in the construction contract with the general contractor on the project requiring the general contractor to name Consultant as an additional insured on its CGL insurance coverage. The risk of an inadvertent omission of such provision is on Consultant. Therefore, Consultant shall review the construction contract prior to bidding to ensure that such provision has been included in the draft of the bid documents.
- 8.4 Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of County and other Indemnitees in the exact form and substance of those contained in this Agreement.
- 8.5 County acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. County shall hire an expert consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with County's expert consultant as required by Appendix "A", Services To Be Provided By Consultant.

## **9. Liability of County**

- 9.1 Except as provided in Appendix "A", Services to be Provided by Consultant, and Appendix "C",

Insurance, County's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.

- 9.2 Notwithstanding any other provision of this Agreement, in no event shall County be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.
- 9.3 County shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented, or loaned to Consultant by County. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless County from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, County employees or third parties, or to property belonging to any of the above except to the extent caused by the sole negligence of willful misconduct of County.
- 9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which County may have under this Agreement or any applicable law. All rights and remedies of County, whether under this Agreement or other applicable law, shall be cumulative.

#### **10. Independent Contractor; Payment of Taxes, and Other Expenses**

- 10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of its Subconsultants, its employees and its agents.
- 10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between County and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be County employees, and shall not be entitled to receive any benefits conferred on County employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.
- 10.4 Consultant shall be available as much as reasonably possible to County staff during the County's normal working hours or as otherwise requested by County. Terms in this Agreement referring to direction from County shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.
- 10.5 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

#### **11. Insurance**

- 11.1 Prior to execution of this Contract, Consultant shall furnish to County satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix C "Insurance," which is attached and made a part of this Contract. In the event Consultant fails to maintain any required insurance, County may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this Contract (or Consultant shall promptly reimburse County for such expense).

#### **12. Suspension of Services**

- 12.1 County may, without cause, order Consultant to suspend, delay or interrupt ("suspend") Services pursuant to this Agreement, in whole or in part, for such periods of time as County may determine in its sole

discretion. County shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an excusable delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.

- 12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

### 13. Termination of Agreement for Cause

- 13.1 If at any time County believes Consultant may not be adequately performing its obligations under this Agreement, that Consultant may fail to complete the Services as required by this Agreement, or has provided written notice of observed deficiencies in Consultant's performance, County may request from Consultant prompt written assurances of performance and a written plan to correct the observed deficiencies in Consultant's performance. Consultant shall provide such written assurances and written plan within ten calendar days of receipt of written request. Consultant acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.

- 13.2 Consultant shall be in default of this Agreement and County may, in addition to any other legal or equitable remedies available to County, terminate Consultant's right to proceed under the Agreement, for cause:

13.2.1 Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or

13.2.2 Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of written notice from County to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide County within the 10 day period a written plan acceptable to County to cure said breach, and then diligently commence and continue such cure according to the written plan); or

13.2.3 Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) days of the date of the notice from County to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide County within the 10-day period a written plan to cure said violation acceptable to County, and then diligently commence and continue performance of such cure according to the written plan.)

- 13.3 In the event of termination by County as provided herein for cause:

13.3.1 County shall compensate Consultant for the value of the Services delivered to County upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but County shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties;

13.3.2 Consultant shall deliver to County possession of all tangible aspects of the Services in their then condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with

vendors and Subconsultants, and all other documentation associated with the Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.

- 13.3.3 Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which County may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate County for all loss, cost, damage, expense, and/or liability suffered by County as a result of such termination and failure to comply with the Agreement.
- 13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense, or liability may be claimed, requested, or recovered by Consultant.

#### 14. Termination of Agreement for Convenience

- 14.1 County may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever County shall determine that termination is in the County's best interests. Termination shall be effected by County delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.
- 14.2 After receipt of a Notice of Termination, and except as otherwise directed by County, Consultant shall:
- 14.2.1 Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
  - 14.2.2 Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
  - 14.2.3 Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
  - 14.2.4 Assign to County in the manner, at times, and to the extent directed by County, all right, title, and interest of Consultant under orders and subcontracts so terminated. County shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
  - 14.2.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of County to the extent County may require. County's approval or ratification shall be final for purposes of this clause;
  - 14.2.6 Transfer title and possession to County, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by County, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to County.
  - 14.2.7 Use its best efforts to assist County in selling, in the manner, at times, to the extent, and at a price or prices that County directs or authorizes, any property of the types referred to in Section 14.2.6, but Consultant shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at a price or prices approved by County. All proceeds from the foregoing shall be applied to reduce payments to be made by County to Consultant under

- this Agreement, shall otherwise be credited to the price or cost of Services covered by this Agreement or be paid in such other manner as County may direct;
- 14.2.8 Complete performance of any part of the Services which were not terminated by the Notice of Termination; and
- 14.2.9 Take such action as may be necessary, or as County may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which County has or may acquire an interest.
- 14.3 After receiving a Notice of Termination, Consultant shall submit to County a termination claim, in the form and with the certification County prescribes. The claim shall be submitted promptly but in no event later than 3 months from the effective date of the termination, unless one or more extensions in writing are granted by County upon Consultant's written request made within such 3-month period or authorized extension. However, if County determines that facts justify such action, it may receive and act upon any such termination claim at any time after such 3-month period or extension. If Consultant fails to submit the termination claim within the time allowed, County may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. County shall then pay to Consultant the amount so determined.
- 14.4 Subject to provisions of Section 14.3, Consultant and County may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.
- 14.5 If Consultant and County fail, under Section 14.4, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of –
- 14.5.1 Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix "B", "Payments to Consultant". Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.
- 14.5.2 When, in opinion of County, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.
- 14.5.3 Reasonable cost to Consultant of handling material returned to vendors, delivered to County or otherwise disposed of as directed by County.
- 14.6 Except as provided in this Agreement, in no event shall County be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under Section 14.5.

- 14.7 This section shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by County to settle claims from Subconsultants.
- 14.8 In arriving at amount due Consultant under this Section there shall be deducted:
- 14.8.1 All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
- 14.8.2 Any substantiated claim which County may have against Consultant in connection with this Agreement, and
- 14.8.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Section, and not otherwise recovered by or credited to County.
- 14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with County a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. County may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of County and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit County's rights and remedies at law.

#### **15. Conflicts of Interest/Other Agreements**

- 15.1 Consultant represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections.
- 15.2 Consultant represents that it has completely disclosed to County all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of County, or other officer, agent or employee of County or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by County for cause. Consultant agrees to comply with all conflict of interest codes adopted by the County of Alameda and their reporting requirements.
- 15.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the County that Consultant has no present, and will have no future, conflict of interest between providing the County the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the County. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the County hereunder.

#### **16. Proprietary or Confidential Information of County; Publicity**

- 16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by County and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to County. Consultant agrees that all information disclosed by County to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the County's interests where such confidential information could be used adversely to the County's interests. Consultant agrees to notify the County immediately in writing if it is

requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.

16.2 Any publicity or press releases with respect to the Project or Services shall be under the County's sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies, or representatives of public bodies, without County's prior written consent. Consultant shall have the right, however, without County's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.

16.3 The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the County hereunder.

## 17. Notice to the Parties

17.1 Notices. All notices (including requests, demands, approvals, or other communications) under this Agreement shall be in writing.

17.1.1 Method of Delivery. Notice shall be sufficiently given for all purposes as follows:

- (a) When personally delivered to the recipient, notice is effective on delivery.
- (b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.
- (c) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- (d) When delivered by overnight delivery service, including Federal Express, Airborne, and United Parcel Service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
- (e) When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.

17.1.2 Refused, Unclaimed or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

17.1.3 Addresses. Addresses for the purpose of giving notice are set forth below. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this paragraph 17.

To County:  
Road Program Manager  
399 Elmhurst Street  
Hayward, CA 94544

To Consultant:  
(Consultant's Project Manager's Full Name).  
(Full Address)

17.1.4 Change of Recipient or Address. Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt

of notice of change shall not be invalidated by the change.

## 18. Ownership of Results/Work for Hire

- 18.1 Any interest (including, but not limited to, property interests and copyright interests) of Consultant or its Subconsultants, in drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by Consultant or its Subconsultants in connection with Services to be performed under this Agreement shall become the property of and will be transmitted to County at the conclusion of this Agreement. Consultant may, however, retain one copy for its files. Notwithstanding the foregoing, in the normal course of the Consultant's activities, Consultant shall have an unrestricted right to reuse its standard construction drawings, details, specifications and other related documents, including the right to retain electronic data or other reproducible copies thereof, and the right to reuse portions or the information contained in them which is incidental to the overall design of the Project. County shall indemnify, hold harmless and defend Consultant against any and all claims, liabilities, losses and costs arising from County's use of Consultant's documents on work for which Consultant is not retained.
- 18.2 Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Consultant or its Subconsultants in connection with Services performed under this Agreement shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of County. In the event that it is ever determined that any works created by Consultant or its Subconsultants under this Agreement are not Works for Hire under U.S. law, Consultant hereby assigns all copyrights to such works to County. With the prior written approval of the County, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

## 19. Audit and Inspection Records

- 19.1 Consultant shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to the Project, for a period of at least five years following final completion and acceptance of the Project. All such records (except for materials subject to the attorney client privilege, if any) shall be available to County, and County's authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of Consultant's personnel costs, Consultant costs, and reimbursable expenses pertaining to both Basic Services and Additional Services shall be kept on a generally recognized accounting basis, and shall be available to County, and County's authorized agents, officers, and employees, upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising County and allowing County to accept and store the records.
- 19.2 Consultant agrees to maintain full and adequate records in accordance with County requirements to show actual costs incurred by Consultant in its performance of this Agreement, and to make available to County during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to County or relative to Consultant's activities under this Agreement. Consultant will furnish to County, its authorized agents, officers and employees such other evidence or information as County may request with regard to any such expenditure or disbursement charged by Consultant. Consultant will permit County, and County's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement.
- 19.3 Consultant shall maintain all items described in Sections 19.1 and 19.2 above in an accessible location and condition for a period of not less than five years after final completion and acceptance of the Project or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from County's offices at 399 Elmhurst Street,

Hayward, California, Consultant shall, upon County's request and at Consultant's sole cost and expense, make such items available to County, and County's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius, or Consultant shall pay County its reasonable and necessary costs incurred in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon County by this Section.

- 19.4 The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

## 20. Subcontracting/Assignment/ County Employees

- 20.1 Consultant and County agree that Consultant's unique talents, knowledge and experience form a basis for this Agreement and that the services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by County in a written instrument executed and approved by the County in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
- 20.2 Consultant shall use the Subconsultants for the scopes of work listed in Appendix A attached hereto, and shall not substitute Subconsultants unless approved by written instrument executed and approved by the County in writing.
- 20.3 To the extent Consultant is permitted by County in writing to subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder, Consultant shall comply with all applicable prompt payment laws and regulations, including without limitation, California Civil Code Section §3321. Consultant shall remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services or the Project, as if it engaged in the acts and omissions directly.
- 20.4 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by County or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of County.

## 21. Non-Discrimination, Equal Employment Opportunity, and Business Practices

- 21.1 Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (Americans with Disabilities Act) (as defined below), political affiliation, veteran's status, or any other non-merit factor. To the extent applicable, Consultant shall comply with all federal, state, and local laws (including, without limitation, County ordinances, rules, and regulations) regarding non-discrimination, equal employment opportunity, affirmative action, and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.
- 21.2 Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (Americans with Disabilities Act) (as defined below), political affiliation, veteran's status, or any other non-merit factor.
- 21.3 Consultant shall, if requested to do so by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (Americans with Disabilities Act) (as defined below), political affiliation, veteran's status, or any other non-merit factor.

- 21.4 If requested to do so by the County, Consultant shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- 21.5 Consultant shall recruit vigorously and encourage minority- and women-owned businesses to bid its subcontracts.
- 21.6 Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
- 21.7 The Consultant shall include the provisions set forth in 21.2 through 21.6 (above) in each of its subcontracts.

## 22. Drug-Free Workplace Policy

- 22.1 Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on a County facility or work site. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents, or assigns shall be deemed a material breach of this Agreement.
- 22.2 If Consultant or any employee of Consultant is convicted of a criminal drug statute violation occurring at a County facility or work site, the Consultant within five days thereafter shall notify the head of the County department/agency for which the contract services are performed.

## 23. Compliance with Americans with Disabilities Act

- 23.1 Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state, and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.

## 24. Debarment and Suspension Certification (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

- 24.1 (a) By signing this agreement and Appendix D, Debarment and Suspension Certification, Consultant/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35, and Executive Order 12549.
- (b) By signing this agreement, Consultant certifies to the best of its knowledge and belief, that it and its principals:
- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
  - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

## 25. Small Local and Emerging Business Participation:

***[Select the appropriate SLEB provision below for your contract and delete the unused options:***

*Option 1 – If Prime is subcontracting with SLEBs*

*Option 2 – If Prime is a SLEB*

*Option 3 – If SLEB Waiver was approved by GSA, Auditor-Controller or the Board]*

***OPTION 1: If Prime is subcontracting with SLEB(s) use provision below:***

- 25. Small Local and Emerging Business (SLEB) Participation:** Consultant shall subcontract with *company name (street address, city, state; Principal, name)*, for services to be provided under this Agreement in an amount equal to twenty percent (20%) *(Or adjust percentage if more than or less than 20%. If less than 20% a copy of approved GSA Waiver or Board approval is required )* of the contract value of this Agreement in accordance with County's Small and Emerging Local Business provision, which includes but is not limited to:

25.1 SLEB subcontractor(s) is (are) independently owned and operated (*i.e.* is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.

25.2. As is applicable, Consultant shall ensure that the certification status of participating SLEB subcontractors is maintained in compliance with the SLEB Program for the term of this Agreement.

25.3 Consultant shall not substitute or add any small and/or emerging local business(s) listed in this Agreement without prior written approval from the County. Requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County contract representative identified under Section 6.1 above. Consultant will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).

25.4 All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation Compliance System. Consultant and Consultant's small and/or emerging local businesses participating subcontractors on the awarded contract are required to use the Elation web-based Compliance System as described in Appendix D (Contract Compliance Reporting Requirements) to report and validate payments made by Prime Contractors to the certified small and/or emerging local businesses. It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Elation Compliance System. SLEB prime contractor with SLEB subcontractors must enter payments made to subcontractors in the Elation System and ensure that SLEB subcontractors confirm payments received.

25.5 County will be under no obligation to pay Consultant for the percent committed to a SLEB subcontractor if the work is not performed by the listed small and/or emerging local business.

25.6 For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) via E-mail at [ACSLEBcompliance@acgov.org](mailto:ACSLEBcompliance@acgov.org).

***OPTION 2 – If Prime is a SLEB use provision below:***

- 25. SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:** Consultant has been certified by the County as a small or emerging local business. As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision. If during the term of this Agreement, Consultant's certification status changes, Consultant shall notify the County within three business days.

Should Consultant's status as a certified small or emerging local business change at any time during the term of this Agreement, Consultant shall negotiate with County to be in compliance with the County's Small and Emerging Local Business provision, including but not limited to:

- 25.1 Consultant must subcontract a minimum 20% of the remaining contract value with a certified small or emerging local business(es).
- 25.2 SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- 25.3 As is applicable, Consultant shall ensure that their certification status is maintained in compliance with the SLEB Program for the term of this agreement.
- 25.4 For any subcontractors retained to comply with this provision, Consultant shall not substitute any such small and/or emerging local business(s) subcontractor without prior written approval from the County. Said requests to substitute shall be submitted in writing to the County department contract representative identified under Item #13 above. Consultant will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC). Further approval from the Board of Supervisors may also be required.
- 25.5 If subcontractors are added to the agreement, all SLEB participation, except for prime contractor, must be tracked and monitored utilizing the Elation compliance System (see Exhibit E). SLEB prime contractor with SLEB subcontractors must enter payments made to subcontractors in the Elation System and ensure that SLEB subcontractors confirm payments received.

Consultant shall meet the requirements above within 15 business days of the County notifying Consultant that it is no longer in compliance with the program. County will be under no obligation to pay consultant for the percent committed to a SLEB subcontractor if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor-Controller's Office of Contract Compliance (OCC) via E-mail at ACSLEBcompliance@acgov.org.

**OPTION 3 –If SLEB Waiver was approved by GSA, Auditor Controller or the Board use provision below:**

- 25. SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:** Consultant has been approved by County to participate in agreement without SLEB participation (attach SLEB waiver). As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the agreement should change, Consultant may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- 25.1 Consultant must be a certified small or emerging local business (es) or subcontract a minimum 20% with a certified small or emerging local business (es).
- 25.2 SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.

- 25.3. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the Agreement. Consultant shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.
- 25.4. Consultant shall not substitute or add any small and/or emerging local business(s) listed in this Agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Consultant will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- 25.5. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay consultant for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor-Controller's Office of Contract Compliance (OCC) via E-mail at ACSLEBcompliance@acgov.org.

## 26. First Source Program

- 26.1 For contracts over \$100,000, Consultant shall provide COUNTY ten (10) working days to refer to Consultant, potential candidates to be considered by Consultant to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the COUNTY that Consultant has available during the contract term before advertising to the general public.

## 27. Disputes

- 27.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the County Engineer or his designee, and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party, and a meeting between the County representative and principal of the Consultant shall then take place within five days of the request.
- 27.2 Provided that County continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute and Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, County may terminate this Agreement for cause as provided herein.
- 27.3 In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et. seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

**28. Agreement Made in California; Venue**

28.1 This Agreement shall be deemed to have been executed in the City of Oakland, County of Alameda. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in the County of Alameda. Consultant waives CCP §394.

28.2 The parties shall execute one original and three copies of this Agreement.

**29. Compliance with Laws**

29.1 Consultant represents that it will comply with all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project, and will provide all information, work histories, and/or verifications as requested by such authorities for security clearances or compliance.

29.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

**30. Construction**

30.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement. Each signatory to this Agreement for Consultant shall have joint and several responsibility and liability to perform the terms of this Agreement.

**31. Miscellaneous**

31.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by County of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.

31.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

31.3 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

31.4 If a death, serious personal injury or substantial property damage occurs in connection with Consultant's performance of this Agreement, Consultant shall immediately notify the Alameda County Risk Manager's Office by telephone. Consultant shall promptly submit to County a written report, in such

form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Consultant's sub-Consultant; if any; (3) name and address of Consultant's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.

- 31.5 Consultant further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

### **32. Entire Agreement; Modifications of Agreement**

- 32.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations, or agreements, either written or oral, express or implied that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 32.2 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 32.3 Consultant and its Subconsultants shall, upon request by County, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 32.4 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.
- 32.5 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both County and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 32.6 Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of County. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to County, unless otherwise indicated by the context.

### **33. Labor Code Requirements**

- 33.1 The Consultant shall adhere to all appropriate provisions of the California Labor Code in particular with Division 2, Part 7, Chapter 1, Articles 1-3. Any approvals, by the County, will not relieve the Consultant from the observation and/or adherence to the provisions of the California Labor Code.
- 33.2 The Consultant and any subcontractor shall pay not less than the specified general prevailing rates of wages to all workers employed in the execution of the contract. General Prevailing rates of per diem wages shall be those general wage determinations made by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.

- 33.3 Copies of the prevailing rate of per diem wages are on file with the Contract Compliance Officer, County of Alameda, 951 Turner Court, Room 100, Hayward, CA 94545.
- 33.4 The Consultant shall post, on the job site, a copy of the prevailing rates of per diem wages as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker needed to execute the contract.
- 33.5 Premium pay for Saturdays, Sundays, holidays and overtime shall be as determined by the Director of the Department of Industrial Relations, State of California for each craft, classification or type of worker required in the execution of the contract. Holidays for which the general prevailing hourly wage rate for holiday work shall be paid, shall be all holidays recognized in the collective bargaining agreement on file with the Director of the Department of Industrial Relations, State of California, applicable to the particular craft, classification, or type of worker employed on the project.
- 33.6 Health and welfare, pension, vacation/holiday, apprenticeship or other training programs and any other employer payments required in the execution of the contract shall be as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 33.7 Hours of work per day or week shall be as determined by the director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract. Eight hours labor constitutes a legal day's work.
- 33.8 Pursuant to Section 1773.8 of the Labor Code, travel and subsistence payments shall be made to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Director of the Department of Industrial Relations, State of California.
- 33.9 The Consultant, or any subcontractor, shall comply with all provisions of Section 1777.5 of the Labor Code pertaining to the employment of apprentices on public works projects. The responsibility for compliance with all the provisions of said Section 1777.5 for apprenticeable occupations is vested with the Consultant. In the event the Consultant willfully fails to comply with Section 1777.5, said Consultant shall be denied the right to bid on any public works contract for a period of up to one year for the first violation and up to three years for the second or subsequent violation with the period running from the date the determination of non-compliance is made. The interpretation and enforcement of Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.
- 33.10 The Consultant shall comply with the Labor Code Sections 1774 and 1775. In accordance with said Section 1775, the Consultant shall forfeit, as a penalty, not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of Industrial Relations, State of California, for such work or craft in which such worker is employed for any work done under the contract by the Consultant, or by any subcontractor, in violation of the provisions of the Labor Code, and, in particular, Labor Code Sections 1770 to 1780 inclusive. In addition to said penalty, and pursuant to said Section 1775, the difference between such stipulated 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 stipulated prevailing wage rate, shall be paid to each worker by the Consultant.
- 33.11 Eight hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty, Twenty-Five Dollars (\$25.00) for each worker employed in the execution of the contract by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Sections 1810 to 1814 thereof, inclusive, except that work performed by employees of the Consultant in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one-and-one-half (1-1/2) times the basic rate of pay, as provided in Section 1815 of the Labor Code.

- 33.12 In accordance with Section 1776 of the Labor Code:
- 33.12.1 The Consultant and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, ethnic code, 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 said Consultant or subcontractor in connection with the work.
  - 33.12.2 The payroll records enumerated in Section 33.12.1 shall be certified, and shall be available for inspection at all reasonable hours at the principal office of the Consultant on the following basis:
    - 33.12.2.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
    - 33.12.2.2 A certified copy of all payroll records enumerated in Section 33.12.1 shall be forwarded weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545, and shall be made available for inspection or furnished upon request to a representative of the County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations, State of California.
    - 33.12.2.3 A certified copy of all payroll records enumerated in Section 33.12.1 shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Consultant.
  - 33.12.3 The Consultant shall file a certified copy of the records enumerated in Section 33.12.1 with the entity that requested such records within ten (10) days after receipt of a written request.
  - 33.12.4 Any copy of records made available for inspection as copies and furnished upon request to the public or to any public agency by the County, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the Consultant awarded the contract or performing the contract shall not be marked or obliterated.
  - 33.12.5 The Consultant shall inform the County of the location of the records enumerated under Section 33.12.1 including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and/or address.
  - 33.12.6 In the event of noncompliance with the requirements of said Section 1776 of the Labor Code, the Consultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with said Section. Should noncompliance still be evident after such ten-day period, the Consultant shall, as a penalty, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
  - 33.12.7 The responsibility for compliance with Section 1776 of the Labor Code shall be a responsibility of the Consultant.
- 33.13 A certified copy of all payroll records enumerated in the above Section 33.12 shall be sent weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545.
- 33.13.1 Certified weekly payrolls shall show the wages and benefits paid to each employee, the employee's job classification, sex and ethnic code. Payrolls will be submitted by the Consultant and each subcontractor via the Consultant.

- 33.13.2 This provision applies to all classifications, including truckers.
- 33.14 Requests for information relating to labor compliance records, including certified payroll records enumerated in Section 33.12, shall be made through the Contract Compliance Officer at 951 Turner Court, Room 100, Hayward, CA 94545.
- 33.15 Failure to file certified copies of the records enumerated in Section 33.12.1 with County representatives may result in conditioning amounts of any progress payment due.
- 33.16 The Consultant assures that he/she/it will comply with the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contract.
- 33.16.1 The Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this contract, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 33.16.2 Consultant shall, if requested to so do by the County, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 33.16.3 If requested to do so by the County, Consultant shall provide the County with access to copies of all of its records pertaining to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- 33.16.4 Consultant shall recruit vigorously and encourage minority- and women-owned businesses to bid its subcontracts.
- 33.16.5 Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- 33.16.6 The Consultant shall include the provisions set forth in Sections 33.16.1 through 33.16.5 in each of its subcontracts.
- 33.16.7 **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS POLICY FORM:**  
The Consultant must post the Equal Employment Opportunity Practices Provisions Policy in a conspicuous place at each construction site. A sample form shall be provided.
- 33.17 Non-compliance with the provisions of the Equal Employment Opportunity Practices policy is subject to the provisions outlined below.
- 33.17.1 If County finds that the Consultant has violated the Equal Employment Opportunity Practices Provisions policy, the Director of Public Works (or designee) shall hold a meeting with the Consultant for the purpose of determining whether the Consultant is out of compliance. If after the meeting the Consultant is found to be still out of compliance, the Consultant will be notified of a public hearing. The public hearing will be held before the Board of Supervisors with a minimum five calendar-day notice to the Consultant. If the Board of Supervisors finds that there has been a violation, the County will notify the Consultant in writing of the sanctions to be imposed.
- 33.17.2 In addition, the County shall deem a finding by the Fair Employment Practice Commission that there was willful violation of the California Fair Employment Act also to be a violation by the Consultant of the Equal Employment Opportunity Practices Provisions requirements of the contract, and such violation shall be subject to the sanctions provided herein.
- 33.18 A finding at the public hearing that there has been violation of the Equal Employment Opportunity Practices Provisions requirements of the contract shall be cause for the Board of Supervisors to impose

any or all of the following sanctions:

- 33.18.1 Withhold an additional ten percent (10%) of all further contract progress payments until the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
- 33.18.2 Suspend the contract until such time as the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
- 33.18.3 Terminate the contract and collect appropriate damages from the Consultant.
- 33.18.4 Declare that the Consultant is a non-responsible bidder, and is ineligible to make bids on future County contracts for a stated period of time or until the Consultant can demonstrate to the satisfaction of the Board of Supervisors that the violation has been corrected.

\*\*\* END OF STANDARD AGREEMENT \*\*\*

For Information Only

## APPENDIX A

**SERVICES TO BE PROVIDED BY CONSULTANT**

1. This is an appendix attached to, and made a part of the Agreement dated (Day) of \_\_\_\_\_, 2016, between the County of Alameda (“County”) and (CONSULTANT NAME) (“Consultant”), providing for professional services.

1.1 The County’s Proposed Project – (“Project Title”) in Alameda County.

1.2 Consultant Team

Consultant’s team consists of

(CONSULTANT NAME), (CONSULTANT ADDRESS),

(ALL SUBCONSULTANT NAMES), (ALL SUBCONSULTANT ADDRESSES),

Consultant shall provide civil engineering services, and is the prime consultant, with the other consultants serving as subconsultants.

1.3 Scope of Project

Refer to Appendix A Exhibit A-1 attached hereto.

1.4 Consultant’s Milestone Schedule and Deliverables

The Milestone Schedule shall be in accordance with Appendix A Exhibit A-1 attached hereto. The deliverables shall be as specified in Appendix A Exhibit A-1 attached hereto.

1.5 Personnel and Subconsultants

Consultant shall use only the personnel and subconsultants identified herein.

2. General Requirements

2.1 General Criteria Governing Consultant’s Service

2.1.1 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards. Certain exceptions are possible, but only when the County grants a written exemption to a specific standard or regulation.

2.1.2 Consultant shall review existing County data, reports, plans, and other information regarding the site, and perform field investigations as necessary to become familiar with the site. Consultant shall make an independent assessment of the accuracy of the information provided by the County concerning existing conditions (including, but not limited to, existing utilities and structures) and conduct such further investigations of existing conditions as are necessary for Consultant to perform the Services. Consultant shall rely on the results of its own independent investigations and not on information provided by County. Consultant shall

review supplied design information and advise County of its adequacy for Consultant's work and advise County of any further design or other services necessary to complete the Project.

- 2.1.3 Unless otherwise permitted in writing by County, Consultant shall not specify or recommend unique, innovative, proprietary or sole source equipment, systems or materials. In the event Consultant requests to specify or recommend a proprietary or sole source design or equipment, Consultant shall provide County with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can be performed normally and without excessive cost or time. County will consider such evaluation in making its decision.

## 2.2 General Scope of Consultant's Services

- 2.2.1 Consultant's services shall include all professional services within the scope of Consultant's professional discipline (including Consultant's team's professional disciplines) necessary to accomplish the tasks defined throughout this Appendix. These services will include, but are not limited to, the services outlined in Consultant's proposed scope of services annexed to this Appendix as its Exhibit A-1. Consultant shall have adequate personnel, facilities, equipment and supplies to complete Consultant's Services.
- 2.2.2 Performance of Services will require Consultant to work with, meet with, and attend meetings with County staff, with other governmental agencies, and with such other consultants as Consultant determines necessary, to the extent necessary for performance of Consultant's duties under this Agreement (including, but not limited to, Consultant's express duties of coordination with other consultants).
- 2.2.3 Consultant shall engage all appropriate specialty subconsultants as are necessary for proper completion of Consultant's Services in accordance with the scope of work specified herein and utilizing the consultants as specified in Exhibit A-1, at the sole expense of Consultant. Consultant's contracts with its subconsultants (and their contracts with their subconsultants) shall incorporate this Agreement by reference to the extent not inconsistent with the subconsultant's scope of work. Consultant shall secure County's approval for any subconsultants not listed in Exhibits 1 and this Appendix. Consultant shall require each of its subconsultants to execute agreements containing standard of care and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold County harmless from any negligent errors or omissions of the Subconsultants.
- 2.2.4 Consultant shall provide County with written evaluations, when applicable, of the effect of any and all governmental and private regulations, licenses, patents, permits, and any other type of applicable restriction and associated requirements on the Services and its incorporation into the Project, including but not limited to, all requirements imposed by the Regional Water Quality Control Board, California Uniform Building Code and California Regulations (including, but not limited to, Title 24). Consultant may incorporate these written evaluations into its deliverables as expository of the report and design solutions provided.

## 2.3 Coordination of Services with the Project, County's Consultant Team, and County Staff

- 2.3.1 Consultant shall fully coordinate its Services with the services of all engineering disciplines and subconsultants involved in completing the Project. For projects requiring the

development of construction designs, the objective of this coordination shall be the development of a comprehensive and workable design for the site work portion of the Project and preliminary design for balance of the Project, with consistency in engineering standards, any construction methods anticipated, construction details, materials specifications and approaches, to secure practical, consistent and economic design solutions. Consultant shall immediately advise County in writing if any County staff or consultant fails in any manner to coordinate its work with Consultant, and the nature of the non-compliance. County will have responsibility to then enforce compliance.

2.3.2 Consultant shall provide appropriate safety training for Consultant's personnel. Consultant shall review and train Consultant's personnel in appropriate safety procedures for work in the Project area. Consultant shall require all personnel under Consultant's direction to wear safety equipment such as orange vests and appropriate shoes, ear, and eye protection whenever these precautions are required by OSHA safety standards. Consultant shall provide all safety equipment for Consultant's personnel.

#### 2.4 Deliverables and Completion Dates Required Under this Agreement

Required deliverables are discussed in Section \_\_\_\_\_, and in Consultant's proposed scope of work annexed as Exhibit A.1. Each deliverable shall be reviewed with representatives of the County. The County shall make a reasonable determination of the acceptability of the deliverables. Consultant shall promptly correct deficiencies that County reasonably identifies in the deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to County, and the cost thereof is included in the fee for Basic Services. (If Consultant should disagree with County's determination, Consultant shall make the changes requested by County under a reservation of rights to request additional compensation and shall submit separate supporting documentation for the additional charge.)

#### 2.5 Monthly Progress Update

With each request for payment, Consultant shall provide County with a written Monthly Progress Update. The Monthly Progress Update shall cover the Consultant's percent complete for each phase of the work as outlined in the "Monthly Billing Breakdown" in accordance with Appendix B, Item 2. If applicable, the Monthly Progress Update shall identify any actions and approvals needed, and any problems in performing the Services (whether by Consultant, County, or any third party) of which Consultant becomes aware.

### 3. Additional Services

All Services identified in the Agreement, including, but not limited to, the Agreement form, the other appendices, and in the foregoing sections of this Appendix A are "Basic Services". The County may request Consultant to provide services in addition to Basic Services, referred to hereafter as "Additional Services". Additional Services must be authorized by County in writing prior to performance. Consultant shall be compensated for Additional Services as provided herein, unless the parties agree on lump sum compensation for particular work activities. (Under no circumstances shall Additional Services be deemed to include work or services necessary because of Consultant's errors, omissions, or conflicts of any type in Consultant's work product. All such services shall be performed at no cost

to County, including, but not limited to, any required corrections or revisions to reports, drawings, or specifications that are a result of any errors or omissions by Consultant. Nor shall Additional Services include work performed prior to written notice and written agreement upon the Additional Services).

END OF APPENDIX A

For Information Only

## APPENDIX B

**PAYMENTS TO CONSULTANT**

This is an appendix attached to, and made a part of the Agreement dated (Day) of \_\_\_\_\_, 2016, between the County of Alameda (“County”) and (CONSULTANT NAME) (“Consultant”), providing for professional services.

**1. Amount of Compensation for Services of Consultant**

1.1 The amount of compensation to be paid to Consultant for all services under this Agreement shall not exceed (*Amount written in numerical words*) (\$\_\_\_\_\_) referred to hereafter as the Not To Exceed Amount (“NTE”). Total compensation due Consultant shall be the actual amount invoiced based upon the Consultant’s hourly billing, which may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all subconsultants and their reimbursables, and shall constitute full compensation for the Services.

1.2 “Reimbursable Expenses” means job related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs, and similar. Normal travel expenses to and from the site are included in the base contract. Out-of-State travel in connection with the project shall be approved in advance by County.

**2. Monthly Billing Breakdown**

2.1 County shall make monthly payments to Consultant in accordance with approved Monthly Billing Breakdown, which shall be submitted by Consultant for County’s approval prior to the first monthly invoice. The “Monthly Billing Breakdown” shall itemize separate categories for each consultant, each phase of work, along with the billing period defining the time line and cost for each category.

**3. Methods of Payment to Consultant**

3.1 For Basic Services on the Project. Consultant shall submit monthly invoices in accordance with the approved “Monthly Billing Breakdown” specifying the percentage complete for each billing category and itemized reimbursable expenses supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant’s total billings.

3.2 For Additional Services. The County shall pay Consultant for Additional Services, as defined below, as follows:

3.2.1 General. For Additional Services of Consultant’s professional staff engaged directly on the Project, on the basis of a lump sum amount negotiated between the parties, or, at County’s

option, based on hourly rates per Consultant's billing schedule with an agreed Not-to-Exceed amount.

3.2.2 Subconsultants. For Additional Services of Subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant therefor.

3.2.3 For Additional services on an hourly basis, Consultant agrees that all Subconsultants billing will be limited to a not-to-exceed amount upon prior written approval of the County.

#### 4. Definitions

4.1 "Additional Services" mean services beyond the scope of the Services defined in this Agreement. Additional Services must be authorized in writing prior to proceeding.

4.2 The Billing Rates used as a basis for payment apply to all of Consultant's and Subconsultants' principals, professional personnel and others engaged directly on the Project, and are set forth in the Scope of Project (Exhibit A-1 attached to Appendix A). Any future adjustments to the 2015 fee schedule is subject to negotiation for approval by the County. In any case, the maximum adjustment shall not exceed 3%.

END OF APPENDIX B

For Information Only

## APPENDIX C

**COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS**

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
<b>A</b>	<b>Commercial General Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability; Abuse, Molestation, Sexual Actions, and Assault and Battery	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
<b>B</b>	<b>Commercial or Business Automobile Liability</b> All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities.	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
<b>C</b>	<b>Workers' Compensation (WC) and Employers Liability (EL)</b> Required for all contractors with employees	WC: Statutory Limits EL: \$1,000,000 per accident for bodily injury or disease
<b>D</b>	<b>Professional Liability/Errors &amp; Omissions</b> Includes endorsements of contractual liability and defense and indemnification of the County	\$1,000,000 per occurrence \$2,000,000 project aggregate

For Information Only

<b>E</b>	<p><b><u>Endorsements and Conditions:</u></b></p> <ol style="list-style-type: none"> <li>1. <b>ADDITIONAL INSURED:</b> All insurance required above with the exception of Professional Liability, Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li>2. <b>DURATION OF COVERAGE:</b> All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.</li> <li>3. <b>REDUCTION OR LIMIT OF OBLIGATION:</b> All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.</li> <li>4. <b>INSURER FINANCIAL RATING:</b> Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.</li> <li>5. <b>SUBCONTRACTORS:</b> Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.</li> <li>6. <b>JOINT VENTURES:</b> If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:             <ul style="list-style-type: none"> <li>– Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.</li> <li>– Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".</li> </ul> </li> <li>7. <b>CANCELLATION OF INSURANCE:</b> All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation.</li> <li>8. <b>CERTIFICATE OF INSURANCE:</b> Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision.</li> </ol>
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For Information Only

**APPENDIX D**

**COUNTY OF ALAMEDA**  
**DEBARMENT AND SUSPENSION CERTIFICATION**  
For Procurements Over \$25,000

The Consultant, under penalty of perjury, certifies that, except as noted below, Consultant, its Principals, and any named and unnamed subconsultants/subcontractors:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

CONSULTANT: \_\_\_\_\_

PRINCIPAL: \_\_\_\_\_ TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

END OF APPENDIX D

For Information Only

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**APPENDIX E****COUNTY OF ALAMEDA  
CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County which have a start date on or after July 1, 2007 should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at:

[http://www.elationsys.com/elationsys/support\\_1.htm](http://www.elationsys.com/elationsys/support_1.htm)

Or call Elation Systems at (510) 764-1870. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

END OF APPENDIX E

For Information Only

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**APPENDIX F: ALAMEDA COUNTY VENDOR FIRST SOURCE AGREEMENT  
VENDOR INFORMATION**

ALCOLINK Vendor Number (if known): \_\_\_\_\_ SLEB Vendor Number: \_\_\_\_\_

Full Legal Name: \_\_\_\_\_ DBA: \_\_\_\_\_

Type of Entity:       Individual       Sole Proprietor       Partnership  
                                   Corporation       Tax-Exempted       Government or Trust

Check the boxes that apply:

Goods Only       Goods & Services       Rents/Leases       Legal Services  
 Rents/Leases paid to you as the agent       Medical Services       Non-Medical Services –  
 Describe \_\_\_\_\_  Other \_\_\_\_\_

Federal Tax ID Number (required): \_\_\_\_\_

P.O. Box/Street Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Vendor Contact's Name: \_\_\_\_\_

Vendor Contact's Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Vendor Contact's E-mail address: \_\_\_\_\_

***Please check all that apply:***

- LOC  Local Vendor (Holds business license within Alameda County)
- SML  Small Business (as defined by Small Business Administration)
- I  American Indian or Alaskan Native (>50%)
- A  Asian (>50%)
- B  Black or African American (>50%)
- F  Filipino (>50%)
- H  Hispanic or Latino (>50%)
- N  Native Hawaiian or other Pacific Islander (>50%)
- W  White (>50%)

Number of Entry Level Positions available through the life of the contract: \_\_\_\_\_

Number of other positions available through the life of the contact: \_\_\_\_\_

This information to be completed by County: Contract # _____ Contract Amount: _____ Contract Term: _____
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**Vendor** agrees to provide Alameda County (through East Bay Works and Social Services Agency), ten (10) working days to refer to Vendor, potential candidates to be considered by Vendor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County, that Vendor has available during the life of the contract before advertising to the general public. Vendor will also provide the County with specific job requirements for new or vacant positions. Vendor agrees to use its best efforts to fill its employment vacancies with candidates referred by County, but final decision of whether or not to offer employment, and the terms and conditions thereof, to the candidate(s) rest solely within the discretion of the Vendor.

**Alameda County** (through East Bay Works and Social Services Agency) agrees to only refer pre-screened qualified applicants, based on vendor specifications, to vendor for interviews for prospective employment by Vendor (see Incentives for Vendor Participation under Vendor First Source Program located on the Small Local Emerging Business (SLEB) Website, <http://www.acgov.org/auditor/sleb/>).

If compliance with the First Source Program will interfere with Vendor's pre-existing labor agreements, recruiting practices, or will otherwise obstruct Vendor's ability to carry out the terms of the contract, Vendor will provide to the County a written justification of non-compliance in the space provided below.

For Information Only

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Vendor Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(East Bay Works / One-Stop Representative  
Signature)

\_\_\_\_\_  
(Date)

Justification of Non-Compliance:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ATTACHMENT E: SMALL LOCAL EMERGING BUSINESS (SLEB) PARTNERING INFORMATION FORM

In order to meet the Small Local Emerging Business (SLEB) requirements of this RFP, all bidders must complete this form as required below.

Bidders not meeting the [definition of a SLEB \(http://acgov.org/auditor/sleb/overview.htm\)](http://acgov.org/auditor/sleb/overview.htm) are required to subcontract with a SLEB for at least 20% of the total estimated bid amount in order to be considered for contract award. SLEB subcontractors must be independently owned and operated from the prime Contractor with no employees of either entity working for the other. This form must be submitted for each business that bidders will work with, as evidence of a firm contractual commitment to meeting the SLEB participation goal. (Copy this form as needed.)

Bidders are encouraged to form a partnership with a SLEB that can participate directly with this contract. One of the benefits of the partnership will be economic, but this partnership will also assist the SLEB to grow and build the capacity to eventually bid as a prime on their own.

Once a contract has been awarded, bidders will not be able to substitute named subcontractors without prior written approval from the Auditor-Controller, Office of Contract Compliance (OCC).

County departments and the OCC will use the web-based Elation Systems to monitor contract compliance with the SLEB program (Elation Systems: <http://www.elationsys.com/elationsys/>).

<input type="checkbox"/> <b>BIDDER IS A CERTIFIED SLEB</b> (sign at bottom of page)  SLEB BIDDER Business Name: _____ SLEB Certification #: _____ SLEB Certification Expiration Date: _____ NAICS Codes Included in Certification: _____
<input type="checkbox"/> <b>BIDDER IS NOT A CERTIFIED SLEB AND WILL SUBCONTRACT _____% WITH THE SLEB NAMED BELOW FOR THE FOLLOWING GOODS/SERVICES:</b> _____  SLEB Subcontractor Business Name: _____ SLEB Certification #: _____ SLEB Certification Expiration Date: _____ SLEB Certification Status: <input type="checkbox"/> Small / <input type="checkbox"/> Emerging NAICS Codes Included in Certification: _____  SLEB Subcontractor Principal Name: _____  SLEB Subcontractor Principal Signature: _____ Date: _____

**Upon award, prime Contractor and all SLEB subcontractors** that receive contracts as a result of this bid process agree to register and use the secure web-based ELATION SYSTEMS. ELATION SYSTEMS will be used to submit SLEB subcontractor participation including, but not limited to, subcontractor contract amounts, payments made, and confirmation of payments received.

Bidder Printed Name/Title: \_\_\_\_\_

Street Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Bidder Signature: \_\_\_\_\_