

PW13972

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT ("Agreement" or "Contract") is made and entered into this 27th day of July, 2015.

BY AND BETWEEN

COUNTY OF LOS ANGELES, a body corporate and politic, hereinafter referred to as "County",

AND

KLEINFELDER, INC.,
hereinafter referred to as "Consultant",

County has determined that it is a matter of public convenience and necessity to engage the specialized services of Consultant to provide as-needed materials testing, pavement mix design, and inspection services on various federal and non-federal funded projects throughout the Los Angeles County and other neighboring jurisdictions.

Consultant is a firm of recognized professionals with extensive experience and training in its specialized field. In rendering these services, Consultant shall, at a minimum, exercise the ordinary care and skill expected of the average practitioner in Consultant's profession acting under similar circumstances. The work will involve the performance of professional, expert, and/or technical services of a temporary or part-time duration; and

The parties hereto do mutually agree as follows:

1. Definition

County means either County; County, as agent for such joint powers authority or nonprofit corporation as may be involved in the issuance of bonds, certificates of participation, or other evidences of indebtedness to finance the work contemplated herein; or said joint powers authority or nonprofit corporation.

2. Consultant's Services

The scope of work shall be as outlined in **Attachment 1** dated January 5, 2015, which is attached hereto and incorporated into the Agreement by this reference. No work shall commence on this project until a written Notice to Proceed is issued by County. County does not guarantee or promise that any work will be assigned to Consultant under this Contract until a written Notice to Proceed is issued by the County.

3. Consideration

In consideration of the performance by Consultant in a manner satisfactory to County of the services described in Article 2 above, including receipt and acceptance of such work by Director of the County of Los Angeles Department of Public Works (hereinafter called Director), County agrees to pay Consultant a maximum not to exceed fee of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) annually and according to the Consultant's Cost Proposal attached to this Agreement as **Attachment 3**. However, the combined expenditure for a given year may not exceed \$1,250,000 for all six contracts in this Program as referenced in the County Board of Supervisors letter, dated and adopted February 10, 2015 (attached). **The total maximum contract amount for any one firm will not exceed \$3,500,000 throughout the entire duration of the Contract for Federal funded projects.**

County shall compensate Consultant as follows:

- a. Monthly payments for the work accomplished shall be made upon verification and acceptance of such work by Director, as stated in **Attachment 1** dated January 5, 2015, up to a maximum of \$1,250,000 as described above. No payments shall be made prior to verification and approval by Director of any work. No payments shall be made prior to execution by County of this Contract. No work shall be performed by Consultant, and no payment obligation shall be incurred by County, prior to the execution of this Contract by County. Consultant shall be paid on an hourly basis according to the job title and hourly rate of each employee performing the work as set forth in the Consultant's Cost Proposal (Attachment 3). Monthly invoices shall be accompanied by an analysis of work completed for the invoice period. This analysis shall be prepared in a format satisfactory to Director.
- b. Subject to the maximum not to exceed fee of \$1,250,000 annually and as described above, Supplemental Consultant Services may be required at County' discretion, upon prior written authorization by Director, and will be based on Consultant's Cost Proposal attached to this Agreement as Attachment 3.
- c. If requested by the Consultant, the contract (hourly, daily, monthly, etc.) amount may, at the sole discretion of the County, be increased at the time of contract renewal option, if option year is exercised by County based on the most recently published percentage change in the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange County Area

for the 12-month period preceding the contract renewal date, which shall be the effective date for any COLA. However, any increase shall not exceed the general salary movement granted to County employees as determined by the Chief Executive Officer as of each July 1 for the prior 12-month period. Furthermore, should fiscal circumstances ultimately prevent the Board of Supervisors from approving any increase in County employee salaries, no COLA will be granted. Upon approval of a COLA, a notification will be sent to the Consultant.

- d. In the event that budget reductions occur in any fiscal year covered by this Agreement that may cause County to consider terminating this Agreement, the County may attempt to renegotiate the terms of this Agreement to reduce the cost thereof in lieu of termination under the termination provisions of the Agreement.
- e. All funds for payment of services rendered after June 30 of the current fiscal year are subject to County's legislative appropriation for this purpose. Payments for services following June 30 of each fiscal year are dependent upon the same action. Notwithstanding any other provision of this Agreement, County shall not be obligated for Consultant's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until County's Board of Supervisors appropriates funds for this Agreement in County's budget for each future fiscal year, and in the event that funds are not appropriated for this Agreement, this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. County shall notify Consultant in writing of such nonappropriation of funds at the earliest possible date.
- f. Consultant will not be required to perform services which will exceed the Contract amount, scope of work, and Contract dates without amendment to this Agreement.

Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by County's Project Manager.

Consultant will not proceed with additional services without prior written authorization. Consultant will not be paid for any expenditures beyond the Contract amount stipulated without amendment to this Agreement.

- g. Consultant will notify County when the Contract amount has been incurred up to 75% of the Contract total.
- h. As all projects will be located within the County of Los Angeles and neighboring counties, mileage and travel-related expenses will not be reimbursed unless pre-authorized by County Project Manager. If mileage is pre-authorized by County Project Manager, mileage will be reimbursed at the current IRS rate.
- i. Allowable Costs and Payments:
 - a. Specific projects will be assigned to Consultant through issuance of Task Orders.
 - b. After a project to be performed under this Contract is identified by County, County will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County Project Coordinator. The draft Task Order will be delivered to Consultant for review. Consultant shall return the draft Task Order within ten (10) calendar days along with a cost estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and Consultant.

In the case when a project is federally funded, County will prepare a mini-RFP according to the Two-Step RFP method as specified in Caltrans Local Assistance Procedures Manual to be circulated to all six on-call Consultants. The mini-RFP will specify project scope of work, project deliverables, schedules, duration, evaluation criteria, and DBE goal. County will evaluate all six on-call Consultants' proposals and select the first ranked Consultant to negotiate Task Order cost.

Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in Consultant's Cost Proposal.
 - c. Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Attachment 3). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract, with the exception of Paragraph 3(c) above.

- d. In addition, Consultant will be reimbursed for incurred (actual) direct costs other than salary costs that are in the Cost Proposal and identified in the Cost Proposal and in the executed Task Order.
- e. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal, and shall be limited as specified in Paragraph 3(h), above.
- f. When milestone cost estimates are included in the approved Cost Proposal, Consultant shall obtain prior written approval for a revised milestone cost estimate from the Project Manager before exceeding such estimate.
- g. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- h. Consultant shall not commence performance of work or services until this Contract has been approved by County, and notification to proceed has been issued by County's Project Manager. No payment will be made prior to approval or for any work performed prior to approval of this Contract.
- i. A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.

The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Contract.

- j. Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by County's Project Manager of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Contract number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article 46, Equipment Purchase, of this Contract, must be reimbursed by Consultant prior to the

expiration or termination of this Contract. Invoices shall be mailed to County's Project Manager at the following address:

*COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS/GREG JOHNSON
900 South Fremont Avenue, 4th Floor, Alhambra, CA 91802*

- k. The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by Contract amendment.

If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.

Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.

- l. The total amount payable by County for all Task Orders resulting from this Contract shall not exceed \$1,250,000 annually. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Contract through Task Orders.
- m. All subcontracts in excess of \$25,000 shall contain the above provisions.
- n. There shall be no change in Consultant's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this Contract without prior written approval by County's Project Manager.
- o. Consultant shall be required to complete and submit the following forms:
- DAS140 Public Works Contract Award Information
 - Checklist of Labor Law Requirements to the Contract
 - Fringe Benefit Statements

4. Equipment and Supplies

Consultant agrees to furnish all necessary equipment and supplies used in the performance of the aforementioned services at Consultant's sole cost and expense.

5. County's Responsibility

County will make available drawings, specifications, and other records as available in County Department of Public Works' file. Notwithstanding the foregoing, County does not represent the accuracy of the content of said materials.

6. County's Representative

Director, or Director's authorized representative, shall represent County in all matters pertaining to the services to be rendered pursuant to this Agreement.

7. Performance Period, Term, and Termination

a. This Contract shall go into effect on July 27, 2015, contingent upon approval by County, and Consultant shall commence work after notification to proceed by County's Project Manager. The Contract shall end on July 26, 2018, unless extended by Contract amendment.

b. Consultant is advised that any recommendation for Contract award is not binding on County until the Contract is fully executed and approved by County.

c. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this Contract, the terms of the Contract shall be extended by Contract amendment.

d. At the sole discretion of the County, this Agreement may be extended for two additional one-year terms, not to exceed a total contract period of five years.

e. Notwithstanding the above-referenced expiration date, if the County has authorized the Consultant to perform services on a given project prior to the stated expiration date, but ultimately such services are not completed by such stated expiration date, the expiration date of the Agreement shall be automatically extended until such services are completed to the satisfaction of the County, and automatically extended for that purpose only. The provision in this paragraph 7e applies to non-federal funded projects only.

f. County reserves the right to terminate this Contract upon thirty (30) calendar days written notice to Consultant with the reasons for termination stated in the notice.

County may terminate this Contract with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this Contract with Consultant, County shall pay Consultant the sum due to Consultant under this Contract prior to termination, unless the cost of completion to County exceeds the funds remaining in the Contract. In which case the overage shall be deducted from any sum due Consultant under this contract and the balance, if any, shall be paid to Consultant upon demand.

The maximum amount for which the Government shall be liable if this Contract is terminated is 0 dollars.

In the event of any such termination by County, Consultant shall provide to County a termination report consisting of all drawings, specifications, reports, and data accumulated to the date of such termination in a form capable of assimilation for use by County.

8. Ownership of County Materials

a. Consultant and County agree that all materials, including but not limited to, designs, specifications, techniques, plans, reports, deliverables, data, photographs, diagrams, maps, images, graphics, text, videos, advertising, software, source codes, website plans and designs, interactive media, drafts, working papers, outlines, sketches, summaries, edited and/or unedited versions of deliverables, and any other materials or information developed under this Agreement and any and all Intellectual Property rights to these materials, including any copyrights, trademarks, service marks, trade secrets, trade names, unpatented inventions, patent applications, patents, design rights, domain name rights, know-how, and any other proprietary rights and derivatives thereof, are and/or shall be the sole property of County (hereafter collectively, "County Materials"). Consultant hereby assigns and transfers to County all Consultant's right, title and interest in and to all such County Materials developed under this Agreement.

Notwithstanding such County ownership in the County Materials, Consultant may retain possession of working papers and materials prepared by Consultant under this Contract. During and for a minimum of five years subsequent to the term of this Contract, County shall have the right to inspect any and all such working papers and materials, make copies thereof and use the working papers and materials and the information contained therein.

b. Consultant shall execute all documents requested by County and shall perform all other acts requested by County to assign and transfer to, and vest in County, all Consultant's right, title and interest in and to the County Materials, including, but not limited to, any and all copyrights, trademarks, service marks, trade names, unpatented inventions, patent applications, patents, design rights, domain name rights, know-how, and any other proprietary rights and derivatives thereof resulting from this Contract. County shall have the right to register all applicable copyrights, trademarks and patents in the name of the County of Los Angeles. Further, County shall have the right to assign, license, or otherwise transfer any and all County's rights, title and interest, including, but not limited to copyrights, trademarks, and patents, in and to the County Materials.

c. Consultant represents and warrants that the County Materials prepared herein under this Agreement, are the original work of Consultant and do not infringe upon any Intellectual Property or proprietary rights of third parties. For those portions of the County Materials that are not the original work of Consultant, Consultant represents and warrants that it has secured all appropriate licenses, rights, and/or permission from appropriate third parties to include such materials in the County Materials.

Consultant shall defend, indemnify and hold County harmless against any claims by third parties based on infringement of copyright, patent, trade secret, trademark, or any other claimed Intellectual Property or proprietary right, arising from County's use of County Materials created and/or prepared by Consultant. Consultant will also indemnify and defend at its sole expense, any action brought against County based on a claim that County Materials furnished hereunder by Consultant and used within the scope of this Agreement infringe any copyright, patent, trade secret, trademark, or any other claimed intellectual property or proprietary right of third parties, and Consultant will pay any costs, damages and attorney's fees incurred by County. County will notify Consultant promptly and in writing of any such action or claim and will permit Consultant to fully participate in the defense thereof.

d. Consultant shall affix the following notice to all County Materials: "© Copyright 2015 (or such other appropriate date of first publication), County of Los Angeles. All Rights Reserved." Consultant shall affix such notice on the title page of all images, photographs, documents and writings, and otherwise as County may direct.

e. County shall also have the sole right to control the preparation, modification, and revisions to, all acknowledgment and/or attribution language for all County Materials resulting from this Agreement. County will, however, honor requests by Consultant seeking removal of all acknowledgment and/or attribution language relating to the Consultant, should Consultant no longer wish to receive attribution for its work on the County Materials.

f. If directed to do so by County, Consultant will place the County name and County logo on County Materials developed under this Agreement. Consultant may not, however, use the County name and County logo on any other materials prepared or developed by Consultant that falls outside the scope of this Agreement.

g. Consultant is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by County of the machine-readable information and data provided by Consultant under this Contract; further, Consultant is not liable for claims, liabilities, or losses arising out of, or connected with any use by County of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by Consultant.

h. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts for Federal-aid contracts).

i. County may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and

to authorize others to use, the work for government purposes.

j. Any subcontract in excess of \$25,000 entered into as a result of this Contract, shall contain all of the provisions of this Article.

9. Indemnification and Insurance

The Indemnification and Insurance Provisions are set forth in Attachments 2 of this Agreement.

10. Anti-Discrimination

The following provisions are required by Section 4.32.010 et seq. of the Los Angeles County Code:

Consultant certifies and agrees that all persons employed by Consultant, its affiliates, subsidiaries, or holding companies are, and will be, treated equally by Consultant without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with state and Federal anti-discrimination laws. Consultant further certifies and agrees that it will deal with its subconsultants, bidders, and vendors without regard to or because of race, religion, ancestry, national origin, or sex. Consultant agrees to allow access to its employment records during regular business hours to verify compliance with the foregoing provisions when so requested by County.

Consultant specifically recognizes and agrees that if County finds that any of the foregoing provisions have been violated, the same shall constitute a material breach of contract upon which County may determine to cancel, terminate, or suspend the Agreement. While County reserves the right to determine individually that the anti-discrimination provision of the Agreement has been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Consultant has violated state or Federal anti-discrimination laws shall constitute a finding by County that Consultant has violated the anti-discrimination provisions of the Agreement.

At its option, and in lieu of canceling, terminating, or suspending the Contract, County may impose damages for any violation of the anti-discrimination provisions of this paragraph, in the amount of Two Hundred Dollars (\$200) for each violation found and determined. County and Consultant specifically agree that the aforesaid amount shall be imposed as liquidated damages, and not as a forfeiture or penalty. It is further specifically agreed that the aforesaid amount is presumed to be the amount of damages sustained by reason of any such violation, because from the circumstances and the nature of the violation, it is impracticable and extremely difficult to fix actual damages.

11. Independent Consultant Status

This Agreement is by and between County of Los Angeles and Consultant and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Consultant.

Consultant understands and agrees that all persons furnishing services to County pursuant to this Agreement are, for purposes of Workers' Compensation liability, employees solely of Consultant and not of County.

Consultant shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any person for injuries arising from, or connected with, services performed on behalf of Consultant pursuant to this Agreement.

12. County's Quality Assurance Plan and Evaluation of Consultant

County, or its agent, will evaluate Consultant's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing Consultant's compliance with all Contract terms and performance standards. Consultant deficiencies which County determines are severe or continuing, and that may place performance of the Agreement in jeopardy if not corrected, will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by County and Consultant. If improvement does not occur consistent with the corrective action measures, County may terminate this Agreement or impose other penalties as specified in this Agreement. The evaluation together with the report shall be retained as part of the Contract period.

13. Assignment

This Agreement shall not be assigned without the prior written consent of County. Any attempt to assign without such consent shall be void and confer no rights on any third parties.

14. Forum Selection

Consultant hereby agrees to submit to the jurisdiction of the courts of the State of California. The exclusive venue of any action brought by Consultant, on Consultant's behalf or on the behalf of any subconsultant, which arises from this Agreement, or concerns, relates to, or is connected with services performed pursuant to this Agreement, shall be deemed to be in the courts of the State of California located in Los Angeles County, California.

15. Conflict of Interest

a. No County employee in a position to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by Consultant herein, or have any other direct or indirect financial interest in this Agreement.

b. Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this Contract, or any ensuing County construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

c. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Contract.

d. Any subcontract in excess of \$25,000 entered into as a result of this Contract, shall contain all of the provisions of this Article.

16. Prohibition from Involvement in Bidding Process

Consultant understands and agrees that neither it nor its subsidiaries shall be involved in any way in the bidding process on any Request for Proposal or any other solicitation developed or prepared by or with the assistance of Consultant's services rendered pursuant to this Agreement, either as a prime consultant or subconsultant, or as a consultant to any other prime consultant or subconsultant. Any such involvement by Consultant shall result in the rejection by the County of the bid by the prime consultant in question.

17. Lobbying

Consultant and each County lobbyist or County lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by Consultant, shall fully comply with County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of Consultant or any County lobbyist or County lobbying firm retained by Consultant to fully comply with County Lobbyist Ordinance shall constitute a material breach of this Contract, upon which County may immediately terminate or suspend this Contract.

18. Gratuities, Rebates, Kickbacks or Other Unlawful Consideration

It is improper for any County officer, employee, or agent to solicit consideration, in any form, from Consultant with the implication, suggestion, or statement

that Consultant's provision of the consideration may secure more favorable treatment for Consultant in the award of the Agreement or that Consultant's failure to provide such consideration may negatively affect County's consideration of Consultant's submittal. Consultant shall not offer or give, either directly or through an intermediary, consideration, in any form, to a County officer, employee, or agent for the purpose of securing favorable treatment with respect to the award of the Agreement.

Consultant shall immediately report any attempt by a County officer, employee, or agent to solicit such improper consideration. The report shall be made either to County manager charged with the supervision of the employee, or to County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861. Failure to report such a solicitation may result in Consultant's submittal being eliminated from consideration.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

Consultant warrants that this Contract was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the Contract without liability; to pay only for the value of the work actually performed; or to deduct from the Contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

19. Employment of Laid-Off County Employees

Should Consultant, or any subconsultant performing more than \$250,000 of the Contract value, require additional or replacement personnel to perform services under this Agreement other than the performance of a skilled trade, Consultant shall give first consideration for such employment openings to qualified County employees who are targeted for layoff or qualified former County employees who are on a re-employment list.

20. Consultant's Warranty of Adherence to County's Child Support Compliance Program

Consultant acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through contract are in compliance with their court-ordered child, family, and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Consultant's duty under this Contract to comply with all applicable provisions of law, Consultant warrants that it is now in compliance and shall during the term of this Agreement maintain compliance with employment and wage

reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or DISTRICT Attorney Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

Failure of Consultant to maintain compliance with these requirements shall constitute a default by Consultant under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure to cure such default within 90 days of notice by the Los Angeles County Child Support Services Department shall be grounds upon which County Board of Supervisors may terminate this Contract.

21. Consultant's Acknowledgment of County's Commitment to Child Support Enforcement

Consultant acknowledges that County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. Consultant understands that it is County's policy to encourage all County consultants to voluntarily post County's L.A.'s Most Wanted: Delinquent Parents poster in a prominent position at Consultant's place of business.

22. Termination for Improper Consideration

County may, by written notice to Consultant, immediately terminate the right of Consultant to proceed under this Agreement if it is found that consideration, in any form, was offered or given by Consultant, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing the Agreement or securing favorable treatment with respect to the award, amendment, or extension of the Agreement or the making of any determinations with respect to Consultant's performance pursuant to the Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Consultant as it could pursue in the event of default by Consultant.

Consultant shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to County manager charged with the supervision of the employee or to County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

23. Consideration of Hiring GAIN/GROW Program Participants

Should Consultant require additional or replacement personnel after the effective date of this Contract, Consultant shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Consultant's minimum qualifications for the open position. For this purpose, consideration shall mean that the Consultant will interview qualified candidates. County will refer GAIN/GROW participants by job category to Consultant. Consultant shall report all job openings with job requirements to: GAINGROW@dpss.lacounty.gov to obtain a list of qualified GAIN/GROW job candidates.

In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

24. Notice to Employees Regarding the Federal Earned Income Credit

Consultant shall notify its employees, and shall require each subconsultant to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal income tax laws. Such notice shall be provided in accordance with the requirement set forth in Internal Revenue Service Notice 1015.

25. Reduction of Solid Waste

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, Consultant agrees to use recycled-content paper to the maximum extent possible on the project.

26. County Rights

County may employ, either during or after performance of this Agreement, any right of recovery the County may have against the Consultant by any means it deems appropriate including, but not limited to, set-off, action at law or in equity, withholding, recoupment, or counterclaim. The rights and remedies of the County under this Agreement are in addition to any right or remedy provided by California law.

27. Fair Labor Standards Act

Consultant shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless County, its agents, officers, and employees from any and all liability including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law including, but not limited to, the Federal Fair Labor Standards Act

for services performed by Consultant's employees for which County may be found jointly or solely liable.

28. Prevailing Wage Requirements

Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

Any subcontract entered into as a result of this Contract, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

29. Employment Eligibility Verification

Consultant warrants that it fully complies with all Federal statutes and regulations regarding employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in Federal statutes and regulations. Consultant shall obtain, from all covered employees performing services hereunder, all verifications and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. Consultant shall retain such documentation for all covered employees for the period prescribed by law. Consultant shall indemnify, defend, and hold harmless County, its officers, and employees from employer sanctions and any other liability which may be assessed against Consultant or County in connection with any alleged violation of Federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Agreement.

30. Consultant Responsibility and Debarment

a. A responsible consultant is a consultant who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform this contract. It is the County's policy to conduct business only with responsible consultants.

b. Consultant is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Consultant on this or other contracts which indicates that the Consultant is not responsible, the County may, in addition to other remedies provided in the Agreement, debar the

Consultant from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing contracts the Consultant may have with the County.

c. County may debar a consultant if the Board of Supervisors finds, in its discretion, that the consultant has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County; (2) committed an act or omission which negatively reflects on the consultant's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

d. If there is evidence that the consultant may be subject to debarment, the Department will notify the consultant in writing of the evidence which is the basis for the proposed debarment and will advise the consultant of the scheduled date for a debarment hearing before the Contractor Hearing Board.

e. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The consultant and/or the consultant's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the consultant should be debarred, and, if so, the appropriate length of time of the debarment. The consultant and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the County's Board of Supervisors.

f. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board.

g. If the a consultant has been debarred for a period longer than five years, that consultant may, after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the consultant has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.

h. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the consultant has been debarred for a period longer than five years; (2) the debarment has been in effect for at least five years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Consultant Hearing Board pursuant to the same procedures as for a debarment hearing.

The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the County's Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

i. These terms shall also apply to subconsultants of Consultant.

31. Debarment and Suspension Certification

a. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

b. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

c. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

32. Compliance with Jury Service Program

This Agreement is subject to provisions of the County's ordinance entitled Contractor Employee Jury Service (Jury Service Program) as codified in Sections

2.203.010 through 2.203.090 of the Los Angeles County Code.

a. Unless Consultant has demonstrated to the County's satisfaction either that Consultant is not a consultant or contractor as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Consultant qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Consultant shall have and adhere to a written policy that provides that its Employees shall receive from the Consultant, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Consultant or that the Consultant deduct from the Employee's regular pay the fees received for jury service.

b. For purposes of this Section, consultant means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County consultant and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. Employee means any California resident who is a full-time employee of Consultant. Full-time means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Consultant has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Consultant uses any subconsultant to perform services for the County under the Agreement, the subconsultant shall also be subject to the provisions of this Section. The provisions of this Section shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to such agreement.

c. If Consultant is not required to comply with the Jury Service Program when the Contract commences, Consultant shall have a continuing obligation to review the applicability of its exception status from the Jury Service Program, and Consultant shall immediately notify County if Consultant at any time either comes within the Jury Service Program's definition of Consultant or if Consultant no longer qualifies for an exception to the Program. In either event, Consultant shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that Consultant demonstrates to the County's satisfaction that Consultant either continues to remain outside the Jury Service Program's definition of Consultant and/or that Consultant continues to qualify for an exception to the Program.

d. Consultant's violation of this Section of the Agreement may constitute a material breach of contract. In the event of such material breach, County may, in its sole discretion, terminate the Consultant and/or bar Consultant from the award of future County contracts for a period of time consistent with the seriousness of the breach.

33. No Payment for Services Provided Following Expiration/Termination of Agreement

Consultant shall have no claim against County for payment for any money or reimbursement, of any kind whatsoever, for any service provided by Consultant after the expiration or other termination of this Agreement. Should Consultant receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Agreement shall not constitute a waiver of County's right to recover such payment from Consultant. This provision shall survive the expiration or other termination of this Agreement.

34. Notice to Employees Regarding the Safely Surrendered Baby Law

Consultant shall notify and provide to its employees, and shall require each subconsultant to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and how to safely surrender a baby. The fact sheet is available on the Internet at www.babysafela.org for printing purposes.

Consultant acknowledges that County places a high priority on the implementation of the Safely Surrendered Baby Law. Consultant understands that it is County's policy to encourage all County consultants to voluntarily post the County's, A Safely Surrendered Baby Law poster, in a prominent position at the Consultant's place of business. The County's Department of Children and Family Services will supply the Consultant with the poster to be used.

35. Consultant Assignment

a. Consultant shall not assign its rights or delegate its duties under the Agreement, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this paragraph, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by County to any approved delegate or assignee on any claim under the Agreement shall be deductible, at County's sole discretion, against the claims which Consultant may have against County.

b. Shareholders, partners, members, or other equity holders of Consultant may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Consultant to any person(s), corporation, partnership, or legal entity other than the majority controlling

interest therein at the time of execution of the Agreement, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Agreement.

c. Any assumption, assignment, delegation, or takeover of any of the Consultant's duties, responsibilities, obligations, or performance of same by any entity other than the Consultant, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Agreement which may result in the termination of the Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Consultant as it could pursue in the event of default by Consultant.

36. Consultant's Warranty of Compliance with County's Defaulted Property Tax Reduction Program

Consultant acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless Consultant qualifies for an exemption or exclusion, Consultant warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this Contract will maintain compliance, with Los Angeles County Code Chapter. 2.206.

37. Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program

Failure of Consultant to maintain compliance with the requirements set forth in "Contractor's Warranty of Compliance with County's Defaulted Property Tax Reduction Program" shall constitute default under this Contract. Without limiting the rights and remedies available to County under any other provision of this Contract, failure of Consultant to cure such default within 10 days of notice shall be grounds upon which County may terminate this Contract and/or pursue debarment of Consultant pursuant to County Code Chapter 2.206.

38. Disadvantaged Business Enterprises (DBE) Participation

a. This Contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Consultants who obtain DBE participation on this Contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

b. The goal for DBE participation for this Contract is 4.14%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract