

Contract Log # \_\_\_\_\_

**COUNTY OF MARIN  
STANDARD SHORT FORM CONTRACT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_ by and between the COUNTY OF MARIN, hereinafter referred to as "County" and DKS Associates, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, County desires to retain a person or firm to provide the following services: planning and engineering services for the Nonmotorized Transportation Pilot Program Las Gallinas Avenue-Miller Creek Road Corridor Bike & Pedestrian Improvement Study; and

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by County, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

The County agrees to:

- A. Guarantee access to and make provisions for the Contractor to enter upon public and private lands as required to perform their work.
- B. Make available all pertinent data and records for review.
- C. Provide general bid and contract forms and special provisions format when needed.

**3. FEES AND PAYMENT SCHEDULE:**

The fees and payment schedule for furnishing services under this Contract shall be based on the rate schedule which is attached hereto as **Exhibit "B"** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Contract.

Contractor shall provide County with his/her/its Federal Tax I.D. number prior to submitting the first invoice.

**4. MAXIMUM COST TO COUNTY:**

In no event will the cost to County for the services to be provided herein exceed the maximum sum of \$64,999 including direct non-salary expenses.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on January 12, 2010, and shall terminate on December 31, 2010. Certificate(s) of Insurance must be current on day Contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

**6. INSURANCE:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to County. The general liability policy shall be endorsed naming the County of Marin as an additional insured. The certificate(s) of insurance and required endorsement shall be furnished to the County prior to commencement of work. Each certificate shall provide for thirty (30) days advance notice to County of any cancellation in coverage. Said policies shall remain in force through the life of this Contract and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation of Contractor's liability, and Contractor shall indemnify and hold the County, its employees, officers, and agents, harmless and defend the County against any and all claims, damages, losses and expense that may arise by reason of the Contractor's negligent actions or omissions. County agrees to timely notify Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Contract will constitute a material breach of the agreement. In addition to any other available remedies, County may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

A request for a waiver of any of the following insurance requirements must be set forth on **Exhibit "C"** attached hereto. A waiver must address reduced amounts of coverage or the type of coverage waived entirely.

**6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000.00) with a two million dollar (\$2,000,000.00) aggregate limit. The County shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

**Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")**

**6.2 AUTO LIABILITY**

Where the services to be provided under this Contract involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

**Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")**

**6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to County prior to commencement of work.

**Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")**

**6.4 PROFESSIONAL LIABILITY INSURANCE**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Contract or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Contract effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. The amount of the policy deductible or self-insured retention must be declared on Exhibit "C". If the deductible or self-insured retention amount exceeds \$100,000, the County may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and the County of Marin may conclusively rely thereon.

Contractor's Professional Liability Insurance may be provided, in part, by self-insurance or large deductible as long as contractor provides: (1) evidence to the County that contractor has segregated amounts in a special insurance reserve fund meeting the contract's insurance requirements and restricted specifically to this project or (2) contractor's general insurance reserves are adequate to provide the necessary coverage and the County of Marin may conclusively rely thereon.

Professional liability deductible amount (if applicable) \$50,000

**Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")**

**7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Contract without prior written approval of the County except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the County evidence of same.

**9. ASSIGNMENT:**

The rights, responsibilities and duties under this Contract are personal to the Contractor and may not be transferred or assigned without the express prior written consent of the County.

**10. LICENSING AND PERMITS:**

The Contractor shall maintain the appropriate licenses throughout the life of this Contract. Contractor shall also obtain any and all permits which might be required by the work to be performed herein.

**11. BOOKS OF RECORD AND AUDIT PROVISION:**

Contractor shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Contract. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five years from the completion of this Contract. Contractor will permit County to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Contractor who participated in this Contract in any way. Any audit may be conducted on Contractor's premises or, at County's option, Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from County. Contractor shall refund any monies erroneously charged.

**12. WORK PRODUCT/PRE-EXISTING WORK PRODUCT OF CONSULTANT:**

Any and all work product resulting from this agreement is commissioned by the County of Marin as a work for hire. The County of Marin shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited rights to use the work product.

To the extent Consultant incorporates into the work product any pre-existing work product owned by Consultant, Consultant hereby acknowledges and agrees that ownership of such work product shall be transferred to the County of Marin.

**13. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, the County may terminate this Contract by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract or Amendment(s).

**14. RELATIONSHIP BETWEEN THE PARTIES:**

It is expressly understood that in the performances of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of the County. Contractor shall be solely responsible to pay all required taxes, including but not limited to, all withholding social security, and workers' compensation.

**15. AMENDMENT:**

This Contract may be amended or modified only by written agreement of all parties.

**16. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to County, as is evidenced in writing.

**17. JURISDICTION AND VENUE:**

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

**18. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold County, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this contract.

**19. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all Federal, State and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Board of Supervisors prohibiting the off-shoring of

professional services involving employee/retiree medical and financial data) affecting services covered by this Contract. Copies of any of the above-referenced local laws and resolutions may be secured from the County's contact person referenced in paragraph 20. NOTICES below.

**20. NOTICES:**

This Contract shall be managed and administered on County's behalf by the Department Contract Manager named below. All invoices shall be submitted and approved by this Department and all notices shall be given to County at the following location:

Contract Manager:	Ms. Carey Lando
Dept./Location:	Department of Public Works
	P. O. Box 4186
	San Rafael, CA 94913-4186
Telephone No.:	415.499.5078

Notices shall be given to Contractor at the following address:

Contractor:	Tom Krakow
	1000 Broadway Suite 450
Address:	Oakland, CA 94607
Telephone No.:	510-267-6615

**21. ACKNOWLEDGEMENT OF EXHIBITS**

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A</u>	<input checked="" type="checkbox"/>	<u>Scope of Services</u>	
<u>EXHIBIT B</u>	<input checked="" type="checkbox"/>	<u>Fees and Payment</u>	
<u>EXHIBIT C</u>	<input type="checkbox"/>	<u>Insurance Reduction/Waiver</u>	
<u>EXHIBIT D</u>	<input checked="" type="checkbox"/>	<u>Notice to Bidders/Proposers- Disadvantaged Business Enterprise Information</u>	
<u>EXHIBIT E</u>	<input checked="" type="checkbox"/>	<u>Standard Agreement for Subcontractor/DBE Participation</u>	
<u>EXHIBIT F</u>	<input checked="" type="checkbox"/>	<u>Covenant Against Contingent Fees</u>	
<u>EXHIBIT G</u>	<input checked="" type="checkbox"/>	<u>Nonlobbying Certification</u>	

IN WITNESS WHEREOF, the parties have executed this Contract on the date first above written.

APPROVED BY  
COUNTY OF MARIN:

By: \_\_\_\_\_  
President, Board of Supervisors

CONTRACTOR:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_

**COUNTY COUNSEL REVIEW AND APPROVAL (Only required if any of the noted reason(s) applies)**

**REASON(S) REVIEW:**

- Contract Requires Board of Supervisors' Approval
- Standard Short Form Content Has Been Modified
- Optional Review by County Counsel at Department's Request

County Counsel: \_\_\_\_\_  
Date: \_\_\_\_\_

## EXHIBIT "A"

### SCOPE OF SERVICES (required)

#### **Scope of Work**

DKS will prepare a study that will identify short, medium and long term transportation system improvement opportunities to enhance bicycle and pedestrian mobility while maintaining vehicular and transit operations. The study will focus on significant land use centers, including residential, commercial, institutional, and recreational as key origin and destinations for pedestrians and bicyclists. The goal will be to develop a balance between the various user types as well as be responsive to environmentally vulnerable land. We will utilize available information. Our assumptions are included in the scope of work.

The study area includes Miller Creek Road from Highway 101, including the freeway bus pads and Pacheco path, the intersection of Las Gallinas Avenue and along Las Gallinas Avenue to Cedar Hill Drive just south of Lucas Valley Road. Included in the study are the bus pads on Lucas Valley Road just east of Las Gallinas Avenue.

#### **Task 1 - Study Plan Development: Refine detailed project goals, tasks and schedule**

1. Meet with County staff and Corridor Technical Advisory Committee (CTAC)(meeting #1)
  - i. Focus of meeting will be to refine the project goals in relationship to priorities.
  - ii. We will revisit the proposed products that are envisioned in relationship to the proportional efforts being expended on each task within the project.
  - iii. Review the policy issues related to the parameters of the project in terms of lane widths. Determine whether there are any pre-existing priority lists of improvements that may address the bike or ped project issues.
  - iv. Request existing studies, bike and or ped master plans
  - v. Develop a communication chain for distribution of study materials.
2. Review existing studies and other resources
  - i. Technical review of any pertinent documents to the study
3. Conduct initial field reconnaissance
  - i. Site inventory of the corridor and the feeder routes.
  - ii. Photographic inventory of constraints and opportunities along the study route. Evaluation of alternative routes where appropriate. Review pedestrian access routes along the study corridor for gaps, and for non-ADA compliance. Prepare an inventory.
4. Identify and organize study tasks
  - i. This will be a refinement of the study tasks based upon available information from the agency and the field reconnaissance.
5. Refine schedule,
  - i. Schedule will be revised if there is a need to change the schedule.
6. Monthly progress reports
  - i. Will be prepared with each invoice.

#### Deliverables:

- Meeting agenda(s) and minutes
- Tasks and schedule identified in Gantt chart or similar document
- Study outline with a general statement on opportunities and constraints
- Photographic Inventory of constraints and opportunities

#### **Task 2 - Public Agency Stakeholder Coordination**

1. Attend additional Corridor Technical Advisory Committee (CTAC) meetings. We envision that this body would consist of key stakeholders for County/City/school agency interests. The CTAC would review initial comments, review of technical data, review the draft plan and workshop materials, and review of the final plan before it's released to the public.
2. Support County staff-led coordination with pertinent regulatory agencies and stakeholders.
3. Participate in public meetings (e.g. meetings with stakeholders, community outreach, etc.) as appropriate to discuss the Study and receive input. Two (2) public workshops/meetings are anticipated. County staff will be responsible for setting up the venue and for mailing or emailing the announcements for the meetings. DKS will be responsible for creating the graphics for the announcement of the meetings.
4. The Consultant will be responsible for providing presentation materials for key CTAC meetings as appropriate. Approximately five CTAC meetings will be held during the course of the project. Schedule will be developed at the kick off meeting for the project.

Deliverables:

- Presentation Materials

**Task 3 - Existing Conditions, Site Surveys, Data Collection, Field Inspection and Mapping**

DKS will conduct a preliminary assessment of the corridor to analyze project areas for potential improvements. DKS will conduct a traffic analysis along the corridor. We will utilize the existing data from the County model for determining the projected traffic volumes to 2030. DKS will perform required field traffic data collection and observation (including bike/ped counts and traffic counts), inventory of existing roadways, pedestrian paths and bikeways within and connecting to the study area, surveys and right-of-way based upon County GIS documentation research, if needed for the project and its immediately adjacent connecting streets and facilities.

1. Vehicle traffic and directional bike and pedestrian counts will be observed/collected at the intersections listed below on at least two separate weekdays (T-TH, non-rain day, when school is in session) for two consecutive hours in the AM and PM peak periods.
  - a. Miller Creek/Marinwood/Blackstone/Pacheco Hill Path
  - b. Miller Creek/Las Gallinas
  - c. Las Gallinas/Miller School Driveways/Elvia Ct.
  - d. Las Gallinas/Lucas Valley Road
2. Collect parking data and transit use counts on one week day (T-Th) at three separate time intervals (AM, midday, PM) on Las Gallinas and Miller Creek when school is in session.
3. Collect projected LOS data from future developments approved or under review in the area and include an analysis of potential effect on the recommended improvements in this Study.

We will conduct a field review of the corridor looking at traffic operations and safety issues and focusing on items raised by staff at the kick off meeting. We will utilize county GIS mapping and visual lines of possession to determine right-of-way constraints. We will measure using “roller-wheel” typical pavement cross sections to determine general lane width configuration along the corridor. At bridge structure crossings we will measure the structure on the pavement surface. ADA compliance will be checked at all public County-maintained right-of-way intersections and crosswalks along corridor. Information will be included in an ‘Existing Conditions’ Study chapter that sets the framework and context for the project. It will summarize the history, physical setting, and existing physical, land use, and other relevant conditions based on available sources. It will also summarize past community involvement and other recent improvements (temporary or permanent) or location-specific studies within the study area. It is expected that all streets will be “windshield inspected” within ¼ mile of corridor, all pedestrian/Class 1 paths will be walked within ½ mile of corridor. We will also check and identify sidewalk encroachments by shrubs, other vegetation, etc.

Base mapping will be provided by the consultant using the County-supplied GIS mapping. The base map will clearly define approximate public right-of-way, property line, and easement information as taken from County GIS system. (Right of Way mapping with survey control is not included in the scope of work). Please note that the scope of the base mapping the limits of the project improvements may extend beyond the defined Las Gallinas Avenue and Miller Creek Road.

DKS will rely upon County GIS files. No ground topo will be taken for this study. Mapping supplied will be conceptual level mapping.

Deliverables:

- Prepare a memorandum of design parameters for the project.
- Existing Conditions Study Chapter
- Planimetric map and aerial showing and labeling existing routes, paths, trails, sidewalks, bus stops, etc.
- AutoCAD drawing files, 1" = 20 feet

#### **Task 4 - User Needs Analysis**

Understanding the needs of future users is critical to evaluating optimal alignments. This effort will include input received through public meetings, previous public input and surveys prepared in the corridor, visual review of local activity centers and usage patterns. Utilizing existing and future development LOS as taken from the County Model and using bikeway demand model DKS will project future usage.

Deliverables:

- Survey results
- User Needs Analysis and Use Projections TM

#### **Task 5 - Alternative Design Analysis**

The alternatives will be developed and evaluated based upon an agreed set of criteria and methodology. We will be basing the design on Marin County Bicycle Standards, Caltrans, AASHTO standards and ADA for the project criteria.

DKS will initially develop alternatives for discussion with the CTAC. The alternatives will be conceptual level for planning purposes. The concepts will be specific and locations will be identified for consideration. We will then meet with the CTAC to review each alternative. Once the CTAC has identified the preferred direction for the project, then DKS will develop concept engineering plans, illustrations, and descriptions, corresponding description of existing conditions, opportunities, and constraints, and cost estimates, which are to be included in a County-authored study comprising of analyses and comparison of all alternatives. The County will be responsible for organizing these products into a Study Report and detailed results. The Consultant will need to provide appropriate information for inclusion in the Study to estimate the need for facility improvements based on existing surface quality, available widths, visibility, grades, ADA compliance, signage, safety, and structural analyses. Finally, DKS will provide a timeline with key milestones for moving forward through construction.

The following is a summary of DKS responsibilities for Task 5:

1. Design criteria shall include safety, accessibility, functionality, neighborhood impacts, environmental impacts, aesthetics, cost, estimated usage, right of way availability, consistency with local plans, and opportunities for multiple use.
2. CEQA/NEPA: Our environmental consultant will be provided a set of the concept documents to identify any special environmental concerns in any of the alternatives.
3. Plans and Maps: Prepare concept-level plans and maps for the alternatives. Corridor maps will be in AutoCAD on digitized aerial photographs at an appropriate scale of 1" = 10' to 20'. All maps will show jurisdictional and ROW boundaries. Provide typical street cross section. Files will be provided to County for their use.
4. Design Standards: Ensure that the concept designs comply with sound engineering practices for bicyclist improvements, as well as Americans with Disabilities Act (ADA), State Title 24 requirements, MUTCD and/or Caltrans standards. Designs will be reviewed by County staff for compliance.
5. Cost Estimates: Prepare engineers cost estimates for each alternative. Ranges will be developed for each short-, medium, and long-term alternative design and will be further broken into projects by agency based on jurisdictional boundaries.

6. Implementation Strategy: Provide a phasing plan, schedule of implementation actions and responsibilities, potential funding sources, and a financing plan.

Deliverables:

- Descriptions of existing conditions, opportunities and constraints,
- Concept engineering plans, illustrations and descriptions.
- Engineers cost estimates
- Implementation timeline with key milestones

**Task 6 - Project Management**

DKS will participate in monthly conference call with County, providing a progress report prior to each meeting that includes the following:

1. Work Completed
2. Problems and resolutions
3. Work Remaining
4. Anticipated Problems
5. Budget Status and Analysis
6. Schedule Status/Update

DKS will provide a Project Management Work Plan (PMWP) that includes objectives, organization, scope of services, schedule (Microsoft Project or similar format), budget, QA/QC, communications, document control, cost controls, invoicing and reporting for the development of the study along with project management as required to lead project team, communicate information, complete required tasks, produce deliverables, and to report and control project costs and schedule performance.

Deliverables:

- Project Management Work Plan
- Copies of project correspondence.



**EXHIBIT "B"**

**FEES AND PAYMENT SCHEDULE (required)**

Contractor agrees to provide all services described in Exhibit "A" attached hereto for the maximum sum indicated in Section 4. Payment shall be made based on a monthly invoice submitted with a breakdown of hours and in accordance with the following billing rates:

	<b>Hours</b>								
	<b>\$180</b>	<b>\$240</b>	<b>\$135</b>	<b>\$165</b>	<b>\$115</b>	<b>\$105</b>	<b>\$100</b>	<b>\$110</b>	<b>\$85</b>
<b>Hourly Rate</b>									
<b>Staff Type</b>	<b>Princ. In Charge</b>	<b>Proj Mngr</b>	<b>Sr Civil Engr</b>	<b>Sr Traffic Engr</b>	<b>Transp Engr</b>	<b>Assoc Transp Engr</b>	<b>Assist Transp Engr</b>	<b>CAD</b>	<b>Admin Assist</b>
<b>Task Description</b>	<b>Mark Spencer</b>	<b>Thomas Krakow</b>	<b>Westley Myles</b>	<b>Atul Patel</b>	<b>Patty Comacho De Cano</b>	<b>Filipe Cheong</b>	<b>Alex Ha</b>	<b>CAD</b>	<b>DEM</b>
Estimated hours	10	66	76	12	36	34	36	54	12
<b>TOTAL NOT TO EXCEED</b>	<b>\$64,995</b>								

The above hourly rates include all routine charges for expenditures such as reproduction, mail, telephone calls, and travel to Marin County for meetings. Non-routine charges, approved in advance by the County, such as express mail, courier service, report printing, sub consultants, etc. shall be reimbursable at the Contractor's cost upon submission of a paid invoice. Prompt payment discounts shall be passed on to the County.

**EXHIBIT "D"**

**NOTICE TO BIDDERS/PROPOSERS  
DISADVANTAGED BUSINESS ENTERPRISE INFORMATION  
REQUIREMENTS AND INSTRUCTIONS**

**1. TERMS AS USED IN THIS DOCUMENT**

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "Underutilized Disadvantaged Business Enterprise" or "UDBE" is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups:
  - Black American
  - Asian-Pacific American
  - Native American
  - Women
- The term "bidder" also means "proposer" or "offerer."
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

**2. AUTHORITY AND RESPONSIBILITY**

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Bidders/Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

**3. SUBMISSION OF UDBE AND DBE INFORMATION**

If there is a UDBE goal on the contract, a "Local Agency Bidder/Proposer-UDBE (Consultant Contract) Commitment" (Exhibit 10-0(1)) form shall be included in the Request for Proposal. In order for a bidder/proposer to be considered responsible and responsive, the bidder must make good faith efforts to meet the goal established for the contract. If the goal is not met, the bidder/proposer must document adequate good faith efforts. Only UDBE participation will be counted towards the contract goal; however, all DBE participation shall be collected and reported.

A "Local Agency Proposer/Bidder-DBE (Consultant Contract)-Information" (Exhibit 10-0(2)) form shall be included with the Request for Proposal. The purpose of the form is to collect data required under 49 CFR 26. For contracts with UDBE goals, this form collects DBE participation by DBEs owned by Hispanic American and Subcontinent Asian Americans. For contracts with no goals, this form collects information on all DBEs, including UDBEs. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

**4. DBE PARTICIPATION GENERAL INFORMATION**

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

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

- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A UDBE bidder, not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  - 1. The bidder is a UDBE and will meet the goal by performing work with its own forces.
  - 2. The bidder will meet the goal through work performed by UDBE subcontractors, suppliers or trucking companies.
  - 3. The bidder, prior to bidding, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- G. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

## 5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.  
Bidder/Proposer may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.
  - Click on the link in the left menu titled Find a Certified Firm
  - Click on Query Form link, located in the first sentence
  - Click on Certified DBE's (UCP) located on the first line in the center of the page
  - Click on Click To Access DBE Query Form
  - Searches can be performed by one or more criteria
  - Follow instructions on the screen
  - "Start Search," "Requery," "Civil Rights Home," and "Caltrans Home" links are located at the bottom of the query form
- C. How to Obtain a List of Certified DBEs without Internet Access  
**DBE Directory:** If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

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

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

- B. If the materials or supplies purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by -Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not UDBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

## EXHIBIT "E"

### STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION

#### 1. Subcontractors

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Agency and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the Agency for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the Agency's obligation to make payments to the Contractor.
- B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the Agency.
- D. Any substitution of subcontractors must be approved in writing by the Agency's Contract Manager in advance of assigning work to a substitute subcontractor.

#### 2. Disadvantaged Business Enterprise (DBE) Participation

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Bidders who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. If the contract has an under-utilized DBE (UDBE) goal, the Contractor must meet the UDBE goal by using UDBEs as subcontractor or document a good faith effort to meet the goal. If a UDBE subcontractor is unable to perform, the Contractor must make a good faith effort to replace him/her with another UDBE subcontractor if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups:
  - 1. Black American
  - 2. Asian-Pacific American
  - 3. Native American
  - 4. Women
- C. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

#### 3. Performance of DBE Contractors and other DBE Subcontractors/Suppliers

A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount

the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

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

#### **4. Prompt Payment of Funds Withheld to Subcontractors**

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

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

#### **5. DBE Records**

- A. The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors," CEM-2402F (Exhibit 17-F in Chapter 17 of the LAP), certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors" is submitted to the Contract Manager.
  - 1) Prior to the fifteenth of each month, the Contractor shall submit documentation to the Agency's Contract Manager showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Agency's Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.
  - (2) The Contractor shall also submit to the Agency's Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the

Caltrans' Monthly DBE Trucking Verification, CEM-2404(F) form provided to the Contractor by the Agency's Contract Manager.

## 6. DBE Certification and De-certification Status

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the Agency's Contract Manager within 30 days.

**Materials or supplies purchased from DBEs will count towards DBE credit, and if a DBE is also a UDBE, purchases will count towards the UDBE goal under the following conditions:**

- A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.

Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

**EXHIBIT "F"**

**COVENANT AGAINST CONTINGENCY FEES**

The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant; to solicit or secure this agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this warranty, the local agency shall have the right annul this agreement without liability, or at its discretion; to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.



**EXHIBIT "G"**

**NONLOBBYING CERTIFICATION  
FOR FEDERAL-AID CONTRACTS**

The prospective participant certifies by signing and submitting this bid or proposal to the best of his or her knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.