

COUNTY OF MARIN
STANDARD SHORT FORM CONTRACT

THIS AGREEMENT is made and entered into this 2nd day of October, 2007 by and between the COUNTY OF MARIN, hereinafter referred to as "County" and **GREEN VALLEY CONSULTING ENGINEERS**, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, County desires to retain a person or firm to provide the following services: Provide engineering design services for the Alameda del Prado Class 2 Bicycle Lanes project as part of the Nonmotorized Transportation Pilot Program; and

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

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

1. SCOPE OF SERVICES:

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

2. FURNISHED SERVICES:

The County agrees to:

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

3. FEES AND PAYMENT SCHEDULE:

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

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

4. MAXIMUM COST TO COUNTY:

In no event will the cost to County for the services to be provided herein exceed the maximum sum of **\$133,883** including direct non-salary expenses.

5. TIME OF AGREEMENT:

This Agreement shall commence on **October 2, 2007**, and shall terminate on **December 31, 2009**. Certificate(s) of Insurance must be current on day Contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

6. INSURANCE:

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

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

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

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

6.1 GENERAL LIABILITY

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

Insurance Reduction or Waiver of Coverage Requested (Exhibit C)

6.2 AUTO LIABILITY

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

Insurance Reduction or Waiver of Coverage Requested (Exhibit C)

6.3 WORKERS' COMPENSATION

The Contractor acknowledges that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work under this Contract. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to County prior to commencement of work.

Insurance Reduction or Waiver of Coverage Requested (Exhibit C)

6.4 PROFESSIONAL LIABILITY INSURANCE

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

Insurance Reduction or Waiver of Coverage Requested (Exhibit C)

7. NONDISCRIMINATORY EMPLOYMENT:

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

8. SUBCONTRACTING:

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

9. ASSIGNMENT:

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

10. LICENSING AND PERMITS:

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

11. BOOKS OF RECORD, AUDIT, AND RETENTION PROVISION:

Contractor shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a

general ledger itemizing all debits and credits for the work on this Contract. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five years from the completion of this Contract. Contractor will permit County to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Contractor who participated in this Contract in any way. Any audit may be conducted on Contractor's premises or, at County's option, Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from County. Contractor shall refund any monies erroneously charged. Contractor shall retain all records related to this contract for inspection by the State of California or the Federal Highway Administration for a period of not less than three (3) years after the final payment to contractor.

12. TITLE:

Any and all documents, information and reports concerning this project prepared by the Contractor, shall be the property of the County. The Contractor may retain reproducible copies of drawings and copies of other documents. In the event of the termination of this Contract, for any reason whatsoever, Contractor shall promptly turn over all information, writing and documents to County without exception or reservation.

13. TERMINATION:

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

14. RELATIONSHIP BETWEEN THE PARTIES:

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

15. AMENDMENT:

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

16. ASSIGNMENT OF PERSONNEL:

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

17. JURISDICTION AND VENUE:

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

18. INDEMNIFICATION:

Contractor agrees to indemnify, defend, and hold County, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's willful misconduct or negligent performance of this Contract. Nothing herein shall be construed as a limitation of Contractor's liabilities.

19. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws including, but not limited to, Disadvantaged Business Enterprise programs (**Exhibits D and E**), Covenant Against Contingent Fees (**Exhibit F**), Non-Lobbying Certification (**Exhibit G**), wage rates, and the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data affecting services covered by this Contract. Copies of any of the above-referenced local laws and resolutions may be secured from the County's contact person referenced in paragraph 20. NOTICES below.

20. NOTICES:

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

Contract Manager:	Patrick Echols
	Marin County Department of Public Works
Dept./Location:	Box 4186, San Rafael, CA 94912
Email:	pechols@co.marin.ca.us
Telephone No.:	415-499-7026

Notices shall be given to Contractor at the following address:

Contractor:	Liz Ellis
	Green Valley Consulting Engineers
	335 Tesconi Circle
Address:	Santa Rosa, CA 95401
Telephone No.:	707-579-0388

21. ACKNOWLEDGEMENT OF EXHIBITS

CONTRACTOR'S INITIALS

- EXHIBIT A.** **Scope of Services**
- EXHIBIT B.** **Fees and Payment**
- EXHIBIT C.** **Insurance Reduction/Waiver**
- EXHIBIT D.** **Notice to Bidders/Proposers –
Disadvantaged Business Enterprise
Information**
- EXHIBIT E.** **Standard Agreement for
Subcontractor/DBE Participation**
- EXHIBIT F.** **Covenant Against Contingent Fees**
- EXHIBIT G.** **Non-Lobbying Certification**

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

**APPROVED BY
COUNTY OF MARIN:**

By: _____
BOARD PRESIDENT

CONTRACTOR:

By: _____
Name: _____
Telephone No.: _____

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

REASON(S) REVIEW:

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

County Counsel: _____

Date: _____

EXHIBIT "A"

SCOPE OF SERVICES

TASK 1 - Project Meetings and Preliminary Research

After award of the contract, we will update the proposed project schedule to reflect any changes in the starting date and subsequent milestones for the project. We will provide weekly schedule/milestone updates in Microsoft Excel. Our updates will include a Status Open Items list/spreadsheet identifying open items and tasks, priority, responsible person and a brief description of the status. In addition, we will provide a semi-annual NTPP status report.

Green Valley's Project Manager and Engineer will participate in monthly conference calls with County staffs, staggered two weeks apart from monthly project update meetings. If and when appropriate, Kleinfelder and WTrans's Project Managers will participate in the monthly conference calls as well.

We have started gathering information and performing research on the proposed project, and will continue by contacting the project stakeholders upon notice to proceed.

During our preliminary research phase we will assess the project areas for issues unique to this project scope, such as right-of-way constraints, utility pole relocations, environmental issues, pavement design, accessibility issues, and drainage problems.

A pre-design report will be prepared that will include the following:

- An annotated photo log of the project limits, including any spots that might pose conflicts during construction, and indication of trees to be removed
- Summarization of results of existing utility research
- Documentation of any ADA concerns
- Documentation of existing pavement conditions and proposed structural section for new work

It is a known fact that relocation of power pole(s) will be required as well, and this will demand a focused project manager to ensure it happens in a timely manner.

TASK 2 - Topographic Surveys and Right-of-Way

To expedite the schedule, we will perform topographic mapping simultaneously with the kick off meeting and information gathering. A field survey of the project limits will be performed, including obtaining existing horizontal and vertical data necessary to construct the improvements. Prior to field surveys, we will work for USA, to assist in identifying underground utilities that may be in conflict.

In general, mapping will include the following for your project:

- a. Spot elevations as requested
- b. Cross-sections taken every 75 feet
- c. Sidewalks, planters, curbs, gutters, FOG lines, travel lanes and medians
- d. Signs, street lights and landscape lights, walls
- e. Overhead utilities (electric, telephone, CATV, etc.)
- f. Water valves, meters and hydrants, and irrigation components
- g. Trees (6" and larger, with driplines) and landscaped areas within work limits will be shown
- h. We will map underground sewer and storm drain utilities in the direct project vicinity
- j. We will include spot elevations of inlets and pipe inverts as well as top and bottom spot elevations at any retaining walls.
- k. C.B.'s, manhole covers, electrical and communication boxes will be shown as applicable

We will distinguish between the edge of the AC paving, edge of concrete, planters, and any retaining walls with differentiating dashed lines. Curbs will be shown as double lines and tree trunks will be shown with caliper. Topographic mapping along streets will only extend to the top of existing curb.

In addition, existing topographic surveys will be obtained from the City prior to project kick-off. All surveying will conform to Caltrans Survey Manual Standards for accuracy and field procedures will follow Caltrans Survey Manual and Safe Surveying Practices manual.

Mapping will be prepared at 1"= 20" with 1 foot contours and hard copy and diskette in AutoCAD R2006 provided. The height of overhead wires will be measured to determine conflicts, if necessary. Existing underground street light or other

existing electric utilities will be located. Existing pavement markings and roadside signs will be mapped. Photographs will be taken to support efficient design services. Utility mapping will be obtained from the various utility companies and added to the background.

Deliverables: 2006 DWG Files on CD and Check Prints

2b. Right of Way Data Gathering

We will obtain Right of Way documentation and maps from the County of Marin, as well as obtain available utility base maps for the area and horizontal and vertical benchmark data. It is not anticipated that right of way services will be required on this project. We will indicate any right of way lines if they appear to conflict with proposed improvements.

2c. Research and Right of Way Analysis

GVCE will perform an analysis of available Right of Way information prior to any field survey work in order to prepare for locating existing Right of Way monumentation. This research will only be for agency provided information and does not include research on individual properties adjoining the Right of Way.

TASK 3 – CEQA & NEPA Compliance Studies

After consultation with the County of Marin's environmental representative, Mr. Timothy Haddad, it was determined that the project will only require a simple CEQA 15301 categorical exemption. Accordingly, we will have Kleinfelder, Inc. provide this documentation, including the requisite NEPA documentation that is associated with a categorical exemption. Anything more will require us to re-visit this item of work and negotiate a new fee.

TASK 4 – Public Participation

Our design work, specifically the proposed horizontal alignment and striping configuration, will be based on the results of the "Traffic Engineering Technical Assistance Program (TETAP)" prepared for Alameda del Prado Median Reconfiguration Study by DKS Associates, dated May 31, 2007.

Green Valley will coordinate appropriate public outreach and participate in any public meetings (community outreach, Board of Supervisor's, etc.) as necessary throughout the project. As per the RFP, for cost estimating, we have assumed a total of six (6) meetings that will be attended by the various team members as appropriate.

TASK 5 – 30% Design and Improvement Plans

Preliminary plans will identify project information such as underground utilities, manholes, gate valve boxes, survey monument and structures that would be affected by construction. Our plans will show alignment and grades for proposed improvements, including any relocated underground facilities, and new curb lines.

We will look at the possibility of grinding and overlaying the existing road section and what impacts this will have on grading conforms, in order to minimize construction costs. Also during the preliminary design stage, we will be looking at the existing and proposed drainage system to determine what modifications will be required to the existing system and the extent of proposed improvements.

We will prepare a Conceptual landscape design of the median improvements along Alameda del Prado. We will prepare the conceptual landscape plans to meet County of Marin requirements. This will include preparation of a preliminary landscape plan identifying and showing all trees and shrubs individually, groundcover and shrub areas, listing all plants selected in a legend with botanical name, common name and whether they are native and drought tolerant. We will provide the plan for submittal to the client to receive comment from the County of Marin and make corrections based upon those comments in the construction document/final landscape plan phase. We will also prepare a final rendered conceptual landscape plan after all county comments are incorporated into the drawings.

We will ensure that all design complies with sound engineering practices for Class II bike lanes and pavement improvements. The proposed plan sheet index for the 30% submittal is expected to include:

- Cover Sheet (1)
- Legend, Notes, and Abbreviations (1)
- Detail Sheets (1)
- Plan and Profiles (6)
- Landscape Planting Plans (6)
- Irrigation Plans and Details (8)
- Cross-Sections (2)
- Striping and Signing (2)

A preliminary estimate of probable construction costs will be submitted at this stage of the project.

We have not included time for geotechnical investigations associated with the new pavement section. We are assuming that the structural section will be the same as existing street and can be obtained from as-built information.

TASK 6 - 75% Design and Improvement Plans

A 75% submittal of the plans and specifications will incorporate all comments from the preliminary review, as well as comments and requirements at regulatory agencies and utility company reviews of the 30% plans. Final horizontal and vertical alignment, and detail plan sheets will be included. Construction documents and specifications will be prepared in accordance with the County of Marin Design and Construction Standards.

We will proceed with final landscape and irrigation plans upon approval of our conceptual submittal.

We do not anticipate there will be issues with hazardous materials on this project, and have not included services for a Phase I report.

Mitigating damage to mature trees in conflict with the bike lanes will be a key concern. We will take every measure to preserve existing trees and landscaping as possible. By having in-house landscape architecture services we can modify our design and/or incorporate critical information early in the design process to accommodate existing features.

An updated cost estimate and preliminary specifications will be prepared for review by team members and County staff at this stage of the project.

TASK 7 – 90% Design and Improvement Plans

A 90% submittal of the plans and specifications will include all remaining comments from the previous reviews. A review of the front-end specifications will be made and the final engineer's estimate, based on recent bid results, will be prepared. Comments from the various utility companies and regulatory agencies will be incorporated. The plans will be suitable for advertising upon submittal.

Striping and Signing Plan

This task covers the preparation of striping and signing plans. Striping is fairly straightforward and will be coordinated with the various side roads and intersections, it is not planned that there will be any street lighting required for this project, other than pole relocations associated with narrowing the median island.

Our scope does not account for any work associated with a potential Rule 20A project.

TASK 8 - Final Plans, Specifications, and Estimate

Within this task, we will submit final stamped and signed mylars, camera-ready specifications, and construction estimates in Microsoft excel. Comments will be addressed from the 90% review.

Cost estimates will be prepared for the proposed project at the 30%, 75%, 90% and final submittals. Quantities will be developed in accordance with County standard pay items. Caltrans Construction Cost Database will be used to estimate item prices, unless otherwise directed by the County. Project estimates will show individual pay items, quantities, and costs as well as project cost summary, including appropriate supplemental work items and contingencies. We will submit an electronic version of all work items. The County of Marin will be responsible for the preparation of the "front-end" specifications.

TASK 9 - Permitting & Utility Coordination

We will coordinate with all pertinent regulatory agencies, including Cal-Trans, City of Novato, and the utility companies to obtain project approval prior to advertising.

Utility Coordination

This task will include identification of overhead and underground utilities that will require relocation or modification prior to construction. We will identify and coordinate with all utility companies or agencies operating facilities that maybe impacted by the project. Green Valley will be proactive in planning and coordinating with all utility companies and agencies to ensure there are no unnecessary delays due to utility company and agency reviews, construction, and relocations. We will arrange and coordinate meetings and as needed, construction meetings with all utility companies and agencies. Existing utilities will be picked up during topographic mapping after we have called for USA markouts. The information will be enhanced with existing base mapping, meeting and utility company representatives and review of existing record drawings of improvements in the area. We will be issuing preliminary planimetrics to the utility companies for verification of their utility locations.

The County of Marin will be provided with the proposed schedules of utility relocations after confirmation is received from the various utility representatives. It is not anticipated to underground utilities as a part of this project and is specifically excluded from our scope of work and associated fees.

TASK 10 – Contract Assistance

Assistance during bidding: We will provide all needed assistance to the County during the bidding phase of the project, including attendance at pre-bid conference, responding to Contractor's bid questions, and preparation of any required draft addenda.

Items Not Included Within Scope of Services

Construction Inspection & Construction Management Services are not included at this time. Should these services be required by Green Valley, we will provide a scope and fee at a later date. We are also able to provide construction staking services. In addition, we have not allowed time for geotechnical investigations, environmental services beyond a standard Categorical Exemption or extensive right-of-way research.

Project Schedule

The project schedule follows as a bar chart by task and submittal. Included are estimates of the review time that will be required by our QA/QC team and affected County departments (15 working days between submittals) to arrive at the indicated milestones.

Estimated Fee

Attached is Green Valley's estimated schedule of fees for the project. As requested in the RFP, we have provided an estimated hourly schedule for each member of the team, broken down by task, classification of individual team member, and estimated number of hours to be spent on the proposed tasks.

EXHIBIT "B"

FEEES AND PAYMENT SCHEDULE

(insert)

EXHIBIT "C"

INSURANCE REDUCTION/WAIVER (if applicable)

CONTRACTOR: _____

CONTRACT TITLE _____

This statement shall accompany all requests for a reduction/waiver of insurance requirements. Please check the box if a waiver is requested or fill in the reduced coverage(s) where indicated below:

	<i>Check Where Applicable</i>	<i>Requested Limit Amount</i>	<i>CAO Use Only</i>
General Liability Insurance	<input type="checkbox"/>	\$	
Automobile Liability Insurance	<input type="checkbox"/>	\$	
Workers' Compensation Insurance	<input type="checkbox"/>		
Professional Liability Deductible	<input type="checkbox"/>	\$	

Please set forth the reasons for the requested reductions or waiver.

Contract Manager Signature: _____

Date: _____

Extension: _____

Approved by Risk Manager: _____

Date: _____

EXHIBIT "D"

NOTICE TO BIDDERS/PROPOSERS DISADVANTAGED BUSINESS ENTERPRISE INFORMATION

The Agency has determined that Disadvantaged Business Enterprises (DBE) can reasonable be expected to compete for the subcontracting opportunities in this Agreement and has established a DBE Availability Advisory of 10%. It is therefore, the Agency's expectation that available DBE firms have an opportunity to participate in this Agreement.

1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "bidder" also means "proposer" or "offerer."
- The term 'Agreement' also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49CFR26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Contractor should ensure that DBEs and other SBs, have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Bidders/Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.
- C. Meeting the DBE Availability Advisory Percentage is not a condition for being eligible for award of the Agreement.

3. SUBMISSION OF DBE INFORMATION

A "Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information" form will be included in the Agreement documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

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

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint-venture commensurate with its ownership interest.
- D. A DBE must perform a commercially useful function, pursuant to 49 CFR 26.55 that is, must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- E. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- F. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

5. RESOURCES

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

6. WHEN REPORTING DBE PARTICIPATION, MATERIAL OR SUPPLIES PURCHASED FROM DBES MAY COUNT AS FOLLOWS:

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

EXHIBIT "E"

STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION

1. Subcontractors

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

2. Disadvantaged Business Enterprise Program Availability Advisory

- A. This Agreement is subject to Title 49, Part 26, Code of Federal Regulations (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." In order to ensure Caltrans achieves its federally mandated statewide overall DBE goal, the Agency encourages the participation of DBEs, as defined in 49 CFR 26 in the performance of Agreements financed in whole or in part with federal funds. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. As required by federal law, the Caltrans has established a statewide overall DBE goal. In order to ascertain whether that statewide overall DBE goal is being achieved, the Caltrans is tracking DBE participation on all federal-aid contracts.
- C. To assist Contractors in ascertaining DBE availability for specific items of work, the Agency advises that it has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project and the likely DBE Availability Advisory Percentage is 10 percent. The Agency also advises that participation of DBEs in the specified percentage is not a condition of award.
- D. Contractor has agreed to carry out applicable requirements of Title 49 CFR 26, in the award and administration of federally assisted Agreements. The regulations in their entirety are incorporated herein and by reference.
- E. The Contractor should notify the Contract Manager in writing, of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.
- F. DBE and other small businesses (SB), as defined in Title 49 CFR 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The contractor shall carry out applicable requirements of Title 49 CFR 26 in the award and administration of US DOT- assisted agreements. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.
- G. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

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

- A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.
- B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

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

4. Prompt Payment of Funds Withheld to Subcontractors

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

6. DBE Records

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

7. DBE Certification and De-certification Status

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

EXHIBIT "F"

COVENANT AGAINST CONTINGENCY FEES

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

EXHIBIT "G"

**NONLOBBYING CERTIFICATION
FOR FEDERAL-AID CONTRACTS**

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

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

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

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