AGREEMENT

BETWEEN

COUNTY OF SANTA CLARA

AND

DRAKE HAGLAN AND ASSOCIATES, INC.

FOR

PROFESSIONAL ENGINEERING SERVICES

FOR

REHABILITATION OF LOYOLA OVERCROSSING

at

FOOTHILL EXPRESSWAY

(Bridge No. 37C0117)

Federal Project No. BHLO-5937 (174)

AUGUST 2011
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AGREEMENT
BETWEEN
COUNTY OF SANTA CLARA
AND
DRAKE HAGLAN AND ASSOCIATES, INC.
FOR
PROFESSIONAL ENGINEERING SERVICES
FOR
REHABILITATION OF LOYOLA OVERCROSSING AT FOOTHILL EXPRESSWAY
(Bridge No. 37C0117)

This Agreement is made and entered into as of the date it is fully executed between County of Santa Clara (COUNTY), a political subdivision of the State of California, and Drake Haglan and Associates, Inc., a California corporation, located at 10423 Old Placerville Road, Suite 200, Sacramento, CA 95827 (CONSULTANT).

WHEREAS, the COUNTY’s Roads and Airports Department (DEPARTMENT), is the administrative, planning, and engineering staff for COUNTY, and provides the lead management role for road-related project improvements; and

WHEREAS, the DEPARTMENT was authorized by the Board of Supervisors to select a professional consultant in accordance with Board-approved policies on contracting with consultants for professional services, and in accordance therewith, the COUNTY now desires to contract with CONSULTANT to provide engineering and other professional technical services for the Rehabilitation of Loyola Overcrossing at Foothill Expressway, Bridge No. 37C0117 (PROJECT) in the County of Santa Clara.

NOW, THEREFORE, COUNTY and CONSULTANT agree as follows:

I. DESCRIPTION OF PROJECT

A. The PROJECT, which is the subject of this Agreement, is located on Foothill Expressway in the City of Los Altos. The Consultant will prepare plans, specifications and estimates for preliminary and final bridge design, prepare contract documents, assist during bidding process, and provide consultation services during construction phase, all as described in Attachment A.

B. In the performance of its tasks, the CONSULTANT must exercise that degree of professional skill, efficiency, and judgment ordinarily employed by other similarly skilled consultants in accordance with the standard of care generally recognized as applying to CONSULTANT’s area of specialty in the State of California. The CONSULTANT will cooperate with and coordinate all of its activities with the DEPARTMENT’s Project Manager, or other COUNTY staff as directed by the
DEPARTMENT’s Project Manager.

II. SCOPE OF SERVICES

A. GENERAL

CONSULTANT’s services are described in ATTACHMENT A – SCOPE OF WORK. CONSULTANT will provide professional engineering and technical services in the following areas, as necessary to accomplish the work tasks described in ATTACHMENT A - SCOPE OF WORK:

- Environmental study,
- Civil design, highway and street design,
- Electrical design, signal design, intelligent transportation system (ITS) design,
- Structural design,
- Landscaping architecture,

Protection of Existing Landscape and Trees

This Project involves work that may disturb or encroach into existing areas with landscape and trees. CONSULTANT must retain a certified arborist to provide consulting services during the design and construction phases for the protection of existing landscape and trees that are required to remain. Consultant must provide written proof to the DEPARTMENT of retention of an arborist. In the event that existing landscape or trees are impacted by proposed improvements or construction activities, CONSULTANT must coordinate with the Project Manager and affected local jurisdiction for ways to minimize impacts and provide protection or replacement of the existing landscape and trees.

B. PROJECT SCHEDULE

CONSULTANT will provide the services according to the schedule for performance described in ATTACHMENT B - PROJECT SCHEDULE. Time is the essence of this Agreement.

C. DELIVERABLES

1. CONSULTANT shall deliver to the DEPARTMENT’s Project Manager the Deliverables in the forms and quantities indicated in ATTACHMENT C - DELIVERABLES and in accordance with ATTACHMENT B - PROJECT SCHEDULE.

2. If CONSULTANT fails to submit the required Deliverable items set forth in this Section or in ATTACHMENT C - DELIVERABLES, the DEPARTMENT shall have the right to elect an appropriate remedy including withholding payment, and/or to terminate this Agreement, in accordance with ARTICLE X -
TERMINATION OF AGREEMENT.

3. Computer-generated documents to be furnished electronically to the DEPARTMENT shall be in AUTOCADD 2011 or later, Microsoft Word, Microsoft Excel, and Microsoft Project, as applicable.

D. MEETINGS

In addition to the PROJECT site visits and periodic progress meetings required under ATTACHMENT A – SCOPE OF WORK, and when notified, the CONSULTANT shall attend meetings with COUNTY’s officials and staff, commissions and user groups as required for the performance of CONSULTANT’s services pursuant to this Agreement. The DEPARTMENT’s Project Manager shall coordinate all meetings between the CONSULTANT and the COUNTY’s staff, officials and others as appropriate.

E. PROJECT PROGRESS

1. To ensure an understanding of the PROJECT objectives, progress meetings between the DEPARTMENT and CONSULTANT shall be held at least once a month for the duration of the PROJECT, unless otherwise indicated by the DEPARTMENT’s Project Manager.

2. CONSULTANT shall prepare, for each progress meeting, a meeting agenda, an updated PROJECT schedule, including any pertinent information requested by the DEPARTMENT’s Project Manager or any action required of the DEPARTMENT or others.

3. CONSULTANT shall attend a design review meeting at each submittal level of the Plans, Specifications, and Estimates (PS&E) to resolve outstanding items of the design review comments. CONSULTANT shall prepare for each of these meetings a list of review comments, generated from the review of the PS&E by DEPARTMENT and others, which highlight action taken by CONSULTANT or require further classification and discussion with respective reviewers.

4. CONSULTANT shall submit to the DEPARTMENT as part of the monthly invoices a report of the tasks performed as specified in ARTICLE V – COMPENSATION.

F. DESIGN STANDARDS

The Deliverables prepared by the CONSULTANT pursuant to this Agreement shall be prepared in accordance with the COUNTY’S regulations, policies and procedures, and in compliance with the following:

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PS&E/Fed-Aid/Specific Project-07/20/06 Rev. 04/30/2010
1. The US Customary Unit System shall be used in all working papers and construction contract documents.

2. All design work shall be in accordance with the most current version of the following:
   (a) American Association of State Highway & Transportation Officials (AASHTO) Standards,
   (b) ADA & Pedestrian Facilities Standards,
   (c) Caltrans Bridge Design Aids Manual,
   (d) Caltrans Bridge Design Details Manual,
   (e) Caltrans Bridge Memo to Designers,
   (f) Caltrans Bridge Design Practice Manual,
   (g) Caltrans Bridge Design Specifications Manual,
   (h) Caltrans Flexible Pavement Structural Section Design Manual,
   (i) Caltrans Highway Design Manual,
   (j) Caltrans Traffic Manual,
   (k) Caltrans Seismic Design Criteria Manual,
   (l) Caltrans Standard Plans & Specifications,
   (m) Caltrans Standard Signs Manual,
   (n) Caltrans Structural Detailing Standards Manual,
   (o) City of Los Altos Standard Details and Specifications Manuals (if any),
   (p) County of Santa Clara Bicycle Accommodation Guidelines
   (q) County of Santa Clara Standard Details and Specifications Manuals,
   (r) Highway Capacity Manual,
   (s) CFR Title 23, Part 940 - Intelligent Transportation System Architecture & Standards,
   (t) Caltrans Local Assistance Program Guidelines Chapter 12.6 – Intelligent Transportation Systems,
   (u) California Manual on Uniform Traffic Control Devices,
   (v) National Electrical Codes (NEC),
   (w) Flexible Pavement Structural Section Design Guide for California Cities & Counties,
   (x) National Pollutant Discharge Elimination System (NPDES) Permit Requirements of the Santa Clara Valley Urban Runoff Pollution Prevention Program,
   (y) National Transportation Communications for ITS Protocol (NTCIP) Standards.

4. Construction contract details shall be prepared using DEPARTMENT’s standard plan sheet format. Construction contract specifications shall be developed using DEPARTMENT-formatted Special Provisions template. The bid items shall be prepared using the Bid Schedule format contained in DEPARTMENT-provided Special Provisions template. DEPARTMENT will supply the CONSULTANT with the electronic plan sheet format and Special Provisions template.

5. Construction contract bid items developed for the PROJECT shall be substantiated by calculations which shall be made available to the DEPARTMENT’s Project Manager upon request.

G. SUPPORT SERVICES

1. CONSTRUCTION BIDDING PHASE

(a) The PROJECT advertisement for bids and bid evaluation are primarily the responsibilities of the DEPARTMENT.

(b) While the PROJECT is being advertised for bids, all questions concerning the bid documents must be referred to the DEPARTMENT’s Project Manager. In the event that any items requiring interpretation in the drawings or specifications are discovered during the bidding period, and at the request of the DEPARTMENT’s Project Manager, the CONSULTANT shall analyze items and provide recommendation within the specified time frame for decision by the DEPARTMENT’s Project Manager. As appropriate and at the DEPARTMENT’s sole discretion, action taken shall be in the form of an addendum prepared by the CONSULTANT, if directed by the DEPARTMENT’s Project Manager, and issued by the DEPARTMENT.

(c) Upon opening of bids, CONSULTANT may be called upon to assist in the evaluation of bids. In such event, at the request of the DEPARTMENT’s Project Manager, CONSULTANT shall expedite the review of bids and provide a recommendation within the specified time frame for decision by the DEPARTMENT’s Project Manager.

2. CONSTRUCTION PHASE

(a) CONSULTANT shall attend the pre-construction meeting and weekly construction meetings at the request of the DEPARTMENT’s Project Manager.

(b) CONSULTANT shall visit the job site for on-site review of construction as it deems appropriate and as otherwise required or requested by the DEPARTMENT’s Project Manager. CONSULTANT shall bring to the attention of the DEPARTMENT’s Project Manager any defects or deficiencies
in the work by the COUNTY’S construction contractor. CONSULTANT shall not issue any instructions to the COUNTY’S construction contractor.

(c) CONSULTANT shall furnish all necessary additional drawings for corrections if resulting from CONSULTANT’S work and will prepare change orders. Such drawings shall be requested in writing by the COUNTY, and shall be provided at no additional cost to the COUNTY. The original tracings of the drawings and contract wording for change orders shall be submitted to the DEPARTMENT’s Project Manager for distribution.

(d) CONSULTANT shall review and provide comments on all submittals and/or shop drawings submitted by the construction contractor as requested by the DEPARTMENT’s Project Manager.

(e) CONSULTANT shall provide engineering support service for design-related issues, issues relating to protection of existing landscape and trees, and/or unforeseen conditions on an as-needed basis during construction as requested by the DEPARTMENT’s Project Manager.

(f) CONSULTANT shall prepare the necessary written recommendations, drawings, calculations, and/or specifications and furnish them to the DEPARTMENT’s Project Manager within 3 working days of the request.

III. RESPONSIBILITIES OF THE DEPARTMENT

A. The DEPARTMENT has designated Amir Douraghy as Project Manager who will serve as a central point of contact to perform overall project management duties, such as administering CONSULTANT’s contract, monitoring PROJECT’s progress and coordinating with other DEPARTMENT’s.

B. The DEPARTMENT will provide the following:

1. Record/as-built drawings as available of existing improvements in County jurisdiction,
2. Field survey and right-of-way engineering services,
3. Property acquisition and related services, if any, Traffic data and analysis, and
4. Construction administration and inspection.

IV. CONSULTANT’S PERSONNEL

A. CONSULTANT will provide all qualified personnel required to perform the services under this Agreement. CONSULTANT’s key personnel are listed on ATTACHMENT D – CONSULTANT’S KEY PERSONNEL AND SUB-CONSULTANTS.
B. CONSULTANT may retain sub-consultants for any appropriate portion of the PROJECT's work. The designated sub-consultants are listed on ATTACHMENT D – CONSULTANT'S KEY PERSONNEL AND SUB-CONSULTANTS.

C. CONSULTANT’s key personnel and sub-consultants as listed on ATTACHMENT D shall be assigned to perform work for the duration of the PROJECT.

D. The DEPARTMENT’s Director or his designee may approve any revisions to CONSULTANT’s key personnel or designated Sub-consultant as an administrative modification to this Agreement.

V. COMPENSATION

A. COUNTY’s maximum compensation limit for services under this Agreement is the not-to-exceed amount of $400,000.00. This maximum compensation limit includes services authorized under ARTICLE VII – ADDITIONAL SERVICES. The method of payment for the work under this Agreement is based on actual-cost-plus-a-fixed fee. COUNTY will reimburse CONSULTANT for actual costs as set forth on ATTACHMENT E – FEE SCHEDULE (including those of direct labor, employee benefits, travel, equipment rental, overhead and other direct expenses) incurred by the CONSULTANT in the performance of the work. In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee as indicated on ATTACHMENT E – FEE SCHEDULE. The fixed fee is non-adjustable for the term of the Agreement, except in the event of a significant change in the scope of work and such adjustment is made by an amendment to the Agreement. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.

B. The CONSULTANT’s Fee Schedule per ATTACHMENT E sets forth in detail the maximum fee for each task and/or phase of the PROJECT including the hourly rates for its staff and sub-consultant staff in accordance with work classification (i.e., Project Manager, Project Engineer I, Project Engineer II, Drafting Technician, Environmental Specialist, etc.). For a multi-year contract, CONSULTANT's Fee Schedule shall include for each year of the contract any adjustment to the hourly rates of its staff and sub-consultants anticipated for the duration of the contract. No change to these hourly rates is permitted during the contract duration. The DEPARTMENT’s Director or his designee may approve any modifications to ATTACHMENT E – FEE SCHEDULE and ATTACHMENT E1 – CONSULTANT’S HOURLY RATE SCHEDULE, as an administrative modification to this Agreement so long as such notification does not exceed the maximum compensation of this Agreement.

C. COUNTY will compensate CONSULTANT for services performed and allowable expenses incurred in accordance with this Agreement in the form of progress payments based on submitted invoices which show satisfactory performance acceptable to the DEPARTMENT’s Project Manager. A pro-rata portion of CONSULTANT’s fixed fee
may be included in the progress invoices for payment. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Agreement when specified, the DEPARTMENT shall have the right to delay payment until satisfactory receipt by the DEPARTMENT’s Project Manager of the said deliverable items. Such invoices shall be submitted within 30 calendar of the work performed days but no more often than every four weeks. Final invoice must contain the final cost, retention, and any credits due COUNTY including any equipment purchased under the provisions of ARTICLE XXIV – EQUIPMENT PURCHASE of this Agreement. The final invoice should be submitted within 60 calendar days after completion of the CONSULTANT’s work. Invoices shall be mailed to the attention of the DEPARTMENT’s Project Manager at the address indicated in Article XXXIV – NOTICES, and shall contain the following information:

1. Consultant contract number (if one is assigned by DEPARTMENT after award of the contract) and Federal-Aid Project number;

2. Serial identification of invoices by number (e.g. “Invoice No. 1”, “Invoice No. 2”);

3. The beginning and ending dates of the billing period;

4. A description of the work performed and percentage of work completed for tasks during the billing period;

5. Names and classifications of staff, including hourly rate and hours, providing services for each task;

6. Allowable reimbursable expenses as specified in ARTICLE V.D.1 hereinbelow;

7. Backup receipts, invoices for reimbursable expenses, regardless of the amount;

8. A Summary of Costs by Tasks (sample to be provided by the DEPARTMENT’s Project Manager upon award of the contract) to be submitted with each invoice an containing the following information for each task:

   (a) Task and Phase number & description,
   (b) Allocated task budget,
   (c) Percentage completed of task,
   (d) Amount previously earned,
   (e) Amount earned & retained for this period,
   (f) Total amount earned & retained to-date,
   (g) Net amount due for the billing period,
   (h) Available task budget, and
   (i) A footnote section listing any modifications to and/or additions of task budgets with approval date and description of task budgets modified and/or added.
D. Reimbursable and Non-reimbursable Expenses

The following expenditures are reimbursed by COUNTY subject to the provisions in ARTICLE V – COMPENSATION. No markup by CONSULTANT shall be allowed for Reimbursable Expenses.

(a) Transportation expenses between: the DEPARTMENT’s offices and PROJECT job site; the CONSULTANT’s office and the DEPARTMENT’s offices and meeting locations other than DEPARTMENT’s offices when CONSULTANT’s attendance is required. Reimbursement is made on the basis of the COUNTY’s most current mileage reimbursement rate to be provided by the DEPARTMENT’s Project Manager. This method of reimbursement applies to privately owned vehicles used by CONSULTANT or its employee(s). Company-owned and rental vehicle expenditures are considered as part of CONSULTANT’s overhead expenses and not reimbursed separately by COUNTY.

(b) Out-of-area travel expenses for transportation, lodging, meals, and long distance business related telecommunication, incurred by CONSULTANT in connection with the PROJECT. Reimbursement for transportation and subsistence costs are limited to the subsistence rates in effect according to the State Administrative Manual Sections 0700 & 4100, and the California Code of Regulations, Title 2-Administration, Division 1-Administrative Personnel, Chapter 3-Department of Personnel Administration, Subchapter 1-General Civil Service Rules, Article 2-Traveling Expenses, Sections 599.615 through 599.638.1. Prior approval by the DEPARTMENT’s Project Manager is required for out-of-area travel. Out-of-area travel consists of traveling beyond the counties of Santa Clara, San Benito, Santa Cruz, San Mateo, San Francisco, Alameda, and Contra Costa.

(c) Meal expenses for out-of-area travel or in connection with meetings attended by CONSULTANT beyond the normal regular 8AM-5PM working hours and at the request of the DEPARTMENT’s Project Manager. Actual expenditures may not exceed the maximum allowable rates identified in the COUNTY’s Travel Policy Desk Reference Manual. The set rates include tax and tip. The cost of alcoholic beverages is not reimbursable.

(d) Charges for document printing and shipping performed by third-party vendors.

(e) Fees paid to Sub-consultant’s services and reimbursable expenditures as defined herein above.

(f) Fees paid on behalf of the COUNTY in connection with encroachment permit
applications, environmental study, utility as-built drawings, and as requested by the DEPARTMENT.

(g) Salary increases if they are identified on ATTACHMENT E – FEE SCHEDULE of the Agreement. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases which are the direct result of changes in the prevailing wage rates are reimbursable. CONSULTANT must provide proof of the prevailing wage rate increase as part of the submitted invoices.

(h) Other fees as specified on ATTACHMENT E – FEE SCHEDULE.

2. The following expenditures are not reimbursed separately by COUNTY and shall be considered as overhead expenses and included in the overhead rate as stated in ATTACHMENT E – FEE SCHEDULE:

(a) Charges relating to computer usage, including computer rental and software acquisition or upgrade, required for executing the PROJECT tasks.

(b) Telephone, cellular and fax (local and long distance) charges, except as specified in ARTICLE V.D.1. (b).

(c) Labor charges for invoice preparation .

(d) Office related expenses, including in-house printing expenses.

(e) Company-owned and rental vehicle expenditures.

3. COST PRINCIPLES

(a) CONSULTANT agrees to comply with all federal procedures in accordance with CFR Title 49 - Transportation, Part 18 - Uniform Administrative Requirements for Grants and Cooperative Agreements to the State and Local Governments.

(b) CONSULTANT agrees that the CFR Title 48 - Federal Acquisition Regulations System, Part 31 – Contract Cost Principles and Procedures, shall be used to determine which individual items of cost are allowable under this Agreement. CONSULTANT’s attention is directed to the provisions in CFR Title 48 - Federal Acquisition Regulations System, Part 31 – Contract Cost Principles and Procedures, Section 31.205-33 (c) which identifies the unallowable costs.

(c) Any expenditure listed herein above and for which payments have been made to the CONSULTANT, which is determined by subsequent audit to be not...
allowable under CFR Title 48, Part 31, is subject to repayment by the CONSULTANT to the COUNTY, the State and Federal Governments.

(d) Any subcontracts, entered into as a result of this Agreement, shall contain all of the provisions of this Article.

E. For each invoice, COUNTY shall retain 10% of the amount earned. Such retention shall apply to all progress payments, regardless of the percentage completion. Upon CONSULTANT’s completion of all tasks within a phase of services and application for retention release and the DEPARTMENT Project Manager’s acceptance of all tasks in a phase of services, COUNTY shall release retention withheld for all tasks within that phase of services. COUNTY will release retention for a task or phase of services if and when the COUNTY determines that CONSULTANT is unable to complete such task or phase due to circumstances that are beyond CONSULTANT’s control.

F. COUNTY shall pay the undisputed portion of invoices promptly and within 30 days of receipt of the invoice. If the COUNTY disputes all or a portion of the invoice, the COUNTY will pay the undisputed portion and notify the CONSULTANT of the disputed item within 7 days of receipt of the invoice. Both parties shall work diligently to resolve the disputed issue.

G. All subcontracts in excess of $25,000 shall contain the above provisions.

VI. PERFORMANCE PERIOD

A. The term of this Agreement commences upon execution of this Agreement by the COUNTY. The CONSULTANT shall commence work only after written notification to proceed by the DEPARTMENT’s Project Manager. The Agreement shall terminate on 04/30/14 unless terminated earlier in accordance with ARTICLE XI – TERMINATION OF AGREEMENT in this Agreement.

B. Neither party shall be considered in default in the performance of its obligations to the extent the performance of such obligation, except the payment of money, is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of the affected party, or by a strike, lockout or other labor difficulty, the settlement, of which shall be within the sole discretion of the party involved. Each party shall give notice promptly to the other of the nature and extent of any force majeure claimed to delay, hinder or prevent performance of the services required by the terms of this Agreement.

VII. ADDITIONAL SERVICES

A. CONSULTANT shall perform Additional Services related to the PROJECT as COUNTY directs in writing, up to the amount not to exceed $35,790.00. CONSULTANT shall not commence Additional Services beyond the Scope of Services
defined in ARTICLE II – SCOPE OF SERVICES, except by prior, separate written 
authorization from the DEPARTMENT’s Project Manager, including a description of 
the services to be performed, schedule of performance, method and amount of payment. 

B. Any additional services which may be performed by CONSULTANT pursuant to this 
ARTICLE VII – ADDITIONAL SERVICES in excess of the maximum compensation 
limit specified in ARTICLE V - COMPENSATION, Paragraph A, shall not be 
commenced until the scope of the services and amount of compensation has been agreed 
to in writing by a COUNTY-approved amendment to this Agreement. 

VIII. FEDERAL REQUIREMENTS 

A. DISADVANTAGED BUSINESS ENTERPRISES 

1. This Project is subject to Title 49 Code of Federal Regulations Part 26.13(b) as 
specified on ATTACHMENT K – DBE CONTRACT PROVISIONS. 

2. The County of Santa Clara has established the following goal for Underutilized 
Disadvantaged Business Enterprises (UDBE) participation for this Project: 

   UDBE Goal: __________ Percent. 

3. CONSULTANT is notified that all firms the CONSULTANT intends to use and 
count toward the UDBE participation goal must be certified as DBE by the 
California Unified Certification Program (CUCP). It is the CONSULTANT’s 
responsibility to verify that the UDBE firms are certified DBE. 
Listings of CUCP-certified DBEs are available from the Caltrans’ Civil Rights 
CONSULTANT is also encouraged to call the Equal Opportunity Office for 
assistance in DBE participation at (408) 299-5865. 

B. PROMPT PAYMENT OF FUNDS WITHHELD TO SUB-CONSULTANTS 

The COUNTY shall hold retention from the CONSULTANT and shall make prompt 
and regular incremental acceptances of portions, as determined by the COUNTY, of the 
Contract Work and pay retention to the CONSULTANT based on these acceptances. 
The CONSULTANT or sub-consultant shall return all monies withheld in retention 
from a sub-consultant within 30 days after receiving payment for Work satisfactorily 
completed and accepted including incremental acceptances of portions of the Contract 
Work by the COUNTY. 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 
COUNTY’s prior written approval. Any violation of this provision shall subject the 
vviolating CONSULTANT or sub-consultant to the penalties, sanctions, and other 
remedies specified in Section 7108.5 of the California Business and Professions Code.
These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the CONSULTANT or sub-consultant in the event of a dispute involving late payment, or nonpayment by the CONSULTANT, deficient subcontract performance, or non-compliance by a sub-consultant. This provision applies to both DBE and non-DBE prime consultants and sub-consultants.

Any subcontract entered into as a result of this Agreement must contain all of these provisions of this Section.

C. DEBARMENT AND SUSPENSION CERTIFICATION

1. The CONSULTANT’s signature, affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29 – Debarment and Suspension Certificate, 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 within the past 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 against fraud or official misconduct within the past 3 years. Any exception to this certification must be disclosed to the DEPARTMENT.

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

D. COVENANT AGAINST CONTINGENT FEES

1. CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working 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. See ATTACHMENT J – CERTIFICATION OF CONSULTANT.

2. For breach or violation of this warranty, the DEPARTMENT shall have the right to annul this Agreement without liability, or at the DEPARTMENT’s 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.

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E. PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING

1. The CONSULTANT certifies to the best of his or her knowledge and belief that:

(a) No state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any state or federal contract, loan, grant, or cooperative agreement.

(b) 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 CONSULTANT shall complete and submit ATTACHMENT L - "DISCLOSURE FORM TO REPORT LOBBYING" (Standard Form – LLL) in accordance with its instructions.

2. This certification is a material presentation of fact upon which reliance was placed when this transaction was made and entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US 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.

3. The CONSULTANT also agrees by signing this Agreement that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceeds $100,000, and that all such sub-recipients shall certify and disclose accordingly.

IX. INSURANCE AND INDEMNIFICATION REQUIREMENTS

Indemnification and insurance requirements are set forth in ATTACHMENT F -- INSURANCE AND INDEMNIFICATION REQUIREMENTS.
X. TERMINATION OF AGREEMENT

A. COUNTY reserves the right to terminate this Agreement, in whole or in part, for the convenience of the COUNTY by giving written notice specifying the effective date and scope of such termination.

B. In the event of COUNTY's termination, all originals and reproducible copies of all finished or unfinished documents, data, studies, maps, photographs, and reports prepared by the CONSULTANT under this Agreement as instruments of professional services shall become the property of the COUNTY, including but not limited to the non-exclusive ownership of the copyright, and all other intellectual property rights. CONSULTANT shall be entitled to receive compensation for services performed prior to the notice of termination that COUNTY determines were performed in accordance with the provisions of this Agreement and to the satisfaction of the COUNTY.

C. The CONSULTANT may retain a record copy of all documentation in the event of termination.

D. COUNTY may terminate this Agreement should CONSULTANT materially fail to perform in the manner required, provided that the DEPARTMENT shall have given prior written notice to CONSULTANT of such material failure to perform and ten (10) working days for CONSULTANT to cure the reported failure. In the event of such termination, the DEPARTMENT may proceed with the work. The additional cost to the DEPARTMENT shall be deducted from any sum due the CONSULTANT or held by the DEPARTMENT in the form of the retained amount under this Agreement, and the balance, if any, shall be paid the CONSULTANT upon demand.

E. Should COUNTY terminate this Agreement for CONSULTANT's material failure to perform and it is subsequently proven to be in error, the termination shall be considered to have been for the COUNTY's convenience pursuant to Paragraph A of this ARTICLE X – TERMINATION OF AGREEMENT.

F. This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.

XI. EQUAL EMPLOYMENT OPPORTUNITY

A. The CONSULTANT shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following:
Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102.

B. The CONSULTANT shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall the CONSULTANT discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

XII. INTEREST OF PUBLIC OFFICIALS

A. No member, officer or employee of the COUNTY during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

B. No member of, or delegate to, the Congress of the United States of America shall be admitted to any share or part thereof or any benefit to arise herefrom.

XIII. CONFLICT OF INTEREST

A. The CONSULTANT shall disclose any financial, business, or other relationship with the DEPARTMENT that may have an impact upon the outcome of this Agreement, or any ensuing DEPARTMENT’s construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing DEPARTMENT’s construction project.

B. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict in any manner or degree with the performance of services under this Agreement.

C. The CONSULTANT hereby certifies that neither CONSULTANT, its employees, nor any firm affiliated with the CONSULTANT, will bid on any construction contract or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

D. Except for sub-consultants whose services are limited to providing surveying or
materials testing information, no sub-consultant who has provided design services in connection with this Agreement shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement.

E. Any subcontract in excess of $25,000, entered into as a result of this Agreement, shall contain all of the provisions of this Section.

XIV. ASSIGNABILITY AND SUBCONTRACTING

A. Except as otherwise provided by this Agreement, CONSULTANT shall not assign or subcontract any interest in this Agreement nor performance required hereunder, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the DEPARTMENT’s Project Manager.

B. Nothing contained in this Agreement or otherwise shall create any contractual relationship between the COUNTY and any sub-consultants/subcontractors, and no subcontract shall relieve the CONSULTANT of its responsibilities and obligation hereunder. The CONSULTANT agrees to be as fully responsible to the COUNTY for the acts and omissions of its sub-consultants/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 CONSULTANT. The CONSULTANT’s obligation to pay its sub-consultants/subcontractors is an independent obligation from the COUNTY’s obligation to make payments to the CONSULTANT.

C. CONSULTANT shall pay its sub-consultants/subcontractors within ten (10) calendar days from receipt of each payment made to the CONSULTANT by the COUNTY.

D. Any subcontract in excess of $25,000, entered as a result of this Agreement, shall contain all of the provisions of this Section.

XV. IDENTIFICATION OF DOCUMENTS

A. The format and manner of identification of the CONSULTANT on all reports, maps, and other documents completed as a part of this Agreement other than documents prepared exclusively for internal use by the DEPARTMENT shall be approved by the DEPARTMENT’s Project Manager.

B. The Federal Project Number, if provided, and project title shall be shown on all documents including invoices submitted to the DEPARTMENT.

XVI. OWNERSHIP OF DOCUMENTS

A. All documents, reports, and materials, in hard copy or electronic format, prepared by
the CONSULTANT specifically in the performance of this Agreement as instruments of professional services shall become the property of the COUNTY upon payment in accordance with this Agreement, including instruments of service provided after termination of Agreement.

B. The DEPARTMENT shall indemnify, defend and hold harmless the CONSULTANT, its employees and sub-consultants from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages and liability caused by, resulting from, or arising out of the DEPARTMENT's reuse of CONSULTANT’s documents where such reuse was without express consent of the CONSULTANT.

C. If CONSULTANT and its sub-consultants copyrighted reports or other agreements products, CONSULTANT and its sub-consultants agree that the COUNTY and FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use all copyrighted material produced under this Agreement.

D. Any subcontract in excess of $25,000, entered as a result of this Agreement, shall contain all of the provisions of this Section.

XVII. COMMUNICATION WITH THE MEDIA AND CONFIDENTIALITY OF DATA

A. Any media inquiry relating to any matter regarding the PROJECT must be referred immediately to the DEPARTMENT’s Project Manager. CONSULTANT shall not make any statement to the media relating to the PROJECT without prior approval from the DEPARTMENT’s Project Manager.

B. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without the COUNTY’s prior review and permission.

C. All financial, statistical, personal, technical, or other data and information relative to the DEPARTMENT’s operations, which are designated confidential by the DEPARTMENT and made available to the CONSULTANT in order to carry out this Agreement, shall be protected by the CONSULTANT from unauthorized use and disclosure.

D. Permission to disclose information on one occasion, or public hearing held by the DEPARTMENT relating to the Agreement, shall not authorize the CONSULTANT to further disclose such information or disseminate the same on any other occasion.

E. All information related to the construction estimate is confidential and shall not be disclosed by the CONSULTANT to any entity other than the DEPARTMENT’s Project Manager.

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PS&E/Fed-Aid/Specific Project-07/20/06 Rev. 04/30/2010
F. Any subcontract entered into as a result of the Agreement shall contain all of the provisions of this Section.

XVIII. RETENTION OF RECORDS AND AUDIT

A. For the purpose of determining compliance with Public Contract Code 10115, et seq. and California Code of Regulations, Title 21, Chapter 21, Section 2500 and seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7, CONSULTANT and its sub-consultants shall maintain all records pertaining to the performance of the PROJECT. The records must be made available at their respective offices at all reasonable times during the contract period and for a minimum period of three (3) years after the final payment to CONSULTANT by the DEPARTMENT. CONSULTANT and its sub-consultants agree to make all records available for inspection and audit by the duly authorized representatives of the COUNTY, State of California, federal government including FHWA and furnish copies of the records if requested.

B. Any subcontract in excess of $25,000, entered as a result of this Agreement, shall contain all of the provisions of this Section.

XIX. CONSULTANT'S ENDORSEMENT ON PS&E/OTHER DATA

CONSULTANT’s Project Manager must sign all Project Study Reports, plans, specifications, estimates and engineering data and reports, required under this Agreement, and indicate his/her professional registration number, where appropriate. This requirement shall extend to all documents of same prepared by its sub-consultants.

XX. LIMITS OF THE AGREEMENT

A. This Agreement constitutes the sole understanding of the parties hereto and supersedes all prior negotiations, statements, instruction, representations or Agreements, whether written or oral.

B. This Agreement shall be amended only by written instrument signed by both the COUNTY and the CONSULTANT.

XXI. COMPLIANCE WITH ALL LAWS AND POLICIES

A. CONSULTANT must comply with all Federal, State, and Local laws applicable to the PROJECT.

B. BEVERAGE NUTRITIONAL CRITERIA
   Contractor shall not use County funds to purchase beverages that do not meet the
County’s nutritional beverage criteria. The six categories of nutritional beverages that meet these criteria are (1) water with no additives; (2) 100% fruit juices with no added sugars, artificial flavors or colors (limited to a maximum of 10 ounces per container); (3) dairy milk, non-fat, 1% and 2% only, no flavored milks; (4) plant derived (i.e., rice, almond, soy, etc.) milks (no flavored milks); (5) artificially-sweetened, calorie-reduced beverages that do not exceed 50 calories per 12-ounce container (teas, electrolyte replacements); and (6) other non-caloric beverages, such as coffee, tea, and diet sodas. These criteria may be waived in the event of an emergency or in light of medical necessity.

C. COUNTY NO-SMOKING POLICY
Contractor and its employees, agents and subcontractors, shall comply with the County’s No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

XXII. APPLICABLE LAW AND VENUE
This Agreement is governed by and construed in accordance with the laws of the State of California. The parties agree that the venue is proper only in the County of Santa Clara unless otherwise agreed to by the COUNTY.

XXIII. INDEPENDENT CONTRACTOR

A. CONSULTANT agrees to perform all work and services described herein as an independent contractor and not as an officer, agent, or employee of the COUNTY. CONSULTANT shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and sub-consultants, if any.

B. Nothing herein shall be considered as creating a partnership or joint venture between COUNTY and CONSULTANT. No person performing any of the work or services described hereunder shall be considered an officer, agent, or employee of COUNTY, nor shall any such person be entitled to any benefits available or granted to employees of COUNTY.

XXIV. EQUIPMENT PURCHASE

A. Prior authorization in writing by the DEPARTMENT’s Project Manager shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding $5,000 for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

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PS&E/Fed-Aid/Specific Project-07/20/06 Rev. 04/30/2010
B. For purchase of any item, service or consulting work not covered in the AGREEMENT’s Fee Schedule and exceeding $5,000 prior to authorization by the DEPARTMENT’s Project Manager; three (3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased as a result of this Agreement is subject to the following provision:
CONSULTANT shall maintain an inventory of all non-expendable property. Non-
expandable property is defined as having a useful life of at least 2 years and an
acquisition cost of $5,000 or more. If the purchased equipment needs replacement and is
sold or traded in, the DEPARTMENT shall receive a proper refund or credit at the
conclusion of the Agreement; or, if the Agreement is terminated, the CONSULTANT
may either keep the equipment and credit the DEPARTMENT in an amount equal to its
fair market value, or sell such equipment at the best price obtainable at a public or
private sale, in accordance with established COUNTY procedures, and credit the
DEPARTMENT in an amount equal to the sales price. If the CONSULTANT elects to
keep the equipment, fair market value shall be determined at the CONSULTANT’s
expense on the basis of a competent and independent appraisal of such equipment.
Appraisals shall be obtained from an appraiser mutually agreeable to by the
DEPARTMENT and the CONSULTANT. If it is determined to sell the equipment, the
terms and conditions of such sale must be approved in advance by the DEPARTMENT.

D. All subcontracts in excess of $25,000 must contain the above provisions.

XXV. NON-WAIVER

A. In the event any provisions of this Agreement are held to be invalid and un-enforceable,
the remaining provisions remain valid and binding on the parties. One or more waivers
by either party of any provision, term, condition or covenant shall not be construed by
the other party as a waiver of a subsequent breach.

B. A failure by the COUNTY to require full compliance with any requirement or condition
of this Agreement shall not be deemed to be a waiver of that requirement or condition or
of any subsequent breach of the same or any other requirement or condition. Acceptance
by the COUNTY of performance or fulfillment of a requirement or a condition by the
CONSULTANT including payment to the CONSULTANT by the COUNTY, shall not
be deemed to be a waiver of any preceding breach by the CONSULTANT, regardless of
the COUNTY’s knowledge or such preceding breach at the time of acceptance.

XXVI. TIMELY APPROVALS

Whenever the approval of the COUNTY or the CONSULTANT is required pursuant to this
Agreement, such approval will not be unreasonably withheld or delayed.
XXVII. SEVERABILITY

Should any part of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that the remainder of the Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

XXVIII. CONTRACTING PRINCIPLES

A. This Agreement is a Type I Service contract, subject to the Resolution on Contracting Principles adopted by the Board of Supervisors on October 28, 1997. Accordingly, the CONSULTANT shall comply with all of the following:

1. The CONSULTANT shall during the term of this contract, comply with all applicable Federal, State, and local rules, regulations and laws.

2. The CONSULTANT shall maintain financial records adequate to show the COUNTY funds paid under the Contract were used for purposes consistent with the terms of the contracts. These records shall be maintained during the term of this Contract and for a period of three (3) years from termination of this Contract or until all claims if any, have been resolved, whichever period is longer, or longer if otherwise required under other provisions of this Contract.

B. The failure of the CONSULTANT to comply with this Section or any portion thereof may be considered a material breach of this Contract and may, at the option of the COUNTY, constitute grounds for the termination and/or non-renewal of the Contract. The CONSULTANT shall be provided with reasonable notice of any intended termination or non-renewal on the ground of non-compliance with this Section, and the opportunity to respond and discuss the COUNTY’s intended action.

C. See ATTACHMENT G – CERTIFICATION OF COMPLIANCE WITH COUNTY CONTRACTING PRINCIPLES and ATTACHMENT H – DECLARATION OF CONTRACTOR.

XXIX. DISPUTE RESOLUTION PROCEDURES

A. Any dispute, other than audit, concerning the terms, conditions, and services of this Agreement shall be decided by the DEPARTMENT’s Director, who will furnish the decisions to CONSULTANT in writing within 30 days after receiving a written request from CONSULTANT.

B. Not later than 30 calendar days after completion of all deliverables necessary to
complete the plans, specifications, and estimate required under the Agreement, the CONSULTANT may request review by the DEPARTMENT’s Director of unresolved claims or disputes, other than audit. The request for review must be submitted in writing.

C. Neither the pendency of a dispute, nor its consideration by the DEPARTMENT will excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

XXX. AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement shall be reviewed by the DEPARTMENT’s Director who will furnish the decisions to CONSULTANT in writing within 30 days after receiving a written request from CONSULTANT.

B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the DEPARTMENT’s Director of unresolved audit items. The DEPARTMENT’s Director will furnish the decisions to CONSULTANT in writing within 30 days after receiving a written request from CONSULTANT.

C. Neither the pendency of a dispute, nor its consideration by the DEPARTMENT will excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

XXXI. SAFETY

A. CONSULTANT must comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment and procedures. CONSULTANT must comply with safety procedures issued by the DEPARTMENT. CONSULTANT’s personnel must wear safety vests and hard hats at all times while working on the project site.

B. Pursuant to the authority contained in Section 591 of the Vehicle Code, the DEPARTMENT has determined which areas are within the project limits and are open to public traffic. CONSULTANT must comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT must take all reasonably necessary precautions for safe operation of its vehicles and personnel and the protection of the traveling public from injury and damage from such operations.

C. Any subcontract entered as a result of this Agreement shall contain all of the provisions of this Section.
XXXII. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, the CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the CONSULTANT within the immediately preceding two-year period, because of the CONSULTANT’s failure to comply with an order of a federal court that orders the CONSULTANT to comply with an order of the National Labor Relations Board.

XXXIII. PREVAILING WAGE RATES

A. This is an Agreement for Public Work subject to California Labor Code §1771, et seq., and the applicable implementing regulations. The California Labor Code requires the payment of not less than the general prevailing wage rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted by the State throughout the term of this Agreement. Notwithstanding any other provisions of the Agreement, CONSULTANT shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

B. Labor Code §1720 includes “Inspection and Land Surveying” work in its definition of “Public Works” for which prevailing wages must be paid pursuant to Labor Code §1771. If CONSULTANT’s scope of SERVICES includes such work, CONSULTANT must comply with California’s General prevailing wage requirements in accordance with California Labor Code, Section 1770, et seq., and all other Federal, State, and Local laws, regulations and ordinances.

1. CONSULTANT shall comply with California Labor Code §1775, whereby CONSULTANT shall be assessed a penalty for each calendar day or portion thereof, for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed for any work done pursuant to the Agreement by CONSULTANT or any Sub-consultant in violation of the California Labor Code and in particular §1770 through §1780. In addition to said penalty and pursuant to §1775, CONSULTANT shall pay each worker the difference between such stipulated prevailing wages and the amount paid to each worker for each calendar day or portion thereof for which worker was paid less than the stipulated prevailing wage rate.

2. CONSULTANT and each Sub-consultant must, pursuant to California Labor Code §1776, submit a certified weekly payroll within ten (10) days after the DEPARTMENT’s request for submission of certified weekly payroll records. The certified payroll must include the date of actual payment of wages for each worker employed on the Project and a breakdown of each payment including all fringe benefits included in such wage for each worker. The responsibility for compliance
with California Labor Code §1776 is the responsibility of the prime CONSULTANT.

3. CONSULTANT must submit two (2) copies of said payroll to the DEPARTMENT’s Project Manager on the California Department of Industrial Relations standard Form A-1-131 “Public Works Payroll Reporting Form.” Other forms may be used provided they exactly duplicate the format, dimensions and wording of Form A-1-131.

4. Pursuant to the provisions of California Labor Code §1770 and following the California Department of Industrial Relations has ascertained the general prevailing rate of wages (which rate includes employer payments for health and welfare, vacation, pension, and similar purposes) applicable to the Work, for straight time, overtime, Saturday, Sunday and Holiday work. The Holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of each craft, classification, or type of workers concerned. Said prevailing wage rates are on file in the Office of the Clerk of the Board of Supervisors, incorporated herein by reference, and copies of which are available to any interested party on request. The rates are also available on the State of California Department of Industrial Relations website at http://www.dir.ca.gov/.

5. If CONSULTANT uses a craft or classification not shown on the prevailing wage determinations, Consultant may be required to pay the wage rate of that craft or classification most closely related to it, shown in the general determinations in effect when the Bids were received. Pursuant to California Labor Code §1773.2, CONSULTANT shall prominently post a copy of such prevailing wages at each job site.

6. Pursuant to Public Contract Code §6109, CONSULTANT shall not perform Work on this public works project with any Sub-consultant who is ineligible to perform Work on a public works project pursuant to §1771.1 or §1777.7 of the Labor Code. Any contract on a public works projects entered into between the Consultant and a debarred Sub-consultant is void as a matter of law. A debarred Sub-consultant may not receive any public money for performing Work as a Sub-consultant on a public works contract, and any public money that may have been paid to a debarred Sub-consultant by the CONSULTANT on this Project shall be returned to the COUNTY. The CONSULTANT shall be responsible for the payment of wages to workers of a debarred Sub-consultant who has been allowed to work on the Project.

7. Pursuant to Labor Code §1771.5.b.6, the COUNTY will withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment of prevailing wages has occurred.
C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

XXXIV. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS

Contractor assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

XXXV. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and delivered or mailed to:

DEPARTMENT:
Mr. Michael J. Murdter, Director
County of Santa Clara
Roads and Airports Department
101 Skyport Dr.
San Jose, CA 95131
ATTN.: Amir Douraghy
Project Manager

CONSULTANT:
Drake Haglan and Associates, Inc.
10423 Old Placerville Road, Suite 200
Sacramento, CA 95827
ATTN.: Eli Aramouni
Project Manager

XXXVI. ATTACHMENTS

The following listed Attachments referred to herein are incorporated in the Agreement as though set forth in full. CONSULTANT’s signature is required where indicated.

Attachment A - Scope of Work,
Attachment B - Project Schedule,
Attachment C - Deliverables,
Attachment D - Consultant’s Key Personnel and Sub-Consultants,
Attachment E - Fee Schedule,
Attachment E1 - Consultant’s Hourly Rate Schedule,
Attachment F - Insurance & Indemnification Requirements,
Attachment G - Certification of Compliance with County Contracting Principles,
Attachment H - Declaration of Contractor,
Attachment I - Determination of Tax Withholding and Benefit Status,
Attachment J - Certification of Consultant,
Attachment K - DBE Contract Provisions,
Attachment K1 - Consultant’s UDBE Commitment,
Attachment K2 - UDBE Information-Consultant’s Good Faith Efforts Statement,
Attachment K3 - Consultant’s DBE Information,
IN WITNESS WHEREOF, the COUNTY and CONSULTANT have caused their names to be subscribed hereto by their duly authorized representatives on AUG 09 2011.

COUNTY OF SANTA CLARA

By: [Signature]
Dave Coitese, President
Board of Supervisors

CONSULTANT

By: [Signature]
Eli Aramouni
Project Manager

Attest:

By: [Signature]
Maria Marinos
Clerk of the Board of Supervisors

Approved As To Form And Legality:

By: [Signature] 07/06/2011
Elizabeth G. Pianca
Deputy County Counsel