

## ATTACHMENT 2



# PROFESSIONAL SERVICES AGREEMENT

***PROJECT TITLE***

***Month, day, year***

**EL DORADO COUNTY TRANSPORTATION COMMISSION  
2828 Easy Street, Suite 1  
PLACERVILLE, CALIFORNIA 95667-3907  
530.642.5260  
[www.edctc.org](http://www.edctc.org)**

# **AGREEMENT**

**This AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the EL DORADO COUNTY TRANSPORTATION COMMISSION, hereinafter referred to as "EDCTC" or the "Commission" and **COMPANY NAME, a (JURISDICTION corporation) (JURISDICTION limited liability corporation) (JURISDICTION limited partnership) (an individual doing business as)**, hereinafter referred to as "CONSULTANT" or "CONTRACTOR."

## **TERMS OF AGREEMENT**

### **1) SERVICES TO BE PERFORMED BY CONSULTANT**

The Scope of Work is described below. Consultant will perform all services necessary to complete the Scope of Work. The Consultant will receive general direction from the EDCTC Executive Director.

#### **Scope of Work**

Tasks will include the following:

##### **General**

The Executive Director of EDCTC or their designee must approve the final form of each project deliverable prior to acceptance by EDCTC.

Any references herein to subconsultants are for convenience only and Consultant remains responsible for the performance of this Agreement and the Scope of Work.

##### **Specific**

**INSERT DETAILED LIST OF TASKS AND DELIVERABLES**

In the event of any inconsistency between the Scope of Work and other terms and conditions of this Agreement, the Scope of Work shall control. EDCTC reserves the right to review and approve all work to be performed by Consultant in relation to this Agreement.

All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

### **2) PROJECT TIMETABLE**

Consultant shall complete the work in accordance with the following general timetable. As the project progresses, EDCTC may provide more specific dates within the general timetable:

#### **Project Timetable**

**INSERT PROJECT TIMETABLE**

## A. Presentations

Presentations to the EDCTC will be required. The meetings will occur at to-be-determined dates. Time is of the essence in this Agreement.

## B. Delays

Consultants shall notify EDCTC in writing of any potential delay or interruption in the performance of all or any part of the work of this contract. If the work of this contract is interrupted by instances of unavoidable delay(s), informal negotiations between the parties to this contract will be used to adjust the delivery or performance dates of any work products or any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by the fault or negligence of the Consultant, or for which an adjustment is provided or excluded under any other term or condition of this contract.

## 3) TERM OF AGREEMENT

The term of the Agreement shall be from \_\_\_\_\_, 201\_ to \_\_\_\_\_, 201\_, subject to the rights of termination as set forth in Sections 6 and 7 of this Agreement.

## 4) COMPENSATION AND METHOD OF PAYMENT

### A. Cost Ceiling

1. For services performed under this Agreement for the referenced fiscal years, EDCTC agrees to pay, and Consultant agrees to accept, as payment in full, the following professional fees:

***INSERT FUNDING SOURCE, NOT TO EXCEED AMOUNT***

In no instance shall EDCTC be liable for any payments or costs for work in excess of this amount, nor for any unauthorized or ineligible costs.

### B. Compensation

1. Professional fees shall be billed on a monthly basis for all services rendered and in accordance with the Scope of Work and Project Budget. ***[Alternative Language: EDCTC shall compensate consultant upon completion and acceptance of each task as described in the Scope of Work in Section 1 hereto.]***
  - a. The hourly rate must be billed at the rate shown in the Project Budget Exhibit "A". Increases to the hourly rate are not allowed.
  - b. Changes to staff must be approved by EDCTC prior to beginning work on the project.
2. Consultant will not charge for travel, phone, copying or other out-of-pocket expenses incurred with this engagement unless specified in the project budget dated \_\_\_\_\_, 201\_ ("***Project Budget/Rates of Compensation***"), attached hereto and

incorporated herein as Exhibit "A." Backup documentation must be provided for all travel, phone, copying or other out-of-pocket expenses.

- a. Travel and subsistence (per diem) expenses of Consultant and Subcontractors claimed for reimbursement using funds administered through this agreement shall not exceed rates authorized to be paid to non-state employees under current State of California Department of Human Resources (Cal HR) rates or Caltrans Division of Accounting Travel Guide ([www.dot.ca.gov/hq/asc/travel/ch12/1consultant.htm](http://www.dot.ca.gov/hq/asc/travel/ch12/1consultant.htm)).
3. EDCTC shall pay for services only after receipt and approval of complete invoices indicating work performed and time spent. The consideration to be paid to Consultant, as provided in this Agreement, shall be in compensation for all of Consultant's expenses incurred in the performance of work under this Agreement, including travel and per diem, unless otherwise expressly so provided.

### **C. Cost Principles**

1. Consultant agrees to comply with Title 2, CFR, part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable.
2. Consultant agrees that (a) the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 Contract Cost Principles and Procedures and 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be used to determine the allowability of individual project cost items. Every Consultant receiving Project funds as a contractor, subcontractor, or sub-grantee under this agreement shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
3. Consultant and subconsultants' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review.

Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 Contract Cost Principles and Procedures or 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards are subject to repayment by Consultant to EDCTC. Disallowed costs must be reimbursed to EDCTC within sixty (60) days unless EDCTC approves in writing an alternative repayment plan.

Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this subsection 4(C) above.

### **D. Indirect Cost Rate (ICR)**

1. Prior to Consultant seeking reimbursement of indirect costs, Consultant must prepare an indirect cost rate (ICR) proposal in accordance with 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq. Contract Cost Principles and Procedures.
2. Material audit adjustments will require reimbursement to EDCTC and STATE if proposals are later found to have included costs that are unallowable as specified by law or regulation.

#### E. Retention

*EDCTC shall retain ten percent (10%) of the total contract amount until successful completion of the contract and project scope and the acceptance by EDCTC of all final deliverables.*

### 5) RECORD RETENTION/AUDITS

1. Consultant shall maintain all source documents, books and records connected with project for a minimum of three (3) years from the date of final grant payment to EDCTC or, if an audit is initiated within that timeframe, until audit resolution is achieved, whichever is later, and shall make all such supporting information available for inspection and audit by representatives of STATE, the Bureau of State Audits, or the Federal Government upon request. Copies will be made and furnished by EDCTC upon request at no cost to STATE. Scanned original documents in electronic form are suitable to meet this requirement.
2. Consultants and Subconsultants shall establish and maintain, an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Requests for Reimbursement which segregate and accumulate the costs of work elements by line item (i.e. direct labor, other direct costs, subrecipients/subcontractor, etc) and enable the determination of expenditures at interim points of completion, and provide support for reimbursement payment vouchers or invoices.
3. For the purpose of determining compliance with Title 2, California Government Code, Chapter 6.5, Article 2, Section 8546.7, in connection with the performance of EDCTC contracts and/or agreements with third parties, Consultants and Subconsultants shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts and/or agreements, including, but not limited to, the costs of administering those various contracts and/or agreements. All of the above referenced parties shall make such contracts and/or agreements available at their respective offices at all reasonable times during the three (3) years from the date of final grant payment to EDCTC or, if an audit is initiated within that timeframe, until audit resolution is achieved, whichever is later. STATE, the California State Auditor, or any duly authorized representative of STATE or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to the fulfillment of the contracts/ and/or agreements for audits, examinations, excerpts, and transactions, and RTPA shall furnish copies thereof if requested.

## 6) TERMINATION FOR CONVENIENCE OF EDCTC

EDCTC may terminate the whole or any part of this Agreement for the convenience of EDCTC and without cause at any time by giving a minimum of ten (10) days written notice to Consultant of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, collected data, and other materials shall, at the option of EDCTC, become its property. If this Agreement is terminated by EDCTC for convenience, Consultant shall be paid an amount for satisfactory services actually performed to the date of termination based upon an invoice provided by Consultant pursuant to Section 4 above.

## 7) TERMINATION OF AGREEMENT FOR CAUSE

- A. EDCTC may, by written notice to Consultant, terminate the whole or any part of this Agreement for cause, including but not limited to any of the following:
1. If Consultant fails to perform the services called for by this Agreement within the time(s) specified herein or any extension thereof; or
  2. If Consultant fails to perform the services called for by this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, or;
  4. Consultant fails to maintain adequate staff to perform the services required under this agreement, or is dissolved or is under investigation for accounting irregularities by a local, state or federal regulatory body.
- B. In the event EDCTC terminates this Agreement in whole or in part as provided in this Section 7, EDCTC may deny payment to Consultant or request reimbursement from Consultant for payments made and may procure, upon such terms and such manner as it may determine appropriate, services similar to those terminated.
- C. If EDCTC issues a notice of termination under this Section 7:
1. Consultant shall immediately cease rendering services pursuant to this Agreement.
  2. Consultant shall deliver to EDCTC copies of all Writings, whether or not completed, which were prepared by Consultant, its employees or its subcontractors, if any, pursuant to this Agreement. The term "Writings" shall include, but not be limited to, handwriting, typesetting, computer files and records, drawings, blueprints, printing, photostating, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including, letters, works, pictures, sounds, symbols computer data, or combinations thereof.

## 8) FORCE MAJEURE

Neither EDCTC nor Consultant shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God or of the public enemy, acts of government, in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather, or any similar cause beyond the reasonable control of EDCTC or Consultant.

## 9) INTEREST OF OFFICIALS AND CONSULTANT

- A. No officer, member, or employee of EDCTC, or other public official of the governing body of the locality or localities in which the work pursuant to this Agreement is being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the aforesaid work shall:
1. Participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he has, directly or indirectly, any interest, or
  2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his tenure or for one year thereafter.
- B. No member of or delegate to the Congress of the United States of America shall be admitted to any share or part hereof or to any benefits to arise herefrom.
- C. Consultant hereby covenants that it has, at the time of the execution of this Agreement, no interest and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. Consultant further covenants that in the performance of this work, no person having any such interest shall be employed. Consultant shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with EDCTC's interest. Consultant shall immediately notify EDCTC of any and all potential violations of this Section upon becoming aware of the potential violation.

## 10) COVENANT AGAINST CONTINGENT FEES

Consultant warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this contract upon an Agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, EDCTC shall have the right to annul this Agreement without liability or, in 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.

## 11) SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties. Consultant shall not assign, delegate, or transfer the rights and duties under this Agreement or any part thereof without the prior written consent of EDCTC.

## 12) CONSULTANTS AND SUBCONTRACTORS

- A. Consultant shall not subcontract any portion of the work without the prior express written authorization of EDCTC. If EDCTC consents to a subcontract, Consultant shall be fully responsible for all work performed by the subcontractor.

1. EDCTC reserves the right to review and approve any contract or agreement to be funded in whole or in part using funds provided under this Agreement.
2. Any contract or sub-contract shall require the Consultant and its subcontractors, if any, to:
  - (1) Comply with applicable State and Federal requirements that pertain to, among other things, labor standards, non-discrimination, the Americans with Disabilities Act, Equal Employment Opportunity, and Drug-Free Workplace, and *Office of Management and Budget Circular A-87, Cost Principles for State, Local and Indian Tribal Governments*.
  - (2) Maintain at least the minimum State-required Workers' Compensation Insurance for those employees who will perform the work or any part of it.
  - (3) Maintain unemployment insurance and disability insurance as required by law, along with liability insurance in an amount that is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the Consultant or any subcontractor in performing work associated with this Agreement or any part of it.
  - (4) Retain all books, records, computer records, accounts, documentation, and all other materials pertaining to the performance of this Agreement for a period of three (3) years from the date of termination of this Agreement, or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.
  - (5) Permit EDCTC and/or its designees, upon reasonable notice, unrestricted access to any or all books, records, computer records, accounts, documentation, and all other materials pertaining to the performance of this Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.
  - (6) Comply with all applicable requirements of Title 49, Part 26 of the Code of Federal Regulations, as set forth in Section 29, Disadvantaged Business Enterprise Participation.

### 13) INDEPENDENT CONTRACTOR

In the performance of these services herein provided for, Consultant, including Consultant's employees and agents, shall act as and be an independent contractor and not an agent or employee of EDCTC. Consultant, its employees, agents, and sub-Consultants, shall have no power to bind or commit EDCTC to any decision or course of action, and shall not represent to any person or entity that they have such power. Consultant has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation, and discharge of all persons assisting Consultant in the performance of said services hereunder. Consultant shall be solely responsible for all matters relating to the payment of its employees, including but not limited to compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.



## 14) INSURANCE

Consultant hereby warrants that it carries and shall maintain, at its sole cost and expense, in full force and effect during the full term of this Agreement and any extensions to this Agreement, the following described insurance coverage:

POLICY	MINIMUM LIMITS OF LIABILITY
(1) Workers' Compensation; Employer's Liability.	Statutory requirements for Workers' Compensation; \$ 1,000,000 Employers' Liability.
(2) Comprehensive Automobile: Insurance Services Office, form #CA 0001 (Ed 1/87) covering Automobile Liability, Code 1 (any auto).	Bodily Injury/Property Damage \$1,000,000 each accident.
(3) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).	\$1,000,000 per occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit, such limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
(4) Errors and Omissions/Professional Liability (errors and omissions liability insurance appropriate to the Consultant's profession as defined by EDCTC).	\$1,000,000 per claim.

A. Deductibles and Self-insured Retentions: Any deductibles or self-insured retentions over \$5,000 must be declared to and approved by EDCTC.

B. Required Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects EDCTC, its directors, officers, employees, and agents. Any insurance or self-insurance maintained by EDCTC, its directors, officers, employees or agents shall be in excess of Consultant's insurance and shall not contribute to it.
2. Any failure by Consultant to comply with reporting or other provisions of the policies including breaches of warrants shall not affect coverage provided to EDCTC, its directors, officers, employees, or agents.
3. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
4. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in

coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to EDCTC.

- C. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by EDCTC.
- D. Certificate of Insurance and Additional Insured Requirement: Consultant shall furnish to EDCTC an original Certificate of Insurance on a standard ACORD form, or other form acceptable to EDCTC, substantiating the required coverages and limits set forth above and also containing the following:
  1. Thirty (30) days prior written notice to EDCTC of the cancellation, non-renewal or reduction in coverage of any policy listed on the Certificate; and
  2. The following statement with respect to the Commercial General Liability policy: "EDCTC and its directors, officers, agents, employees, and volunteers are made additional insureds, but only insofar as the operations under this Agreement are concerned."
- E. Certified Copies of Policies: Upon request by EDCTC, Consultant shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.
- F. Consultant's Responsibility: Nothing herein shall be construed as limiting in any way the extent to which Consultant may be held responsible for damages resulting from Consultant's operations, acts, omissions, or negligence. Insurance coverage obtained in the minimum amounts specified above shall not relieve Consultant of liability in excess of such minimum coverage, nor shall it preclude EDCTC from taking other actions available to it under this Agreement or by law, including but not limited to, actions pursuant to Consultant's indemnity obligations.

## 15) DISPUTE: GOVERNING LAW AND FORUM

Any dispute not resolved by informal negotiation between the parties to this contract shall be adjudicated in the Superior Court of El Dorado County. This Agreement shall be administered and interpreted under the laws of the State of California.

## 16) SPECIFICATIONS

- A. All specifications, manuals, standards, etc., either attached to this Agreement or incorporated by reference, are deemed to be the issue in effect as of the date of this Agreement and are binding as to the performance of the work specified in this Agreement unless they are changed by written amendment of the Agreement modified in writing to incorporate such changes.
- B. All tasks hereunder are to be performed on a "best effort" basis with the full completion of all tasks as the goal which Consultant shall seek, with all due diligence, to attain. Any changes to tasks hereunder shall be mutually agreed to and include provisions for resulting schedule and cost adjustments.

## 17) PUBLICATIONS

- A. No report, information, or other data given to or prepared or assembled by Consultant pursuant to this Agreement, shall be made available to any individual or organization by Consultant without the prior written approval of EDCTC.
- B. Any and all reports published by Consultant pursuant to this Agreement shall acknowledge that it was prepared in cooperation with EDCTC.
- C. Articles, reports, or works reporting on the work provided for herein or on portions thereof which are published by Consultant shall contain in the forward, preface, or footnote, the following statement:

"The contents of this report reflect the views of the author who is responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of EDCTC. This report does not constitute a standard, specification, or regulation."

**18) HEADINGS**

The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.

**19) CONVICT LABOR**

In connection with the performance of work under this Agreement, Consultant agrees not to employ any person undergoing sentence of imprisonment.

**20) INDEMNIFICATION**

Consultant specifically agrees to indemnify, defend, and hold harmless EDCTC, its directors, officers, members, agents, and employees (collectively the "Indemnitees") from and against any and all actions, claims, demands, losses, costs, expenses, including reasonable attorneys' fees and costs, damages, and liabilities (collectively "Losses") arising out of or in any way connected with the performance of this Agreement, excepting only Losses caused by the sole, active negligence or willful misconduct of an Indemnitee. Consultant shall pay all costs and expenses that may be incurred by EDCTC in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this Section shall survive the expiration, termination, or assignment of this Agreement.

**21) OWNERSHIP OF DOCUMENTS; PERMISSION**

- A. Consultant agrees that all work products, including, but not limited to, original documents, methodological explanations, computer programs, drawings, designs, reports and other written materials generated in the performance of this Agreement shall belong to and become the sole property of EDCTC; provided that Consultant may retain file copies of said work products. The creation of additional copies of work products, not otherwise provided for herein, shall be the responsibility of EDCTC.
- B. Consultant represents and warrants that all materials used in the performance of this Agreement, including, without limitation, all computer software materials and all written

materials, are either produced and owned by Consultant or that all required permissions and license agreements have been obtained and paid for by Consultant and EDCTC is free to use, reuse, publish or otherwise deal with all such materials or work products except as otherwise specifically provided in this Agreement. Consultant shall defend, indemnify, and hold harmless EDCTC and its directors, officers, employees, and agents, from any claim, loss, damage, cost, liability, or expense to the extent of any violation or falsity of the foregoing representation and warranty.

- C. If Consultant is permitted copy rights, the Federal Highway Administration, Caltrans, and EDCTC shall have the royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, all work products generated in the performance of this Agreement for government purposes.

## 22) NOTICES

- A. Notices shall be sufficient hereunder if personally delivered to EDCTC or Consultant or if sent by the United States Postal Service postage prepaid, addressed as follows:

Woodrow Deloria  
 Executive Director  
 El Dorado County Transportation Commission  
 2828 Easy Street, Suite 1  
 Placerville, CA 95667  
 Phone: (530) 642-5260  
 E-mail: wdeloria@edctc.org

***INSERT CONTRACT ADMIN, COMPANY NAME, ADDRESS, ETC.***

- B. Nothing herein above shall prevent either EDCTC or Consultant from personally delivering any such notices to the other.

## 23) WAIVERS

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of EDCTC to enforce at any time the provisions of this Agreement or to require at any time performance by the Consultant of these provisions, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of EDCTC to enforce these provisions.

## 24) LITIGATION

Consultant shall notify EDCTC immediately of any claim or action undertaken by it or against it that affects or may affect this Agreement or EDCTC, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of EDCTC.

## 25) NATIONAL LABOR RELATIONS BOARD CERTIFICATION

Consultant, by signing this Agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued

against Consultant within the immediately preceding two-year period because of Consultant’s failure to comply with an order of a federal court which orders Consultant to comply with an order of the National Labor Relations Board (Public Contract Code § 10296).

**26) AMERICANS WITH DISABILITIES ACT (ADA) of 1990**

By signing this Agreement, Consultant assures EDCTC that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability. Consultant also assures EDCTC that it complies with the U.S. DOT implementing regulations 49 CFR parts 27, 37 and 38, as well as all applicable regulations and guidelines issued pursuant to the ADA.

**27) COMPLIANCE WITH NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY LAWS**

- A. It is EDCTC’s policy to comply with state and federal laws and regulations including Title VI of the Civil Rights Act of 1964, Americans with Disabilities Act of 1990 (ADA) and other federal discrimination laws and regulations, as well as the Unruh Civil Rights Act of 1959, the California Fair Employment and Housing Act, and other California State discrimination laws and regulations. EDCTC does not discriminate on the basis of race, color, sex, creed, religion, national origin, age, marital status, ancestry, medical condition, disability, sexual orientation or gender identity in conducting its business. EDCTC prohibits discrimination by its employees, contractors and consultants.
- B. Consultant assures EDCTC that it complies with, and that Consultant will require that its subcontractors comply with, the following non-discrimination and equal opportunity laws. Any failure by Consultant to comply with these provisions shall constitute a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as EDCTC may deem appropriate.
  - 1. Consultant and its subcontractors shall comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., with U.S. D.O.T. regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act”, 49 C.F.R. Part 21, and with any applicable implementing federal directives that may be issued.
  - 2. Consultant and its subcontractors shall comply with all applicable equal employment opportunity (EEO) provisions of 42 U.S.C. §§ 2000e, implementing federal regulations, and any applicable implementing federal directives that may be issued. Consultant and its subcontractors shall ensure that applicants and employees are treated fairly without regard to their race, color, creed, sex, disability, age, or national origin.
  - 3. Consultant and its subcontractors will not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religion, national origin, physical disability, mental disability, medical condition, age or marital status. Consultant and its subcontractors will insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and

harassment. Consultant and its subcontractors will comply with all applicable federal and state employment laws and regulations including, without limitation, the provisions of the California Fair Employment and Housing Act (Government Code § 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §§ 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

4. Consultant will include the non-discrimination and equal employment opportunity provisions of this section (provisions B.1 through B.3 above) in all contracts to perform work funded under this Agreement.

## 28) DRUG-FREE CERTIFICATION

By signing this Agreement, Consultant hereby certifies under penalty of perjury under the laws of the State of California that Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, et seq.) and will provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.
- B. Establish a Drug-Free Awareness Program to inform employees about:
  1. The dangers of drug abuse in the workplace;
  2. The person's or the organization's policy of maintaining a drug-free workplace;
  3. Any available counseling, rehabilitation, and employee assistance programs; and
  4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Every employee of Consultant who works under this Agreement shall:
  1. Receive a copy of Consultant's Drug-Free Workplace Policy Statement; and
  2. Agree to abide by the terms of Consultant's Statement as a condition of employment on this Agreement.

## 29) UNION ORGANIZING

By signing this Agreement, Consultant hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.

- A. Consultant will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.

- B. Consultant will not meet with employees or supervisors on EDCTC or state property if the purpose of the meeting is to assist, promote or deter union organizing, unless the property is equally available to the general public for meetings.

### **30) POLITICAL REFORM ACT COMPLIANCE**

Consultant is aware and acknowledges that certain contractors that perform work for governmental agencies are "consultants" under the Political Reform Act (the "Act") (Government Code § 81000, et seq.) and its implementing regulations (2 California Code of Regulations § 18110, et seq.). Consultant agrees that any of its officers or employees deemed to be "consultants" under the Act by EDCTC, as provided for in the Conflict of Interest Code for EDCTC, shall promptly file economic disclosure statements for the disclosure categories determined by EDCTC, to be relevant to the work to be performed under this Agreement and shall comply with the disclosure and disqualification requirements of the Act, as required by law.

### **31) SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

### **32) INTEGRATION AND MODIFICATIONS**

This Agreement represents the entire understanding of EDCTC and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by EDCTC and Consultant.

### **33) PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS**

A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. 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 Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### **34) ASSIGNMENT**

The contract will require the successful proposer to agree that by execution of the contract, or any subcontract awarded by the successful proposer, that proposer or any subcontractor offers and agrees to assign and thereby will assign to EDCTC all rights, title, and interest in and to all causes of action such proposer or subcontractor may have under section 4 of the Clayton Act (15 USC section 15) or under the Cartright Act (Chapter 2 or Part 2 of Division 7 of the Business and Professions Code, commencing with section 16700), arising from purchases of goods, services, or materials pursuant to this contract or subcontract. This assignment shall be made and shall become effective upon execution of the contract.

### **35) COMPLIANCE WITH LAWS**

Consultant shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders and decrees. Consultant warrants and represents to EDCTC that Consultant shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession or are necessary and incident to the performance of the services and work Consultant performs under this Agreement. Consultant shall provide written proof of such licenses, permits, insurance and approvals upon request by EDCTC. EDCTC is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

### **36) CAMPAIGN CONTRIBUTION DISCLOSURE**

Consultant has complied with the campaign contribution disclosure provisions of the California Levine Act (Government Code § 84308) and has completed the Levine Act Disclosure Statement attached hereto as Exhibit "B."

### **37) COSTS AND ATTORNEYS' FEES**

If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and reasonable attorneys' fees.

### **38) AUTHORITY**

Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.

### **39) COUNTERPARTS**

This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

### **40) DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITIES**

Consultant certifies and warrants that neither the Consultant firm nor any owner, partner, director, officer, or principal of Consultant, nor any person in a position with management responsibility or responsibility for the administration of funds:



- A. Is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency.
- B. Has within the three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- C. Is presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commissions of any of the offenses enumerated in paragraph "b" above.
- D. Has within a three-year period preceding this Agreement, had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.
- E. Consultant shall complete the Debarment Certification Form, attached hereto as Exhibit D.

#### **41) PROHIBITION OF EXPENDING STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. Consultant certifies, to the best of his or her knowledge or belief, that:
  - 1. No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.
  - 2. If any funds other than Federally 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 any employee of a Member of Congress in connection with this Federal Agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this Agreement was entered into. Submission of this certification is a prerequisite for making or entering into this Agreement 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.

- C. Consultant also agrees by signing this Agreement 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 sub-recipients shall certify and disclose accordingly.

## 42) CERTIFICATES AND ASSURANCES

- A. Consultant shall comply, as applicable, with the FHWA "Transportation Planning Process Certification" requirements in accordance with 23 CFR 450.334 and Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59; SAFETEA-LU) and its successors thereto. This certification is provided annually by FHWA and FTA. It may include but is not limited to:
- I. 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart;
  - II. In nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506 (c) and (d)) and 40 CFR part 93;
  - III. Title VI of the Civil Rights Act of 1964 and the Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794;
  - IV. Section 1101(b) of the SAFETEA-LU (Pub. L. 109-59) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;
  - V. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and 49 CFR parts 27, 37, and 38;
  - VI. 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;
  - VII. 23 CFR part 230, regarding the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;
  - VIII. The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
  - IX. Section 324 of title 23 U.S.C. regarding the prohibition of discrimination based on gender; and
  - X. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.
- B. If project is funded with Federal Transit Assistance funds, Consultant shall comply with the "Certifications and Assurances for FTA Assistance", including "Certifications and Assurances Required of Each Applicant" and the "Lobbying Certification" in compliance with 49 U.S.C. Chapter 53, published annually in EDCTC's OWP.

The 2013 FTA Certifications includes the following areas under “Assurances Required of Each Applicant:”

1. Authority of Applicant and its Representatives
  2. Standard Assurances
  3. Intergovernmental Review Assurance
  4. Suspension and Debarment Certification
  5. U.S. Office of Management and Budget Assurances in SF-424B and SF-424D
- C. Consultant shall require its Subconsultant(s) to comply with these Certifications, and agrees to furnish documentation to EDCTC to support this requirement that all of its agreements with Subconsultant(s) contain provisions requiring adherence to this section in its entirety.

#### **43) DISADVANTAGED BUSINESS ENTERPRISE (DBEs) PARTICIPATION**

This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations (CFR) entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Financial Assistance Programs.” DBE’s and other small businesses, as defined in Title 49 CFR Part 26, are encouraged to participate in the performance of agreements financed in whole or in part with federal funds; however, DBE participation is not a condition of award. In any event, Consultant shall complete the DBE Information Form attached to this Agreement as Exhibit “E” so that EDCTC may compile statistics for federal reporting purposes.

- A. Non-Discrimination: Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Consultant or subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation-assisted contracts. Failure by Consultant or subcontractor 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 EDCTC may deem appropriate. Each subcontract signed by Consultant in the performance of this Agreement must include this nondiscrimination clause.
- B. Prompt Progress Payments to DBE and Non-DBE Subcontractors: A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-day rule is applicable unless a longer period is agreed to in writing. 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 Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual,

- administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- C. Prompt Payment of Withheld Funds to Subcontractors: The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30-days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Pursuant to 49 CFR Section 26.29, a subcontractor's work will be deemed satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by EDCTC. If EDCTC makes an incremental acceptance of a portion of the work hereunder, the work of a subcontractor covered by that acceptance will be deemed satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- D. Records: Consultant shall maintain records of all subcontracts entered into with certified DBE subcontractors and records of materials purchased from certified DBE suppliers. The records shall show the name and business address of each DBE subcontractor or vendor and the total dollar amount actually paid each DBE subcontractor or vendor. The records shall show the date of payment and the total dollar figure paid to all firms. Upon completion of the contract, a summary of these records shall be prepared and submitted to EDCTC.
- E. Termination of a DBE: In conformance with 49 CFR Section 26.53:
1. Consultant shall not terminate a listed DBE subcontractor unless Consultant has received prior written authorization from EDCTC's Project Manager. EDCTC's Project Manager will authorize termination only if the Project Manager determines that Consultant has good cause to terminate the DBE subcontractor. As used in this Section, "good cause" includes those circumstances listed in 49 CFR Section 26.53(f)(3).
  2. Prior to requesting EDCTC's authorization to terminate and/or substitute a DBE subcontractor, Consultant shall give notice in writing to the DBE subcontractor, with a copy to EDCTC, of its intent to request termination and/or substitution, and the reason for the request. The DBE subcontractor shall have five days to respond to the Consultant's notice and state the reasons, if any, why it objects to the proposed termination of its subcontract and why EDCTC should not approve the Consultant's action. EDCTC may, in instances of public necessity, approve a response period shorter than five days.
  3. If a DBE subcontractor is terminated or fails to complete its work for any reason, Consultant shall be required to make good faith efforts to replace the original DBE subcontractor with another DBE.

- F. DBE Certification and Decertification: If a DBE subcontractor is decertified during the life of the contract, the decertified subcontractor shall notify Consultant in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the contract, the subcontractor shall notify Consultant in writing with the date of certification. Consultant shall then provide to the Project Manager of EDCTC written documentation indicating the DBE's existing certification status.
- G. Noncompliance by Consultant. Consultant's failure to comply with any requirement of this Section is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as EDCTC may deem appropriate.

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

#### **44) NON-DISCRIMINATION CLAUSE**

- A. In the performance of work undertaken pursuant to this agreement, Contractors shall not, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family and medical care leave, and denial of pregnancy disability leave.
- B. Contractors and subcontractors shall ensure, that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. EDCTC shall comply, and ensure that its contractors and subcontractors shall comply, with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this agreement by reference and made a part hereof as if set forth in full.
- C. Contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements.
- D. Contractors and subcontractors shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR Part 21, and 23 CFR Part 200 are made applicable to this agreement by this reference.
- E. Contractors and subcontractors will permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by STATE to investigate compliance with this Section 44.

#### **45) EDCTC CONTRACT ADMINISTRATOR**

**INSERT PROJECT MANAGER'S NAME**

Senior Transportation Planner  
El Dorado County Transportation Commission  
2828 Easy Street, Suite 1  
Placerville, CA 95667  
(530) 642- [REDACTED]

**INSERT EMAIL ADDRESS**

**46) FINAL PRODUCT**

Consultant will provide six hard copies and six electronic copies (on compact discs) of the final product to EDCTC. Final product must be consistent with deliverables identified in the approved scope of work. The final product is funded through the **INSERT FUNDING SOURCE** grant program. Therefore, the final product shall credit the **INSERT FUNDING AGENCY**'s financial participation on the cover or title page.

**47) CONTRACT CLOSEOUT**

Consultant must complete all work, submit all copies of the final product, all deliverable(s) no later than **INSERT DATE**. Time extensions are not allowed as grant funds lapse after **INSERT DATE**. Final invoice must be submitted to EDCTC by **INSERT DATE**.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

El Dorado County Transportation Commission

Consultant

\_\_\_\_\_  
Woodrow Deloria  
Executive Director

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
Project Budget

## EXHIBIT B INVOICING AND ALLOWABLE CHARGES

This project is funded by a **state or federal** program subject to review by Caltrans Audits and Investigations. The following are important items to note in this contract regarding invoicing and allowable charges:

- Section 4 B Compensation: Hourly Rates must be billed as shown on Exhibit "A" Project Budget. The rates will remain constant for the term of the contract.
- Section 4 B Compensation: Changes to staff assigned must be approved prior to the employee starting work on the project.
- The hourly rate for new staff assigned to the project must be consistent with the Exhibit "A" billing rates.
- Section 4 B Compensation: Documentation must be provided for all travel, phone, copying or other out-of-pocket expenses.
- Section 4 B Compensation: Travel expenses must not exceed the rates in the Caltrans Division of Accounting Travel Guide.
  - Mileage will be reimbursed at the IRS approved rate.
  - Travel by any means other than privately owned or company vehicle (i.e. Lyft, Uber, Zipcar, Rental, taxi) must be pre-approved.
  - Meals will be reimbursed based on the following:**
    - All meals must have a detailed receipt
    - Breakfast – Actual expense up to \$7 only if travel begins at or before 6:00 am
    - Lunch – Actual expense up to \$11 only if travel begins at or before 11:00 am
      - Lunch is not reimbursable on trips less than 24 hours
    - Dinner - Actual expense up to \$23 only if trip begins at or before 5:00 pm
    - No alcoholic beverages allowed
- Section 4 E Retention: Ten percent (10%) retention will be withheld from every invoice until project completion.
- Markup on subconsultant invoices is not allowed.

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Authorized Signature for Consultant



**EXHIBIT C**  
**LEVINE ACT DISCLOSURE STATEMENT**

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract. Please refer to the attachment for the complete statutory language.

Current Commissioners of the EDCTC: (as of 1/1/17; check for current list)

Patty Borelli	Wendy Thomas	John Clerici	John Hidahl
Shiva Frentzen	Mike Ranalli	Brian Veerkamp	Trisha Wilkins (Alternate)

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any EDCTC Commissioner(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

\_\_\_ YES      \_\_\_ NO

If yes, please identify the Commissioner(s): \_\_\_\_\_

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any EDCTC Commissioner(s) in the three months following the award of the contract?

\_\_\_ YES      \_\_\_ NO

If yes, please identify the Commissioner(s): \_\_\_\_\_

Answering yes to either of the two questions above does not preclude EDCTC from awarding a contract to your firm. It does, however, preclude the identified Director(s) from participating in the contract award process for this contract.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
(SIGNATURE OF AUTHORIZED OFFICIAL)

\_\_\_\_\_  
(TYPE OR WRITE APPROPRIATE NAME, TITLE)

\_\_\_\_\_  
(TYPE OR WRITE NAME OF COMPANY)

**California Government Code Section 84308**

- (a) The definitions set forth in this subdivision shall govern the interpretation of this section.
- (1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
  - (2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.
  - (3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.
  - (4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.
  - (5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.
  - (6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.
- (b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.
- (c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or

other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7. If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

- (d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.
- (e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

For more information, contact the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814, (916) 322-5660.

**EXHIBIT D**

**DEBARMENT CERTIFICATION FORM**

The Consultant certifies that, neither the Consultant firm nor any owner, partner, director, officer, or principal of the Consultant, nor any person in a position with management responsibility or responsibility for the administration of federal funds:

- (a) Is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency;
- (b) Has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or
- (d) Has within a three-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

The Consultant further certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

By \_\_\_\_\_  
Authorized Signature for Consultant

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

\_\_\_\_\_  
Consultant Firm Name and Type of Entity (*Corp., Partnership, Sole Proprietor*)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip Code

\_\_\_\_\_  
Area Code/Telephone Number and E-Mail Address

## EXHIBIT E

### CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: \_\_\_\_\_ 2. Contract DBE Goal: \_\_\_\_\_
3. Project Description: \_\_\_\_\_
4. Project Location: \_\_\_\_\_
5. Consultant's Name: \_\_\_\_\_ 6. Prime Certified DBE:  7. Total Contract Award Amount: \_\_\_\_\_
8. Total Dollar Amount for **ALL** Subconsultants: \_\_\_\_\_ 9. Total Number of **ALL** Subconsultants: \_\_\_\_\_

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
<b>Local Agency to Complete this Section</b>		<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>	\$
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____  Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			%
23. Local Agency Representative's _____ 24. Date _____  25. Local Agency Representative's _____ 26. Phone _____  27. Local Agency Representative's _____ Title		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.  15. Preparer's Signature _____ 16. Date _____  17. Preparer's _____ 18. Phone _____  19. Preparer's _____ Title	

**DISTRIBUTION:** 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

**INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT****CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 4. Project Location** - Enter the project location as it appears on the project advertisement.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
- 8. Total Dollar Amount for ALL Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 9. Total number of ALL subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 10. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 12. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 13. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 14. Total Claimed DBE Participation - \$:** Enter the total dollar amounts entered in the "DBE Dollar Amount" column. **%:** Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 15. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 16. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 17. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 18. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 19. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

**LOCAL AGENCY SECTION**

- 20. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 22. Contract Execution Date** - Enter the date the contract was executed.
- 23. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 24. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 25. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 26. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 27. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

**EXHIBIT F**

**Prompt Payment Certification  
Federal-Aid Projects  
(Exhibit F is required if funding is Federal)**

In accordance with the requirements of the prompt payment clause under Sections 33 and 42 B and C, submit this certification form to the El Dorado County Transportation Commission (EDCTC) within 30 days after receiving payments from EDCTC. The EDCTC may withhold payments or suspend work for failure to submit this form or provide prompt payment in accordance with the contract.

\_\_\_\_\_  
Date of Payment to Consultant

\_\_\_\_\_  
Prompt Payment Certification Due to EDCTC

**Certification**

*"I certify that to the best of my knowledge and with the exception of those subcontractors listed below, all subcontractors have been paid in accordance with the contract, 10 days after receiving payment for the work performed by the subcontractor."*

\_\_\_\_\_  
Consultant/Prime Contractor

\_\_\_\_\_  
Project

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

The following subcontractors have not been paid for reasons listed:

Name of Subcontractor	*Reason for Non-Payment

\*Only reasons based on dispute of subcontractor noncompliance may be accepted.

Return this form by mail, email or fax to:

EDCTC  
2828 Easy Street, Suite 1  
Placerville, CA 95667  
Email: [kthompson@edctc.org](mailto:kthompson@edctc.org)  
Fax: (530) 642-5266