

# **SANDAG**

## **STANDARD SERVICES AGREEMENT**

### **CONTRACT NO.**

This Agreement is effective as of the last signature date below, in the State of California by and between San Diego Association of Governments (SANDAG), and the following contractor, hereinafter referred to as "Consultant."

This Agreement will terminate on month day, year, unless an amendment is executed by the parties.

Name: _____	DBE Goal: _____ %
Address: _____	Consultant _____ %
	DBE Commitment
	<b>[Note: Must match total shown on Consultant Contract DBE Commitment Information Form (Caltrans Exhibit 10-02)]</b>
City, State, ZIP: _____	Is Consultant a DBE? <input type="checkbox"/> YES
	<input type="checkbox"/> NO
Form of Business: _____	
	<b>[Note: corporation, partnership, sole proprietor, etc.]</b>
Tax ID Number: _____	
Authorized person to sign contract:	
Name: _____	Phone: (    ) _____
Title: _____	Email: _____

The attached Standard Terms and Conditions are part of this Agreement. The Consultant agrees to furnish to SANDAG services and materials, summarized as follows (the "Project"):

Development a Regional Broadband and Digital Infrastructure Master Plan for constructing a regional broadband network that will connect public facilities in each of the jurisdictions within the San Diego region

The Maximum Amount of the Agreement shall not exceed \$ \_\_\_\_\_ U.S. dollars unless amended.

SANDAG	CONSULTANT
By: _____ Executive Director (or designee)	By: _____ Signature
Approved as to form:	
By: _____ Office of General Counsel	

## **STANDARD TERMS AND CONDITIONS**

### **I. AUTHORIZATION TO PROCEED**

#### **A. NOTICE TO PROCEED**

Specific authorization to proceed with all or a portion of the work described in the scope of work (an Exhibit to this Agreement) shall be granted in writing by SANDAG via a Notice to Proceed. Consultant shall not proceed with the work unless it is authorized. No expenditures are authorized, and work shall not commence, until a Notice to Proceed for those tasks has been executed by SANDAG.

#### **B. PERFORMANCE PERIOD**

This Agreement shall go into effect on the date the last required signatory executes the Agreement and Consultant shall commence work after receipt of a Notice to Proceed from SANDAG. The Agreement shall end on the date shown on the first page of the Agreement, unless extended by Agreement amendment.

Consultant is advised that any recommendation for Agreement award is not binding on SANDAG until the Agreement is fully executed and approved by SANDAG. Any Agreement amendment issued under this Agreement also is of no force or effect until returned to SANDAG and signed by an authorized representative of SANDAG.

Consultant shall monitor the termination date of the Agreement and notify the SANDAG Project Manager at least 60 days prior to the termination date if Consultant believes Consultant's work under the Agreement will extend beyond the termination date and necessitates an amendment.

### **II. PASS THROUGH OF TERMS AND CONDITIONS**

When subcontracting on a SANDAG project, Consultant shall provide a copy of the Agreement to its subcontractors. All Sections of the Agreement and Exhibits with an asterisk (\*) shall apply to subcontractors at all tiers.

### **III. CONSIDERATION\***

#### **A. COMPENSATION**

##### **1. Maximum Amount**

The Maximum Amount of this Agreement shall be as shown on the cover page of the Agreement unless a written amendment to this Agreement is executed by SANDAG. It is understood and agreed that the actual amount of work requested by SANDAG may be less than the Maximum Amount. There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized under this Agreement.

##### **2. Payment Method Defined by Task Order**

The parties may agree for payment for each item of work or deliverable to be made in the form of a lump sum (firm fixed price), specific rates of compensation (hourly rates), or as a price per unit, as shall be described in each Task Order. The amounts negotiated will be based on the labor and other rates set forth in Consultant's Cost Proposal. The final amounts agreed upon shall be included in the Fee, Rate or Payment Schedule attached to the approved Task Order.

### **3. Specific Rates of Compensation Payment Method**

If payment will be made on the basis of specific rates of compensation, the specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. Time spent preparing invoices shall be included in Consultant's overhead cost. SANDAG shall not pay for time spent preparing billing for SANDAG.

Specific rates of compensation are not adjustable for the performance period set forth in this Agreement unless otherwise stated in this Agreement.

Consultant will be reimbursed for incurred (actual) Other Direct Costs (ODCs) besides salaries indicated in the Fee, Rate or Payment Schedule or applicable executed Task Order. No markup of ODCs is permitted and receipts for each incurred expense must be submitted to SANDAG.

When specific rates of compensation is a method of payment, the Fee, Rate or Payment Schedule shall break out estimated costs by milestone, and Consultant shall obtain prior written approval for a revised milestone cost estimate from the Project Manager before exceeding such estimate. Increases that could cause the maximum amount of the Agreement to increase must be documented in a written amendment to the Agreement. Progress payments will be made in arrears, as specified in the Payment Schedule and based on services provided and actual costs incurred.

Premium time or overtime is not allowed without the express written approval of SANDAG.

### **4. Lump Sum or Unit Price Payment Method**

When lump sum or unit prices will be used as a method of payment, Consultant will only be paid at completion of the milestone or acceptance of deliverables indicated in the Fee, Rate or Payment Schedule. If Consultant fails to satisfactorily complete a milestone or deliverable being paid for on a lump sum basis, no payment will be made until the deliverable has been satisfactorily completed. Partial payments on lump sums shall not be permitted.

### **5. Travel Expenses**

SANDAG shall not reimburse Consultant for local travel, which is travel within 100 miles of a person's assigned office. Transportation and subsistence costs will be reimbursed at the actual costs incurred by the Consultant, as supported by receipts shall not exceed the maximum amounts authorized for state employees, which are available at <https://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>.

All ODCs, including travel, shall be invoiced to SANDAG without markup for profit.

### **6. Subconsultant Invoices**

Invoices shall be submitted to SANDAG no later than 45 calendar days after the performance of work by either Consultant or any of its subconsultants. SANDAG shall have the right to refuse payment of an invoice for services performed in a prior fiscal year if the invoice is submitted to SANDAG more than 60 days after the end of a SANDAG fiscal year (July 1 - June 30).

### **7. Expenses Prior To or After Agreement Period of Performance**

Consultant shall not commence performance of work or services until this Agreement has been approved by SANDAG, and notification to proceed has been issued by SANDAG. No

payment will be made prior to approval or for any work performed prior to approval of this Agreement.

## **8. Temporary Agency Employees**

If Consultant uses staff that are on the payroll of a temporary agency, whether such staff are treated by Consultant as temporary employees or subconsultants, SANDAG shall not be charged more than the amount invoiced by the temporary firm or subconsultant to Consultant unless the arrangement is fully disclosed to SANDAG and expressly agreed to in this Agreement or an executed amendment.

## **IV. CHANGES IN WORK**

If Consultant believes an amendment to the Agreement is required, it shall be processed by SANDAG in the following manner: A letter outlining the proposed changes shall be forwarded to SANDAG by Consultant, but no statement of estimated changes in fee or time schedule shall be provided initially. The SANDAG Project Manager will prepare an independent cost estimate if he/she believes an amendment is needed. The SANDAG Project Manager will then request that Consultant provide an estimate of hours and costs for the change. If SANDAG determines an amendment is merited an amendment to the Agreement may be prepared by SANDAG following negotiation with the Consultant.

SANDAG will not be required to pay for increased costs or changes in work unless the amendment is executed by both parties before performance of such services commences. Consultant is expressly put on notice that no employee of SANDAG has authority to authorize, in writing or otherwise, any additional work that would increase the cost of this Agreement without SANDAG Executive Director approval. Such an amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

## **V. INVOICING\***

### **A. GENERAL**

In determining allowable incurred subcontractor costs that are eligible for reimbursement, in addition to reimbursement for actual costs that are incurred by reason of payment, SANDAG will allow subcontractor costs that are treated by the Consultant as accrued due to such costs having been billed to the Consultant and recognized by the Consultant as valid, undisputed, due, and payable. By submitting accrued but unpaid subcontractor costs for reimbursement, Consultant agrees that, within ten days of receipt of reimbursement, the full amount submitted as a reimbursable accrued subcontractor cost shall be paid to the subcontractor.

All payments made to Consultant hereunder shall be in US dollars and considered made upon mailing or fund transfer by SANDAG.

### **B. CERTIFICATION**

Consultant shall add the following statement to each invoice: "I certify that to the best of my knowledge this invoice represents a full and complete claim for goods and services provided during the billing period identified and wage rates are in compliance with the contract terms and all applicable state and federal prevailing wage laws. I acknowledge that SANDAG may audit invoices submitted to verify accuracy and compliance with contract terms."

If the Agreement concerns services covered by the federal or state Brooks Acts (40 USC §1101 et seq.; Cal. Gov't. Code §4525), which are to be paid at specified hourly rates with not to exceed amounts, Consultant shall also include the following certification in its invoices: "I certify that the

hourly rates charged to SANDAG on this invoice for each employee do not exceed the actual rate paid by Consultant to the applicable employee, which amounts shall be subject to verification by SANDAG based on Consultant's payroll records."

#### **C. INFORMATION REQUIRED**

Consultant's invoices shall contain unique invoice numbers and shall reference the SANDAG Agreement number, Project title and any applicable Task Order or Purchase Order number.

Electronic invoicing and payments may be utilized by SANDAG and Consultant agrees to cooperate and provide information necessary to implement these efforts.

Invoices for items or services from subcontractors or subconsultants shall be attached to Consultant's invoices and shall coincide with the same period of performance being invoiced by Consultant.

Payments shall be made to the address or account specified in this Agreement or such other address or account as is specified by Consultant in writing from time to time, provided that Consultant shall give SANDAG at least 90 days' prior written notice of any name, account, address or other change in payment instructions. SANDAG will not be liable for any late or misdirected payment caused by Consultant's failure to provide timely notice of any such change. SANDAG will be unable to pay invoices on which the Consultant's name or Tax ID number does not match with the name or number shown on the Agreement.

#### **D. TIMING OF PAYMENT**

Consultant will be reimbursed, as promptly as fiscal procedures will permit, typically within 30 days upon receipt by SANDAG of itemized invoices. Separate invoices itemizing all costs are required for all work performed under this Agreement unless payment for the item or service will be based on a lump sum. Credits due SANDAG that include any equipment purchased or other offsets called for under the provisions of the Agreement must be reimbursed by Consultant prior to the expiration or termination of the Agreement.

#### **E. DBE RUNNING TALLY OF PAYMENTS**

After submitting an invoice to SANDAG that includes a payment to a DBE, and no later than the tenth day of the following month, Consultant shall complete and submit the Disadvantaged Business Enterprise Running Tally of Payments (Caltrans LAPM Exhibit 9-F) form to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy provided to the SANDAG Project Manager. The form is available on the following website: <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>. SANDAG may impose penalties or withhold payments up to \$10,000 each month under this Agreement if Consultant fails to submit the form on time.

#### **F. FINAL INVOICE**

Upon completion of all deliverables and work tasks to the satisfaction of SANDAG, Consultant shall submit a final invoice showing the cumulative costs incurred by Consultant, not to exceed the Maximum Amount of the Agreement. Final payment of any retained amounts will be made following Consultant's submittal of all required documentation and completion of the Project, including the entitled "Final Report – Utilization of All Subcontractors, Underutilized/Disadvantaged Business Enterprises and Small Businesses" ("the FUR"). Notwithstanding the foregoing, all payments are subject to the conditions set forth elsewhere in this Agreement or which are otherwise required by law. Payments shall be subject to review by SANDAG for compliance with the requirements of this Agreement, and payment may be withheld if Consultant is not in compliance with the Agreement. Payments shall be subject to an audit upon completion of services. No other compensation will be

paid except for work done under an amended agreement. approved pursuant to the Section in this Agreement entitled, "Changes in Work."

#### **G. DBE DOCUMENTATION REQUIRED WITH FINAL INVOICE**

Whether or not a DBE goal is set for the procurement or a DBE commitment is made for the Agreement, Consultant shall submit a document entitled "Final Report – Utilization of All Subcontractors, Underutilized/Disadvantaged Business Enterprises and Small Businesses" ("the FUR") within 90 days after the date all goods and services called for in the Fee, Rate or Payment Schedule of the Agreement are completed. SANDAG is required to track use of DBE and SB firms on procurements, whether or not federal funding is used.

Whether or not a DBE goal is set for the procurement or a DBE commitment is made for the Agreement, Consultant shall submit the "Disadvantaged Business Enterprises Certification Status Change form (Caltrans LAPM Exhibit 17-O) within 90 days after the date all goods and services called for in the Fee, Rate or Payment Schedule of the Agreement are completed. SANDAG is required to track use of DBE and SB firms on procurements, whether or not federal funding is used.

#### **H. PAYMENT IN THE EVENT OF NON-COMPLETION**

If Consultant fails to satisfactorily complete a deliverable or portion thereof according to the schedule set forth in the Agreement, no payment will be made until the relevant deliverable or portion thereof has been satisfactorily completed or the parties have agreed to amend the scope of work.

### **VI. COMPLIANCE INFORMATION SYSTEM\***

Consultant shall report subcontractor payment details to SANDAG using a web-based system called Compliance Information System (CIS) by the 15th of each month. Subcontractors with lower tier DBE subcontractors shall report payment details to SANDAG using CIS within 15 days from the date payment is received from Consultant or higher tier subcontractor.

The web-based system allows contractors to manage their own subcontract information, maintain accurate contract information, and report subcontractor award and payment details online. E-copies of the Vendor User Guide are available to Consultant and subcontractors upon request. CIS is mandatory for Consultant and subcontractors to use unless SANDAG provides written instructions otherwise. An account will be created for Consultant after Agreement award, which will allow Consultant to enter award and payment data into the web-based system. After award, Consultant will receive instructions on how to set up its account and enter required subcontractor data. Consultant is responsible for notifying subcontractors of the requirement to verify subcontractor payments via CIS and shall include this requirement in any subcontracts under this Agreement.

Consultant is responsible for ensuring subcontractors are verifying payments through CIS on a timely basis and shall promptly notify delinquent subcontractors to verify payments. SANDAG may impose penalties or withhold payments up to \$10,000 each month under this Agreement if Consultant fails to timely report subcontractor payments or reasonably notify delinquent subcontractors to report verification of payments.

### **VII. INDEPENDENT CONTRACTOR\***

#### **A. NOT A SANDAG EMPLOYEE**

Consultant hereby declares that it is engaged in an independent business and agrees that, in the performance of this Agreement, it shall act as an independent contractor and not as an employee of SANDAG. Consultant has and hereby retains full control of all the employment, compensation, and

discharge of all employees of Consultant assisting in its performance hereunder. Consultant shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Consultant shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. Except as otherwise specifically provided, as an independent contractor, Consultant will be solely responsible for determining means and methods for performing the services described in the scope of work.

#### **B. WITHHOLDING AND EMPLOYMENT TAXES**

The payments made to Consultant pursuant to this Agreement shall be the full and complete compensation to which Consultant is entitled. SANDAG shall not make any federal or state tax withholdings on behalf of Consultant. SANDAG shall not be required to pay any workers' compensation insurance on behalf of Consultant. Consultant agrees to indemnify SANDAG for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which SANDAG may be required to make on behalf of Consultant or any employee of Consultant for work done under this Agreement.

#### **C. NO AGENCY**

Except as SANDAG may specify in writing in this Agreement or elsewhere, Consultant shall have no authority, express or implied, to act on behalf of SANDAG in any capacity whatsoever, as an agent or otherwise, or to bind SANDAG or its members, agents, or employees to any obligation whatsoever.

#### **VIII. INSURANCE**

Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection, with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

##### **A. ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Carriers must be licensed to do business in California and maintain an agent for service of process within California. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

##### **B. PASS-THROUGH COSTS TO SANDAG**

To the extent Consultant elects to pass through insurance premium costs to SANDAG, Consultant shall not charge SANDAG for any insurance costs that are not directly attributable to the Project. Consultant shall not pass through insurance costs to SANDAG that are attributable to, or overlap with, work performed for Consultant's other projects or clients or are included in Consultant's overhead rate.

##### **C. NOTICE OF TERMINATION, CANCELLATION, OR CHANGE**

Should any of the insurance policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions and sent to SANDAG. Consultant shall notify SANDAG immediately following Consultant's first notice or awareness of any proposed or actual termination, cancellation, or change in its insurance coverage. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be amended or canceled, except after 30 days' prior written notice has been given to SANDAG. Notice of cancellation sent by



registered mail, postage prepaid, with a return receipt of addresses requested shall be sufficient notice.

#### **D. FAILURE TO PROVIDE INSURANCE**

Failure to provide and continue in force any insurance as described in this Insurance Section shall be deemed a material breach of this Agreement, which SANDAG may deem to constitute cause for immediate termination. SANDAG reserves the right to withhold payments to Consultant in the event of material noncompliance with the insurance requirements outlined herein. If consultant fails to maintain the insurance as set forth herein, SANDAG shall have the right, but not the obligation, to purchase said insurance at Consultant's expense and to withhold the expense of such insurance from any payments otherwise due to Consultant.

#### **E. CERTIFICATES OF INSURANCE AND ENDORSEMENTS**

Consultant shall furnish SANDAG with Certificates of Insurance and any required endorsements affecting coverage required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Endorsements must specifically state that they modify the policy language. All certificates and endorsements are to be received and approved by SANDAG before work commences. Consultant shall ensure that the representations made on the Certificate of Insurance and Endorsements are true and correct. Complete policies of insurance shall be provided to SANDAG upon request and no later than five (5) days after such request. Failure to provide SANDAG a copy of the insurance policies required in this contract shall be deemed a material breach of contract, which shall be deemed at the option of SANDAG to constitute a cause for immediate termination hereof. The coverage forms and related endorsements required herein required by Consultant shall conform to the Insurance Services Office (ISO) 2013 Edition (or the latest revision available).

#### **F. COMMERCIAL GENERAL LIABILITY AND AUTO LIABILITY ENDORSEMENTS**

The Commercial General and Auto Liability policies shall contain, or be endorsed to contain, the following provisions:

SANDAG, its directors, officers, agents and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. The commercial general liability policy does not need to cover completed operations when services Consultant will perform on the Project are not connected to construction or maintenance.

Commercial general liability coverage shall be provided in the form of an additional insured policy endorsement to the Consultant's insurance at least as broad as ISO CG 20 10 and CG 20 37 forms, respectively. Auto liability coverage shall be provided in the form of an additional insured policy endorsement at least as broad as the ISO CA 20 48 form.

For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects SANDAG, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it. Consultant shall provide SANDAG a conforming ISO CG 20 01 Endorsement for Commercial General Liability and ISO CA 04 50 Endorsement for Auto Liability, respectively.

Consultant agrees to waive all rights against SANDAG and its directors, officers, agents and employees for recovery of damages to the extent these damages are covered by the Commercial General Liability and Auto Liability insurance required pursuant to this contract. Consultant shall



provide SANDAG a conforming ISO CG 24 04 Endorsement for Commercial General Liability and ISO CA 04 44 Endorsement for Auto Liability, respectively.

#### **G. INSURANCE CERTIFICATE SUBMITTALS**

SANDAG uses myCOI to track and verify insurance coverage. Consultant shall include the Agreement number and/or task order number on all insurance- related correspondence submitted to myCOI (i.e., the insurance certificate itself).

##### **Initial Certificate Submittal**

On Consultant's receipt of the Notice of Intent to Negotiate, Consultant will receive an email from: [certificaterequest@mycoisolution.com](mailto:certificaterequest@mycoisolution.com). Consultant shall follow the instructions contained in the email and complete the online registration. Upon completion of registration, myCOI will request proof of insurance directly from Consultant's insurance agents. SANDAG will not execute the Agreement and Consultant shall not commence work unless Consultant is registered with myCOI, compliant Certificates of Insurance (COIs) and endorsements have been received, and SANDAG has deemed the Consultant as compliant with the insurance requirements.

##### **Renewal Certificate Submittals**

Consultant shall cause its insurance agents to comply with requests for updated information from myCOI on no less than an annual basis. Consultant is responsible for ensuring that its agents send SANDAG updated certificates of insurance throughout the term of the Agreement via myCOI. SANDAG reserves the right to terminate this Agreement or to withhold payments to Consultant if Consultant fails to maintain compliance with the insurance requirements of this Agreement, including providing current certificates of insurance and endorsements to myCOI.

#### **H. NO LIMITATION ON LIABILITIES AND OBLIGATIONS**

The requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by SANDAG or myCOI are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant to this Agreement, including, but not limited to, the provisions concerning indemnification.

The specified insurance limits are minimum amounts to be provided, and any insurance maintained by Consultant above such limits shall provide protection to SANDAG and all additional insureds to the same extent as other insurance provided by Consultant.

#### **I. COVERAGE FOR SUBCONSULTANTS**

Insurance required of the Consultant shall be provided by all subconsultants or by Consultant on behalf of all subconsultants to cover their services performed under this Agreement. Consultant shall not require subconsultants to maintain insurance amounts that are disproportionate to the risk exposure, scope of work and/or dollar value of work subcontracted. Consultant shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to any subconsultant. When the total amount of work to be carried out by a subconsultant under the Agreement will not exceed \$50,000 aggregate and will entirely take place in an office or home environment, Consultant shall not require the subconsultant to maintain more than \$1 million in coverage under any of its insurance policies unless agreed to by the SANDAG Project Manager.

#### **J. NO WAIVER OF REQUIREMENTS**

Acceptance by SANDAG of a certificate or endorsement that varies from the requirements in this section shall not constitute a waiver by SANDAG of strict compliance with the provisions herein.

#### **K. WAIVER AND RELEASE OF LIABILITY FOR AUTO LIABILITY AND/OR WORKERS' COMPENSATION INSURANCE**

Notwithstanding the foregoing section, Consultant may be granted a waiver of the requirements in this section under the following conditions:

- If Consultant does not purchase Workers' Compensation insurance because it has no employees or it has fewer employees than is mandated by the Workers' Compensation statutes, regulations, and applicable to employers in the state of California, then it will be required to sign the Workers' Compensation Waiver and Release of Liability Agreement in order to be allowed to perform work or services for SANDAG. The document is available from the Contracts and Grants Department.
- If Consultant does not purchase Auto Liability insurance because it has no vehicles that will be used in the course of performing work pursuant to this Agreement, and its business will not utilize hired or non-owned vehicles in the course of performing work pursuant to this Agreement in the state of California, then it will be required to sign the Automobile Liability Waiver and Release of Liability Agreement in order to be allowed to perform work or services for SANDAG. The document is available from the Contracts and Grants Department. Until the Waiver is signed or Auto Liability insurance consistent with this Agreement is purchased and approved by SANDAG, Consultant is not authorized to use a vehicle in the course of performing work pursuant to this Agreement.

#### **L. SELF-INSURED RETENTIONS**

Any self-insured retentions must be declared to SANDAG. At the option of SANDAG, the Consultant shall provide a financial guarantee satisfactory to SANDAG guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### **M. CLAIMS -MADE COVERAGES**

If any of the Consultant's insurance are written on a claims-made form:

- The insurance coverage period must commence before the effective date of the Agreement or the beginning of work performed pursuant to the Agreement.
- Insurance must be maintained and evidence of insurance must be provided for at least two years after completion of work under the Agreement.
- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Consultant must purchase an extended reporting coverage for a minimum of two years after completion of work under the Agreement.
- A copy of the claims reporting requirements must be submitted to SANDAG for review.

#### **N. CROSS-LIABILITY COVERAGE**

If Consultant's liability policies do not contain the standard ISO separation of insured's condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

#### **O. MINIMUM POLICY LIMITS AND REQUIREMENTS**

Prior to performing any work, Consultant shall provide proof and maintain limits no less than the following coverages.

Insurance Type	Requirements	Limits
Commercial General Liability (CGL)	Coverage shall conform to ISO Form CG 00 01 covering CGL on an "occurrence" basis. Policy shall include all elements of Coverages A, B and C.	<p>Limits no less than \$2,000,000 - per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall be twice the required occurrence limit.</p> <p>The policy shall be issued on an occurrence basis.</p>
Automobile Liability	Coverage shall conform to ISO Form CA 00 01 covering any auto (Code 1).	<p>Limit no less than \$1,000,000 - per accident for bodily injury and property damage.</p> <p>The policy shall be issued on a combined single limit.</p> <p>For services rendered within 50 feet of the railroad tracks, Consultant shall provide Automobile Liability Insurance with limit of no less than \$2,000,000 per accident for bodily injury and property damage.</p>

Insurance Type	Requirements	Limits
Workers' Compensation and Employer's Liability	<p>Insurance shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the Right-of-Way, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof.</p> <p>Not required for sole proprietors or companies with no employees. Verifiable proof of exemption shall be required by Consultant.</p>	<p>As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident; \$1,000,000 policy limit bodily injury by disease; and \$1,000,000 each employee bodily injury by disease.</p> <p>For services rendered within 50 feet of the railroad tracks, Consultant shall provide Employer's Liability Insurance with limit of no less than \$2,000,000 per accident; \$2,000,000 policy limit bodily injury by disease; and \$2,000,000 each employee bodily injury by disease.</p>
Professional Liability (#)	Policy to cover losses arising from wrongful acts and pollution incidents whenever committed in the performance of professional services under this contract.	Limit no less than \$1,000,000 per claim and annual aggregate limit of \$2,000,000.

## IX. TERMINATION OF AGREEMENT

### A. GENERAL

Whether for cause or convenience, in the event of termination, Consultant shall immediately notify subcontractors and service or supply vendors providing services under this Agreement of the early termination date of this Agreement. Failure to notify any subcontractor and service or supply vendor shall result in the Consultant being liable for the termination costs incurred by any subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Consultant.

Consultant shall provide all Project-related documents and correspondence required as part of the scope of work/Deliverables. Project-related documents shall be described, listed, and identified as part of the proposed final invoice. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by SANDAG, or documents in draft and/or incomplete form for those deliverables which are in progress by the Consultant and have not been accepted as complete. SANDAG shall notify Consultant of all documents it must

receive to make final payment to Consultant. All documents must be received and accepted before the settlement cost invoice is paid.

If Consultant has any property in its possession belonging to SANDAG, Consultant will account for the same and dispose of it in the manner that SANDAG directs. No billable costs will be considered payable after notice of termination is given to Consultant.

Termination settlement expenses will be reimbursed in accordance with 2 CFR 200.

Consultant agrees to release SANDAG from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by Consultant of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

## **B. TERMINATION FOR CAUSE**

In the event SANDAG determines sufficient cause exists, SANDAG will send a notice to cure to the address set forth in this Agreement for Consultant. If Consultant fails to satisfactorily cure the problems within 10 calendar days of receiving written notice from SANDAG specifying the nature of the cause, SANDAG may immediately cancel and/or terminate this Agreement and every right of the Consultant and any person claiming any right by or through the Consultant under this Agreement.

Termination for cause also shall be merited in the event of a material breach of this Agreement. Events of material breach shall include, but not be limited to, failure to adhere to the Project time schedule, failure to maintain required insurance; bankruptcy; failure to pay any subcontractor or other company or person retained by Consultant in connection with this Agreement; documentation or lack thereof establishing that Consultant is failing to meet its Disadvantaged Business Enterprise (DBE) commitment; Consultant refuses or negligently fails, except in cases for which extension of time is provided by SANDAG, to supply sufficient properly skilled staff or proper materials to perform as required by this Agreement; or Consultant negligently or intentionally disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction.

In the event of such termination, SANDAG may proceed with the work in any manner deemed proper by SANDAG. All actual and reasonable costs to SANDAG in the event of termination for cause ("termination costs") shall be deducted from any sum due the Consultant under this Agreement and the balance, if any, shall be paid to the Consultant upon demand. Termination costs include, but are not limited to, the cost of soliciting a new contractor and any increase in the fees that must be paid to the new contractor.

## **C. TERMINATION FOR CONVENIENCE**

Either party may terminate this Agreement for convenience if mutually agreed upon by the parties.

In addition, SANDAG may terminate this Agreement or a Task Order, in whole or in part, at any time by written notice to the Consultant when it is in the best interest of SANDAG. Consultant shall be paid its costs, including contract closeout costs and profit on work performed up to the time of termination if it is terminating for convenience. Consultant shall submit its termination claim and proposed final invoice to SANDAG within 30 calendar days. SANDAG shall have the right to terminate this Agreement for convenience upon 30 calendar days written notice to Consultant.

Separate final invoices for Project-related costs and termination settlement costs, if applicable, shall be submitted no later than 30 calendar days after the date Consultant is notified of acceptance of the proposed final invoice. The invoice for termination settlement costs shall include the following, to the extent they are applicable: Lease termination costs for equipment and facilities approved

under the terms of the contract; equipment salvage costs for equipment valued over \$3,000; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection, and disposition of property acquired or produced under the contract, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

The maximum amount for which SANDAG shall be liable if this Agreement is terminated for convenience is the capacity amount remaining on the Agreement as of the date of the notice of termination.

## **X. INDEMNIFICATION**

### **A. GENERAL**

With regard to the Consultant's performance in connection with or incidental to this Agreement, Consultant agrees to defend, indemnify, protect and hold SANDAG and its directors, officers, and employees as well as any additional insured identified in the Agreement or related Task Order, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Consultant's or its subcontractors' employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless, or willful acts or omissions of Consultant and its subcontractors and their agents, officers, or employees, in performing the work or services herein, or the breach of any representation, warranty, covenant or obligation of Consultant and/or its subcontractors associated with the Project under this Agreement, and all expenses of investigating and defending against same, including attorney's fees and costs; provided, however, that Consultant's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of SANDAG, its directors, agents, officers, or employees.

### **B. INTELLECTUAL PROPERTY**

In addition to the indemnification provisions above, to the extent that a claim or liability arises out of, results from or alleges a claim that any of Intellectual Property provided by Consultant or its subconsultants does or threatens to infringe, misappropriate or otherwise violate any third-party intellectual property rights, or other rights of any third-party, Consultant shall indemnify, defend and hold SANDAG, its Directors, officers, and employees harmless from and against all liability arising out of or resulting from any claim that any of the Intellectual Property, or SANDAG's or any Authorized User's use thereof, actually does or threatens to infringe, misappropriate or otherwise violate any intellectual property right or other right of a third-party.

### **C. INSURANCE POLICIES NOT A LIMIT ON INDEMNIFICATION**

This Section of the Agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. This Section of the Agreement shall survive in perpetuity.

## **XI. ASSIGNMENT AND SUBCONTRACTING\***

### **A. SUBCONTRACTING**

Nothing contained in this Agreement or otherwise, shall create any contractual relationship between SANDAG and any subconsultant(s), and no subcontract shall relieve Consultant of its

responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to SANDAG for the acts and omissions of its subconsultant 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 Consultant. Consultant's obligation to pay its subconsultant is an independent obligation from SANDAG'S obligation to make payments to the Consultant.

Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by SANDAG's Project Manager, in the form of an approved Request to Add Subconsultant Form and/or Personnel Request Form, which can be obtained from the SANDAG Contracts and Grants Department.

Any substitution of subconsultant must be approved in writing by SANDAG's Project Manager prior to the start of work by the subconsultant in the form of an approved Request to Add Subconsultant Form and/or Personnel Request Form, which can be obtained from the SANDAG Contracts and Grants Department. Additional requirements apply for substitution of a DBE subconsultant. Requirements for such substitutions can be found in the section of this Agreement entitled "Disadvantaged Business Enterprise Participation."

#### **B. SANDAG CONSENT REQUIRED**

Consultant shall not assign, sublet, or transfer (whether by assignment or novation) this Agreement, or any rights under or interest in this Agreement, without the written consent of SANDAG, which may be withheld for any reasonable purpose, provided however, that claims for money due to Consultant from SANDAG under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished promptly to SANDAG in writing.

#### **C. RESPONSIBILITY FOR SUBCONTRACTORS**

If Consultant subcontracts any of the work to be performed under this Agreement, Consultant shall be as fully responsible to SANDAG for the acts, errors, or omissions of Consultant's subcontractor and of the persons employed by the subcontractor as Consultant is for the acts and omissions of persons directly employed by Consultant.

### **XII. STANDARD OF CARE\***

#### **A. SERVICE PERFORMANCE**

Consultant's services shall be performed in accordance with generally-accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the same profession currently practicing under similar conditions. All services shall be performed in accordance with the requirements and specifications in this Agreement and issued Purchase Orders. Errors or omissions identified in the Consultant's work product and deemed by SANDAG to be insufficient to meet the applicable professional standard of care shall be corrected upon written notification by the Project Manager, and no additional payment shall be made for said corrections. Corrections of errors or omissions to the Consultant's work product shall not limit enforcement of any other provision of this Agreement.

#### **B. QUALITY CONTROL**

Consultant shall ensure that it provides adequate controls with regard to the quality of its deliverables. Written deliverables will typically be provided to SANDAG in draft for review. If SANDAG must make multiple rounds of revisions to Consultant's deliverables due to failure of



Consultant to provide adequate quality control, SANDAG shall not be required to pay Consultant for hours spent by Consultant to correct its deliverables.

**C. NO WAIVER**

Neither the SANDAG review, approval, or acceptance of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance thereof; and the Consultant shall be, and remain liable to, SANDAG in accordance with applicable law for all damages to SANDAG by Consultant's errors or omissions deemed to be negligent performance of any of the services furnished under this Agreement.

**D. INACCURACY OF DATA**

Consultant acknowledges and understands that the data and/or information it collects and/or provides to SANDAG will be relied upon by SANDAG and other persons or entities that are now or will in the future be under contract with SANDAG. Should information derived and provided by Consultant be inaccurate and cause SANDAG to incur damages or additional expenses, SANDAG shall notify Consultant and Consultant shall immediately place any applicable insurance carrier on notice of a potential claim.

**XIII. EVALUATION OF PERFORMANCE**

Consultant's performance will be evaluated by SANDAG. A copy of the final consultant evaluation will be sent to Consultant. The evaluation, together with any responsive comments that may be sent to SANDAG by Consultant, shall be retained by SANDAG. Interim or yearly evaluations may also be performed by SANDAG.

**XIV. NOTICES\***

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To SANDAG:  
San Diego Association of Governments  
Attention: Insert: Name  
401 B Street, Suite 800  
San Diego, CA 92101

To Consultant:  
As shown on front page.

**XV. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM\***

**A. EQUAL OPPORTUNITY CERTIFICATE**

Consultants doing business with SANDAG must be equal opportunity employers who achieve or attempt to achieve parity in the representation of women and minorities in their workforce. A signed Equal Employment Opportunity Certificate is a proposal submittal requirement and is a condition for contract award to Consultant.

**B. NO DISCRIMINATION**

Consultant shall ensure equal employment opportunity for all persons. Consultant and its subcontractors shall not discriminate against any employee or applicant for employment because of

race, color, religion, creed, national origin, ancestry, age (over 40), gender identity or expression, sex (including pregnancy, childbirth, breastfeeding or related medical conditions), medical condition, physical or mental disability, genetic information, sexual orientation, marital status, military or veteran status or any other category protected under federal, state or local law. These principles are to be applied by the Consultant in all employment practices, including recruiting, hiring, transfers, promotions, training, compensation, benefits, layoffs, and terminations.

### **C. COMPLIANCE WITH NON-DISCRIMINATION LAWS**

During the performance of this Agreement, Consultant agrees to comply with all the requirements imposed by Title VI and Title VII of the Civil Rights Act of 1964, as amended, and the regulations issued thereunder (Executive Order 11246 [Johnson, 1965]), the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, and any other applicable federal and state laws and regulations subsequently enacted. In addition, pursuant to Final Rule (RIN 1250-AA06) on pay transparency effective January 11, 2016) and which implements Executive Order 13665, Consultant and its subconsultants with government contracts in excess of \$10,000 are prohibited from terminating or otherwise discriminating against employees for discussing, disclosing, or inquiring about their own pay or co-workers' pay. The Final Rule also protects pay discussions by job applicants.

### **D. WORKFORCE MAKE-UP REPORTS**

From time to time SANDAG may request that Consultant provide information regarding its workforce to SANDAG. Within 30 calendar days of such a request from SANDAG, Consultant shall complete and submit any required reports to SANDAG. Consultant also may be required to provide reports to the Federal Department of Labor when required by the Office of Federal Contract Compliance Programs or other state or federal agencies.

## **XVI. CONFORMITY TO LEGAL REQUIREMENTS\***

### **A. COMPLIANCE WITH LAWS**

Consultant shall comply with all federal, state, and local laws and ordinances applicable to this Agreement. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code Section 1775 when applicable. Consultant shall cause all completed deliverables to conform to all applicable requirements of law: federal, state, and local and shall pass all of the provisions in this section of the Agreement through to all of its subconsultants.

### **B. VERIFICATION OF EMPLOYMENT ELIGIBILITY**

Consultant shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, consultants, and subcontractors that are included in this Agreement.

### **C. LICENSES AND PERMITS**

Consultant represents and warrants to SANDAG that it has all necessary licenses, permits, qualifications and approvals, of whatever nature, that are legally required for Consultant to practice its profession. Consultant further represents and warrants to SANDAG that it, at its sole cost and expense, shall keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are required for Consultant to practice its profession and/or perform services under this Agreement.

#### **D. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

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

#### **E. COMPLIANCE WITH FEDERAL TRADE LAWS**

By executing this Agreement Consultant certifies that it is (i) not owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.) or (2) not supplying any product for use on the Federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Consultant and any of its subconsultants shall provide immediate written notice to SANDAG if, at any time, it learns that its certification was erroneous by reason of changed circumstances.

Consultant shall not knowingly enter into any subcontract under this Agreement: (i) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or (ii) for the supply of any product for use on the Federal public works project under this Agreement that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. Consultant may rely upon the certification in paragraph (g)(1) of this clause unless it has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Consultant or its subconsultant knowingly rendered an erroneous certification, in addition to other remedies available to SANDAG, SANDAG may cancel this Agreement at no cost. The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7-30.9.

Consultant will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations, the US Department of State's International Traffic in Arm Regulations, and other applicable export laws. Consultant will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of embargoed countries or denied entities or persons except in accordance with all then current applicable US government export laws and regulations.

### **XVII. DISPUTES**

#### **A. INTERPRETATION OF THE AGREEMENT**

This Agreement shall be interpreted in accordance with the laws of the State of California.

## **B. CONTINUATION OF WORK DURING DISPUTE**

In the event Consultant has a dispute with SANDAG during the performance of this Agreement, Consultant shall continue to perform unless SANDAG informs Consultant in writing to cease performance. Consultant shall submit a statement of the grounds for the dispute, including all pertinent dates, names of persons involved, and supporting documentation to the SANDAG Project Manager. The Project Manager and other appropriate SANDAG staff will review the documentation in a timely manner and reply to Consultant within 20 calendar days. Upon receipt of an adverse decision by SANDAG, Consultant may submit a request for reconsideration to the SANDAG Executive Director. The request for reconsideration must be received within ten calendar days from the postmark date of the SANDAG reply. The Executive Director will respond to the request for reconsideration within ten working days. The decision of the Executive Director will be in writing.

## **C. REQUEST FOR MEDIATION**

If Consultant is dissatisfied with the results following exhaustion of the above dispute resolution procedures, Consultant shall make a written request to SANDAG for mediation. SANDAG shall respond to a request for mediation within 30 calendar days. If SANDAG agrees mediation is appropriate, a mutually-acceptable mediator shall be selected by the parties, and the parties will proceed to mediation of the dispute.

## **D. LITIGATION**

If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, litigation and collection expenses, witness fees, and court costs as determined by the court.

## **XVIII. LIMITATIONS ON USE AND DISCLOSURE\***

### **A. SERVICES EXCLUSIVELY FOR SANDAG**

The deliverables hereunder are provided for the exclusive use of SANDAG, and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Consultant are not to be used or relied upon by other parties except as authorized by SANDAG.

### **B. SENSITIVE INFORMATION**

Consultant shall not use for financial gain, disclose, or make other improper use of privileged information that is acquired in connection with this Agreement. For purposes of this Agreement, "Sensitive Information" includes, but is not limited to, trade secret information; documents marked as confidential; medical records; personnel records, home addresses and phone numbers of any person, social security numbers, credit card numbers, bank account numbers or any other PII; and knowledge of selections of contractors or subcontractors in advance of an official announcement by SANDAG. All financial, statistical, personal, technical, or other data and information relative to a party's or another entity's operations, which are designated confidential by a party and made available to the other party in order to carry out this Agreement, shall be protected by the receiving party from unauthorized use and disclosure. Additional terms concerning sensitive, privileged or confidential information or data, including, but not limited to PII, PCI, or data covered by confidentiality or privacy laws, may be set forth in the Special Provisions.

**C. LIMITATION ON DISCLOSURE**

Permission to disclose Sensitive Information on one occasion or public hearing relating to the Agreement shall not authorize the Consultant to further disclose such information or disseminate the same on any other occasion.

**D. PERMISSION FOR PUBLIC COMMENT**

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 prior review of the contents thereof by SANDAG and receipt of written permission from SANDAG.

**E. DISCLOSURE REQUIRED BY LAW**

Consultant is allowed to disclose Sensitive Information when required by law, rule, regulation, or court order upon notice to SANDAG that provides sufficient time to allow SANDAG to challenge such required disclosure.

**F. ACCESS TO PROCUREMENT INFORMATION**

All information related to a construction estimate, an independent cost estimate for non-construction work, evaluation of proposals or bids submitted to SANDAG, or scope of work for a future SANDAG procurement that may be disclosed in whole or in part to Consultant is Sensitive Information, and shall not be disclosed by Consultant to any entity other than SANDAG.

**XIX. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION\***

**A. AGENCY DBE GOALS**

As a recipient of federal funding, SANDAG has established DBE program goals and is required to report on DBE participation each year so that its attainment efforts may be evaluated.

**B. APPLICABILITY REGARDLESS OF USE OF FEDERAL FUNDING**

Even if no federal funding will be used on the Agreement and no DBE goal was set, the Consultant is required to document use of SBs and DBEs in the performance of its work.

**C. DEPARTMENT OF TRANSPORTATION FUNDING**

This Agreement will be funded in whole or in part by United States DOT funds. The applicable requirements are set forth below.

The contract-specific DBE commitment for this Agreement is Insert: Percentage with exact number of decimal places, even if 0.00% percent. **Ability to meet or attempt to meet the goal by submitting a Proposer DBE Commitment form (Caltrans LAPM Exhibit 10-O1 form, an attachment to this solicitation) must be documented at the time of proposal submission or the Proposer will be disqualified.** This form will show the percentage of work that the Proposer will use based on its cost estimate. Proposer will be required to fulfill this commitment through the utilization of DBE firms throughout the duration of the Agreement, including any future amendments.

Additional DBE requirements related to this solicitation are set forth in detail in the following Exhibits to the Standard Services Agreement:

- Standard Federal Provisions for FHWA Non-Construction
- Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions

#### **1. DBE Commitment/Participation**

The contract-specific DBE commitment for this Agreement is Insert: Percentage with exact number of decimal places, even if 0.00% percent.

#### **D. DBE CONTRACT GOAL FOR CHANGE ORDERS, AMENDMENTS, OR OTHER MODIFICATIONS**

In the event of change orders, amendments, or other modifications to the work or award amount when there is federal funding, SANDAG will notify Consultant of whether the DBE goal will remain the same or change. Consultant may be required to identify additional DBE subcontracting opportunities to fulfil the DBE goal or provide good faith efforts if so notified by SANDAG. If Consultant is unable to meet the goal on a change order, amendment, or modification, Consultant must provide SANDAG with documentation that adequate good faith efforts were exercised to meet the goal. Consultant's failure to provide adequate good faith effort documentation to support its inability to meet the applicable DBE goal may subject Consultant to penalties, liquidated damages, or withholding of payments per the Agreement. Consultant may request a waiver from SANDAG to exclude a change order, amendment, or modification from the DBE contract goal, if the change order, amendment, or modification is for newly added work and Consultant, after exercising good faith efforts, is unable to identify DBEs for the new work. New work is defined as work that was not included as part of the current Agreement or Task Order and calls for the performance of new work that can reasonably be construed as outside the scope of the currently specified work. Any waiver or deviation from these requirements shall only be permitted with prior written approval from SANDAG.

#### **E. POST-AWARD COMPLIANCE MONITORING**

SANDAG will conduct post-award monitoring of Consultant's compliance with the DBE provisions of the Agreement. For example, SANDAG may ask to review Consultant's subcontracts to ensure that DBEs have done the work for which credit was claimed. Consultant shall cooperate with SANDAG requests for assistance with post-award monitoring. Failure by the Consultant to cooperate may be considered a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as SANDAG deems appropriate.

#### **F. GOOD FAITH EFFORTS DURING PERFORMANCE OF AGREEMENT**

Post-award good faith efforts are defined as efforts made by Consultant to meet the DBE commitment after an Agreement or Task Order has been awarded and executed, but before the Project has been completed. Consultant is required to meet any DBE commitment or provide good faith efforts during the entire term of the Agreement. Post-award good faith efforts situations commonly occur when an approved DBE has withdrawn its services, when the DBE has been removed for just cause, or when the scope of services has been changed by SANDAG through a change order or amendment.

The DBE regulation at 49 CFR 26.53 provides that Consultant may not terminate for convenience an approved DBE subcontractor working on a DOT federally-assisted contract and then self-perform or award another subcontractor the work of the terminated DBE. Good faith efforts related to the termination and substitution of a DBE firm are addressed under the Termination and Substitution of DBE Subconsultants section of this Agreement.

The SANDAG Office of Diversity and Equity must be notified immediately in writing of any listed DBE subcontractor's inability to perform any or all of its work, whether by request or at the direction of Consultant.

Contract items of work designated by Consultant to be awarded to a DBE subcontractor shall be performed by the designated DBE, or an approved DBE substitute. Consultant, a non-DBE subconsultant, or another DBE subconsultant shall not perform the DBE's contract work items without prior approval by the SANDAG Office of Diversity and Equity.

Consultant is required to use DBEs listed and identified in the proposal or bid to meet the contract goal, and is responsible for ensuring that the DBE subcontractors are available to meet scheduling, work and other requirements on the Agreement or Task Order.

Use of every DBE subcontractor listed on the DBE Commitment forms shall be used by the Consultant as a condition of this Agreement. Consultant shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed on the DBE Commitment form unless the Consultant obtains written consent from the SANDAG Office of Diversity and Equity. Payment for work or material that should have been and was not performed or supplied by the listed DBE may be withheld by SANDAG unless Consultant obtains written consent from the SANDAG Office of Diversity and Equity.

SANDAG or its representatives may visit the work site or consultant's office to conduct reviews to ensure compliance with CUF and other DBE requirements. The reviews may include, among other activities, interviews of DBE subcontractors and their employees and Consultant's employees. Consultant shall cooperate in the review and make its employees available. Consultant shall inform SANDAG in advance when each DBE subcontractor will be working on the project to help facilitate reviews.

## **XX. RETENTION AND PROMPT PAYMENT**

### **A. PAYMENT OF SUBCONTRACTORS**

Consultant shall pay its subconsultants within seven calendar days from receipt of each payment made to the Consultant by SANDAG. The seven days is applicable unless a longer period is agreed in writing. Federal Regulation 49 CFR 26.29 requires any delay or postponement of payment over 30 days to take place only for good cause and only with the prior written approval of SANDAG.

### **B. RIGHT TO OFFSET**

In addition to any other remedy authorized by law, so much of the money due Consultant under this Agreement as shall be considered necessary by SANDAG to remedy a defect in performance or invoicing may be retained until disposition has been made of any claim for damages.

### **C. RETENTION OF FUNDS**

SANDAG shall hold a ten percent retention from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by SANDAG, of the work performed under this Agreement and pay retention to Consultant based on these acceptances. SANDAG will pay the prime contractor any retention withheld within 60 days after the date of final completion of the work.



Consultant or subconsultant shall return all monies withheld in retention from all subcontractors within ten days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the work by SANDAG. Any delay or postponement of payment may take place only for good cause and with the prior written approval of SANDAG. Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the Consultant or subconsultant; deficient subconsultant performance and/or noncompliance by a subconsultant.

## **XXI. RECORDS AND AUDITS\***

### **A. PROJECT RECORDS**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and SANDAG shall maintain and make available for inspection all books, documents, papers, accounting records, emails and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, SANDAG, FHWA, FTA, FRA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its Certified Public Accountants (CPA) work papers that are pertinent to the Agreement, Consultant's or its subconsultants' performance under and compliance with the Agreement, and Indirect Cost Rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished to SANDAG or its designated agent if requested.

### **B. WORK DOCUMENTATION RECORDS**

Consultant shall allow inspection of all work data, documents, proceedings, and activities related to this Agreement by SANDAG and its representatives for a period of three years from the date of final payment under this Agreement. All communications and information provided by Consultant or its subconsultants to SANDAG become public records as the property of SANDAG. As such, they may be subject to public review. See SANDAG's Board Policy 015: Records Management Policy, which is available at [www.sandag.org/legal](http://www.sandag.org/legal), for additional information.

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and SANDAG shall maintain and make available for inspection all books, documents, papers, accounting records, emails and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, SANDAG, FHWA, FTA, FRA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its Certified Public Accountants (CPA) work papers that are pertinent to the Agreement, Consultant's or its subconsultants' performance under and compliance with the Agreement, and Indirect Cost Rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished to SANDAG or its designated agent if requested. Subcontracts in excess of \$25,000 shall contain this provision. Location of Stored Records

Consultant shall ensure that all records relevant to this Agreement are stored only at locations or on servers or remote databases (cloud) that are within the legal jurisdiction of the United States.

## **XXII. COVENANT AGAINST CONTINGENT FEES**

### **A. RESTRICTIONS ON PARTICIPATION**

No elected official(s) of SANDAG or any of its member agencies, the State of California, or the United States Government shall become directly or indirectly interested in or personally benefit from the financial proceeds of this Agreement or in any part of it. No officer or employee of SANDAG shall become directly or indirectly interested in or benefit from the financial proceeds of this Agreement or any part of it.

### **B. NO GIFTS OR FEES**

Consultant affirms that its firm has not employed, retained, paid, or agreed to pay any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it 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, SANDAG shall have the right to 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.

## **XXIII. SANDAG DATA, DELIVERABLES AND OTHER WORK PRODUCTS\***

### **A. SANDAG DATA OWNERSHIP**

As between SANDAG and Consultant, SANDAG is and shall remain the sole and exclusive owner of all right, title and interest in and to SANDAG Data. Consultant shall use, and ensure that its representatives use, reasonable care that is at least as protective as the efforts it uses with respect to its own confidential information, to safeguard SANDAG Data from use or disclosure other than as permitted under the Agreement. Without limiting the foregoing, Consultant shall maintain in effect and enforce rules and policies to protect against access to or use or disclosure of SANDAG Data other than in accordance with this Agreement.

Consultant agrees that it will:

- Not use or permit the use of SANDAG Data other than as strictly necessary to exercise its rights or perform its obligations under this Agreement; and
- Not use or permit the use of any of SANDAG Data, directly or indirectly, in any manner to the detriment of SANDAG; and
- Maintain SANDAG Data in strict confidence and not disclose or make available SANDAG Data to any person without SANDAG's prior written consent, provided, however, that Consultant may disclose the SANDAG Data to its representatives who: (i) have a "need to know" for purposes of any performance, or exercise of any rights with respect to such SANDAG Data, under this Agreement; and (ii) have been informed in writing of the highly confidential nature of the SANDAG Data and the limitations, procedures and obligations that apply to the access, use and disclosure of SANDAG Data under this Section; and (iii) are themselves bound by written restricted use and nondisclosure agreements or obligations at least as restrictive as those set forth in this Agreement, provided, further, that Consultant shall be responsible for ensuring its representatives' compliance with, and shall be liable for any breach by its representatives, of this Section.

Consultant may disclose SANDAG Data when it is required by law, rule, regulation, or court order upon notice to SANDAG sufficient to allow SANDAG to challenge such required disclosure.

Consultant agrees that permission to disclose SANDAG Data on one occasion shall not authorize the Consultant to further disclose such information or disseminate the same on any other occasion.

Upon SANDAG's written request at any time and subject to any contrary obligations under applicable law, Consultant shall at SANDAG's direction promptly return or destroy and erase from all systems it directly or indirectly uses or controls (a) all originals and copies of all documents, materials and other embodiments and expressions in any form or medium that contain, reflect, incorporate or are based on SANDAG Data and provide a notarized written statement to SANDAG certifying that it has complied with the requirements of this Subsection.

During the term and thereafter in perpetuity, Consultant will not Process or otherwise undertake or refrain from any act with respect to any SANDAG Data in any manner, including any actual or attempted Processing thereof, except for the sole purpose of performing under this Agreement and in compliance with: (i) the express terms and conditions of this Agreement or as SANDAG may hereafter expressly direct in advance in writing; and (ii) all applicable laws (including all then current and applicable laws relating to spamming, privacy and consumer and data protection).

Except as SANDAG or an Authorized User may submit to Consultant personnel for purposes of SANDAG's or such Authorized User's use of the Hosted Service, or as SANDAG may hereafter expressly direct in advance in writing, Consultant will not under or in connection with this Agreement or any transaction or arrangement hereunder collect any SANDAG Data from or in connection with SANDAG's or any Authorized User's access to or use of the Hosted Services, or through any access Consultant may have to the SANDAG Systems, including through any cookies, applets, beacons or other data mining methods or technologies.

## **B. SANDAG DATA ACCESS**

In the event Consultant or its subconsultants will have access to a SANDAG database, server, network, or other SANDAG technology or data, Consultant and all applicable subconsultants, and applicable employees thereof, shall take adequate precautions to ensure SANDAG information is not leaked, hacked or otherwise lost, disclosed or misused. All Consultant or subconsultant employees with access to SANDAG Data by electronic means or its cloud databases or network shall be required to sign the acknowledgement included in the Policy on Use of Technology and Electronic Resources by SANDAG "Non-Employees" and Policy Acknowledgement Regarding Policy on Use of Technology and Electronic Resources by SANDAG "Non-Employees."

In the event of a data breach caused by Consultant, subconsultants, or any of their employees, the indemnification provisions of this Agreement shall apply and all costs for remedying the breach shall be reimbursed to SANDAG by the relevant Consultant and/or subconsultants.

## **C. CONSULTANT MATERIALS**

Notwithstanding any provision of this Agreement to the contrary, any routines, methodologies, processes, libraries, tools or technologies created, adapted or used by Consultant in its business generally, or developed prior to execution of the Agreement, including all associated Intellectual Property rights (collectively "Consultant Materials"), shall be and remain the sole property of Consultant, and SANDAG shall have no interest in or claim to Consultant Materials, except as necessary to exercise its rights under the Agreement and as otherwise may be provided in the form of a license from Consultant to SANDAG and Authorized Users.

#### **D. USE OF DELIVERABLES**

All deliverables prepared or obtained under the terms of this Agreement shall be delivered to and become the property of SANDAG. The term “deliverables” includes, but is not limited to, all original drawings, reports, and other documents, including detailed calculations, digital/electronic databases, source code, videos, imagery, data sets, analyses, maps, and other work products developed for the Project. Deliverables must be provided to SANDAG in the format requested by SANDAG and include metadata.

SANDAG shall have the right to remove Consultant’s and subconsultant’s logos from all deliverables. Should Consultant provide a slide deck, report or other presentation items or deliverables to SANDAG that include logos or other identifying marks, Consultant shall provide the deliverables in editable form to allow SANDAG the ability to remove such marks.

All deliverables provided to SANDAG must be free of photos, data or other items that are subject to copyrights or other ownership interests that would limit SANDAG’s ability to reuse and disseminate any portion of the deliverable.

#### **E. INTELLECTUAL PROPERTY RESULTING FROM CREATION OF DELIVERABLES**

Consultant agrees that any and all property rights, including intellectual property rights such as copyrights or patents that arise from creation of deliverables or other work products required by this Agreement for exclusive use by SANDAG or its Authorized Users, excluding however, Consultant Materials, shall be vested in SANDAG and hereby agrees to relinquish all claims to such property rights in favor of SANDAG. Additional provisions concerning intellectual property, if applicable, may be included in the scope of work or Special Provisions.

#### **F. INFORMATION AND DATA NOT TO BE DISCLOSED OR SOLD BY CONSULTANT**

Consultant and all of its subconsultants, agents, representatives and employees are prohibited from disclosing or selling SANDAG Data or information provided, collected or obtained pursuant to this Agreement without express, written permission from SANDAG. Additional terms concerning privileged or confidential information or data, including, but not limited to such information or data that may qualify as PII, PC, or data covered by any other privacy laws, may be set forth in the scope of work or Special Provisions. Consultant shall have no rights to use work product, deliverables, intellectual property, or any other property of SANDAG’s without express, written permission from SANDAG.

#### **XXIV. TIMELY PERFORMANCE**

Consultant acknowledges that timely performance is an important element of this Agreement. Accordingly, the Consultant shall put forth its best efforts to complete its services in accordance with the agreed-upon schedule for this Agreement. It shall be the responsibility of Consultant to advise SANDAG on a Choose: quarterly OR monthly OR bi-weekly OR weekly basis of the progress of its work, expenditures incurred, and information regarding whether the Project is projected to comply with the schedule and budget limits. Consultant shall document the progress and results of work performed under this Agreement to the satisfaction of SANDAG and, if applicable, to the satisfaction of any government agency as directed by SANDAG. This may include progress and final reports, plans, specifications, estimates, or other evidence of attainment of the Agreement objectives.

## **XXV. FORCE MAJEURE**

Either party is excused from performance hereunder if such non-performance results from acts of God, epidemics, war, riots, acts of governmental authorities, or any other cause that could not have been overcome by the exercise of due diligence or planning by the non-performing party. In the event of the occurrence of a force majeure event, the party unable to perform shall promptly notify the other party within five calendar days and provide an explanation describing why the inability to perform is not due in whole or in part to its actions or inaction. It shall further pursue its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

## **XXVI. ENTIRE AGREEMENT**

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

## **XXVII. INCORPORATION OF EXHIBITS**

The SANDAG RFP and Consultant's proposal concerning the Project are hereby incorporated by reference except to the extent they may conflict with the terms of the Agreement. The following documents (exhibits to this Agreement) also are attached and incorporated by reference if the box next to document title is marked:

- ☐ Scope of Work
- ☐ Fee, Rate, or Payment Schedule
- ☐ Project Schedule
- ☐ Special Provisions for Service and/or Equipment Agreements
- ☐ Standard Federal Provisions for FHWA (Non-Construction)
- ☐ Final Report - Utilization of All Subconsultants, Underutilized/Disadvantaged Business Enterprises and Small Businesses
- ☐ Disadvantaged Business Enterprises Certification Status Change Form (Caltrans LAPM Exhibit 17-O)
- ☐ SANDAG Annual Employment Utilization Report
- ☐ Consultant Contract DBE Commitment Information Form (Caltrans LAPM Exhibit 10-O2 - Consultant Contract DBE Information)
- ☐ Surplus DBE Utilization Form
- ☐ Request to Add Subconsultant Form and/or Bench Firm Form

In the event of conflicting provisions, the following order of precedence will apply: 1) Standard Federal Provisions for FHWA; 2) Special Provisions for Service and/or Equipment Agreements; 3) Exhibits to this Agreement; 4) the Standard Services Agreement; 5) Attachments to the RFP; 6) the RFP; and 7) Consultant's proposal.

Wherever the word "contractor" may appear in the exhibits to this Agreement, it should be read as the equivalent to the word "consultant." Wherever the words "bid" or "bidder" may appear in the exhibits to this Agreement, they should be read as the equivalent to the words "proposal" or "Proposer."

## **XXVIII. ADMINISTRATION OF AGREEMENT**

Consultant proposes to assign Insert: Name of person as its Project Manager to provide supervision and have overall responsibility for this Agreement for Consultant. The Project Manager shall not be removed from the Project or reassigned without prior approval of SANDAG. Consultant must obtain approval from SANDAG in writing before assigning a new Project Manager to the Project. No subcontracting of these professional services shall be made without prior approval of SANDAG.

## **XXIX. HEADINGS**

Section headings in this Agreement shall not be used to alter the plain meaning of the text in this Agreement.

## **XXX. PRESERVATION OF AGREEMENT**

Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall be severable and enforceable.

## **XXXI. SUCCESSORS OR ASSIGNS**

All terms, conditions, and provisions hereof shall inure to and shall bind each of the parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.

## **XXXII. SURVIVAL**

The rights, obligations and conditions set forth in the Sections of this Agreement entitled Indemnification, Limitations of Liability, Representations and Warranties, Insurance, Limitations on Use and Disclosure, Assignment and Subcontracting, Standard of Care, Notices, Disputes, Records Retention, Ownership of Documents and Other Deliverables, as well as the Special Provisions, and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, shall survive until the last applicable statute of limitations expires.

## **XXXIII. SIGNATURES\***

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument. The parties hereby agree to the use of electronic signatures to create mutually binding contractual agreements.

## **STANDARD SERVICE AGREEMENT EXHIBITS**



## **SCOPE OF WORK**

See draft scope of work included in the solicitation, the final scope of work for the Agreement will be inserted at the time of Agreement execution.

## **FEE, RATE OR PAYMENT SCHEDULE**

The Final Fee, Rate or Payment Schedule for the Agreement will be inserted at the time of Agreement execution.

## PROJECT SCHEDULE

[Note: Insert when applicable]

## **SPECIAL PROVISIONS FOR SERVICE AND/OR EQUIPMENT AGREEMENTS\***

The special provisions below are incorporated into the Agreement. All of the provisions in this Exhibit shall be passed through to subcontractors.

### **I. OPTION TO EXTEND**

SANDAG shall have the option to extend the term of this Agreement in one or more increments for a total of no less than one and no more than six calendar months at the discretion of SANDAG in order to address unforeseeable circumstances or delays. Each extension shall be effected by written unilateral Agreement amendment delivered to Consultant no less than 15 calendar days prior to expiration of any Agreement term. The rates set forth in the Agreement shall apply to this option clause unless provision for appropriate price adjustment has been made elsewhere in this Agreement or by Agreement amendment. All payments are subject to availability of funds from SANDAG.

### **II. CONFLICT OF INTEREST**

#### **A. ATTEMPTS TO INFLUENCE GOVERNMENT DECISIONS**

Consultant shall not make or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement. Consultant represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as defined in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic or organizational interest which would conflict with Consultant's duties under this Agreement. Consultant agrees to scrupulously avoid performing services for any person or entity or entering into any contractual or other relationship with any person or entity that might create a conflict with the rendering of services under this Agreement. Consultant will immediately advise the General Counsel of SANDAG if Consultant learns of an economic or organizational conflict of interest or other prohibited conflict of interest on the part of Consultant or any of its subcontractors during the term of this Agreement.

#### **B. ETHICAL STANDARDS OF CONDUCT**

All SANDAG business must be conducted within ethical standards approved by the SANDAG Board of Directors. Some of these standards can be found in SANDAG Board Policies Nos. 004 and 016 at [sandag.org/legal](http://sandag.org/legal). SANDAG staff are specifically prohibited from participating in the selection process when those staff have a close personal relationship, family relationship, or past (within the last 12 months), present, or potential business or employment relationship with a person or business entity seeking a contract. It is unlawful for any contract to be made by SANDAG if any individual Board member or staff has a prohibited financial interest in the contract.

#### **C. EXCHANGE OF GIFTS WITH SANDAG**

Consultants, contractors, vendors and agents thereof currently doing business with or planning to seek contract awards from SANDAG are strongly discouraged from giving gifts to SANDAG officers, employees, agents or Board members who have taken or may in the future take part in contracting decisions for SANDAG. The SANDAG officers, employees, agents, and Board members shall not solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements that could bias their decision-making. This prohibition applies to any gift, gratuity, favor, entertainment, or loan, and includes such items as liquor, lodging, travel, food, and tickets to public functions such as sports events, theater, etc. If a person has any reason to believe a financial or organizational conflict of interest

exists with regard to a particular procurement, he/she should notify the SANDAG Office of General Counsel immediately.

#### **D. DETERMINATION OF CONFLICT**

SANDAG is a government agency subject to conflict of interest laws and its Standard of Conduct calls for avoidance of the perception of impropriety. As Consultant, Consultant's eligibility to provide services under the Agreement could be affected by conflicts of interest. If Consultant has reason to believe that it has, or potentially could have, a financial or organizational conflict of interest, Consultant is obligated to immediately inform the SANDAG Office of General Counsel. A prohibited organizational conflict of interest exists when a firm is or may be unable to render impartial, objective assistance or advice to SANDAG or where a firm would receive an unfair competitive advantage. In addition, Consultant is required to disclose any pending or active investigations or litigation that may affect the reputation or ability of Consultant to carry out the Project. Examples of situations that could create a conflict of interest are discussed in Board Policy No. 016, and include situations that can arise when a Consultant represents a client that has sued SANDAG or one of its member agencies, or when Consultant assists SANDAG with preparing estimates, scopes of work, specifications, or evaluation criteria that will be used in a future procurement. These examples are not exhaustive. A process for determining whether Consultant has a conflict is set forth in Board Policy No. 16. Consultant, its subconsultants and affiliates (a firm that is subject to the control of the same persons through joint ownership or otherwise) of either may be found ineligible due to actual or potential conflict.

Proposers are hereby placed on notice that work awarded this Agreement may preclude a Consultant or Subconsultant from working on future stages of a project due to a conflict of interest. For example, if a SANDAG Consultant is awarded a scope of work to assist SANDAG in developing a scope of work for another procurement, the Consultant would have an unfair competitive advantage and would therefore be ineligible to compete when that procurement was issued.

#### **E. AVOIDANCE OF CONFLICT FOR CONSULTANT EMPLOYEES WITH PROJECT MANAGEMENT FUNCTIONS**

Consultant's employees or employees of its subconsultants may be tasked with assisting SANDAG with some portion of its contracting processes with third parties, such as writing scope, preparing cost estimates, reviewing invoices, or recommending the selection of supplies or services from third-party providers. If Consultant's team members will have any of these types of responsibilities, its affected employees will be required to execute a Consultant in Management Support Role Conflict of Interest and Confidentiality Statement (Caltrans LAPM Exhibit 10-U), as well as provide financial disclosure statements required by state law to confirm that those persons do not have sources of income or gifts that will create a conflict of interest prior to carrying out any such activities for SANDAG. Financial disclosure statements (known as Form 700s) must be filed by such employees annually and within 30 days of leaving such responsibilities. If a Form 700 is not filed on a timely basis, the work of the Consultant will be rejected by SANDAG and the individual may be subject to fines by the California Fair Political Practices Commission. Such employees also are prohibited from receiving gifts (tickets, meals, travel, etc.) from entities with which SANDAG may contract in combination with or as a result of the services covered by the Agreement. Such employees will be prohibited from receiving gifts (tickets, meals, travel, etc.) from entities with which SANDAG may contract in combination with or as a result of the services covered by the Agreement. The LAPM form is available on the Caltrans website at <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>.

### **III. WORK ON PREMISES OF SANDAG OR OTHERS**

All or a portion of Consultant's work is to be performed on SANDAG property, premises where SANDAG is conducting operations, or the premises of Insert: Name of applicable entity (e.g., a city or transit board). Therefore, Consultant shall take all necessary precautions to prevent the occurrence of injury to persons

or damage to property during the progress of such work and, except to the extent that any such injury or damage is due to the negligence, act, or omission by SANDAG, as the case may be, Consultant shall defend and indemnify SANDAG, its officers, employees, agents, and landlord, and Insert: Name of applicable entity (e.g., a city or transit board), its officers, employees, agents, and landlord against any and all loss, costs, liability, damage, or expense (including without limitation, attorney's fees and expenses) which may result in any way from any act or omission of Consultant, its employees, servants, agents, or contractors arising from work performed on such property.

#### **IV. GRANT REQUIREMENTS**

#### **V. SENSITIVE SECURITY INFORMATION**

Consultant must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of the Agreement. Such sensitive security information includes, but is not limited to, information obtained or developed in the conduct of security activities, including research and development, the disclosure of which the Secretary of the United States Department of Transportation (DOT) has determined would (1) constitute an unwarranted invasion of privacy (including, but not limited to, information contained in any personnel, medical, or similar file); or (2) reveal trade secrets or privileged or confidential information obtained from any person; or (3) be detrimental to transportation safety. 49 USC 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR 15; 49 USC 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR 1520.

#### **VI. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

##### **A. ALLOWABLE COSTS**

Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

Consultant also agrees to comply with federal procedures in accordance with 2 CFR 200.

Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 2 CFR 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to SANDAG.

##### **B. APPLICATION TO SUBCONTRACTORS**

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

#### **VII. AUDITS**

Consultant may undergo a pre-award or post-award audit. Consultant and all of its subconsultants that work on the Project will be subject to financial and/or performance audits by SANDAG or its representatives as described in this Section. All references to "consultant" in this section shall mean Consultant and all of its subconsultants. SANDAG will not pay Consultant at rates or in amounts that exceed the amounts negotiated or required by SANDAG following an audit. An additional audit may need to be carried out if this Agreement is amended, legal requirements change, or circumstances warrant additional auditing. Each consultant agrees to fully cooperate if an additional audit is requested. Consistent with 49 USC 5325(b)(3)(A)(B), any contract or subcontract awarded under this section must be performed and audited pursuant to Federal Acquisition Regulations. SANDAG will accept a consultant's indirect cost rates, established in accordance with Federal Acquisition Regulations cost

principles, for one-year applicable accounting periods by a cognizant federal or state government if those rates are not currently under dispute

#### **A. AUDIT REVIEW PROCEDURES**

Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by the SANDAG Department Director of Finance.

Not later than 30 days after issuance of the final audit report, a consultant may request a review by the SANDAG Department Director of Finance of unresolved audit issues. The request for review will be submitted in writing. Neither the pendency of a dispute nor its consideration by SANDAG will excuse a consultant from full and timely performance, in accordance with the terms of this Agreement. Consultant and subconsultants' contracts, including cost proposals and Indirect Cost Rates (ICR), are subject to audits or review such as, but not limited to, a Contract Audit, and Incurred Cost Audit, and ICR Audit, or a Certified Public Accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers if applicable, will be reviewed to verify compliance with 48 CFR 31, 2 CFR 200, and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review, it is the consultant responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The contract, cost proposal, and ICR shall be adjusted by the consultant and approved by SANDAG contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by SANDAG at its sole discretion. Refusal by a consultant to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of this Agreement or other applicable contract and disallowance of prior reimbursed costs.

#### **VIII. CONSULTANT EMPLOYEE USE OF SANDAG NAME**

Consultant's and its subconsultants' employees shall not use any SANDAG stationary, business cards, email address signatures, or any other practice or methodology that may mislead the public into believing those employees have an employment relationship with SANDAG or have authority to act on behalf of SANDAG. Consultant's employees that wear clothing displaying one or more SANDAG-owned logos shall also wear a prominent nametag that clearly designates the person as an employee of the Consultant in order to not mislead the public.

#### **IX. ADDING STAFF OR SUBCONSULTANTS**

##### **A. ADDITION OF NEW STAFF**

Consultant must obtain written approval to make changes to its existing staff or to add new staff not previously listed in the Fee, Rate or Payment Schedule. Consultant shall submit and obtain an approved Personnel Request Form prior to the utilization of staff or subconsultants whose rates have not previously been approved by SANDAG. If Consultant fails to obtain prior approval, Consultant shall bear all risks for non-reimbursement by SANDAG due to such employees or their rates not being approved by SANDAG. Under no circumstances shall an invoice be approved for payment for any person or subconsultant until the Personnel Request Form has been approved by SANDAG. SANDAG's payment of an invoice containing personnel or rates that have not previously been approved by SANDAG shall not be considered a waiver by SANDAG of the right to enforce this Section. In no event will SANDAG agree to be charged retroactively for personnel not added via this process when the work occurred in SANDAG's previous fiscal year and Consultant invoices for the personnel's time more than 60 days after the close of SANDAG's fiscal year end.



A Personnel Request Form shall be accompanied by a certified payroll record or other documentation demonstrating the hourly rate of the employee. SANDAG will reject any Personnel Request Form that does not contain sufficient supporting documentation or if the Personnel Request Form contains an hourly rate that exceed the rate shown on the supporting documentation.

## **1. Addition of New Subconsultant**

Consultant shall use the Request to Add Subconsultant or Bench Firm Form and Personnel Request Form to obtain approval to add new subconsultants.

### **a. General Requirements for Addition or Removal of Subconsultants**

Consultant must obtain prior approval for adding new subconsultants or removing existing subconsultants. To add staff or subconsultants, SANDAG must approve the changes in writing via the executed Request to Add Subconsultant or Bench Firm Form, however, a formal Agreement amendment shall not be required to add staff or new subconsultants. Consultant may substitute a subconsultant if the work SANDAG proposes to assign or has assigned under the Agreement If Applicable: or a Task Order cannot be fulfilled by one of the subconsultants listed in the Consultant's proposal because the subconsultant is unavailable, unwilling or unable to perform the work. In addition, a subconsultant addition may be allowed if the work SANDAG intends to assign is not in any of the work categories listed for subconsultants that SANDAG has already approved for use under the Agreement.

It is Consultant's responsibility to select qualified and responsible subconsultants. Consultant may request assistance from SANDAG in identifying subconsultants, but SANDAG may not direct Consultant to hire a particular subconsultant unless a sole source is warranted. The following procedures should be used to add or substitute a subconsultant.

- The Consultant shall submit a Personnel Request Form and supporting documentation that establishes that the proposed rates for the new subconsultant are reasonable. SANDAG staff may be able to document this by comparing the proposed rates against a) the rates charged in other contracts for similar services; or b) what other public agencies have been charged for similar services. If SANDAG is unable to locate sufficient documentation to compare prices, the Consultant will be required to attempt to locate other firms qualified to perform the services and provide rate data for those firms to SANDAG.
- Consultant does not have to select the subconsultant with the lowest rates. Selection of a subconsultant should be based on a combination of factors including qualifications, experience and price.
- Consultant should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or subconsultants without prior written approval from SANDAG. Consultant must request and justify the need for the substitution and obtain approval from SANDAG via the Request to Add Subconsultant or Bench Firm Form prior to use of a different subconsultant. The proposed substituted person or firm must be as qualified as the original, and at the same or lower cost.
- Consultant and any new subconsultant may be required to amend previous documents or sign new documents in order to comply with SANDAG procurement and contracting requirements. Consultant and subconsultant shall complete, sign, and return to

SANDAG any forms SANDAG may require in order to add the subconsultant to the Agreement.

## **2. Termination or Substitution of DBE Subconsultants**

DBEs must perform work or supply materials as listed in the Proposer DBE Commitment form as shown in the Exhibit(s) entitled "Consultant Contract DBE Commitment Information Form" and if applicable, the ADM-0227F DBE Commitment form and ADM-3069 DBE Utilization Report form (when Consolidated Planning Grant funds will be used).

Consultant shall not terminate a DBE listed subconsultant for convenience and perform the work with its own forces, other subconsultants, including other DBEs, or obtain materials from other sources, without prior written authorization from SANDAG. SANDAG will grant authorization to substitute other forces or sources of materials if Consultant submits a request to SANDAG that establishes any of the following justifications:

- Listed DBE fails or refuses to execute a written contract based on plans and specifications for the Project.
- Consultant stipulates that a bond is a condition of executing the subcontract and the listed DBE fails to meet the bond requirements.
- Work requires a license and listed DBE does not have a valid license.
- Listed DBE fails or refuses to perform the work or furnish the listed materials.
- Listed DBE's work is unsatisfactory and not in compliance with its contract.
- Listed DBE delays or disrupts the progress of the work.
- Listed DBE becomes bankrupt or insolvent.

Consultant will need to comply with the following procedures to substitute DBE subconsultants so that the DBE commitment can be met.

- Before requesting permission from SANDAG for a substitution, Consultant must give notice in writing to the DBE subconsultant, with a copy to the SANDAG Director of Diversity and Equity, of its intent to request to terminate and/or substitute the DBE subconsultant.
- The notice sent to the DBE subconsultant must include the reason the Consultant is requesting the substitution. If Consultant is requesting to terminate a portion of the work or materials being provided by a DBE, Consultant shall provide the reason for partially terminating the work committed to a DBE.
- Consultant must give the DBE subconsultant five days to respond to Consultant's notice. The DBE's response should advise the Consultant of the reasons, if any, why it objects to the proposed termination of its subcontract and should include information regarding why the substitution should not be approved, if applicable. If the DBE subconsultant has elected to voluntarily withdraw or has fully completed the scope of work provided in the Consultant's commitment, the DBE subconsultant shall provide a response explaining the circumstances and its concurrence with the termination. Consultant shall provide the SANDAG Director of Diversity and Equity with a copy of the DBE subconsultant's response, if any, when submitting its request for substitution.

- The proposed new subconsultant must be certified to perform a commercially useful function for one or more of the types of work in the scope of work. SANDAG can assist with locating DBE firms and may already have a posted list of certified DBE firms on its Website.
- Consultant must check the CUCP database to ensure the proposed DBE firm is certified for the associated categories and types of work (identified by the NAICS codes) in the proposed scope of work.
- If, after seeking assistance from SANDAG in locating DBE firms, Consultant cannot locate DBE firms that are ready, willing and able to perform the substituted work, Consultant shall provide SANDAG or its designee with GFE documentation regarding its efforts for the SANDAG contract file that will justify a reduction of all or a portion of the DBE goal/commitment. SANDAG or a designee will review and determine if Consultant's submitted GFE documentation is adequate.
- Consultant shall provide SANDAG with the qualifications and fee information that was used for the selection of the substituted DBE.

#### **X. PROVISIONS FOR CONFIDENTIAL, PRIVILEGED, PRIVATE OR SENSITIVE DATA ACCESS**

Consultant's scope of work includes access to, creation of, or Processing of Sensitive Information. Accordingly, the following provisions shall apply to the Agreement.

##### **A. DEFINITIONS**

"Authorized Users" means all persons, including end users, authorized by SANDAG to access and use the Consultant's Materials, SANDAG intellectual property or SANDAG Data under this Agreement.

"Confidential Information" means any information that is treated as confidential by either party ("Disclosing Party"), including trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing, regardless of whether such information was intentionally or unintentionally disclosed or marked as "confidential" or "proprietary" by the Disclosing Party or otherwise obtained (including by visual inspection) by the other party or any of its Representatives ("Receiving Party").

"Consultant Materials" means all devices, documents, data, know-how, methods, processes, software and other inventions, works, technologies and materials, including any and all service software, documentation, computer hardware, programs, reports and specifications, client software and deliverables provided or used by Consultant in connection with performing the scope of work, in each case developed or acquired by the Consultant independently of this Agreement.

"Hosted Services" means the hosting, management and operation of the software or other services for remote electronic access and use by SANDAG and its Authorized Users as may be called for in the scope of work.

"Personal Information" means data or information obtained or derived from Consultant or any of its subconsultants when carrying out the scope of work (including the Processing) that constitutes Personally Identifiable Information, Personal Credit Information, or any other information to which legal restrictions apply in order to protect the privacy of individuals. means any information that any of the Consultant Personnel collects, receives or obtains, from or on behalf of SANDAG or any of its Authorized Users that does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located, such as the individual's name, address, social

security number, etc., and any other information relating to an identified or identifiable individual. The foregoing applies whether the information regarding a specific individual can be directly, derivatively, or by aggregating it with other information. Personal Information includes such information of or pertaining to SANDAG's personnel, directors, officers, agents, suppliers, contractors, members of the public or customers and all "nonpublic personal information," as defined under the Gramm-Leach-Bliley Act (15 USC 6801 et seq.), "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996 (42 USC 1320d), any other similar laws applicable to privacy of individual information and all rules and regulations issued under any of the foregoing.

"Processing" means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works; (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available; or (c) block, erase or destroy. "Processing" and "Processed" have correlative meanings.

"SANDAG Data" means any and all information, data, materials, works, expressions or other content, including any that are (a) uploaded, submitted, posted, transferred, transmitted or otherwise provided or made available by or on behalf of SANDAG or any Authorized User for Processing by or through any Hosted Services; or (b) collected, downloaded or otherwise received by Consultant or any Hosted Services for SANDAG or any Authorized User pursuant to this Agreement or any Service Order or at the written request or instruction of SANDAG or such Authorized User. All output, copies, reproductions, improvements, modifications, adaptations, translations and other derivative works of, based on, derived from or otherwise using any SANDAG Data are themselves also SANDAG Data. For the avoidance of doubt, SANDAG Data includes all User Data and Personal Information but does not include any Consultant Materials.

"Sensitive Information" refers collectively to Confidential Information, Personal Information, User Data, and information covered by federal or state government statutes or regulations intended to protect sensitive security information. All notes, analyses, summaries, interpretations and other embodiments, expressions and derivative works of, containing, based on, derived from or otherwise reflecting any Sensitive Information, in whole or in part, and prepared by any person, shall themselves constitute the Sensitive Information of the Disclosing Party on whose Sensitive Information they are based. Without limiting the foregoing, (a) all SANDAG Data (including all Private Information and Confidential Information) is and will remain the Sensitive Information of SANDAG; and (b) the Consultant Materials will remain the Sensitive Information of Consultant.

"User Data" means any and all information reflecting the access or use of Consultant Materials, SANDAG intellectual property or SANDAG Data by or on behalf of SANDAG or any Authorized User, including any end user profile-, visit-, session-, impression-, click through- or click stream-data and any statistical or other analysis, information or data based on or derived from any of the foregoing.

## **B. CONFIDENTIALITY**

### **1. Exclusions**

Confidential Information does not include any information or material that the Receiving Party can demonstrate by written or other documentary records: (a) is or becomes generally known other than through a breach of this Agreement or another confidentiality or non-disclosure agreement, obligation or duty, or other wrongful act, of or on behalf of the Receiving Party or any of its Representatives; (b) was already rightfully known to the Receiving Party, without restriction on use or disclosure, prior to being directly or indirectly disclosed by or on behalf of the Disclosing Party, or obtained by or on behalf of the Receiving Party; (c) has been or

hereafter is rightfully received by or on behalf of the Receiving Party from a third-party without restriction on use or disclosure and without breach of any agreement or obligation or duty of confidentiality to the Disclosing Party or any other Person; or (d) was or is independently developed by the Receiving Party without access or reference to or use of any Confidential Information of the Disclosing Party.

## **2. SANDAG Data Exception**

Notwithstanding the provisions of Subsection 1 or any other provisions of this Agreement, none of the exclusions set forth in Subsection 1 apply to any SANDAG Data, whether provided by or on behalf of SANDAG to Consultant for Processing or generated or derived from such Processing and regardless of whether such SANDAG Data may be publicly available or otherwise qualify for exclusion under any of the other provisions of this Section. The preceding sentence does not prohibit or limit Consultant from any use or disclosure of any information that may be the same as any SANDAG Data but which Consultant can demonstrate by documentary evidence was: (a) obtained by Consultant without access to, reference to or use of any SANDAG Data; and (b) at all times maintained separately from and not in any way combined, commingled, compared, benchmarked or in any way associated with any SANDAG Data.

## **3. Confidentiality and Use**

Consultant shall use, and ensure that its representatives use, reasonable care that is at least as protective as the efforts it uses with respect to its own confidential information, to safeguard the SANDAG's Sensitive Information from use or disclosure other than as permitted under the Agreement. Without limiting the foregoing, Consultant shall maintain in effect and enforce rules and policies to protect against access to or use or disclosure of Confidential Information other than in accordance with this Agreement. As a condition to being provided with such Sensitive Information, Consultant agrees that, during the Term and for two years thereafter, it will:

- Not use or permit the use of SANDAG's Sensitive Information other than as strictly necessary to exercise its rights or perform its obligations under this Agreement;
- Not use or permit the use of any of SANDAG's Sensitive Information, directly or indirectly, in any manner to the detriment of SANDAG;
- Maintain SANDAG's Sensitive Information in strict confidence and, subject to the following Subsection, not disclose or make available SANDAG's Sensitive Information to any person without SANDAG's prior written consent, provided, however, that Consultant may disclose the Sensitive Information to its representatives who: (i) have a "need to know" for purposes of any performance, or exercise of any rights with respect to such Sensitive Information, under this Agreement; (ii) have been informed in writing of the highly confidential nature of the Sensitive Information and the limitations, procedures and obligations that apply to the access, use and disclosure of Sensitive Information under this Section; and (iii) are themselves bound by written restricted use and nondisclosure agreements or obligations at least as restrictive as those set forth in this Agreement, provided, further, that Consultant shall be responsible for ensuring its representatives' compliance with, and shall be liable for any breach by its representatives, of this Section.

## **4. Compelled Disclosures**

If Consultant becomes compelled by applicable Law to disclose any Sensitive Information, Consultant shall, to the extent permissible by applicable law:

- As soon as possible after becoming aware of such requirement and prior to disclosing Sensitive Information pursuant thereto, notify SANDAG in writing of such required disclosure so that SANDAG may seek a protective order or other appropriate remedy or waive its rights under this Section;
- At the Consultant's expense, use reasonable efforts not to release such Sensitive Information pending the outcome of any measures taken by SANDAG to contest, oppose or limit such compelled disclosure or any further disclosure or use of Sensitive Information that may result therefrom;
- Use reasonable efforts to obtain assurance that the Sensitive Information will be accorded confidential treatment if a protective order or other remedy is not obtained or SANDAG waives compliance with this Section; and
- Disclose only the portion of Sensitive Information that it is legally required to produce to the minimum extent required by applicable Law.
- No such compelled disclosure by the Receiving Party will otherwise affect Consultant's obligations hereunder with respect to the Sensitive Information so disclosed.

## **5. Return or Destruction of SANDAG's Sensitive Information**

Upon SANDAG's written request at any time and subject to any contrary obligations under applicable law, Consultant shall at SANDAG's direction promptly return or destroy and erase from all systems it directly or indirectly uses or controls (a) all originals and copies of all documents, materials and other embodiments and expressions in any form or medium that contain, reflect, incorporate or are based on SANDAG's Sensitive Information, in whole or in part; or (b) solely such specific SANDAG Data, databases or other collections or articles of SANDAG's Sensitive Information as SANDAG may request, and provide a notarized written statement to SANDAG certifying that it has complied with the requirements of this Subsection.

## **C. PERSONAL INFORMATION**

Consultant shall not cause or permit any Personal Information to be Processed in any manner or for any purpose other than the performance of the scope of work in compliance with the restrictions set forth in this Agreement and all applicable Laws.

### **1. Ownership and Treatment of Personal Information**

As between SANDAG and Consultant, SANDAG is and shall remain the sole and exclusive owner of all right, title and interest in and to Personal Information. Without limiting any other representation, warranty or obligation of Consultant under this Agreement, Consultant represents, warrants and covenants, and shall obtain the binding written representations, warranties and covenants of all Consultant Personnel involved in any aspect of the scope of work, that:

- During the Term and thereafter in perpetuity, Consultant will not Process or otherwise undertake or refrain from any act with respect to any Personal Information in any manner, including any actual or attempted Processing thereof, except for the sole purpose of performing the scope of work and in compliance with: (i) the express terms and conditions of this Agreement or as SANDAG may hereafter expressly direct in advance in writing; (ii) SANDAG's then current privacy and security policies; and (iii) all applicable laws (including all then current and applicable laws relating to spamming, privacy and consumer and data protection);



- Except as SANDAG or an Authorized User may submit to Consultant personnel for purposes of SANDAG's or such Authorized User's use of the scope of work, or as SANDAG may hereafter expressly direct in advance in writing, Consultant will not under or in connection with this Agreement or any transaction or arrangement hereunder collect any Personal Information from or in connection with SANDAG's or any Authorized User's access to or use of the scope of work, or through any access Consultant may have to the SANDAG Systems, including through any cookies, applets, beacons or other data mining methods or technologies;
- Consultant shall promptly notify SANDAG in writing when Consultant becomes aware of any unauthorized access, use or other act respecting Sensitive Information or if Consultant becomes the subject of any government, regulatory or other investigation or proceeding relating to its data privacy, security or handling practices;

## **D. SECURITY**

### **1. Protection of SANDAG's Sensitive Information**

Throughout the term of the Agreement and at all times in connection with its actual or required performance of the scope of work hereunder, Consultant shall:

- Maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of SANDAG's Sensitive Information that meet or exceed the requirements of SANDAG's data security requirements and, to the extent such practices and standards are consistent with and not less protective than the foregoing requirements, are at least equal to applicable best industry practices and standards;
- Provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or Processing of such information that ensure a level of security appropriate to the risks presented by the Processing of SANDAG's Sensitive Information and the nature of such Sensitive Information, consistent with best industry practice and standards;
- Take all reasonable measures to:
  - Secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the scope of work against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Consultant's systems or the information found therein;
  - Prevent (a) SANDAG and its Authorized Users from having access to the data of other customers or such other customer's users of any Hosted Services; (b) SANDAG's Sensitive Information from being commingled with or contaminated by the data of other customers or their users of any Hosted Services; and (c) unauthorized access to any SANDAG's Sensitive Information;
  - Continuously monitor its systems for potential areas where security could be breached;
  - Immediately report to SANDAG any breach of security or unauthorized access to SANDAG's Sensitive Information that Consultant detects or becomes aware of;



- Use diligent efforts to remedy such breach of security or unauthorized access in a timely manner and deliver to SANDAG a root cause assessment and future incident mitigation plan with regard to any breach of security or unauthorized access affecting any Sensitive Information of SANDAG that sets out written details regarding Consultant's investigation of such incident and, upon SANDAG's written request, provide a second more in-depth investigation and results of its findings;
- Refrain from notifying, for or on behalf of SANDAG or any Authorized User, any regulatory authority, consumer or other Person of any such security breach or unauthorized access unless SANDAG specifically requests in writing that Consultant do so; and
- If such security breach or unauthorized access results from any act or omission of Consultant or any Consultant personnel, promptly reimburse SANDAG for all reasonable costs and expenses SANDAG may incur in providing any notification of such security breach or unauthorized access.
- Without limiting the generality of the foregoing, Consultant and SANDAG will work together to formulate a plan to rectify all security breaches and unauthorized access concerning SANDAG's Sensitive Information.

## **2. Unauthorized Access**

Consultant shall not access, and shall not permit any access to, the SANDAG Data, in whole or in part, whether through Consultant's systems or otherwise, without SANDAG's express prior written authorization. Such authorization may be revoked by SANDAG in writing at any time in its sole discretion. Any access to the SANDAG Data shall be solely in accordance with the terms and conditions, and in no case exceed the scope of, the SANDAG's authorization pursuant to this Section. All SANDAG-authorized connectivity or attempted connectivity to SANDAG Data or systems shall be only through SANDAG's security gateways and firewalls and in compliance with SANDAG's security policies as expressed by the SANDAG Director of Technical Services or his/her designee.

## **3. Consultant Systems**

Consultant shall be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Consultant to access SANDAG Data or systems or otherwise in connection with the scope of work (SANDAG Systems) and shall prevent unauthorized access to the SANDAG Systems through Consultant's systems.

## **4. Security Audits**

During the Term and for five years thereafter, Consultant shall:

Maintain complete and accurate records relating to its data protection practices and the security of any of SANDAG's Sensitive Information, including any backup, disaster recovery or other policies, practices or procedures relating to SANDAG's Sensitive Information and any other information relevant to its compliance with this Section; and upon SANDAG's request, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by SANDAG or its authorized representative, provided that SANDAG shall: (i) give Consultant reasonable prior notice of any such audit; (ii) undertake such audit no more than once per calendar quarter, except for good cause shown; and (iii) conduct or cause to be conducted such audit in a manner designed to minimize disruption of Consultant's normal business operations and that complies with the terms and

conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of this Agreement. SANDAG may, but is not obligated to, perform such security audits, which shall, at SANDAG's option and request, include penetration and security tests, of any and all Consultant Systems and their housing facilities and operating environments.

## **5. Regulatory and Compliance Audits**

Any authorized representative of any regulatory agency, taxing authority or private entity that functions in a quasi-regulatory manner that has jurisdiction over SANDAG in connection with its regulatory functions (each, a "Regulator") shall, upon request, have the same audit rights as those set forth in foregoing Subsection, provided that no condition or restriction stated herein shall apply to any Regulator to the extent it is contrary to applicable law. Consultant shall cooperate with all individuals conducting such audits and comply with all reasonable recommendations that result from such inspections, tests and audits within reasonable time frames. Without limiting any of Consultant's other obligations under this Section, if Consultant engages a third-party auditor to perform a Statement on Standards for Attestation Engagements No. 16 (SSAE 16) audit of Consultant's operations, information security program or disaster recovery/business continuity plan, Consultant shall provide a copy of the audit report to SANDAG promptly within five Business Days after Consultant's receipt of such report. Any such audit reports shall be Consultant's Sensitive Information.

## **6. Nonexclusive Remedy for Security Breach**

Any failure of the Consultant to meet the requirements of this Agreement with respect to the security of any SANDAG Data or other Sensitive Information of SANDAG, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of this Agreement for which SANDAG, at its option, may terminate this Agreement immediately on written notice to Consultant without any notice or cure period, and Consultant shall promptly reimburse to SANDAG any fees prepaid by SANDAG prorated to the date of such termination.

## **E. REDUNDANCY, DATA BACKUP, AND DISASTER RECOVERY**

Consultant shall, in accordance with the provisions of this Section, maintain or cause to be maintained disaster avoidance procedures designed to safeguard the SANDAG Data and SANDAG's other Sensitive Information, Consultant's Processing capability and the availability of any portion of the scope of work constituting Hosted Services, in each case throughout the Term and at all times in connection with its actual or required performance of the scope of work hereunder. The force majeure provisions the Agreement shall not limit Consultant's obligations under this Subsection.

### **1. Redundant Hosting and Connectivity**

Consultant shall simultaneously operate a mirror system at a hardened data center facility in the United States that is geographically remote from the primary system on which any software that is a deliverable for SANDAG or Hosted Services that are hosted by Consultant (the "Secondary Backup Facility") that may be called for in the scope of work. Except for its location and housing facility, the mirror system shall: (a) be identical in all respects to the primary system; (b) have hardware and software, network connectivity, power supplies, backup generators and other similar equipment and services that operate independently of the primary system; (c) have fully current backups of all SANDAG Data stored on the primary system; and (d) have the ability to provide the Hosted Services in accordance with this Agreement and the specifications during the performance of routine and remedial maintenance or any outage or failure of the primary system fails. Consultant shall operate, monitor and maintain such mirror system so that it may be activated within 24 hours of any failure of the Hosted Services to be available.

## **2. Data Backup**

Consultant shall conduct or have conducted contemporaneous backups of SANDAG Data and perform or cause to be performed other periodic backups of SANDAG Data on at least a daily basis and store such backup SANDAG Data in a commercially reasonable location and manner within the United States and, in addition, no less than daily at the Secondary Backup Facility. On written notice from SANDAG and, in any case, on a monthly/daily basis, Consultant shall provide SANDAG with a copy of the backed up SANDAG Data in such machine-readable format as SANDAG reasonably requests. Consultant shall provide all monthly/daily backups at its sole cost and expense. No backup of SANDAG Data shall be counted in allotting or calculating any data storage actually used or permitted to be used by SANDAG or any associated payment or fee.

## **3. Disaster Recovery/Business Continuity**

Throughout the Term and at all times in connection with its actual or required performance of the scope of work hereunder, Consultant shall:

Maintain a Business Continuity and Disaster Recovery Plan for any Hosted Services (the "Plan"), and implement such Plan in the event of any unplanned interruption of the Hosted Services. Consultant's current Plan, revision history, and any reports or summaries relating to past testing of or pursuant to the Plan will be provided to SANDAG upon request. Consultant shall actively test, review and update the Plan on at least a quarterly basis using industry best practices as guidance. Consultant shall provide SANDAG with copies of all such updates to the Plan promptly upon request. All updates to the Plan shall be subject to the requirements of this Section; and

Provide SANDAG with copies of all reports and summaries resulting from any testing of or pursuant to the Plan promptly after Consultant's receipt or preparation thereof. If Consultant fails to reinstate the Hosted Services within the periods of time set forth in the Plan, SANDAG may, in addition to any other remedies available hereunder, in its sole discretion, immediately terminate this Agreement as a non-curable default under the Termination provisions of this Agreement.

## **STANDARD FEDERAL PROVISIONS FOR FEDERAL HIGHWAY ADMINISTRATION (NON-CONSTRUCTION)\***

### **COMPLIANCE WITH FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS**

This Agreement is subject to a financial assistance contract between SANDAG and the FHWA. All references to "Contractor" herein shall refer to "Consultant" as defined in the Agreement. The provisions of this Agreement exhibit shall apply to all subcontracts when FHWA funding will be used.

#### **I. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

The federal government shall not be subject to any obligations or liabilities to any third-party contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement between SANDAG and FHWA in connection with the performance of this Agreement. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party contract, the federal government continues to have no obligations or liabilities to any party, including Consultant or any other third-party contractor.

#### **II.FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and United States DOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this contract. Accordingly, by signing the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claims, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the federal government deems appropriate.

The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with an urbanized area formula Project financed with federal assistance authorized by 49 USC 5307, the government reserves the right to impose on the Contractor the penalties of 18 USC 1001, to the extent the federal government deems appropriate.

#### **III. TITLE VI COMPLIANCE**

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

##### **A. COMPLIANCE WITH REGULATIONS**

The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the DOT, 49 CFR 21, as they may be amended from time to time (the Regulations), which are herein incorporated by reference and made a part of this Contract.

##### **B. NONDISCRIMINATION**

The Contractor, with regard to the work performed by it during the term of the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by

Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

The Contractor agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 USC 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 USC 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 USC 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

### **C. SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT**

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color sex, age, or national origin.

### **D. INFORMATION AND REPORTS**

The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the recipient or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the recipient, or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

### **E. SANCTIONS FOR NONCOMPLIANCE**

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the recipient shall impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

- Withholding of payments to the Contractor under the Agreement until the Contractor complies.
- Cancellation, termination, or suspension of the Agreement, in whole or in part.

### **F. INCORPORATION OF PROVISIONS**

The Contractor shall include the provisions of Paragraphs A through F of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as SANDAG or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request that SANDAG enter into such litigation to protect the interests of SANDAG, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **IV. LABOR**

During the performance of this Agreement, the Contractor agrees as follows:

### **A. NON-DISCRIMINATION**

The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor further agrees to post in conspicuous places,

available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

**B. EQUAL CONSIDERATION**

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.

**C. NOTICE TO WORKER'S REPRESENTATIVES**

The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of the Contractor's commitments under Section 202 of Executive Order 11246 (Johnson, 1965), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**D. COMPLIANCE WITH ORDERS OF SECRETARY OF LABOR**

The Contractor will comply with all provisions of Executive Order 11246 and with the rules, regulations, and relevant orders of the Secretary of Labor.

**E. FURNISHING OF INFORMATION AND REPORTS**

The Contractor will furnish all information and reports required by Executive Order 11246 and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the FHWA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

**F. NONCOMPLIANCE**

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part. The Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

**G. INCLUSION OF LABOR PROVISIONS IN SUBCONTRACTS**

The Contractor will include the provisions of paragraphs A through F herein, in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246. Such provisions shall be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Labor or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**H. ADDITIONAL REQUIREMENTS**

Attention also is directed to the requirements of the California Fair Employment and Housing Act (Government Code Sections 12900 through 12996 - Stat. 1980, Chapter 992), to the regulations



promulgated by the Fair Employment and Housing Commission to implement said Act, and to the nondiscrimination, affirmative action and equal employment opportunity requirements in this Agreement.

## **V. STANDARD EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

### **A. EQUAL EMPLOYMENT OPPORTUNITY**

In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin. The Contractor shall ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

As used in this exhibit:

- "Director" means the SANDAG Executive Director.
- "Employer Identification Number" means the federal Social Security number used on the Employer's Quarterly Federal Tax Return, United States Treasury Department Form 941.
- "Minority" includes:
  - African American (all persons having origins in any of the African American racial groups not of Hispanic origin)
  - Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central, or South American or other Spanish Culture or origin, regardless of race)
  - Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands [this area includes China, Japan, Korea, the Philippine Islands, and Samoa])
  - American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

### **B. SEPARATE GOALS**

A single goal for minorities and a separate single goal for women may have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

### **C. PROHIBITION ON USE OF GOALS TO DISCRIMINATE**

The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

#### **D. DEBARRED CONTRACTORS**

The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

The Contractor shall carry out such sanctions and penalties for violation of the provisions in this exhibit and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by SANDAG. If Contractor fails to carry out such sanctions and penalties it shall be in violation of the Agreement and Executive Order 11246 as amended.

If the Contractor fails to comply with the requirements of the Executive Order, the Implementing Regulations, or the Agreement, SANDAG will retain an amount equal to ten percent of the estimated value of the work performed during the previous month (exclusive of mobilization) from the next monthly estimate, except that such retention shall not exceed \$10,000, nor be less than \$1,000. The retention for failure to comply with this section will be released on a monthly estimate for partial payments following the date that the Contractor fulfills its obligations under the provisions of this exhibit.

#### **E. MONITORING REQUIREMENTS**

The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company Equal Employment Opportunity policy is being carried out, to submit reports relating to the provisions hereof and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractor shall not be required to maintain separate records.

#### **F. NO LIMITATION**

Nothing herein provided shall be construed as a limitation upon the application of other laws that establish different standards of compliance.

#### **VI. NONCOLLUSION**

Title 23, USC, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that Contractor file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 USC 1746, is attached.

#### **VII. LOBBYING**

##### **A. NO USE OF FEDERAL FUNDS**

SANDAG and Contractor shall not use federal assistance funds to support lobbying.

## **B. CERTIFICATION**

In accordance with 31 USC 1352 and United States DOT regulations, "New Restrictions on Lobbying," 49 CFR 20, if the Project exceeds \$100,000, FTA will not make any federal assistance available to the Contractor until FTA has:

- Received the Contractor's certification that the Contractor has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement, or any other federal award from which funding for the Project is originally derived, consistent with 31 U.S.C 1352.
- If applicable, the Contractor's statement disclosing any lobbying with nonfederal funds that has taken place in connection with obtaining any federal financing ultimately supporting the Project.

## **C. REQUIRED DISCLOSURE**

The Contractor agrees to provide SANDAG a copy of each lobbying disclosure statement with the accompanying lobbying certification provided by a prospective third-party contractor at any tier or subrecipient at any tier. The form is Certification of Restrictions on Lobbying (Part 5).

## **VIII. DISADVANTAGED BUSINESS ENTERPRISES**

### **A. FHWA DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

SANDAG is a subrecipient of FHWA funds through Caltrans. In conformance with 49 CFR 26, and directives and guidance issued by Caltrans, SANDAG is required to implement a minority-conscious DBE program of limited application. The minority-conscious component of the Caltrans FHWA DBE program includes all six DBE groups: African American, Hispanic American, Subcontinental Asian American, Asian Pacific Islander, Native American, and Women.

### **B. FHWA DBE COMMITMENT**

SANDAG Choose: set a DBE goal on the procurement OR set an estimate DBE goal range on the procurement and will be setting DBE goals at the time Task Order proposals are requested when federal funding will be utilized OR did not set a DBE goal for this procurement. Task Orders with FHWA funds may have DBE goals that exceed the estimated range.

### **C. DBE PROCUREMENT AND AGREEMENT REQUIREMENTS**

## **IX. CONTRACTOR SHALL COMPLY WITH THE PROVISIONS IN THE AGREEMENT AND SOLICITATION ATTACHMENT ENTITLED "NOTICE REGARDING DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS AND INSTRUCTIONS". MISCELLANEOUS**

### **A. TAXES**

SANDAG is not exempt from sales tax.

### **B. ENVIRONMENTAL VIOLATIONS**

For all contracts and subcontracts in excess of \$100,000, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 7606), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11375 (Johnson, 1967), and EPA regulations (40 CFR 1 et seq.), which prohibit the use under nonexempt

federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities. Contractor shall report violations to FHWA and to the United States EPA Assistant Administrator for Enforcement.

The Contractor and suppliers shall submit evidence that the governing air pollution criteria will be met. This evidence will be retained for on-site examination by FHWA.

#### **C. ENERGY EFFICIENCY**

The Contractor shall comply with the California Energy and Pollution Reduction Act of 2015 (SB 350, 2015) issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

#### **D. PROHIBITED INTERESTS**

No member, officer, or employee of a local public body, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising there from.

#### **E. BUY AMERICA**

Contractor should be familiar with the "Buy America" requirements of 23 CFR 635.410, and the regulations adopted pursuant thereto and set forth in Federal Form 1273. Information on "Buy America" requirements is available for review at the SANDAG office. In conformance with the law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this Project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to the "Buy America" requirements.

A Certificate of Compliance shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall specifically certify that all manufacturing processes for the materials occurred in the United States, except for the above exceptions.

The requirements imposed by the law and regulations do not prevent a minimal use of foreign steel and iron materials if the total combined cost of the materials used does not exceed 0.1 percent of the total contract cost or \$2,500, whichever is greater. The Contractor shall furnish SANDAG acceptable documentation of the quantity and value of the foreign steel and iron prior to incorporating the materials into the work.

#### **F. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS**

Contractor agrees:

- To utilize privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whether shipping any equipment, materials, or commodities pursuant to this Section, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.
- To furnish within 30 days following the date of loading for shipment originating within the United States, or within 30 working days following the date of loading for shipment originating

outside the United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 1 above to the Project Manager (through the prime contractor in case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20230, marked with appropriate identification of the Project.

- To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this clause.

#### **G. PREFERENCE FOR PRODUCTS MANUFACTURED IN THE UNITED STATES**

Pursuant to 2 CFR 200.322, SANDAG's preference is for the purchase, acquisition, or use of goods, products, or materials produced in the United States. To the greatest extent practicable, when using funding from this Agreement, Consultant will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### **H. STATEMENT OF ELIGIBILITY**

Contractor shall execute the Eligibility Certificate for Federally Funded Projects which is Part 1 of the Certifications for Federally Funded Contracts. The Contractor also shall have executed by its subcontractors a Subconsultant's Statement of Eligibility, which is Part 4 of the Certifications for Federally Funded Contracts for each designated subcontractor. All Subcontractor's Statement of Eligibility forms will be made a part of the Agreement.

#### **I. CLEAN AIR AND WATER REQUIREMENTS**

Contractor shall comply with Section 508 of the federal Clean Water Act and Section 306 of the federal Clean Air Act.

#### **J. DEBARRED BIDDERS (2 CFR 1200)**

Contractor, including any of its officers or holders of a controlling interest, is obligated to inform the recipient whether or not it is or has been on any debarred bidder's list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this Project, it shall so inform SANDAG.

Contractor shall include in all contracts with designated subcontractors, an obligation to declare whether or not the subcontractor, including any of its officers or holders of a controlling interest, is or has been on any debarred bidder's list maintained by the United States Government. Should a subcontractor be included on such a debarred bidder's list in the past, is now on such a list, or is placed on such a list during the performance of this Agreement, it shall so inform the Contractor. Contractor shall notify SANDAG of any subcontracts with debarred contractors.

#### **K. AUDIT AND INSPECTION OF RECORDS**

Contractor agrees that SANDAG, the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect

all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts with regard to the Project. Further, Contractor agrees to maintain all required records for at least three years after grantees make final payments and all other pending matters are closed.

#### **L.        PRIVACY**

To the extent that Contractor at any tier, any subcontractor at any tier, or their employees administers any system of records on behalf of the federal government, the contractor at any tier, and their employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC 552.

#### **M.        ENERGY CONSERVATION**

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 USC 6321 et seq.

#### **N.        ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES**

Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794; and the following federal regulations, including any amendments thereto:

- DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR 37
- DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR 27
- DOT regulations, "ADA Accessibility Specifications for transportation Vehicles," 49 CFR 38
- DOT regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR 35
- DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR 36
- Regulations adopted by the GSA in Appendices C and D to 36 CFR part 1191 (ABA Chapters 1 and 2, and Chapters 3 through 10) as the Architectural Barriers Act Accessibility Standard (ABAAS) 41 CFR 102-76.65
- Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR 1630
- Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR 64(F)

#### **O.        FEDERAL CHANGES**

Contractor shall at all times comply with all applicable FHWA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in Federal Form 1273 or this Agreement, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.

**P. SAFETY: ACCIDENT PREVENTION**

In the performance of this Agreement, Contractor shall comply with all applicable federal, state, and local laws governing safety, health, and sanitation (23 CFR 635). Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SANDAG Project Manager may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the Agreement.

It is a condition of this Agreement, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this Agreement, that Contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 USC 3700 et seq.).

Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 USC 3700 et seq.).

**Q. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on federal-aid highway Projects, it is essential that all persons concerned with the Project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the Project is a violation of federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the Project:

**NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

18 USC 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."



## **R. CERTIFICATIONS**

### **1. Certification Regarding Debarment, Suspension, Ineligibility, And Voluntary Exclusion**

By signing and submitting its proposal, Contractor provided the certification set out below and reaffirms it by executing the Agreement. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this Agreement. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the determination of SANDAG whether to enter into this Agreement. Contractor's failure to furnish a certification or an explanation shall disqualify such firm/person from participation in this Agreement.

- The certification in this subsection is a material representation of fact upon which reliance was placed when SANDAG determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, Caltrans, or SANDAG may terminate this Agreement for cause of default.
- Contractor shall provide immediate written notice to SANDAG if at any time Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this subsection and the Debarment and Suspension Certificate, which is Part 3 of the Certifications for Federally Funded Contracts, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 (Reagan, 1986). Contractor may contact SANDAG for assistance in obtaining a copy of those regulations.
- Contractor agrees that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this Agreement, unless authorized by SANDAG.
- Contractor further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided in this Agreement, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- Except for transactions authorized by SANDAG, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, SANDAG may terminate the Agreement for cause or default.

## **2. Certification Regarding Debarment, Suspension, Ineligibility, Voluntary Exclusion-Primary Covered Transactions**

Consultant certifies to the best of its knowledge and belief, that it and its principals:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
- Have not within a three-year period preceding submission of its proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.
- Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses.
- Have not within a three-year period preceding submission of its proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
- Where Contractor is unable to certify to any of the statements in this certification, such prospective participant shall provide SANDAG a written explanation prior to execution of the Agreement.

## **3. Instructions For Certification - Lower Tier Covered Transactions**

Applicable to all subcontracts, purchase orders, and other lower-tier transactions of \$25,000 or more - 2 CFR 1200

The certification in this clause is a material representation of fact upon which reliance was placed when this Agreement or a related contract was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, Caltrans or SANDAG with which this Agreement originated may pursue available remedies, including suspension and/or debarment.

The prospective lower tier participant shall provide immediate written notice to the person to which its bid/proposal was submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.

The prospective lower tier participant agrees by submitting its bid/proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier

covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by SANDAG.

The prospective lower tier participant further agrees by submitting a bid/proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized by SANDAG, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, Caltrans, or SANDAG may pursue available remedies, including suspension and/or debarment.

#### **4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

The prospective lower tier participant certifies, by submission of its bid/proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its bid/proposal.

# FINAL REPORT – UTILIZATION OF ALL SUBCONSULTANTS, UNDERUTILIZED/DISADVANTAGED BUSINESS ENTERPRISES AND SMALL BUSINESSES

(Caltrans EXHIBIT 17-F FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS)

Contract No.	County	Location	Project Description				Federal Aid Project No.		Administering Agency		Contract Start/NTP	Contract End Date					
Task/Job Order No.									SANDAG		TO/JO Start/NTP	TO/JO End Date					
Prime Consultant/Contractor (Company Name)		Prime Consultant/Contractor Business Address				Business Ownership by Minority Code			Final Contract or Task/Job Order Paid Amount \$								
Address:						BA - Black American    NA - Native American    APA - Asian Pacific American W - Woman    HA - Hispanic American    SCA - Subcontinent Asian American											
City, State, Zip Code:									Federal Funding Type (If Applicable)								
SUBCONSULTANT(S)/ SUBCONTRACTOR(S)		SB / DBE CERTIFICATE		CONTRACT/TASK/JOB ORDER PAYMENTS						FTA <input type="checkbox"/>		FHWA <input type="checkbox"/>					
				TOTAL PAYMENTS*				TOTAL PAYMENTS BY MINORITY GROUP									
		SB Cert #	DBE Cert #	SB	DBE	UDBE *** (if applicable)	Non-Certified	APA	BA	HA	NA	SCA	W	Unpaid Retention (if applicable)	Date Work Complete	Date of Final Payment	Work Performed/ Material Provided
Name (Contractor/PRIME)																	
Address																	
Description of work																	
Name																	
Address																	
Description of work																	
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\$ - \$ -		Total Payments		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	DBE Goal Attainment		0%	
% %														UDBE Goal Attainment		0%	
Original U/DBE Commitment		Original SB Commitment												SB Participation		0%	

\*If Sub is SB, DBE and/or UDBE, enter the total dollar amount in all three fields

\*\*\*The decision of which column to use for entering the U/DBE dollar value is based on which program was applied to the Contract/TO/JO. For procurements advertised after August 1, 2014, only a DBE program applies and DBE payments only need to be entered in the DBE column. For procurements advertised prior to August 1, 2014, a UDBE (FTA) or DBE (FHWA) program may apply. Under the FTA UDBE program, payments to the Asian-Pacific American (APA) minority group can not be included in the UDBE payment column, only the DBE payment column. Please refer to the instructions for additional details on completing the UDBE payment column.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT		
CONSULTANT/CONTRACTOR REPRESENTATIVE NAME	BUSINESS PHONE NUMBER	DATE
TO THE BEST OF MY KNOWLEDGE THE ABOVE INFORMATION IS COMPLETE AND CORRECT		
SANDAG PROJECT MANAGER'S NAME	BUSINESS PHONE NUMBER	DATE

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

## INSTRUCTIONS:

SANDAG Contract Number and Task/Job Order boxes - Enter the SANDAG contract and Job/Task Order number if applicable.

Location - Enter project location by city and county.

Project Description - Provide description of project.

Federal-Aid Project Number - Enter the Federal-Aid Project Number.

Local Agency - SANDAG name entered as agency that is funding the contract/Job Order/Task Order.

Contract Start and End Dates - Enter the date the contract/Job Order/Task Order was started or Notice to Proceed was issued and then date project completed.

Prime Contractor/Consultant - Enter the contractor/consultant's firm name.

Business Address - Enter the contractor/consultant's business address.

Final Contract Amount - Enter the total final amount for the contract/Job Order/Task Order as applicable.

Federal Funding Type - Mark box for FTA and/or FHWA if applicable.

DBE/SB Company Name and Business Address - Enter the name, address, and phone number of all subcontracted contractors/consultants. Also, enter the prime contractor/consultant's name and phone number, if the prime is a DBE.

Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials provided. Indicate all work to be performed by DBEs including work performed by the prime contractor/consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE.

DBE Certification Number - Enter the DBE's Certification Identification Number. Leave blank if subcontractor is not a DBE.

Contract Payments - Enter the subcontracted dollar amount of the work performed or service provided. Include the prime contractor/consultant if the prime is a DBE. The Non-DBE column is used to enter the dollar value of work performed by firms that are not certified DBE or for work after a DBE becomes decertified.

Date Work Completed - Enter the date the subcontractor/subconsultant's item work was completed.

Date of Final Payment - Enter the date when the prime contractor/consultant made or will make the final payment to the subcontractor/subconsultant for the portion of work listed as being completed.

Original DBE Commitment Amount - Enter the total DBE participation listed in Bidder DBE Commitment Form (Construction) or Consultant Contract DBE Commitment Form.

Total Payments - Enter the sum of the "Contract Payments" Non-DBE and DBE columns. Report total payments, including unpaid retention, made to ALL subconsultants/subcontractors and ALL certified SB, DBE, and/or UDBE firms regardless of tier or whether the firm was originally listed for goal credit. If actual U/DBE utilization (or item of work) was different than that approved at time of award, provide comments on a separate page. If no subconsultants/subcontractors were utilized, enter "N/A" in the Name field. If

retention is being withheld at the time of completing this report, enter the total amount in the "Unpaid Retention" column.

Contractor/Consultant Representative's Signature - The person completing the form on behalf of the contractor/consultant's firm must sign their name.

Contractor/Consultant Representative's Name - Enter the name of the person preparing and signing the form.

Phone - Enter the area code and telephone number of the person signing the form.

Date - Enter the date the form is signed by the contractor/consultant's preparer.

SANDAG Representative's Signature - A SANDAG Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.

SANDAG Representative's Name - Enter the name of the SANDAG Representative signing the form.

Phone - Enter the area code and telephone number of the SANDAG representative signing the form.

Date - Enter the date the form is signed by the SANDAG Representative.

**CONSULTANT CONTRACT COMMITMENT  
(CALTRANS EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT)**

Used to show commitment at time of Agreement execution. All information on this form must be typed, excluding signatures.

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

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

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



## INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT

### CONSULTANT SECTION

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

19. Preparer's Title - Enter the position/title of the person signing the consultant's DBE commitment form.

#### SANDAG SECTION

20. SANDAG Contract Number - Enter the SANDAG contract and/or Task Order number.

21. Federal-Aid Project Number - Enter the Federal-Aid Project Number.

22. Contract Execution Date - Enter the date the contract was executed.

23. SANDAG Representative's Signature - The person completing this section of the form for SANDAG must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.

24. Date - Enter the date the DBE commitment form is signed by the SANDAG Representative.

25. SANDAG Representative's Name - Enter the name of the SANDAG Representative certifying the consultant's DBE commitment form.

26. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.

27. SANDAG Representative Title - Enter the position/title of the SANDAG Representative certifying the consultant's DBE commitment form.

**DBE CERTIFICATION STATUS CHANGE  
CALTRANS EXHIBIT 17-O DBE CERTIFICATION STATUS CHANGE)**

All information on this form must be typed, excluding signatures.

1. SANDAG Contract/JO/TO Number:			2. Federal-Aid Project Number:		
3. Local Agency:			4. Contract Completion Date:		
5. Contractor/Consultant:		6. Business Address:		7. Final Contract Amount:	
8. Contract Item Number	9. DBE Contact Information	10. DBE Certification Number	11. Amount Paid While Certified	12. Certification/Decertification Date (Letter Attached)	13. Comments

If there were no changes in the DBE certification of subcontractors/subconsultants, indicate on the form.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT			
14. Contractor/Consultant Representative's Signature	15. Contractor/Consultant Representative's Name	16. Phone	17. Date
I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED			
18. SANDAG Representative's Signature	19. SANDAG Representative's Name	20. Phone	21. Date

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814

## INSTRUCTIONS –DBE CERTIFICATION STATUS CHANGE

1. Local Agency Contract/JO/TO Number - Enter the SANDAG contract number and Job or Task Order number if applicable.
2. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
3. Local Agency – SANDAG name entered as agency that is funding the contract.
4. Contract Completion Date - Enter the date the contract/Job Order or Contractor was completed if applicable.
5. Contractor/Consultant - Enter the contractor/consultant's firm name.
6. Business Address - Enter the contractor/consultant's business address.
7. Final Contract Amount - Enter the total final amount for the contract, Job Order or Task Order.
8. Contract Item Number - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
9. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted contractors/consultants.
10. DBE Certification Number - Enter the DBE's Certification Identification Number.
11. Amount Paid While Certified - Enter the actual dollar value of the work performed by those subcontractors/subconsultants during the time period they are certified as a DBE.
12. Certification/Decertification Date (Letter Attached) - Enter either the date of the Decertification Letter sent out by the Office of Business and Economic Opportunity (OBEO) or the date of the Certification Certificate mailed out by OBEO.
13. Comments - If needed, provide any additional information in this section regarding any of the above certification status changes.
14. Contractor/Consultant Representative's Signature - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
15. Contractor/Consultant Representative's Name - Enter the name of the person preparing and signing the form.
16. Phone - Enter the area code and telephone number of the person signing the form.
17. Date - Enter the date the form is signed by the consultant's preparer.
18. SANDAG Representative's Signature - A SANDAG representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
19. SANDAG Representative's Name - Enter the name of the SANDAG representative signing the form.
20. Phone - Enter the area code and telephone number of the person signing the form.
21. Date - Enter the date the form is signed by the SANDAG representative.

## SANDAG ANNUAL EMPLOYMENT UTILIZATION REPORT

Report Date: March 20 \_\_\_\_\_  
of \_\_\_\_\_

Contract No. \_\_\_\_\_

Page \_\_\_\_\_

Project Title: \_\_\_\_\_

Prime Consultant's Name: \_\_\_\_\_ Work Site Location: \_\_\_\_\_

Subconsultant's Name (if applicable): \_\_\_\_\_

Signature of Person Preparing Report: \_\_\_\_\_

Printed Name and Job Title of Preparer: \_\_\_\_\_

NAME OF PRIME CONSULTANT'S OR SUBCONSULTANT'S EMPLOYEE	MALE/FEMALE	RACE CODE*	EMPLOYEE'S RESIDENCE ZIP CODE	EMPLOYEE'S CRAFT

\*RACE CODES: Black American (BA); Mexican American or Hispanic (MA); Native American or Alaskan (NA); Asian or Pacific Islander (AP); Caucasian (CA)

## REQUEST TO ADD SUBCONSULTANT AND/OR BENCH FIRM FORM



Version 1.0

### REQUEST TO ADD SUBCONSULTANT (For Non-A&E Only)

1. Prime Consultant Name: \_\_\_\_\_
2. SANDAG Contract No.: \_\_\_\_\_
3. Name of Subconsultant to be added: \_\_\_\_\_
4. Services to be performed by Subconsultant: \_\_\_\_\_
5. Dollar amount subcontract: \$ \_\_\_\_\_
6. Reason for request:
  - ☐ Need to add Subconsultant to meet DBE/UDBE goal
  - ☐ Service is not available from current team
  - ☐ Other: \_\_\_\_\_

7. List three firms Prime Consultant contacted for quotes or rates.

Firm Name	Contact Name	E-mail	Quote/Rate
			\$
			\$
			\$

8. If the subconsultant was selected without considering other firms, please explain why no other firm was considered.  
\_\_\_\_\_

9. Describe why the new Subconsultant was selected (for example: qualifications, experience, price, availability).  
\_\_\_\_\_

10. Attach required submittals:

- |  |   |
|--|---|
| <input type="checkbox"/> Bidder's List                             | <input type="checkbox"/> Subconsultant Statement of Eligibility |
| <input type="checkbox"/> EEO Certification                         | <input type="checkbox"/> Subconsultant letter of Commitment     |
| <input type="checkbox"/> Certification of Restrictions on Lobbying | <input type="checkbox"/> Personnel Request Form                 |

#### FOR SANDAG STAFF ONLY

##### RECOMMENDATION BY CONTRACT MANAGER

I have reviewed this request and agree that the information provided by the Prime Consultant is accurate and recommend the request be accepted.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

##### APPROVAL BY MANAGER OF CONTRACTS AND PROCUREMENT

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

##### APPROVAL BY MANAGER OF SMALL BUSINESS DEVELOPMENT *(Required if adding a DBE)*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## PERSONNEL REQUEST FORM

Prime Consultant: _____		Contract #: _____		Submittal Date: _____	
Sub-Consultant: _____				Effective Date: _____ 30 Days After Receipt of PRF	
(If Applicable)		Combined OH: _____		Fee: _____ Multiplier: 1.0000 Escalation Rate: _____	

  

No.	Employee Name		SANDAG Contract Classification	SANDAG Contract Classification (New)	Years Exp.	Effective Date*		Actual Hourly Rates	Loaded Hourly Billing Rates		Promotion Use Only		
	Last	First				From	To		Straight	Overtime (If applicable)	Current Rate	Proposed Rate	% Change
1									\$0.00	\$0.00			#DIV/0!
2									\$0.00				#DIV/0!
3									\$0.00				#DIV/0!
4									\$0.00				#DIV/0!
5									\$0.00				#DIV/0!
6									\$0.00				#DIV/0!
7									\$0.00				#DIV/0!
8									\$0.00				#DIV/0!
9									\$0.00				#DIV/0!
10									\$0.00				#DIV/0!

(1) Subject to Prevailing Wages - if applicable; (2) Contract Classification Change \* Effective start/end date of the specified rate

Reason/Additional Notes (Must Select One): \_\_\_\_\_

Add Employee: \_\_\_\_\_ Promotion: \_\_\_\_\_ New Sub-Consultant: \_\_\_\_\_

Adding employees to the Contract: I certify with my signature below that the employee's "Actual Hourly Rate" are correct as shown for the first year "Effective Date of Hourly Rate (From/Hire Date)" date listed herein for each appropriate employee. I understand that a registered payroll may be requested to verify rates at any time. All rates herein are subject to the Standard Agreement, Standard Conditions.

<p><u>CONSULTANT SIGNATURES</u></p> <p>CERTIFIED BY: _____</p> <p>X _____</p> <p>Name _____ DATE _____</p> <p>PRIME CONSULTANT PROJECT MANAGER</p> <p>CERTIFIED BY: _____</p> <p>X _____</p> <p>Name _____ DATE _____</p> <p>SUB-CONSULTANT TASK MANAGER (If applicable)</p> <p>Consultant Contact Information for PRF Questions</p> <p>Name: _____</p> <p>Phone Number: _____</p> <p>Email: _____</p>	<p><u>AGENCY SIGNATURES</u></p> <p>Contract Division Review _____ DATE _____</p> <p>(Analyst)</p> <p>Project Manager Approval _____ DATE _____</p> <p>Contract Manager Approval _____ DATE _____</p> <p>(If applicable)</p> <p>Department Director Approval _____ DATE _____</p> <p>(If applicable)(Promotions only)</p>
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## GLOSSARY

**A&E:** Architecture and Engineering.

**Agreement:** The contract between SANDAG and Contractor or Consultant awarded pursuant to a solicitation.

**BAFO:** Best and Final Offer, which can be requested from one or more proposers by SANDAG during the negotiations process for a contract document.

**Bid:** Interchangeable with the word Proposal.

**Bidder:** Interchangeable with the word Proposer.

**Business Day:** Monday through Friday except for the following holidays as they are observed per the California Government Code: New Year's Day, Martin Luther King Day, Presidents' Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and the day after, and Christmas Day.

**Caltrans:** The California Department of Transportation.

**Contractor or Consultant:** Interchangeable terms that when started with an uppercase "C" refer to the prime consultant or prime contractor that will provide the services either directly or through the use of Subcontractors or Subconsultants pursuant to the Agreement.

**CFR:** Code of Federal Regulations.

**CGL:** Commercial General Liability.

**CIS:** Compliance Information System.

**CM:** Construction Management.

**COI:** Certificate of Insurance.

**Confidential Information:** information in any form that is not generally known and that is treated as confidential by a party, including business, financial, statistical, and non-public personal information, trade secrets, know-how, applications, documentation, schematics, procedures, as well as PII, information covered by legal privilege, and other proprietary information that may be disclosed or incorporated in materials or products provided to one party by the other, whether or not intentionally or unintentionally disclosed, and whether or not such information is subject to legal protections or restrictions.

**CUCP:** California Unified Certification Program; a State-run program that certifies firms as DBEs, eliminating the need for firms to obtain certifications from multiple agencies.

**DBE:** Disadvantaged Business Enterprise; a for-profit small business concern owned and controlled by a socially and economically disadvantaged person as defined in 49 CFR 26.5 and as certified by the CUCP.

**Deliverables:** Services and work products required to be provided to SANDAG under the Agreement.

**DGS:** Department of General Services

**DISCO:** Diversity in Small Contractor Opportunities

**DOL:** Department of Labor

**DOT:** The federal Department of Transportation.

**DUNS Number:** The 9-digit number assigned by Dun and Bradstreet, Inc. to identify unique business entities.

**DVBE:** Disabled Veteran Business Enterprise

**EEO:** Equal Employment Opportunity

**EPA:** Environmental Protection Agency.

**FPR:** Final Proposal Revisions.

**FHWA:** Federal Highway Administration.

**FUR:** Final Utilization Report – Utilization of All Subconsultants/Subcontractors, Underutilized/Disadvantaged Business Enterprises and Small Businesses

**GFE:** Good Faith Effort - the effort that must be made by a Proposer to utilize a sufficient number of DBEs. GFE documentation must be submitted by a Proposer when it is unable to meet the DBE goal on federally-funded work.

**NAICS:** North American Industry Classification System.

**Notice to Proceed:** A document from SANDAG instructing a Contractor that the Agreement has been executed and that work under the Agreement is to commence

**PII (Personally Identifiable Information):** information that can be used to identify a specific individual, either alone or when combined with other private or public information that can be linked in some way to a specific individual.

**Project Manager:** The individual identified by SANDAG as SANDAG's primary contact for the receipt and management of the goods and services required under the Agreement.

**Proposal:** All documents submitted by the Proposer with its Proposal/Bid.

**Proposer:** The company or entity submitting a proposal to supply SANDAG with services in response to this solicitation and which, if selected for award, will be known as the Contractor or Consultant.

**SaaS:** Software as a Service.

**SANDAG:** San Diego Association of Governments.

**SANDAG Data:** All information, data, and other content, including Confidential Information and other information whether or not made available by SANDAG or SANDAG's agents, representatives or users, to a Contractor or potential Contractor or their employees, agents, representatives or Subcontractors, and any information, data and content directly derived from the foregoing, including data reflecting user access or use.

**SAM:** System for Award Management.

**SB:** A Small Business or Small Business Enterprise as defined in 13 CFR 121.

**SIP:** State Implementation Plan.

**Subcontractor or Subconsultant:** Interchangeable terms that refer to a firm contracted by the prime consultant to perform a portion of the scope of work for the prime consultant.

**Technical Specification:** Part of the overall design documents for a project, setting forth the features, characteristics, standards, quantities and other criteria for products and services to be used by the Contractor in undertaking work and completing a project.

**USC:** United States Code