



**REQUEST FOR PROPOSALS:
(RFP No. DPW2026-005)**

**Design Engineering and Environmental Services for the
Rehabilitation of Maple Creek Bridge 04C0061**

Date Released: June 16, 2026

Proposals Due: July 17, 2026 (Received by 4 p.m.)

**Humboldt County Public Works
1106 Second Street
Eureka, CA 95501**

REQUEST FOR PROPOSALS – No. DPW2026-005
DESIGN ENGINEERING AND ENVIRONMENTAL SERVICES FOR THE REHABILITATION OF
MAPLE CREEK BRIDGE 04C0061

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1.0 DEFINITIONS:

1.1 Terms:

- A. **Addenda.** As used herein, the term “Addenda” refers to an amendment or modification to this Request for Proposals.
- B. **Caltrans.** As used herein, the term “Caltrans” refers to the California Department of Transportation.
- C. **Caltrans Audits and Investigations.** As used herein, the term “Caltrans Audits and Investigations” refers to the California Department of Transportation Inspector General’s Independent Office of Audits and Investigations.
- D. **Consultant.** As used herein, the term “Consultant” refers to any individual, firm or company submitting a Proposal in response to this Request for Proposals.
- E. **Consultant Services Agreement.** As used herein, the term “Consultant Services Agreement” refers to the agreement between the County and the Successful Consultant regarding Design Engineering and Environmental Services for the Rehabilitation of Maple Creek Bridge 04C0061.
- F. **County.** As used herein, the term “County” refers to the County of Humboldt, a political subdivision of the State of California, acting through its Department of Public Works – Engineering Division.
- G. **Proposal.** As used herein, the term “Proposal” refers to the document submitted by a Consultant in response to this Request for Proposals.
- H. **Successful Consultant.** As used herein, the term “Successful Consultant” refers to the individual, agency, firm or company that the County chooses to enter into a final Consultant Services Agreement with after the review, evaluation, selection, contract negotiation and approval processes set forth in this Request for Proposals have been successfully completed.
- I. **Services.** As used herein, the term “Services” refers to specified Design Engineering and Environmental Services for the Rehabilitation of Maple Creek Bridge 04C0061.

1.2 Abbreviations:

- A. **C.C.R.** As used herein, the abbreviation “C.C.R.” refers to the California Code of Regulations.
- B. **CEQA.** As used herein, the abbreviation “CEQA” refers to the California Environmental Quality Act.
- C. **C.F.R.** As used herein, the abbreviation “C.F.R.” refers to the United States Code of Federal Regulations.

- D. **CUF**. As used herein, the abbreviation “CUF” refers to a Commercially Useful Function as that term is defined in the Local Assistance Procedures Manual issued by the California Department of Transportation.
- E. **DBE**. As used herein, the abbreviation “DBE” refers to a Disadvantaged Business Enterprise as that term is defined in the Local Assistance Procedures Manual issued by the California Department of Transportation.
- F. **DOT**. As used herein, the abbreviation “DOT” refers to the United States Department of Transportation.
- G. **FHWA**. As used herein, the abbreviation “FHWA” refers to the Federal Highways Administration
- H. **LAPM**. As used herein, the abbreviation “LAPM” refers to the Local Assistance Procedures Manual issued by the California Department of Transportation.
- I. **PST**. As used herein, the abbreviation “PST” refers to Pacific Standard Time.
- J. **RFP**. As used herein, the abbreviation “RFP” refers to this Request for Proposals seeking consulting firms to provide Design Engineering and Environmental Services for the Rehabilitation of Maple Creek Bridge 04C0061.

2.0 **INTRODUCTION:**

2.1 **Statement of Purpose:**

The County of Humboldt (“County”), by and through its Department of Public Works – Engineering Division, is issuing this Request for Proposals (“RFP”) to retain an experienced and qualified consulting firm to provide specified professional consulting services (“Services”) for the development of construction plans and associated project documentation for the Rehabilitation of the Maple Creek Bridge No. 04C0061 Bridge (“Project”). The Project is funded through the Federal Highways Administration Highway Bridge Program and will require design engineering and environmental services. Such Services shall include, without limitation, topographic surveying, geotechnical investigation, hydraulics analysis, preparation engineering design reports and completion of all required environmental studies and documentation.

2.1 **Project Background:**

The Maple Creek Bridge (Bridge No. 04C0061) is a 60-foot-long structure spanning Maple Creek, located approximately 12 miles from the town of Korb on Maple Creek Road. Originally constructed in 1954, the bridge currently features a deck in good condition and a superstructure in fair condition. However, the substructure is rated in poor condition due to active, long-term instability of the northwesterly earthen bank.

Slope instability was first documented in November 1971. Although biennial inspection reports historically noted little change, ongoing bank movement has caused Abutment 2 to migrate and rotate toward Abutment 1. Consequently, the steel girders are locked tight against both abutment backwalls, forcing the bridge superstructure to act as an unintended structural strut resisting the bank movement.

The steel girders rest on a steel rocker bearing assembly. Due to structural displacement, the bearing assembly at Abutment 1 is fully unseated and no longer supports the girder. County maintenance crews previously field-cut the girder ends to re-establish expansion space; however, continuous slope movement has since closed this gap.

The Successful Consultant must have the ability to provide trained and experienced staff, and subconsultants, if necessary, to perform Design Engineering and Environmental Services for the Rehabilitation of Maple Creek Bridge 04C0061 equivalent to those set forth in this RFP. Responses to this RFP will be in the form of a Proposal.

2.2 Process Overview:

Proposals submitted in response to this RFP shall be objectively evaluated to identify the Consultant that is best qualified to provide the Services set forth in this RFP. At the conclusion of the review, evaluation, selection, contract negotiation and approval processes set forth in this RFQ, a Consultant Services Agreement pertaining to the provision of Services set forth in this RFQ will be awarded to the Successful Consultant. The final Consultant Services Agreement will have a term of four (4) years, unless extended through amendment thereto or sooner terminated as set forth therein. The maximum amount payable by the County pursuant to the terms and conditions of the final Consultant Services Agreement resulting from this RFP process is estimated at Six Hundred Twenty Thousand Dollars (\$620,000.00).

3.0 PRELIMINARY SCOPE OF SERVICES:

This section presents a preliminary scope of services to generally communicate the County's expectations for the provision of the Services solicited hereby. A final scope of services will be developed by the County and the Successful Consultant prior to the final Consultant Services Agreement. All Consultants shall be strictly held to the requirements, standards and protocols set forth in this RFP. Such requirements, standards and protocols will be incorporated into the final Consultant Services Agreement between the County and the Successful Consultant.

3.1 Outline of Anticipated Services:

The outline of anticipated services presented herein is for the primary purpose of allowing the County to compare Proposals submitted in response to this RFP. The precise scope of services that will be incorporated into the final Consultant Services Agreement shall be the subject of negotiations between the County and the Successful Consultant.

3.2 Preliminary Engineering Services:

- A. **Preliminary Engineering Studies.** The required preliminary engineering studies will generally consist of developing scope and impacts of the long-term instability of the northwesterly earthen bank.
- B. **Hydraulic Studies.** The required hydraulic studies will generally consist of all of the following:
 - 1. Reviewing and gathering available hydrologic and hydraulic data pertaining to the Project area;

2. Preparing a Location Hydraulic Study and Summary Floodplain Encroachment Report pertaining to the Project area in accordance with the Caltrans Environmental Handbook.
 3. Conducting scour and erosion analysis within the Project area; and
 4. Drafting and submitting a final Hydraulic Study Report pertaining to the Project area.
- C. **Geotechnical Reconnaissance.** The geotechnical reconnaissance provided will generally consist of the following:
1. Reviewing and analyzing previous studies and published geologic and seismicity data, including, without limitation, air photos and initial geologic field reconnaissance, pertaining to the Project area.
 2. Conducting a site-specific foundation investigation, including, without limitation, test borings, soil/rock testing, analysis and preparation of the foundation report. The specific scope of geotechnical design services will depend on the results of other preliminary engineering tasks, including, without limitation, support locations, loads and approach configurations.
 3. Conducting and analyzing test borings at the existing abutment, wingwall and other locations within the Project Area to define subsurface conditions for bridge rehabilitation and to confirm rock depth and quality.
 4. Evaluating the present Maple Creek channel conditions, including, without limitation, reviewing scour/degradation and aggradation. Upon completion of such geotechnical reconnaissance services, the Successful Consultant will be responsible for preparing a summary report which discusses site conditions, channel changes and migration trends, site seismicity, constraints affecting wall type selection and preliminary foundation data.
- D. **Surveys.** The Successful Consultant shall provide current site surveys, including, without limitation, control, topographic and hydrographic surveys, and will be responsible for any additional surveys necessary for preliminary engineering, hydraulic studies, design, cost estimates, right-of-way impacts and the level of environmental clearance with the County.
- E. **Stakeholder Information.** The Successful Consultant shall gather information from community stakeholders within Project limits, including, without limitation, public utility companies, community service districts and private utility services.
- F. **Deliverables.** Deliverables shall include, without limitation Hydrology/Hydraulics Study and Geotechnical Report.

3.3 **Environmental Services:**

- A. **Environmental Studies.** The environmental services provided will generally consist of conducting and preparing environmental studies, assessments and reports to ensure compliance with any and all applicable local, state and federal laws, regulations, standards, policies, procedures and guidelines. Currently, the County anticipates that an environmental document which meets the requirements of both the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA") will need to be completed due to the potential significant impacts that may occur within the Project area. For CEQA, an Initial

Study must be prepared in order to determine whether or not the Project will have a significant effect on the environment. If the County determines that an Environmental Impact Report will be required for the Project, preparation of an Initial Study will not be required, but may still be desirable. The environmental services provided may include, without limitation, all of the following:

1. Providing necessary environmental studies and documents to secure approval from Caltrans for completion of the preliminary engineering services set forth herein including, but not limited to, all of the following:
 - a. Preparation of a Preliminary Environment Study form which is designed to provide an understanding of the full scope of the project and to provide early coordination needed to determine required technical studies and permits, level of analysis and NEPA Class of Action.
 - b. Preparation of a Natural Environment Study which includes an environmental assessment of the entire Project area, including, without limitation, identification and quantification of potential impacts to wetlands, sensitive habitat and endangered and threatened plant and animal species within the Project area. The Natural Environment Study must also discuss the results of any and all consultation efforts with local, state and federal agencies, including, without limitation, any and all applicable Biological Assessments and maps of all wetland delineation areas and United States Army Corps of Engineers' jurisdictional boundaries within the Project area. Finally, the Natural Environment Study must demonstrate how the Project will comply with any and all applicable local, state and federal laws, regulations and Executive Orders, including, without limitation, Executive Order 13112 – Invasive Species, Executive Order 11990 – Protection of Wetlands, the federal Migratory Bird Treaty Act and the Federal Endangered Species Act.
 - c. Preparation of a Local Hydraulic Study Form which includes any and all hydrologic and hydraulic data pertaining to the Project area in accordance with any applicable local, state and federal laws, regulations, standards, policies, procedures and guidelines, including, without limitation, the Caltrans Environmental Handbook.
 - d. Preparation of a Summary Floodplain Encroachment Report, which includes a discussion of any and all potential impacts to floodplains within the Project area in accordance with any and all applicable local, state and federal laws, regulations, standards, policies, procedures and guidelines, including, without limitation, Volume I, Chapter 17 – Floodplains of the Caltrans Environmental Handbook.
 - e. Preparation of a Biological Assessment which addresses any and all potential impacts to federally listed fish species and critical habitat within the Project area, including without limitation, Coho Salmon (*Oncorhynchus kisutch*) and Chinook Salmon (*O. tshawytscha*) within the Southern Oregon and Northern California Coastal Evolutionarily Significant Unit and Steelhead (*O. mykiss*) within the Northern California Coast Distinct Population Segment. The Biological Assessment will also address potential adverse effects to Essential Fish Habitat and shall include a hydroacoustic analysis relating potential impacts from noise generated activities. Formal consultation with the National Marine Fisheries Service will be required and a Biological Opinion will be issued in accordance with

the federal Endangered Species Act. Caltrans will be the lead agency initiating consultation with the National Marine Fisheries Service.

- f. Preparation of a Biological Assessment which addresses any and all potential impacts to federally listed bird species, reptile species and critical habitat within the Project area, including, without limitation, the Northern Spotted Owl (*Strix occidentalis caurina*), the Marbled Murrelet (*Brachyramphus marmoratus*) and Northwestern Pond Turtle (*Actinemys marmorata*). Formal consultation with the United States Fish and Wildlife Services will be required and a Biological Opinion will be issued in accordance with the federal Endangered Species Act. Caltrans will be the lead agency initiating consultation with United States Fish and Wildlife Services.
 - g. Preparation of a Botanical and/or Wetland Delineation Report which addresses any and all potential impacts to federal and/or state recognized sensitive plants and wetlands within the Project area that may be impacted by the Project. The findings of the Botanical and/or Wetland Delineation Report, including, without limitation, any and all mitigation measures that may be implemented to reduce potential impacts to sensitive plants and/or wetlands, and should be included in the Natural Environment Study.
 - h. Preparation of an Initial Site Assessment for Hazardous Materials which addresses any and all potential hazardous waste contamination, including, without limitation, lead paint and asbestos, that may occur within the Project area.
 - i. Preparation of a Visual Impact Assessment which addresses any and all potential visual impacts that may occur within the Project area. The Visual Impact Assessment must be prepared in accordance with the guidelines set forth in the Caltrans Visual Impact Assessment Guide which is available online at: <https://dot.ca.gov/programs/design/lap-visual-impact-assessment>.
- 2. Complying with applicable standards in accordance with Caltrans Local Assistance Program requirements, including, without limitation documentation regarding Cultural Resources. The bridge is eligible under the National Register of Historic Places (NRHP). Consequently, any proposed work requires additional documentation and coordination with Caltrans Architectural Historian such that the project does not impact the bridge's eligibility under NRHP. The following studies may be required: Area of Potential Effects (APE) Map, Archaeological Survey Report (ASR), Extended Phase 1 (XPI), Historic Property Survey Report (HPSR), Finding of Effects Report and Memorandum of Agreement (MOA).
 - 3. Complying with applicable standards in accordance with Caltrans Local Assistance Program requirements, including, without limitation consulting and communicating with Caltrans local Assistance staff as directed by the County.
 - 4. Complying with the applicable requirements of NEPA and CEQA, including, without limitation, preparing and submitting the environmental documentation set forth herein.
 - 5. Providing accurate information to, and soliciting input from, the public that can be incorporated into the NEPA and CEQA processes, including, without limitation, attending public meetings and presentations.

6. Consulting with the United States Army Corps of Engineers, United States Fish and Wildlife Services, National Marine Fisheries Service, California Department of Fish and Wildlife, the North Coast Regional Water Quality Control Board, the California State Lands Commission, the California Coastal Commission and any other agencies with jurisdiction in the Project area, and obtaining all required permits and approvals. The County will retain responsibility for all informal and formal consultations with any and all local state and federal agencies regarding Project mitigation and compensation proposals.
 7. Establishing direct contact with governmental regulatory and resource agencies for the purpose of obtaining information, expertise and technical assistance in developing baseline data and resource inventories related to the Project.
 8. Maintaining records of all contacts and transmitting copies of such records to the County on a regular basis.
 9. Providing the County with the opportunity to review and revise all environmental documentation prepared and submitted pursuant to the terms and conditions of the final Consultant Services Agreement prior to final submission thereof.
- B. Legal Compliance.** The intended outcome is for the Successful Consultant to perform the above-referenced environmental services in accordance with the requirements set forth in both NEPA and CEQA. The documents, reports and studies provided shall meet any and all local, state and federal and County requirements and follow the guidelines promulgated by the Caltrans Local Assistance Program. The Successful Consultant shall use any and all available local, state and/or federal templates and/or annotated outlines and follow any and all applicable local, state and/or federal guidelines set forth in the Caltrans Standard Environmental Reference. All environmental documents prepared shall comply with all of the following state and federal laws regulations, and guidelines:
1. California Environmental Quality Act;
 2. California Environmental Quality Act guidelines;
 3. Section 106 of the National Historic Preservation Act;
 4. Section 4(f) of the National Registry of Historical Places (NRHP)
 5. United States Endangered Species Act;
 6. United States Clean Water Act;
 7. United states Clean Air Act;
 8. United States Wild and Scenic Rivers Act;
 9. United states Fish and Wildlife Coordination Act;
 10. California Endangered Species Act;

11. United States Migratory Bird Treaty Act;
12. Federal Executive Order 11990 – Wetlands;
13. Federal Executive Order 11988 – Floodplains;
14. Federal Executive Order 13112 – Invasive Species;
15. California Assembly Bill 52 – Consultation Requirements with California Tribes; and
16. Any and all applicable formatting and processing requirements of Caltrans and/or the Federal Highway Administration.

- C. **Environmental Permitting and Support.** The Project will require permits from United States Army Corps of Engineers (Section 404), the California Department of Fish and Wildlife (1602), NCRWQCB (Section 401), the California State Lands Commission (General Lease Permit) and Coastal Development Permit. The County reserves the option to prepare and submit the permit applications for the Project. However, the Successful Consultant may be responsible for providing the County with any technical information, exhibits, illustrations, etc. that may need to be submitted with the permit applications.

3.4 **Design Engineering Services:**

- A. **Final Design.** The Successful Consultant will be responsible for preparing and submitting design reports and other related documentation for the bridge rehabilitation project. The bridge design services provided will also include the preparation of traffic control plans, construction plans and specifications utilizing Caltrans Standards and American Association of State Highway and Transportation Officials Geometric Design guidelines, detailed cost estimates, and bid documents utilizing standard County construction contract provisions. The final design will also contain identification of any utilities that may need to be relocated as a result of the project.
- B. **Deliverables.** Deliverables shall include, without limitation, all of the following:
1. Provision of a sixty-five (65%) Submittal (Unchecked Details) Package which includes all of the following: General Plan; Foundation Plan; Abutment and Elevation Plan; Typical Sections; Test Borings/Geotechnical Report; Traffic Control Plan; Cost Estimate; Outline Specifications; and Roadway and Civil Plans.
 2. Provision of an Independent Review analysis of the structural calculations and designs.
 3. Provision of a one hundred percent (100%) Submittal (Checked Details) Package which includes all of the following: complete construction plans; draft specifications; cost estimates; independent check certifications; design and check calculations; quantity calculations; and construction staging plans.
 4. Provision of a Final Submittal Package which incorporates all of the review comments into the design plan and includes all of the following: complete bid documents including, plans, specifications and contract provisions ready for reproduction and distribution; final cost estimate; final structural design calculations; final independent check calculations;

final quantity calculations; tentative construction schedule; and final construction staging plans.

3.5 Bid Assistance, Construction Support and Project Management Services:

- A. **Assistance with the Bidding Process.** The bid assistance services provided will generally consist of submitting an electronic copy of the final approved plans and specifications. The electronic copy of the plans shall be provided as both AutoCAD files and PDF files, and the electronic copy of the specifications shall be provided in both Microsoft Word format and PDF format. The County will be responsible for making copies of contract documents and will distribute such documents as appropriate. However, the Successful Consultant may be responsible for responding to questions from potential contractors that arise during the bidding process and prepare addendums which will be distributed by the County as necessary.
- B. **Construction Support Services.** The construction support services that the Successful Consultant may be responsible for providing will generally consist of all of the following:
1. Providing construction support, including, without limitation, responding to contractor requests for information, reviewing shop drawings and falsework and shoring submittals, clarifying plans and specifications and conducting up to two (2) site visits during construction.
 2. Providing geotechnical support, including, without limitation, observing pile installation on an as-needed basis, conducting up to three (3) site visits and conducting analysis during construction, on an as-needed basis.
 3. Providing construction staking in accordance with the requirements set forth in the Caltrans Survey Manual for Construction Staking, including, without limitation, providing cut sheets for construction staking based on the plan set.
 4. Providing as-built drawings upon completion of the work, including, without limitation, record drawings based on corrections made by the Resident Engineer.
- C. **Project Management Services.** The Successful Consultant shall be responsible for completing various project management activities throughout the term of the final Consultant Services Agreement, which include, without limitation, coordinating and being responsible for scheduling meetings, managing the Project schedule, preparing and distributing meeting minutes, conducting field reviews, tracking action items and preparing submissions for the County to submit to Caltrans.

4.0 REQUIREMENTS STATEMENT:

4.1 Eligibility Requirements:

- A. **Required Qualifications.** In order to be considered for award of a Consultant Services Agreement pursuant to this RFP process, Consultants must possess, at a minimum, all of the following qualifications:
1. At least six (6) years of experience in providing Services equivalent to those set forth in this RFP.

2. Familiarity with the requirements applicable to the provision of Services equivalent to those set forth in this RFP for state and federally funded projects, including, without limitation, the California Department of Transportation's ("Caltrans") Local Assistance Procedures.
3. Familiarity with the local coordinate, global positioning and geographic information systems.
4. Knowledge of current methods, techniques and practices, including, without limitation, the ability to prepare legal property descriptions, exhibits and plats, used to plan, design and construct of a variety of public works projects.
5. Ability to work long hours as necessitated by site work.
6. Good verbal and written communication skills.

B. Required Personnel. In order to be considered for award of a Consultant Services Agreement pursuant to this RFP process, Consultants must have personnel that are capable, competent and experienced in providing Services equivalent to those set forth herein with minimal instruction. The types of personnel that Consultants must have available to provide Services equivalent to those set forth in this RFP include, without limitation, all of the following:

1. Project Managers that shall be responsible for coordinating the provision of engineering and/or environmental services pursuant to the terms and conditions of the final Consultant Services Agreement resulting from this RFP process. Project Managers shall be registered civil engineers, licensed in the State of California, and have experience with public infrastructure projects.
2. Professional Engineers that shall be responsible for performing design and traffic engineering services pursuant to the terms and conditions of the final Consultant Services Agreement resulting from this RFP process. Professional Engineers shall be registered civil engineers, licensed in the State of California, and have experience with public infrastructure projects.
3. Right-of-Way Staff that shall be responsible for performing right of way services pursuant to the terms and conditions of the final Consultant Services Agreement resulting from this RFP process. Right-of-way staff shall be in compliance with any and all applicable licensure, certification and accreditation requirements and have experience with public infrastructure projects.
4. Geotechnical Engineers that shall be responsible for providing geotechnical engineering services pursuant to the terms and conditions of the final Consultant Services Agreement resulting from this RFP process. Geotechnical Engineers shall be registered civil engineers, licensed in the State of California, and have experience with public infrastructure projects.
5. Engineering Staff that shall be responsible for providing, coordinating and scheduling engineering services pursuant to the terms and conditions of the final Consultant Services Agreement resulting from this RFP process. Engineering Staff shall be supervised by a registered civil engineer, licensed in the State of California, and have experience with public infrastructure projects.

6. Environmental Staff, or subconsultants, that shall be responsible for providing, coordinating and scheduling environmental services pursuant to the terms and conditions of the final Consultant Services Agreement resulting from this RFP process. Environmental Staff shall be in compliance with any and all applicable licensure, certification and accreditation requirements and have experience with public infrastructure projects.
7. Professional Land Surveyor that shall be responsible for providing, and coordinating the provision of, land surveying services pursuant to the terms and conditions of the final Consultant Services Agreement resulting from this RFP process. Professional Land Surveyors shall be licensed in the State of California and have experience with public infrastructure projects.
8. Technical Staff that shall be responsible for providing various land surveying services, including, without limitation, boundary surveys, topographic surveys, construction staking, office calculations and mapping services, pursuant to the terms and conditions of the final Consultant Services Agreement resulting from this RFP process. Technical Staff shall be supervised by a Professional Land Surveyor, licensed in the State of California, and have experience with public infrastructure projects.

4.2 Licensure, Certification and Accreditation Requirements:

In order to be considered for an award of a Consultant Services Agreement pursuant to this RFP process, Consultants must be in compliance with any and all applicable local, state and federal licensure, certification and accreditation requirements and standards.

5.0 SCHEDULE EVENTS:

The following schedule of events represents the County's best estimate of the schedule that will be followed with regard to this RFP process. Unless otherwise specified, the time of day for the following events shall be between 8:00 a.m. and 5:00 p.m. Pacific Standard Time ("PST"). The County hereby reserves the right, at its sole discretion, to modify this tentative schedule as it deems necessary, including, without limitation, extending the deadline for submission of Proposals.

EVENT	DATE
RFP Issued by the County:	June 16, 2026
Deadline for Submission of Questions:	July 8, 2026
Deadline for Responses to Questions:	July 10, 2026
Deadline for Proposals to be Received:	July 17, 2026, 4:00 p.m. PST
Consultant Interviews (if necessary):	TBD
Completion of Review and Evaluation Process:	July 31, 2026
Finalization of Consultant Services Agreement:	TBD
Recommendation of Award to Board of Supervisors:	TBD
Start Date of Consultant Services Agreement:	TBD

6.0 GENERAL INFORMATION REGARDING PROPOSALS:

6.1 Proposal Submission:

Consultants shall prepare and submit one (1) original Proposal and one (1) electronic copy thereof, in PDF format on a CD, DVD or thumb Drive, by **4:00 p.m. PST, on June 16, 2026**. Proposals shall be signed by an authorized agent of the Consultant, and must be placed in a sealed envelope clearly marked “**RFP No. DPW2026-005**” along with the name and address of the Consultant and the closing date and time for submission of Proposals. Proposals that are unsigned, or signed by an individual not authorized to bind the prospective consultant, will be considered nonresponsive and rejected. Proposals shall be personally delivered or mailed to:

COUNTY: Humboldt County Department of Public Works – Engineering Division
Attention: Tony Seghetti, Deputy Director
1106 Second Street
Eureka, California 95501

Proposals submitted to any other County office will be rejected and returned to the Consultant unopened. Time is of the essence, and any Proposal received after the above-referenced date and time for submittal, whether by mail or otherwise, will be rejected and returned to the Consultant unopened. It is the sole responsibility of the Consultant to ensure that its Proposal is received before the submittal deadline, and postmarks will not be accepted in lieu of this requirement. However, nothing in this RFP precludes the County from extending the deadline for submission of Proposals or from requesting additional information at any time during the evaluation process.

6.2 Withdrawal of Submitted Proposals:

A Consultant may withdraw its Proposal at any time prior to the above-referenced submittal deadline by submitting a written notification of withdrawal signed by the consultant or an authorized representative thereof. Consultants must retrieve the entire sealed Proposal package in person. Proposals will become the County’s property after the submission deadline has passed.

6.3 Modification of Submitted Proposals:

Any Consultant who wishes to make modifications to a submitted Proposal must withdraw its initial Proposal as required by this RFP. It is the responsibility of the Consultant to ensure that a modified Proposal is resubmitted before the designated deadline for submission of Proposals in accordance with the terms of this RFP. Proposals may not be changed or modified after the submission deadline.

6.4 Consultant Investigations:

Before submitting a PROPOSAL, each Consultant shall make all investigations and examinations necessary to ascertain its ability to perform Services equivalent to those set forth in this RFP in accordance with the requirements and standards described herein. In addition, each Consultant shall verify any representations made by the County that the Consultant will rely upon. Failure to make such investigations and examinations will not relieve the Consultant from its obligation to comply with all provisions and requirements set forth in this RFP. In addition, a Consultant’s lack of due diligence will not be accepted as a basis for any claim for monetary consideration on the part of the Consultant.

6.5 Conflict of Interest:

By submitting a Proposal in response to this RFP, Consultant warrants and covenants that no official or employee of the County, nor any business entity in which an official or employee of the County has an interest, has been employed or retained to assist in the preparation or submission of such Proposal.

6.6 Expenses Incurred in Preparing Proposals:

The County accepts no responsibility for, and shall not pay any costs resulting from, or associated with, a Consultant's participation in this RFP process, including, without limitation, the preparation and presentation of a Proposal.

6.7 Right to Reject Proposals:

The County reserves the unqualified right to reject any and all Proposals or to waive, at its sole discretion, any irregularity, which the County deems reasonably correctable or otherwise not warranting rejection of a Proposal.

6.8 Public Records and Trade Secrets:

All Proposals and materials submitted in response to this RFP shall become the County's property and are subject to disclosure under the Public Records Act, California Government Code Sections 6250, *et seq.* This RFP, and all Proposals submitted in response hereto, are considered public information, except for specifically identified trade secrets, which will be handled according to any and all applicable local, state and federal laws and regulations. Any portion of a Proposal that is deemed to be a trade secret by the Consultant shall be clearly marked "PROPRIETARY INFORMATION" at the top of the page in at least one-half inch (1/2") letters. Specifically identified proprietary information will not be released, if the Consultant agrees to indemnify and defend the County in any action brought to disclose such information. By submitting a Proposal in response to this RFP, the Consultant agrees that the County's failure to contact the Consultant prior to the release of any proprietary information contained therein will not be a basis for liability by the County or any employee thereof.

7.0 REQUIRED FORMAT OF PROPOSALS:

7.1 General Instructions and Information:

A. **Content Requirements.** In order for a Proposal to be considered for award of a Consultant Services Agreement pursuant to this RFP process, all of the following conditions must be satisfied:

1. Proposals must be submitted in accordance with the standards and specifications set forth in this RFP and contain all required attachments, including, without limitation, a signed and completed Signature Affidavit.
2. Proposals must be complete and specific unto themselves. For example, "*See Enclosed Brochure*" will not be considered an acceptable response.
3. Proposals must contain information which enables the County to evaluate the Consultant's ability to provide the types of Services set forth in this RFP.

4. All information, statements, letters and other documentation and attachments required by this RFP must be included with the Proposal.
5. Receipt of all Addenda to this RFP, if any, must be acknowledged on the bottom of the Signature Affidavit sheet attached to the Proposal.

B. Presentation Requirements. In order for a Proposal to be considered for award of a Consultant Services Agreement pursuant to this RFP process, all of the following conditions must be satisfied:

1. Proposals must be bound or contained in loose leaf binders. However, costly bindings, color plates, glossy brochures, etc. are not necessary or recommended.
2. Proposals must be uniformly typed in twelve (12) point font on standard letter size (8.5" x 11") white paper, single or double sided, with:
 - a. Each section and subsection clearly titled;
 - b. Each page consecutively numbered, including all attachments;
 - c. Each page having 1.0" margins; and
 - d. Each page being clean and suitable for copying.
3. Proposals must not be any more than seventy-five (75) pages in length. Proposals exceeding such maximum page length may be rejected by the County.

C. Formatting Requirements. In order to be considered for award of a Consultant Services Agreement pursuant to this RFP process, Proposals shall follow the format outlined herein. Failure to follow this format may result in the rejection of the Proposal. Each Proposal shall consist of the following sections:

- 1.0 Introductory Letter
- 2.0 Signature Affidavit
- 3.0 Table of Contents
- 4.0 Business Profile
- 5.0 References
- 6.0 Supplemental Documentation
- 7.0 Evidence of Insurability and Business Licenses
- 8.0 Exceptions, Objections and Requested Changes
- 9.0 Required Attachments

7.2 Introductory Letter:

The introductory letter shall, in one (1) page or less, summarize Consultant's qualifications and experience regarding the provision of Services equivalent to those set forth in this RFP. The introductory letter must also provide the Consultant's current contact information, list any subconsultants that may be used to provide Services equivalent to those set forth in this RFP and identify the offices where such Services will be performed. The introductory letter shall be signed in blue ink by an authorized representative of the Consultant.

7.3 Signature Affidavit:

Each must contain a signed and completed Signature Affidavit which is attached to this RFP as Attachment A. The Signature Affidavit must be signed by an authorized representative of the Consultant. Signature authorization on the Signature Affidavit shall constitute a warranty, the falsity of which shall entitle the County to pursue any and all remedies authorized by law. Receipt of all Addenda, if any, must be acknowledged on the bottom of the Signature Affidavit.

7.4 Table of Contents:

Proposals shall include a comprehensive table of contents that identifies submitted material by sections 1.0 through 9.0 listed above and any subsections thereof with sequential page numbers.

7.5 Business Profile:

Proposals shall include a clear and concise narrative which identifies the Consultant's ability to provide the types of Services specified in this RFP.

A. Company Overview. The Business Profile must include an overview of the business structure and operation of Consultant's firm. The company overview should include, at a minimum, all of the following items:

1. The Consultant's business name, physical location, mission statement, legal business status, such as partnership, corporation, limited liability company or sole proprietorship and the Consultant's current staffing levels.
2. A detailed description of the Consultant's current and previous business activities, including, without limitation:
 - a. The history of the Consultant's firm, including the date when the firm was founded and how innovation and high quality performance is fostered thereby.
 - b. The number of years the Consultant has been operating under the present business name and any prior business names under which the Consultant has provided Services equivalent to those set forth in this RFP.
 - c. The number of years the Consultant has been providing Services equivalent to those set forth in this RFP.
 - d. The total number of government agencies for which the Consultant has provided Services equivalent to those set forth in this RFP.
3. A detailed description of any litigation regarding the provision of Services equivalent to those set forth in this RFP that has been brought by or against the Consultant, including the nature and result of such litigation, if applicable.
4. A detailed description of any fraud convictions related to public contracts, if applicable.
5. A detailed description of any current or prior debarments, suspension or other ineligibility to participate in public contracts, if applicable.

6. A detailed description of any violations of local, state and/or federal industry or regulatory requirements, if applicable.
 7. A detailed description of any controlling or financial interest the Consultant has in any other firms or organizations, or whether the Consultant's firm is owned or controlled by any other firm or organization. If the Consultant does not hold a controlling or financial interest in any other firms or organizations, that must be stated.
- B. Overview of Qualifications and Experience.** The Business Profile must include an overview of the Consultant's qualifications and experience regarding the provision of Services equivalent to those set forth in this RFP. The overview of the Consultant's qualifications and experience should include, at a minimum, all of the following items:
1. A detailed description of the Consultant's knowledge of the requirements pertaining to the provision of Services equivalent to those set forth in this RFP for state and federally funded projects, including, without limitation, Caltrans' Local Assistance Procedures.
 2. A detailed description of the Consultant's overall experience in providing Services equivalent to those set forth in this RFP.
 3. The number of staff members and subconsultants currently providing Services equivalent to those set forth in this RFP.
 4. A detailed description of the qualifications and experience of staff members and subconsultants currently providing Services equivalent to those set forth in this RFP, including, without limitation, job titles, responsibilities, special training and licenses.
- C. Project Understanding and Quality Control.** The business profile must include an overview of the Consultant's policies and procedures regarding quality control. The quality control overview should include, at a minimum, all of the following items:
1. A detailed description of the Consultant's understanding of the requirements, challenges and potential hurdles applicable to the provision of Services equivalent to those set forth in this RFP.
 2. Identification of the Consultant's management team and other key personnel, including, without limitation, an organizational chart and resumés for each staff member that may provide Services equivalent to those set forth in this RFP pursuant to the terms and conditions of the final Consultant Services Agreement resulting from this RFP process.
 3. A detailed description of the management strategies that will be utilized by the Consultant in order to achieve the goals and objectives of specific roadway and bridge construction projects in an efficient manner.
 4. A detailed description of the Consultant's abilities to implement innovative management techniques and identify opportunities for the use of such techniques.
 5. A detailed description of the Consultant's management expertise and approach, and how such expertise and approach will assure staff continuity and timely performance of Services equivalent to those set forth in this RFP pursuant to the terms and conditions of the final Consultant Services Agreement resulting from this RFP process.

6. A detailed description of the expected communication channels between the Consultant's staff and the County to ensure that Services equivalent to those set forth in this RFP will be performed to the County's satisfaction, including, without limitation, how potential problems will be solved.

7.6 **References:**

- A. **Reference Data Sheet.** Proposals shall include a Reference Data Sheet, which is attached hereto as Attachment B, containing present and past performance information from a minimum of three (3) former clients, preferably government agencies, to whom the Consultant has provided Services equivalent to those set forth in this RFP within the past five (5) years.
- B. **Required Information.** The performance information provided with each reference must be clearly correlated to the types of Services and responsibilities set forth in this RFP. Each reference must include, at a minimum, all of the following information:
 1. The name, physical address, email address and telephone number for the current contact person of each referenced client.
 2. The dates of project commencement and completion for each referenced client.
 3. A detailed description of the services performed for each referenced client, including, without limitation, the time period in which such services were delivered.
 4. A detailed description of how the services rendered by the Consultant led to accomplishment of each referenced client's project objectives.
 5. A detailed description of the amount and outcome of each referenced client's project.
 6. A verification that all information provided in the Reference Data Sheet is true and correct to the best of the Consultant's knowledge.

7.7 **Supplemental Documentation:**

Proposals shall include a detailed description of any and all reports, drawings, studies, invoices and any other pertinent documents, that may be prepared and/or used to provide Services equivalent to those set forth in this RFP pursuant to the terms and conditions of the final Consultant Services Agreement resulting from this RFP process. Samples of each document described in the supplemental documentation section of the Proposal shall be attached thereto.

7.8 **Evidence of Insurability and Business Licenses:**

All Consultants shall submit evidence of eligibility for all insurances required by the sample Consultant Services Agreement that is attached hereto as Attachment E. Upon the award of a final Consultant Services Agreement, the Successful Consultant will have ten (10) calendar days to produce certificates of the required insurance, including a certified endorsement naming the County as an additional insured. However, Consultants should not purchase additional insurance until a final Consultant Services Agreement has been awarded by the County. In addition, all Consultants shall certify the possession of any and all licenses and/or certifications required for the provision of Services equivalent to those set forth in this RFP.

7.9 Exceptions, Objections and Requested Changes:

Consultants should carefully review the terms and conditions of this RFP. Any exceptions, objections or requested changes to this RFP, and/or sample Consultant Services Agreement attached hereto, shall be clearly stated and explained in the Proposal with supporting rationale. Descriptions of any exceptions, objections or requested changes should include the page and paragraph number of the referenced portion of this RFP and/or sample Consultant Services Agreement attached hereto. Protests based on any exception, objection or requested change to this RFP, and/or sample Consultant Services Agreement attached hereto, shall be considered waived and invalid by the County if the exception, objection or requested change is not clearly identified and explained in the Proposal.

7.10 Required Attachments:

Proposals that do not contain each of the following attachments will be considered nonresponsive and rejected by the County:

- **Attachment – Signature Affidavit** (See Section 7.3)
- **Attachment – Reference Data Sheet** (See Section 7.6)
- **Attachment – Supplemental Documentation** (See Section 7.7)

8.0 MODIFICATION AND CORRECTION:

8.1 Requests for Clarification or Correction:

Consultants shall be responsible for meeting all of the requirements and conditions set forth in this RFP. If a Consultant discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, a written request for clarification or correction should be submitted to the County at the following address:

COUNTY: Humboldt County Department of Public Works – Engineering Division
Attention: Tony Seghetti, Deputy Director
1106 Second Street
Eureka, California 95501
Email: tseggetti@co.humboldt.ca.us

Requests for clarification or correction and any other questions pertaining to this RFP must be received by the County before **5:00 p.m. PST on July 8, 2026**. All responses to such requests for clarification or correction and written questions shall be issued by the County on or before **July 10, 2026**.

8.2 Addenda:

Any modifications to this RFP shall be made by written Addenda. Addenda to this RFP, if necessary, will be distributed via mail, email or facsimile to all Consultants by the County and will be posted on the County's website. Addenda issued by the County interpreting or modifying any portion of this RFP shall be incorporated into the Consultant's Proposal. The Addenda Cover Sheet shall be signed and dated by the Consultant and submitted to the County with the Proposal. Any oral communications concerning this RFP by County personnel are not binding on the County, and shall in no way modify this RFP or the obligations of the County or any Consultants.

9.0 EVALUATION CRITERIA AND REVIEW PROCESS:

The County will review and evaluate all Proposals for responsiveness to this RFP, in order to determine whether the Consultant possesses the qualifications necessary for the satisfactory performance of Services equivalent to those set forth in this RFP. In evaluating the Proposals, the County will employ a one hundred (100) point competitive evaluation system with consideration given to each of the following categories:

- **Relevant and Comparable Experience – 30 points:** The Consultant's experience in providing Services equivalent to those set forth in this RFP for government agencies of comparable size.
- **Staffing Levels – 30 points:** The Consultant's ability to provide key personnel familiar with providing Services equivalent to those set forth in this RFP.
- **Local Presence – 10 points:** Consultant's staff and sub-consultant's familiarity with Humboldt County. Consultant's ability to meet on-site, knowledge of local roads and bridges and previous local project experience.
- **Ability to Provide High-Quality Services – 30 points:** Evaluation of the consultant's ability to provide high-quality services includes, but not limited to, the following: strength of the prime consultant's and sub-consultants' team, understanding of the services needed by the county, knowledge of the federal aid process, ability to meet federal aid requirements (Audit and Investigations), past performance with government agencies, and responsiveness of the consultant's Proposal to the requirements of the RFP.

All Proposals will be evaluated by an Evaluation Committee made up of County staff members and other parties that have expertise or experience in the types of Services set forth in this RFP. The RFP Evaluation Committee may directly request clarification of Proposals from, and/or conduct interviews with, one (1) or more Consultants. The purpose of any such requests for clarification or interviews shall be to ensure the Evaluation Committee's full understanding of the Proposal. If clarifications are made as a result of such discussions, the Consultant shall put such clarifications in writing. Any delay caused by a Consultant's failure to respond to direction from the County may lead to rejection of the Proposal.

The evaluation and selection process is designed to award the procurement to the Consultant with the best combination of attributes based upon the above-referenced evaluation criteria. Accordingly, Proposals will be evaluated against the evaluation criteria set forth in this RFP and not against other Proposals. The award of a final Consultant Services Agreement, if made by the County, will be based upon a total review and evaluation of each Proposal.

All contacts made with the County during the evaluation and selection process shall be through Humboldt County Public Works Deputy Director, Tony Seghetti (see Section 8.1 for contact information). Attempts by a Consultant to contact any other representative of the County during the evaluation and selection process may lead to rejection of the Proposal. Conflict resolution shall be handled by County staff upon receiving a written statement from the Consultant about this RFP process.

10.0 CONTRACT DEVELOPMENT:

10.1 Contract Negotiation Process:

Once the Proposal evaluation process has been completed, the County will notify the Consultants of the final rankings, and negotiate the terms and conditions of the final Consultant Services Agreement with the highest-ranking Consultant. The highest-ranking Consultant shall participate in good faith negotiations in accordance with direction from the County. Any delay caused by a Consultant's failure to participate in good faith negotiations may lead to rejection of the Proposal. The contract negotiation process shall include, without limitation, all of the following:

- A. **Scoping Meeting.** The highest-ranking Consultant may be asked to attend a scoping meeting, within two (2) weeks after receiving notification of the final rankings, to ensure that the Consultant has a full understanding of the terms and conditions of the Consultant Services Agreement. The scoping meeting will also provide the highest-ranking Consultant's Project Team with an opportunity to ask technical questions regarding the Services that they will be expected to provide.
- B. **Cost Proposal.** The highest-ranking Consultant will be asked to submit a sealed Cost Proposal for the Services set forth in this RFP, within four (4) weeks after receiving notification of the final rankings. Cost Proposals shall include an itemized list of the hourly rates that will be charged for each Service set forth in this RFP. All subconsultants providing the Services set forth in this RFP pursuant to the terms and conditions of a final Consultant Services Agreement will be required to submit cost proposals in the same format as the Successful Consultant.

10.2 Award of Consultant Services Agreement:

If the County determines, after the completion of the contract negotiation process, to award a contract for the provision of Services equivalent to those set forth in this RFP, a Consultant Services Agreement shall be sent to the Successful Consultant for signature. Once signed copies have been returned to the County, the Consultant Services Agreement will be submitted to the Humboldt County Board of Supervisors for approval. The County hereby reserves the right to award a Consultant Services Agreement to the Consultant which, in the sole judgment of the County, will best serve the interests thereof. No Proposal shall be binding upon the County until a final Consultant Services Agreement has been signed by duly authorized representatives of both the Successful Consultant and the County.

10.3 Contractual Requirements:

- A. **Contract Audit and Review Process Requirements.** The final Consultant Services Agreement resulting from this RFP process, and any subcontracts associated therewith, are subject to audit or review by the California Department of Transportation Inspector General's Independent Office of Audits and Investigations ("Caltrans Audits and Investigations") and any other duly authorized local, state and/or federal agencies. The Successful Consultant, and any subconsultants, shall be responsible for complying with any and all local, state and federal laws, regulations, policies, procedures, standards and contract requirements related to audits and reviews, including, without limitation, any and all applicable requirements set forth in Chapter 10 of the LAPM.
- B. **Cost Certification Requirements.** The Successful Consultant must certify the accuracy of the costs associated with the provision of the Services equivalent to those set forth in this RFP by submitting the Inspector General's Certification of Indirect Costs and Financial Management System or other applicable forms. The County will then submit a complete packet to Caltrans Independent Office of Audits and Investigations in accordance with the LAPM. All documentation supporting the cost certification, including, without limitation,

Inspector General's Financial Document Review (FDR) Request Form, must be retained by the County and the Successful Consultant for the applicable retention period in the event an audit or review is performed by Caltrans Audits and Investigations or any other duly authorized local, state or federal agency.

- C. **Prevailing Wage Requirements.** The Successful Consultant, and any subconsultants with subcontracts exceeding Twenty-Five Thousand Dollars (\$25,000.00), shall be responsible for complying with the applicable State of California Prevailing Wage Rate requirements set forth in California Labor Code, Sections 1770, *et seq.*, as well as all other applicable local, state and federal wage requirements. California State Prevailing Wage information is available at the following California Department of Industrial Relations websites:
- http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html
 - <http://www.dir.ca.gov/oprl/DPreWageDetermination.html>
- D. **Financial Management and Accounting System Requirements.** The Successful Consultant must have an adequate financial management and accounting system as required by Title 49 of the Federal Code of Regulations ("C.F.R.") Part 18 and 48 C.F.R. Part 31.
- E. **Non-Discrimination Requirements.** The Successful Consultant, and all subconsultants, shall be responsible complying with all of the following non-discrimination requirements:
1. The Successful Consultant, and all subconsultants, shall certify under penalty of perjury under the laws of the State of California that the Successful Consultant, and all subconsultants, unless exempt, have complied with the non-discrimination program requirements of California Government Code Section 12990 and Section 8103 of Title 2 of the California Code of Regulations ("C.C.R.").
 2. During the performance of the final Consultant Services Agreement resulting from this RFP process, the Successful Consultant, and all subconsultants, shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over forty (40) years of age), marital status, and denial of family care leave. The Successful Consultant, and all subconsultants, shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Successful Consultant, and all subconsultants, shall comply with the provisions of the Fair Employment and Housing Act (California Government Code Sections 12990(a-f), *et seq.*) and the applicable regulations promulgated thereunder (2 C.C.R. Sections 7285, *et seq.*). The Successful Consultant, and all subconsultants, shall give written notice of their obligations under this provision to labor organizations with which they have a collective bargaining or other agreement.
 3. The Successful Consultant, and all subconsultants, shall act in accordance with the regulations relative to Title VI of the Civil Rights Act of 1964 (nondiscrimination in federally-assisted programs of the Department of Transportation – 49 C.F.R. Part 21 – Effectuation of Title VI of the Civil Rights Act of 1964). Title VI of the Civil Rights Act of 1964 provides that the recipients of federal assistance will implement and maintain a policy of non-discrimination in which no person in the State of California shall, on the basis of race, color, national origin, religion, sex, age or disability, be excluded from

participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

4. During the performance of the final Consultant Services Agreement resulting from this RFP process, the Successful Consultant shall act in accordance with Title VI of the Civil Rights Act of 1964. Specifically, the Successful Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age or disability in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Successful Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the United States Department of Transportation (“DOT”) Regulations, including, without limitation, employment practices for employment related programs.

F. Disadvantaged Business Enterprises Participation. The U.S. Department of Transportation’s Interim Final Rule (90 Fed. Reg. 47969, Oct. 3, 2025) amended 49 CFR Parts 23 and 26 by eliminating race- and sex-based presumptions of social and economic disadvantage and requiring each Unified Certification Program (UCP) to reevaluate all existing DBEs. Until the California UCP completes its mandatory reevaluation:

1. No DBE contract goals will be established for this contract.
2. DBEs and other small businesses, as defined in 49 C.F.R. Part 26, are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. The Successful Consultant and its subconsultants shall not discriminate on the basis of race, color, national origin or sex in the performance of the final Consultant Services Agreement resulting from this RFP process. The Successful Consultant shall carry out the applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT assisted agreements. The Successful Consultant’s failure to carry out these requirements shall constitute a material breach of the final Consultant Services Agreement, which may result in the termination thereof or such other remedy as the County deems appropriate.
3. In accordance with the USDOT Interim Final Rule and subsequent guidance, the following DBE program elements are suspended until completion of statewide UCP reevaluations:
 - I. Goal setting for DBE participation,
 - II. Counting or reporting DBE participation toward contract or overall goals,
 - III. Commercially Useful Function (CUF) reviews,
 - IV. Good Faith Effort (GFE) evaluations,
 - V. any other goal-based DBE compliance monitoring or enforcement activities.
4. Enforcement of the termination requirements in 49 C.F.R. § 26.53 remains in effect. A DBE firm listed by a proposer may only be terminated with prior written approval from the County and only for the reasons permitted under 49 C.F.R. § 26.53(f). Before seeking County approval for termination, the Successful Consultant must fully comply with the procedural requirements of 49 C.F.R. § 26.53(f).
5. Submission of LAPM Exhibit 9-P (Prompt Payment Certification) remains required and must be submitted to dbeforms@dot.ca.gov in accordance with current Caltrans direction.

6. The suspension of certain DBE provisions does not relieve the County, the Successful Consultant, or any subconsultant from compliance with all other applicable federal, state, or local laws relating to contract administration, including but not limited to the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 et seq.) and all other nondiscrimination and prompt-payment requirements.
- G. **Disclosure of Confidential Information.** During the performance of the final Consultant Services Agreement resulting from this RFP process, the Successful Consultant may receive information that is confidential under local, state and/or federal law. The Successful Consultant will be required to protect all confidential information in conformance with any and all applicable local, state and federal laws and regulations.
- H. **Indemnification Requirements.** To the fullest extent permitted by law, and in accordance with California Civil Code Section 2782.8, the Successful Consultant will be required to hold harmless, defend and indemnify the County and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages and liabilities of any kind or nature, including, without limitation, attorney fees and other costs of litigation, arising out of, or in connection with, the Successful Consultant's negligent performance of, or failure to comply with, any of the obligations contained in the final Consultant Services Agreement resulting from this RFP process, except such loss or damage which was caused by the sole negligence or willful misconduct of the County.
- I. **Insurance Requirements.** The Successful Consultant will be required to satisfy the insurance requirements set forth in the sample Consultant Services Agreement attached hereto. The Successful Consultant shall furnish the County with certificates and original endorsements effecting the required insurance coverage prior to County's execution of the final Consultant Services Agreement resulting from this RFP process. In addition, the County may require additional insurance requirements dependent upon the scope of the Services that will be provided by the Successful Consultant pursuant to the terms and conditions of final Consultant Services Agreement resulting from this RFP process.
- J. **Assignment.** The final Consultant Services Agreement resulting from this RFP process shall not be assignable by the Successful Consultant without prior approval by the County.
- K. **Jurisdiction and Venue.** The final Consultant Services Agreement resulting from this RFP process shall be governed in all respects by the laws of the State of California. Any disputes regarding the final Consultant Services Agreement shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

11.0 CANCELLATION OF THE RFP PROCESS:

The County hereby reserves the right to cancel this RFP process at any time after the issuance of this RFP, but prior to the award of a final Consultant Services Agreement, if the County determines, in its sole discretion, that cancellation is in the County's best interests for reasons, including, but not limited to, the following: the types of Services set forth in this RFP are no longer required; the Proposals did not independently arrive in open competition, were collusive or were not submitted in good faith; or the County determines, after review and evaluation of the Proposals, that the County's needs can be satisfied through an alternative method.

The County reserves the right to amend or modify the preliminary scope of services set forth in this RFP prior to the award of a final Consultant Services Agreement, as necessity may dictate, and to reject any and all Proposals received in response hereto. This RFP does not commit the County to award a Consultant Services Agreement for the provision of Services equivalent to those set forth in this RFP.

REQUEST FOR PROPOSALS – No. DPW2026-005
DESIGN ENGINEERING AND ENVIRONMENTAL SERVICES FOR THE REHABILITATION OF
MAPLE CREEK BRIDGE 04C0061

ATTACHMENT A – SIGNATURE AFFIDAVIT
(Submit With Proposal)

REQUEST FOR PROPOSALS – No. DPW2026-005 SIGNATURE AFFIDAVIT	
NAME OF FIRM:	
STREET ADDRESS:	
CITY, STATE, ZIP	
CONTACT PERSON:	
PHONE #:	
FAX #:	
EMAIL:	

Government Code Sections 6250, *et seq.*, the “Public Records Act,” define a public record as any writing containing information relating to the conduct of public business. The Public Records Act provides that public records shall be disclosed upon written request, and that any citizen has a right to inspect any public record, unless the document is exempted from disclosure.

In signing this Proposal, I certify that this firm has not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a Proposal; that this Proposal has been independently arrived at without collusion; that this Proposal has not been knowingly disclosed to any other Consultant or competitor prior to the opening thereof; that the above statement is accurate under penalty of perjury.

The undersigned is an authorized representative of the above named firm and hereby agrees to all the terms, conditions, and specifications required by the County in this Request for Proposals and declares that the attached Proposal is in conformity therewith.

Signature

Title

Name

Date

This firm hereby acknowledges receipt / review of the following Addendum(s), if any
Addendum # [] Addendum # [] Addendum # [] Addendum # []

REQUEST FOR PROPOSALS – No. DPW2026-005
DESIGN ENGINEERING AND ENVIRONMENTAL SERVICES FOR THE REHABILITATION OF
MAPLE CREEK BRIDGE 04C0061

ATTACHMENT B – REFERENCE DATA SHEET
(Submit With Proposal)

REQUEST FOR PROPOSALS – No. DPW2026-005
REFERENCE DATA SHEET

Provide a minimum of three (3) references with name, address, contact person and telephone number whose scope of business or services is similar to those of Humboldt County (preferably in California). Previous business with the County does not qualify.

NAME OF AGENCY:			
STREET ADDRESS:			
CITY, STATE, ZIP:			
CONTACT PERSON:		EMAIL:	
PHONE #:		FAX #:	
Department Name:			
Approximate County (Agency) Population:			
Number of Departments:			
General Description of Scope of Work:			
NAME OF AGENCY:			
STREET ADDRESS:			
CITY, STATE, ZIP:			
CONTACT PERSON:		EMAIL:	
PHONE #:		FAX #:	
Department Name:			
Approximate County (Agency) Population:			
Number of Departments:			
General Description of Scope of Work:			

NAME OF AGENCY:		
STREET ADDRESS:		
CITY, STATE, ZIP:		
CONTACT PERSON:		EMAIL:
PHONE #:		FAX #:
Department Name:		
Approximate County (Agency) Population:		
Number of Departments:		
General Description of Scope of Work:		

REQUEST FOR PROPOSALS – No. DPW2026-005
DESIGN ENGINEERING AND ENVIRONMENTAL SERVICES FOR THE REHABILITATION OF
MAPLE CREEK BRIDGE 04C0061

ATTACHMENT C – US DOT INTERIM FINAL RULE (IFR) REGARDING DBE
(Do Not Submit with Proposal)

Rules and Regulations

Federal Register

Vol. 90, No. 190

Friday, October 3, 2025

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. FAA–2025–0412]

Accepted Means of Compliance for Small Unmanned (sUA) Aircraft Category 2 and Category 3 Operations Over Human Beings; Aerial Vehicle Safety Solutions Inc. (AVSS)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notification of availability.

SUMMARY: This document announces the acceptance of a means of compliance with FAA regulations for sUA Category 2 and Category 3 operations over human beings. The Administrator finds that AVSS's "Means of Compliance with §§ 107.120(a) and 107.130(a) for Small Unmanned Aircraft," revision 6, dated January 7, 2025, provides an acceptable means, but not the only means, of showing compliance with FAA regulations.

DATES: The means of compliance is accepted effective October 3, 2025.

FOR FURTHER INFORMATION CONTACT:

FAA Contact: Kimberly Luu, Cabin Safety Section, AIR–624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3414; email Kimberly.H.Luu@faa.gov.

AVSS Contact: Josh Ogden, CEO, AVSS, 570 Queen Street, Suite 600, Fredericton, New Brunswick, E3B–6Z6, Canada, +1 (650) 741–1326; *Info@avss.co*.

SUPPLEMENTARY INFORMATION:

Background

Title 14, Code of Federal Regulations, part 107, subpart D, prescribes the

eligibility and operating requirements for civil sUA to operate over human beings in the United States. To be eligible for use, the sUA must meet the requirements of § 107.120(a) for Category 2 operations or § 107.130(a) for Category 3 operations. These sections require the sUA to be designed, produced, or modified such that it will not cause injury to a human being above a specified severity limit, does not contain any exposed rotating parts that would lacerate human skin, and does not contain any safety defects. Section 107.155 requires that means of compliance with § 107.120(a) or § 107.130(a) be established and FAA-accepted. Section 107.160 requires an applicant to declare that sUA for Category 2 or Category 3 operations meet an FAA-accepted means of compliance.

Means of Compliance Accepted

This notification of availability serves as a formal acceptance by the FAA of the AVSS's "Means of Compliance with §§ 107.120(a) and 107.130(a) for Small Unmanned Aircraft," revision 6, as an acceptable means of compliance, but not the only means of compliance with §§ 107.120(a) and 107.130(a). Applicants may also propose alternative means of compliance for FAA review and possible acceptance.

Revisions

Revisions to AVSS's "Means of Compliance (MOC) with §§ 107.120(a) and 107.130(a) for Small Unmanned Aircraft (sUA)," revision 6, will not be automatically accepted and will require further FAA acceptance for any revisions to be considered an accepted means of compliance.

Issued in Kansas City, Missouri, on September 30, 2025.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2025–19435 Filed 10–2–25; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Parts 23 and 26

[Docket No. DOT–OST–2025–0897]

RIN 2105–AF33

Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program Implementation Modifications

AGENCY: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: This interim final rule (IFR) ensures that the U.S. Department of Transportation (DOT or Department) operates its Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) Programs (collectively, Programs) in a nondiscriminatory fashion—in line with law and the U.S. Constitution. The IFR removes race- and sex-based presumptions of social and economic disadvantage that violate the U.S. Constitution.

DATES: This IFR is effective October 3, 2025. Comments must be received on or before November 3, 2025. To the extent practicable, DOT will consider late-filed comments.

ADDRESSES: You may submit comments identified by the docket number DOT–OST–2025–0897 by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name, docket name, and docket number DOT–OST–2025–0897 or Regulatory Identifier Number

(RIN) 2105-AF33 for this rulemaking. DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA; 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this IFR contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this IFR, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” Submissions containing CBI should be sent to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. Any commentary that OST receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Electronic Access and Filing

A copy of the IFR, all comments received, and all background material may be viewed online at <http://www.regulations.gov>. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s website at <http://www.ofr.gov> and the Government Publishing Office’s website at <http://www.gpo.gov>.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Office of the General Counsel, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590 at (202) 658-9670 or peter.constantine@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Spanning nearly 40 years, the Department’s DBE and ACDBE programs are small business initiatives intended to level the playing field for businesses seeking to participate in federally assisted contracts and in airport concessions. Rooted in a desire to give small businesses a fair shake in the process, the Programs must balance a desire to help the small business community with an overriding government obligation to serve the public. The government must undertake all these efforts consistent with law—including constitutional nondiscrimination requirements that establish the conditions for national harmony and unity. This IFR advances the administration’s goals of nondiscrimination, fairness, and excellence in serving the American public.

Although the Programs aim to assist small businesses owned and controlled by “socially and economically disadvantaged individuals,” Congress has mandated by statute that DOT treat certain individuals—women and members of certain racial and ethnic groups—as “presumed” to be disadvantaged.¹ Other individuals do not benefit from that statutory presumption. This means that two similarly situated small business owners may face different standards for entering the program, based solely on their race, ethnicity, or sex.

On September 23, 2024, the U.S. District Court for the Eastern District of Kentucky determined that the DBE program’s statutory race- and sex-based presumptions likely do not comply with the Constitution’s promise of equal protection under the law.² The Court held that the Government may only use a racial classification to “further a compelling government interest” and may only use race in a “narrowly

¹ Congress has provided that: (1) “women shall be presumed to be socially and economically disadvantaged individuals”; and (2) the term “socially and economically disadvantaged individuals” should otherwise be given the meaning given by section 8(d) of the Small Business Act and its implementing regulations. See Infrastructure Investment and Jobs Act, Public Law 117-58, 11101(e)(2) (B) (2021) (DBE program for highway and transit funding); 49 U.S.C. 47107(e)(1) (ACDBE program); 49 U.S.C. 47113(a)(2) (DBE program for airport funding). Section 8(d) of the Small Business Act and its implementing regulations create a rebuttable presumption that “Black Americans,” “Hispanic Americans,” “Native Americans,” “Asian Pacific Americans,” and “Subcontinent Asian Americans” are disadvantaged. See 15 U.S.C. 637(d)(3); 13 CFR 124.103(b)(1).

² *Mid-America Milling Co. v. U.S. Dep’t of Transp.*, No. 3:23-cv-00072, 2024 WL 4267183 (Sept. 23, 2024).

tailored fashion.” It held that although courts have identified a compelling government interest in “remediating specific, identified instance[s] of past discrimination that violated the constitution or a statute,” the Government did not present evidence of such discrimination by DOT against each of the groups covered by the DBE program’s presumptions. The Court held, moreover, that the presumptions were not narrowly tailored because Congress used an unexplained “scattershot” approach in identifying the covered groups, and because the presumptions had no “logical end point.” The Court also held that the sex-based presumptions failed heightened scrutiny. Accordingly, the Court issued a preliminary injunction that prohibits DOT from mandating the use of presumptions with respect to contracts on which the two plaintiff entities bid. DOT has implemented the injunction by requiring funding recipients to remove DBE contract goals from any contracts on which the plaintiffs intend to bid.

On January 20, 2025, the President issued Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*, which affirmed that “Americans deserve a government committed to serving every person with equal dignity and respect” and directed agencies to recommend actions to align their programs and activities with this policy. On January 21, 2025, the President issued Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, which ordered agencies to “terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements.”

On March 21, 2025, the Attorney General issued a memorandum to all Federal agencies on implementing these Executive Orders.³ The Attorney General noted that “federal policies that give preference to job applicants, employees, or contractors based on race or sex trigger heightened scrutiny under the Constitution’s equal protection guarantees and can only survive in rare circumstances.” The Attorney General directed all Federal agencies immediately to “[d]iscontinue any policies that establish numerical goals, targets, or quotas based on race or sex,” and to “[r]emove any contracting or

³ Memorandum from the Attorney General for All Federal Agencies, *Implementation of Executive Orders 14151 and 14173; Eliminating Unlawful DEI Programs in Federal Operations* (March 21, 2025), available at <https://www.justice.gov/ag/media/1409556/dl?inline>.

funding requirement or guidance that induces, requires, or encourages private parties to adopt discriminatory practices.”

On February 19, 2025, the President issued Executive Order 14219, *Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative*, which directed agencies to identify “unconstitutional regulations and regulations that raise serious constitutional difficulties,” and to target those regulations for repeal. On April 9, 2025, the President issued a memorandum directing that this effort should prioritize regulations that conflict with certain Supreme Court decisions, including *Students for Fair Admissions, Inc. v. Harvard (SFFA)*.⁴

In accordance with the directives of the President and the Attorney General, DOT and the U.S. Department of Justice (“DOJ”) have evaluated the DBE and ACDBE programs. DOT and DOJ, consistent with the ruling of the District Court, have determined that the race- and sex-based presumptions of DOT’s DBE programs are unconstitutional. In *SFFA*, the Supreme Court held that race-based admissions programs at universities violated the Equal Protection Clause of the Fourteenth Amendment—and, by corollary, Title VI of the Civil Rights Act. In light of *SFFA*, multiple Federal courts have held unlawful the use of presumptions similar to those used in the DBE and ACDBE programs. In *Ultima Serv. Corp. v. U.S. Dep’t of Agric.*, the Eastern District of Tennessee held that a Small Business Act program violated the equal protection component of the Fifth Amendment’s Due Process Clause to the extent that it used the exact same type of race-based presumptions used by the DBE and ACDBE programs.⁵ And in *Nuziurd v. Minority Business Development Agency*, the Northern District of Texas held that a race-based statutory presumption of disadvantage was unconstitutional and that the U.S. Department of Commerce’s application of this statutory preference violated the equal protection principle of the Fifth Amendment.⁶ As with the presumptions at issue in *Ultima* and *Nuziurd*, there is not a strong basis in evidence that the race- and sex-based presumptions used by the DBE and ACDBE programs are necessary to support a compelling governmental interest, and the presumptions are not narrowly tailored.

The government has no compelling justification for engaging in overt race or sex discrimination in the awarding of contracts in the absence of clear and individualized evidence that the award is needed to redress the economic effects of actual previous discrimination suffered by the awardee. For these reasons, the presumptions must be disregarded, and the Department’s DBE and ACDBE programs must be administered in all other respects in accordance with the law and consistent with the U.S. Constitution.

On May 28, 2025, DOT (represented by DOJ), along with the plaintiffs in the litigation in the U.S. District Court for the Eastern District of Kentucky, asked the Court to enter a Consent Order resolving a constitutional challenge to the DBE program.⁷ The motion is currently pending. In the proposed Consent Order, DOT stipulated and agreed that “the DBE program’s use of race- and sex-based presumptions of social and economic disadvantage . . . violates the equal protection component of the Due Process Clause of the Fifth Amendment of the U.S. Constitution.” The parties asked the Court to declare that “the use of DBE contract goals in a jurisdiction, where any DBE in that jurisdiction was determined to be eligible based on a race- or sex-based presumption, violates the equal protection component of the Due Process Clause of the Fifth Amendment,” and to “hold and declare that [DOT] may not approve any Federal, State, or local DOT-funded projects with DBE contract goals where any DBE in that jurisdiction was determined to be eligible based on a race- or sex-based presumption.”

On June 25, 2025, the Solicitor General wrote to the Speaker of the House, consistent with 28 U.S.C. 530D, to advise the Speaker that DOJ had concluded that the DBE program’s presumptions violate the U.S. Constitution, that DOJ would no longer defend the presumptions in court, and that DOJ had taken that position in ongoing litigation.⁸ The Solicitor General noted that DOJ “had previously defended the DBE program’s race- and sex-based presumptions by pointing to societal discrimination against minority-owned businesses generally.” He stated, however, that “[c]onsistent with *SFFA*’s rejection of a similar justification in the university-admissions context, [DOJ] has determined that an interest in

remediating the effects of societal discrimination does not justify the use of race- and sex-based presumptions in the DBE program.” The Solicitor General also reported that DOJ has determined that “like the admissions programs at issue in *SFFA*, the DBE program relies on arbitrary, overbroad, and underinclusive racial categories and lacks any logical end point.” DOT agrees with and adopts the Solicitor General’s analysis.

In light of DOT and DOJ’s determination that the DBE program’s race- and sex-based presumptions are unconstitutional, DOT is issuing this IFR to remove the presumptions from the DBE program regulations set forth in 49 CFR part 26. Because the ACDBE presumptions are functionally identical and suffer the same constitutional infirmity, this IFR also removes the presumptions from the ACDBE regulations set forth in 49 CFR part 23. To ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions and reliance in whole or in part on claims of disadvantage based on race or sex, this IFR requires each Unified Certification Program (UCP) to reevaluate any currently certified DBE or ACDBE, to recertify any DBE or ACDBE that meets the new certification standards, and to decertify any DBE or ACDBE that does not meet the new certification standards. The IFR includes certain requirements that apply during the pendency of this reevaluation process.

II. Revisions

Part 26

Subpart A—General

1. Objectives (§ 26.1)

The Department amends § 26.1 to clarify the proper objectives of the DBE program. The Department’s amendments replace references to the DBE program being “narrowly tailored” with an objective intended to ensure that the DBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service. These amendments center the DBE program’s purpose of leveling the playing field for businesses owned and controlled by socially and economically disadvantaged individuals while providing excellent service to the American people.

2. Definitions (§ 26.5)

The Department changes the definition of “socially and economically disadvantaged individual” in § 26.5 to

⁴ 600 U.S. 181 (2023).

⁵ *Ultima Servs. Corp. v. U.S. Dep’t of Agric.*, 683 F. Supp. 3d 745 (E.D. Tenn. 2023).

⁶ *Nuziurd v. Minority Bus. Dev. Agency*, 721 F. Supp. 3d 431 (N.D. Tex. 2024).

⁷ Joint Motion for Entry of Consent Order, *Mid-America Milling Co. v. U.S. Dep’t of Transp.*, No. 3:23-cv-00072 (E.D. Ky. May 28, 2025).

⁸ Letter from Solicitor General D. John Sauer to Hon. Mike Johnson (June 25, 2025), <https://www.justice.gov/oip/media/1404871/dl?inline>.

remove the race- and sex-based presumptions that DOT and DOJ and have found to violate the Fifth Amendment. Under the revised rule, any individual seeking to demonstrate that he or she is a “socially and economically disadvantaged individual” will be required to make the same individualized showing of disadvantage, regardless of the individual’s race or sex.

In furtherance of these legal conclusions, the IFR also replaces the terms “race-neutral” and “race-conscious” in § 26.5 with “DBE-neutral” and “DBE-conscious” and modifies the definitions slightly for the same reasons.

3. Recordkeeping and Reporting (§ 26.11)

Similarly, the IFR eliminates the requirement in § 26.11(c)(2)(iv) for recipients to obtain bidders list information about the majority owner’s race and sex for all DBEs and non-DBEs who bid as prime contractors and subcontractors on each of a recipient’s federally assisted contracts, and then renumbers the requirements in current §§ 26.11(c)(v) through (c)(vii) as §§ 26.11(c)(iv) through (c)(vi).

The IFR also eliminates the requirement in § 26.11(e)(1) that recipients report and categorize the percentage of in-State and out-of-State DBE certifications by sex and ethnicity. The IFR also eliminates the requirements in §§ 26.11(e)(5) and (6) that recipients report the number of in-State and out-of-State applications for an “individualized” determination of social or economic disadvantage status, and the number of in-State and out-of-State applicants who made an individualized showing of social and economic disadvantaged status. This IFR requires all applicants to demonstrate social and economic disadvantage affirmatively to participate in the DBE program, which renders these reporting requirements unnecessary. The IFR further renumbers the reporting requirements in current §§ 26.11(e)(2) through (e)(4) as §§ 26.11(e)(1) through (e)(3).

Subpart B—Administrative Requirements for DBE Programs for Federally Assisted Contracting

4. Recipient Monitoring Responsibilities (§ 26.37)

For consistency, the IFR replaces the word “race-neutral” with “DBE-neutral” in § 26.37(b).

5. Fostering Small Business Participation (§ 26.39)

For consistency, the IFR replaces the word “race-neutral” with “DBE-neutral” in §§ 26.39(b)(1) and (5).

Subpart C—Goals, Good Faith Efforts, and Counting

6. Setting Goals (§ 26.45)

For consistency, the IFR replaces the phrase “race-neutral DBE program” with “DBE-neutral program” in § 26.45(a)(2).

For consistency, the IFR amends the second sentence of § 26.45(b) to replace the word “discrimination” with “social and economic disadvantage” so it will read as follows: “The goal must reflect your determination of the level of DBE participation you would expect absent the effects of social and economic disadvantage.”

For consistency and to ensure recipients establish overall goals that include only DBEs who are ready, willing, and able to compete for and participate in DOT-assisted contracts, the Department amends § 26.45(c)(3) to clarify that any disparity studies utilized by recipients in setting their goals must provide a detailed capacity analysis, including the methodology used. The Department makes the same clarification regarding the use of disparity studies in § 26.45(d)(ii).

For consistency, the IFR amends § 26.45(f)(3) to remove references to race-neutral and race-conscious measures.

The IFR amends § 26.45(g)(1) to remove consultation requirements for minority and women’s contractor groups, as well as the language related to posting proposed overall goals in minority-focused media.

The IFR amends § 26.45(h) by removing the existing language, as there will be no opportunity to create group-specific goals now that race and sex have been removed from the regulation. In its place, the IFR adds new language in § 26.45(h) to indicate that a recipient is not required to update its overall goal until its UCP completes the reevaluation process described in § 26.111.

7. Failing To Meet Overall Goals (§ 26.47)

For consistency, the IFR replaces the words “race-conscious” and “race-neutral” with “DBE-conscious” and “DBE-neutral” in § 26.47(c)(4) and § 26.47(d).

The IFR adds § 26.47(e) to provide that until a Unified Certification Program (UCP) completes the reevaluation process described in § 26.111, the compliance provisions of

§ 26.47 will not apply to any recipient covered by that UCP. This requirement ensures fairness to recipients during the transition period.

8. Means Used To Meet Overall Goals (§ 26.51)

For consistency, the IFR replaces the words “race-conscious” and “race-neutral” with “DBE-conscious” and “DBE-neutral” throughout § 26.51 and the corresponding examples.

The IFR adds § 26.51(h) to provide that until a UCP completes the reevaluation process described in § 26.111, a recipient covered by that UCP may not set any contract goals. This provision ensures that existing DBEs do not continue to receive any benefits as a result of their certification under the old standards.

9. Counting DBE Participation Toward Goals (§ 26.55)

The IFR adds § 26.55(i) to provide that until a UCP completes the reevaluation process described in § 26.111, a recipient covered by that UCP may not count any DBE participation toward DBE goals. This provision ensures that existing DBEs do not continue to receive any benefits as a result of their certification under the old standards.

Subpart D—Certification Standards

10. Burden of Proof (§ 26.61)

The IFR eliminates § 26.61(b)(2), which imposed a burden of proof on certifiers with respect to individuals subject to the race- and sex-based presumptions that the IFR eliminates.

11. Social and Economic Disadvantage (§ 26.67)

The IFR revises § 26.67 to implement the removal of unconstitutional race- and sex-based presumptions. The IFR requires all small business concerns to demonstrate social and economic disadvantage based on their own experiences and circumstances without reliance in whole or in part on race or sex.

Subpart F—Compliance and Enforcement

12. Reevaluation Process (§ 26.111)

This IFR adds § 26.111 to require each UCP to reevaluate any currently certified DBE, to recertify any DBE that meets the new certification standards, and to decertify any DBE that does not meet the new certification standards or fails to provide additional information required for submission under the new certification standards. The IFR provides that decertification procedures of 49 CFR 26.87 do not apply to any

decertification decisions under this process. The IFR requires each UCP to complete the reevaluation process as quickly as practicable following issuance of this IFR. The Department will work with each UCP to minimize the practical impact of this rule change during the pendency of the reevaluation process. This reevaluation process will ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions and reliance on claims of disadvantage based in whole or in part on race or sex. This process does not replace or restrict the Department's ability to conduct a review or take action under Title VI or other applicable law regarding compliance with equal protection principles. A companion provision has been added to part 23 with respect to reevaluation of ACDBEs.

Part 23

Subpart A—General

13. Aligning Part 23 With Part 26 Objectives (§ 23.1)

The IFR amends the program objectives for the ACDBE program in § 23.1 that are similar to the amendments to the DBE program objectives in § 26.1.

14. Definitions (§ 23.3)

The IFR amends the definition of the phrase “socially and economically disadvantaged individual” in § 23.3 to conform to the definition of the phrase in § 26.5. In addition, the IFR replaces the terms “race-conscious” and “race-neutral” with “ACDBE-conscious” and “ACDBE-neutral” in § 23.3.

Subpart B—ACDBE Programs

15. Measures To Ensure Nondiscrimination Participation of ACDBEs (§ 23.25)

For consistency, the IFR replaces the words “race-neutral” and “race-conscious” with “DBE-neutral” and “DBE-conscious” in §§ 23.25(d) and (e).

The IFR adds § 23.25(h) to provide that until a UCP completes the reevaluation process described in § 23.81, a recipient covered by that UCP may not set concession-specific goals or use any of the other methods described in § 23.25(e). This provision ensures that existing ACDBEs do not continue to receive any benefits as a result of their certification under the old standards.

16. Fostering Small Business Participation (§ 23.26)

For consistency, the IFR replaces the words “race-neutral” with “DBE-neutral” in § 23.26(b)(1).

For consistency, the IFR replaces the words “minority and women owned” with “socially and economically disadvantaged” in § 23.26(d)(5).

For consistency, the IFR replaces the word “gender” with “sex” in § 23.26(e).

17. Reporting and Recordkeeping (§ 23.27)

The IFR eliminates the requirement in § 23.27(c)(2)(iv) for recipients to obtain information about the majority owner's race and sex for all ACDBEs and non-ACDBEs who seek to work on each of a recipient's concession opportunities, and then renumbers the requirements in current §§ 23.27(c)(v) through (c)(vii) as §§ 23.27(c)(iv) through (c)(vi). The IFR also eliminates the requirement in § 23.27(d)(1) that recipients report and categorize the percentage of in-State and out-of-State ACDBE certifications by sex and ethnicity. The IFR also eliminates the requirements in §§ 23.27(d)(5) and (6) that recipients report the number of in-State and out-of-State applications for “individualized” determinations of social or economic disadvantage status, and the number of in-State and out-of-State applicants who made an individualized showing of social and economic disadvantaged status. This IFR requires all applicants to demonstrate social and economic disadvantage affirmatively to participate in the ACDBE program, which renders these reporting requirements unnecessary. The IFR further renumbers the reporting requirements in current §§ 23.27(d)(2) through (d)(4) as §§ 23.27(d)(1) through (d)(3).

Subpart D—Goals, Good Faith Efforts, and Counting

18. Goal and Consultation Requirements (§§ 23.41, 23.43)

The IFR amends § 23.41(d) by removing the existing language, as there will be no opportunity to create group-specific goals now that race and sex have been removed from the regulation. In its place, the IFR adds new language to indicate that a recipient is not required to update its overall goal until its UCP completes the reevaluation process described in § 23.81.

The IFR amends § 23.43(b) to remove consultation requirements for minority and women's contractor groups, as well as the language related to posting proposed overall goals in minority-focused media.

19. Setting Goals (§ 23.51)

For consistency, the Department amends § 23.51(a) to replace the words “discrimination and its effects” with “social and economic disadvantage.” For consistency, the IFR replaces the

words “race-neutral” and “race-conscious” with “ACDBE-neutral” and “ACDBE-conscious” in §§ 23.51(f), (g), and (h), and in § 23.51(d)(5).

For consistency and to ensure recipients establish overall goals that include only DBEs who are ready, willing, and able to compete for and participate in DOT-assisted contracts, the Department amends § 23.51(c)(3) to clarify that any disparity studies utilized by recipients in setting their goals must provide a detailed capacity analysis, including the methodology used.

20. Counting ACDBE Participation During Transition Period (§§ 23.53, 23.55)

The IFR adds § 23.53(g) and § 23.55(m) to provide that until a UCP completes the reevaluation process described in § 23.81, recipients covered by that UCP, and car rental companies operating at airports covered by that UCP, may not count any ACDBE participation toward ACDBE goals. These provisions ensure that existing ACDBEs do not continue to receive any benefits as a result of their certification under the old standards.

21. Failing To Meet Overall Goals (§ 23.57)

For consistency, the IFR replaces the words “race-conscious” and “race-neutral” with “DBE-conscious” and “DBE-neutral” in § 23.57(b)(4) and § 23.57(c).

The IFR adds § 23.57(d) to provide that until a UCP completes the reevaluation process described in § 23.81, the compliance provisions of § 23.57 will not apply to any recipient covered by that UCP. This requirement ensures fairness to recipients during the transition period.

22. Reevaluation Process (§ 23.81)

This IFR adds § 23.81 to require each UCP to reevaluate any currently certified ACDBE, to recertify any ACDBE that meets the new certification standards, and to decertify any DBE that does not meet the new certification standards or fails to provide additional information required for submission under the new certification standards. The IFR provides that decertification procedures of 49 CFR 26.87 do not apply to any decertification decisions under this process. The IFR requires each UCP to complete the reevaluation process as quickly as practicable following issuance of this IFR. The Department will work with each UCP to minimize the practical impact of this rule change during the pendency of the reevaluation process. This reevaluation

process will ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions and reliance on claims of disadvantage based in whole or in part on race or sex. This process does not replace or restrict the Department's ability to conduct a review or take action under Title VI or other applicable law regarding compliance with equal protection principles. A companion provision has been added to part 26 with respect to reevaluation of DBEs.

III. Public Proceedings

The Administrative Procedure Act generally requires agencies to provide the public with notice of proposed rulemaking and an opportunity to comment prior to publication of a substantive rule. However, 5 U.S.C. 553(b)(B) authorizes agencies to publish a final rule without first seeking public comment on a proposed rule "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." DOT finds that providing advance notice and an opportunity to comment on these regulatory changes pertaining to the DBE and ACDBE programs would be impracticable, unnecessary, and contrary to the public interest. Consistent with the letter authored by the Solicitor General and discussed elsewhere in the preamble,⁹ DOT has determined that race- and sex-based presumptions of the DBE and ACDBE programs violate the U.S. Constitution. In the absence of this IFR, however, DOT's own regulations would continue to require funding recipients to apply those very same presumptions. Allowing this confusing and contradictory situation to continue during a notice-and-comment process would be impracticable and contrary to the public interest. Further, notice-and-comment is unnecessary where a regulatory action is required as a matter of law to ensure consistency with rulings of the United States Supreme Court. It is well-established that an agency is not required to continue to enforce a statutory provision that it has found to be unconstitutional.¹⁰ By the

same token, an agency is not required to subject the public to unconstitutional requirements. This IFR provides notice of the amendments to the regulations' provisions and invites the public to comment. DOT has determined, however, that it should not delay the effectiveness of the amendments and that it should act immediately to remedy the unconstitutional programs. For the foregoing reasons, the good cause exception in 5 U.S.C. 553(d)(3) also applies to DOT's decision to make this IFR effective upon publication.

IV. Regulatory Analyses and Notices

A. Executive Order: 12866 ("Regulatory Planning and Review"), Executive Order 13563 ("Improving Regulation and Regulatory Review"), and DOT Regulatory Policies and Procedures

The IFR is a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," as supplemented by Executive Order 13563, "Improving Regulation and Regulatory Review." Accordingly, the Office of Management and Budget (OMB) has reviewed it under that Executive Order.

The IFR amends reporting and eligibility requirements for the Department's Airport Concession Disadvantaged Business Enterprises (ACDBE) program and Disadvantaged Business Enterprise (DBE) program. These programs are implemented and overseen by recipients of certain Department funds. The changes to the requirements would affect businesses participating in the programs, recipients of Department funds who oversee the programs, and the Department.

The IFR replaces the race- and sex-based presumptions previously embedded in these programs with a requirement for individualized demonstrations of social and economic disadvantage. The IFR also modifies terminology and data reporting requirements to align with constitutional principles while maintaining the programs' statutory objectives.

Need for Regulatory Revisions

The IFR is being issued pursuant to legal determinations by DOT and DOJ that the race- and sex-based presumptions previously embedded in these programs are unconstitutional. In addition to legal compliance, this action corrects a regulatory failure—namely,

reliance on presumptions that no longer withstand judicial scrutiny—by shifting to individualized determinations. The IFR aligns the programs with constitutional mandates.

Costs and Benefits

Costs

While DOT is unable to quantify all the economic costs and benefits of the IFR, the Department has identified both qualitative and quantitative impacts. Several provisions may lead to increased or decreased burdens for applicants, certifying agencies, and recipients related to transitional documentation requirements, the degree of technical rigor in disparity studies, and changes in program reporting. The magnitude of these costs and benefits would depend on the scope of the change; the likelihood of behavior adjustment; and potential legal, administrative, or programmatic effects.

Unquantified Costs

Key provisions of the IFR and their related cost impacts include:

- *Removal of race- and sex-based presumptions.* This provision eliminates presumptive eligibility based on race or sex and requires applicants to submit individualized evidence of social disadvantage, alongside the remaining required showing of economic disadvantage. Although the underlying economic disadvantage documentation (e.g., Personal Net Worth, income verification) was already a component of many applications, the shift to a required narrative or case-specific justification for all applications, as opposed to just those that did not meet the presumption of eligibility, may introduce additional procedural burdens and time costs on some applicants. This may increase the complexity of preparing applications and even potentially deter participation among some eligible small businesses, especially those with limited administrative capacity or legal support. This may also implicate reliance interests for businesses that were previously certified based on presumptive eligibility. However, many eligible small businesses will continue efforts at applying for certification and assume the additional burden to apply because of the benefits to being certified and the potential opportunity it brings outweighs the added burden of the application process. All eligible businesses may apply for and potentially obtain certification under the new certification process, which mitigates any impact on reliance interests. In addition, businesses'

⁹ Letter from Solicitor General D. John Sauer to Hon. Mike Johnson (June 25, 2025), <https://www.justice.gov/oip/media/1404871/dl?inline>.

¹⁰ See *In re Aiken County*, 725 F.3d 255, 259 (D.C. Cir. 2013) (Kavanaugh, J.) ("If the President has a constitutional objection to a statutory mandate or prohibition, the President may decline to follow the law unless and until a final Court order dictates otherwise. . . . [This] basic constitutional

principle[] applies] to the President and subordinate executive agencies."); Office of Legal Counsel Opinion, *Presidential Authority to Decline to Execute Unconstitutional Statutes*, 18 U.S. Op. Off. Legal Counsel 199 (1994).

reliance interests do not justify continuing to implement presumptions that DOT and DOJ have determined are unconstitutional.

- *Certification burden.* As the burden of production and persuasion shifts away from certifying officials to individual applicants, certifying agencies may experience increased numbers of intake inquiries and clarification requests as applicants navigate the new social disadvantage requirements, or face inconsistent application quality, especially during the transition period. This would require certifying agencies to spend time following up with applicants and guiding them through the application as they go through the re-certification process, which implicates certifying agencies' reliance interests. In the short-term, the increase in workload and support services on certifying agencies may temporarily elevate the demands on the recipients' staff demands or delay determinations, which could at least partially offset any cost savings from shifting this burden to applicants. However, in the long run, it is expected that after the initial review of each applicant, subsequent reviews of applicants will require minimal agency time and will not implicate agencies' reliance interests.

- *Reevaluation of all affected DBEs/ACDBEs.* DBE/ACDBE participants who have previously qualified based in whole or in part on their race or sex will incur additional costs to develop and provide the individualized narrative required by the IFR. In addition, all firms will temporarily lose certifications until the reevaluation process is complete, and some firms may lose the certifications that currently lead to opportunities for them to participate, potentially leading to a loss of business opportunities and implicating firms' reliance interests (though this would be offset by other firms who face increased access to the same opportunities). Additional administrative burdens will also fall on certifiers (UCPs) performing the reevaluations. This could also lead to delays in goal setting and program participation, resulting from the temporary pause in counting DBE participation while the reevaluation process is underway.

- *Clarified disparity study expectations.* The rule requires that disparity studies include detailed capacity analyses, which may necessitate additional economic modeling, data collection, and expert analysis beyond what is standard practice in many jurisdictions. These requirements could increase costs,

particularly for large or multi-jurisdictional studies. While such studies are episodic rather than annual, the enhanced methodology could impose non-trivial compliance costs when undertaken.

- *Elimination of race/sex reporting in bidder lists.* The removal of demographic fields from bidder list reporting will reduce the administrative burden of data entry for participants and recipients, though the cost impact would likely be negligible.

- *Terminology changes and redefinitions.* These changes update program language to reflect constitutional terminology but do not alter administrative procedures or eligibility. The impact is purely semantic and is not expected to have any material cost impacts.

Quantified Costs: Information Collection Burden (Paperwork Reduction Act)

In addition to the above qualitative costs, the Department has quantified a portion of the expected compliance burdens as part of its Paperwork Reduction Act (PRA) package of the rule. These burdens represent the time and resources required to prepare, submit, and review program-related information.

Requirement	Estimated cost burden	Timing
Certification narratives (firms)	\$91.9 million	One-time.
UCP reevaluations	\$3.4 million	One-time.
Interstate certification	\$0.46 million	One-time.
Bidders' list reporting	\$1.24 million	Annual.
ACDBE annual report	\$0.58 million	Annual.
Goal setting (disparity studies)	\$0.46 million (annual cost)	Every three years.

These figures reflect fully loaded labor costs consistent with the Bureau of Labor Statistics data and DOT's standard methodology. One-time burdens primarily reflect transaction costs related to individualized certification requirements, while recurring burdens are associated with ongoing reporting and program administration. Overall, the IFR's primary quantified costs are transitional and one-time, totaling approximately \$95 million, with recurring annualized burdens of about \$1.8 million.

Benefits

With respect to benefits, the IFR will enhance constitutional compliance and reduce risks associated with constitutional litigation. It may also improve public trust by reinforcing fairness in eligibility determinations, which, although not easily quantifiable,

represent important benefits from improved program integrity.

B. Executive Order 14192 ("Unleashing Prosperity Through Deregulation")

This interim final rule is considered an E.O. 14219 deregulatory action because the unquantified cost-savings associated with constitutional compliance outweigh the quantified costs.

C. Executive Order 13132 ("Federalism")

This IFR has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"), and the rule satisfies the requirements of the Executive Order. While the rule may include provisions that impose substantial direct compliance costs on State and local governments, the Department has determined that

consultation with State and local governments prior to promulgation of the rule is not practicable given the urgent need to cure constitutional infirmities with the existing DBE and ACDBE regulations. These changes are required not by statute, but to ensure that the DBE and ACDBE programs do not violate the U.S. Constitution. We seek comment from State and local governments on these burdens during the comment period for this IFR.

D. Executive Order 13175 ("Consultation and Coordination With Indian Tribal Governments")

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rulemaking does not significantly or uniquely affect the communities of the Indian Tribal

governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with the base year of 1995). This rulemaking would not result in annual State expenditures exceeding the minimum threshold. The Department has determined that the requirements of the Title II of the Unfunded Mandates Reform Act of 1995 therefore do not apply to this rulemaking.

F. National Environmental Policy Act

The Department has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1D, available at <https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts>. Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). The purpose of this rulemaking is to amend the Department's DBE and ACDBE regulations. Section 9(f) of DOT Order 5610.1D states that a DOT Operating Administration can use the categorical exclusions developed by another Operating Administration. This action is covered by the categorical exclusion listed in the Federal Transit Administration's implementing procedures, "[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives . . ." 23 CFR 771.118(c)(4). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Whenever an agency is required by 5 U.S.C. 553, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency must conduct and publish for public comment a regulatory flexibility analysis. Because the Department is not required to publish a proposed rulemaking for this action, an analysis under the RFA is not required.

H. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 49 U.S.C. 3501, 3507) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before undertaking a new collection of information imposed on ten or more persons, or continuing a collection previously approved by OMB that is set to expire.

This IFR modifies existing collection instruments in both parts 23 and 26. The following is a description of the sections that contain new and modified information collection requirements, along with the estimated hours and cost to fulfill them.

For purposes of estimating the cost burden on recipients, the State government wage rate was taken from the Bureau of Labor and Statistics (BLS) estimate of median wages for employees in the category of "Eligibility Interviewer in Government Programs" (OEWS Designation 43–4061). For the purpose of calculating loaded wage rates, these burden estimates assume wages represent 61.9 percent of total compensation, which is consistent with similar loaded wage rate estimates identified by BLS and used by DOT for related purposes. Because wages represent 61.9 percent of total compensation, the appropriate cost multiplier is 1.62 (1/0.619). Accordingly, the wage rate (\$25.95) is multiplied by 1.62 to get a fully loaded hourly wage rate of \$42.04 to account for the cost of employer-provided benefits.

For purposes of estimating the cost burden on applicant and certified DBE/ACDBE firms, the wage rate was taken from the BLS estimate of median wages for individuals in the category of "Cross-industry, Private Ownership Only" (OEWS Designation 00–0001). Using the same loaded wage rate identified above, the wage rate for DBE/

ACDBE applicant firms (\$69.20) is multiplied by 1.62 to get a fully loaded hourly wage rate of \$112.10 to account for the cost of employer-provided benefits. The Department emphasizes that many of these hour and cost burdens are one-time burdens as a result of the change in the DBE certification eligibility requirements. After the initial transition to the new requirements, increases in annual burdens will be modest. For DOT recipients, reporting burdens are expected to decrease as a result of reduced DBE/ACDBE reporting requirements.

i. Reapplication Review for DBE/ACDBE Certification Based on Individualized Showing of Social Disadvantage

To satisfy the social and economic disadvantage (SED) requirement and ensure all determinations of disadvantage are not based in whole or in part on race or sex, an owner must provide the certifier a Personal Narrative (PN) that establishes the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to similarly situated persons who did not face barriers in obtaining terms.

The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and must establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.

The owner must attach to the PN a current personal net worth (PNW) statement and any other financial information the owner considers relevant. The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 240–2,000 hours. The total annual cost burden was calculated based on one stakeholder response of \$80,000.

In preparing this estimate, DOT estimated a 10 percent decrease in the number of currently certified firms who will submit documentation to maintain their DBE/ACDBE decertification status. DOT also assumed a 50 percent reduction in the total burden hours compared to the pre-existing estimated burden for completing the full Uniform Certification Application (UCA), as firms will be able to use many of their other existing certification documents for resubmission.

Respondents: Firms seeking to maintain their DBE/ACDBE certification.

Estimated Number of Respondents: 41,000.

Frequency: One time per respondent.

Total Annual Burden Hours: 820,000 (one-time burden).

Total Annual Cost Burden: \$91,922,000 (one-time burden).

ii. Unified Certification Program (UCP) Reevaluation of Applications for DBE/ACDBE Certification Based on Individualized Showing of Social Disadvantage

UCPs will need to reevaluate DBE/ACDBE applicant firms based on updated submission of application materials, including the PN and PNW statement. This estimate assumes an average burden of two hours to complete a review and make a disposition for each DBE/ACDBE certification application, including notifications to other jurisdictions.

Respondents: UCPs.

Estimated Number of Respondents: 53.

Frequency: One-time reevaluation of 41,000 applicant firms.

Total Annual Burden Hours: 82,000 (one-time burden).

Total Annual Cost Burden: \$3,447,280 (one-time cost).

iii. Maintaining and Updating Bidders' Lists

We estimate that recipients will experience a reduced burden to implement 49 CFR 26.11 as a result of eliminating the race- and sex-based reporting requirements for bidders' lists, in addition to eliminating the requirement to report data related to applications for and determinations of individualized social and economic disadvantage.

Respondents: FAA, FHWA, and FTA funding recipients.

Estimated Number of Respondents: 1,639.

Frequency: 3 times per year.

Total Annual Burden Hours: 29,502.

Total Annual Cost Burden: \$1,240,264.

iv. ACDBE Annual Report of Percentages of ACDBEs in Various Categories

We estimate that FAA airport recipients will experience a reduced burden to implement 49 CFR 26.11 as a result of eliminating the race- and sex-based reporting requirements for bidders' lists, in addition to eliminating the requirement to report data related to applications for and determinations of individualized social and economic disadvantage.

Respondents: State Departments of Transportation, District of Columbia, U.S. Virgin Islands, and Puerto Rico.

Estimated Number of Respondents: 53.

Frequency: Once per year.

Total Annual Burden Hours: 13,780.

Total Annual Cost Burden: \$579,311.

v. Setting Overall Goals for DBE Participation in DOT-Assisted Contracts

The Department estimates a modest increase in burden for setting overall DBE goals as a result of the transition to the new DBE certification requirements and enhanced expectations related to disparity studies used in setting overall goals. These changes may result in increases in the amount of time for recipients to set goals based on the relative availability of certified DBEs.

Respondents: DOT funding recipients.

Estimated Number of Respondents: 1,639.

Frequency: Once every three years.

Total Annual Burden Hours: 10,927.

Total Annual Cost Burden: \$459,371.

vi. Providing Evidence of Certification to an Additional State When a Firm Certified in Its Home State Applies to Another State for Certification (Interstate Certification)

The Department estimates a one-time increase in the burden for firms to provide evidence of certification to an additional State when a firm certified in its home State applies to another State for certification.

Respondents: DBE/ACDBE firms applying for interstate certification.

Estimated Number of Respondents: 4,100.

Frequency: Once.

Total Annual Burden Hours: 4,100.

Total Annual Cost Burden: \$459,610 (one-time cost).

As noted in the Costs and Benefits section of this analysis, these burden hour and cost estimates have been incorporated into the Department's overall assessment of regulatory costs.

Notwithstanding any other provision of law, no person is required to respond to a collection of information unless that collection displays a valid OMB control number.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DOT will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States. This rule does not constitute a major rule as defined in 5 U.S.C. 804(2).

List of Subjects in 49 CFR Parts 23 and 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs—transportation, Mass transportation, Minority businesses, Reporting and recordkeeping requirements.

Sean P. Duffy,

Secretary of Transportation.

For the reasons stated in the preamble, the Department of Transportation amends 49 CFR parts 23 and 26 as follows:

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

■ 1. The authority for part 23 continues to read as follows:

Authority: 49 U.S.C. 47107 and 47113; 42 U.S.C. 2000d; 49 U.S.C. 322; E.O. 12138, 44 FR 29637, 3 CFR, 1979 Comp., p. 393.

■ 2. Amend § 23.1 by revising paragraph (c) to read as follows:

§ 23.1 What are the objectives of this part?

* * * * *

(c) To ensure that the Department's ACDBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;

* * * * *

■ 3. Amend § 23.3 as follows:

■ a. Add definitions for ACDBE-conscious and ACDBE-neutral in alphabetical order;

■ b. Remove the definitions of Race-conscious and Race-neutral; and

■ c. Revise the definition of Socially and economically disadvantaged individual.

The additions and revisions read as follows:

§ 23.3 What do the terms used in this part mean?

ACDBE-conscious measure or program is one that is focused specifically on assisting only ACDBEs.

ACDBE-neutral measure or program is one that is, or can be, used to assist all small business concerns.

* * * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically

disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on race or sex. For that reason, applicants may qualify as socially and economically disadvantaged only if they can meet the relevant criteria described in § 26.67.

■ 4. Amend § 23.25 as follows:

■ a. Revise the introductory text of paragraphs (d) and (e); and

■ b. Add paragraph (h).

The revisions read as follows:

§ 23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

(d) Your ACDBE program must include ACDBE-neutral measures that you will take. You must maximize the use of ACDBE-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. These are responsibilities that you directly undertake as a recipient, in addition to the efforts that concessionaires make, to obtain ACDBE participation. The following are examples of ACDBE-neutral measures you can implement:

(e) Your ACDBE program must also provide for the use of ACDBE-conscious measures when ACDBE-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of ACDBE-conscious measures you can implement:

(h) Effective October 3, 2025, you may not use any of the measures described in paragraph (e) of this section until the UCP that covers you has completed the reevaluation process described in § 23.81.

■ 5. Amend § 23.26 by revising paragraphs (b) introductory text, (b)(1), (d)(5), and (e) to read as follows:

§ 23.26 Fostering small business participation.

(b) This element must be submitted to the FAA for approval as a part of your ACDBE program. As part of this program element, you may include, but are not limited to including, the following strategies:

(1) Establish an ACDBE-neutral small business set-aside for certain concession opportunities. Such a strategy would include the rationale for selecting small

business set-aside concession opportunities that may include consideration of size and availability of small businesses to operate the concession.

(d) * * *

(5) You will take aggressive steps to encourage those socially and economically disadvantaged firms eligible for ACDBE certification to become certified; and

(e) A State, local, or other program, in which eligibility requires satisfaction of race, sex, or other criteria in addition to business size, may not be used to comply with the requirements of this part.

§ 23.27 [Amended]

■ 6. Amend § 23.27 as follows:

■ a. Remove paragraph (c)(2)(iv);

■ b. Redesignate paragraphs (c)(2)(v), (c)(2)(vi), and (c)(2)(vii) as paragraphs (c)(2)(iv), (c)(2)(v), and (c)(2)(vi), respectively;

■ c. Remove paragraph (d)(1);

■ d. Redesignate subparagraphs (d)(2), (d)(3), and (d)(4) as paragraphs (d)(1), (d)(2), and (d)(3), respectively; and

■ e. Remove paragraphs (d)(5) and (d)(6).

■ 7. Amend § 23.41 by revising paragraph (d) to read as follows:

§ 23.41 What is the basic overall goal requirement for recipients?

(d) Effective October 3, 2025, you are not required to update your overall goals until the UCP that covers you has completed the reevaluation process described in § 23.81.

■ 8. Amend § 23.43 by revising paragraph (b) to read as follows:

§ 23.43 What are the consultation requirements in the development of recipients' overall goals?

(b) Stakeholders with whom you must consult include, but are not limited to, business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged businesses and the recipient's efforts to increase participation of ACDBEs.

■ 9. Amend § 23.45 by revising paragraphs (f), (g), and (h) to read as follows:

§ 23.45 What are the requirements for submitting overall goal information to the FAA?

(f) Your submission must include your projection of the portions of your overall goals you propose to meet through use of ACDBE-neutral and ACDBE-conscious means, respectively, and the basis for making this projection (see § 23.51(d)(5)).

(g) FAA may approve or disapprove the way you calculated your goal, including your ACDBE-neutral/ACDBE-conscious "split," as part of its review of your plan or goal submission. Except as provided in paragraph (h) of this section, the FAA does not approve or disapprove the goal itself (*i.e.*, the number).

(h) If the FAA determines that your goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with you, adjust your overall goal or ACDBE-neutral/ACDBE-conscious "split." The adjusted goal represents the FAA's determination of an appropriate overall goal for ACDBE participation in the recipient's concession program, based on relevant data and analysis. The adjusted goal is binding.

■ 10. Amend § 23.51 as follows:

■ a. Revise the introductory text of paragraph (a);

■ b. Revise paragraph (a)(2);

■ c. Revise paragraph (c)(3); and

■ d. Revise paragraph (d)(5).

The revisions read as follows:

§ 23.51 How are a recipient's overall goals expressed and calculated?

(a) Your objective in setting a goal is to estimate the percentage of the base calculated under §§ 23.47 through 23.49 that would be performed by ACDBEs in the absence of social and economic disadvantage and its effects.

(2) In conducting this goal setting process, you are determining the extent, if any, to which the firms in your market area have been impacted by social and economic disadvantage in connection with concession opportunities or related business opportunities.

(c) * * *

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study. Any disparity study utilized must

provide a detailed capacity analysis, including the methodology used.

* * * * *

(d) * * *

(5) Among the information you submit with your overall goal (see § 23.45(e)), you must include description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through ACDBE-neutral and ACDBE-conscious measures, respectively (see §§ 26.51(c) of this chapter).

* * * * *

■ 11. Amend § 23.53 by adding paragraph (g) to read as follows:

§ 23.53 How do car rental companies count ACDBE participation toward their goals?

* * * * *

(g) Effective October 3, 2025, you as a car rental company may not count any ACDBE participation toward the goal that an airport has set for you until the UCP covering that airport has completed the reevaluation process described in part 26, § 23.81

■ 12. Amend § 23.55 by adding paragraph (m) to read as follows:

§ 23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

* * * * *

(m) Effective October 3, 2025, you may not count any ACDBE participation toward ACDBE goals until the UCP covering you has completed the reevaluation process described in § 23.81.

■ 13. Amend § 23.57 as follows:

- a. Revise paragraphs (b)(4) and (c); and
- b. Add paragraph (d).

The revision and addition read as follows:

§ 23.57 What happens if a recipient falls short of meeting its overall goals?

* * * * *

(b) * * *

(4) The FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your ACDBE-

neutral/ACDBE-conscious split, or the introduction of additional ACDBE-neutral or ACDBE-conscious measures.

* * * * *

(c) If information coming to the attention of FAA demonstrates that current trends make it unlikely that you, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FAA may require you to make further good faith efforts, such as modifying your ACDBE-conscious/ACDBE-neutral split or introducing additional ACDBE-neutral or ACDBE-conscious measures for the remainder of the fiscal year.

(d) Effective October 3, 2025, you are not subject to this section until the UCP that covers you has completed the reevaluation process described in § 23.81.

■ 14. Add § 23.81 to subpart E to read as follows:

§ 23.81 ACDBE reevaluation process.

(a) Effective October 3, 2025, each UCP must:

(1) Identify each currently certified ACDBE;

(2) Provide each firm identified pursuant to paragraph (a)(1) of this section with the opportunity to submit documentation demonstrating its ACDBE eligibility under the standards set forth in this part;

(3) Determine whether each firm identified pursuant to paragraph (a)(1) of this section meets the ACDBE eligibility standards set forth in this part; and

(4) Issue a written decision to each firm reevaluated pursuant to subparagraph (a)(3), indicating that it has either been recertified or is decertified.

(b) The provisions of § 26.87 of this chapter shall not apply to any action taken pursuant to paragraph (a) of this section.

(c) Each UCP must reevaluate each firm identified pursuant to paragraph (a)(1) of this section as quickly as practicable and must promptly notify the Department when it has done so. The Department reserves the right to review a UCP's reevaluation process.

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

■ 15. The authority for part 26 continues to read as follows:

Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 47113, 47123; Sec. 1101(b), Pub. L. 114–94, 129 Stat. 1312,

1324 (23 U.S.C. 101 note); Sec. 150, Pub. L. 115–254, 132 Stat. 3215 (23 U.S.C. 101 note); Pub. L. 117–58, 135 Stat. 429 (23 U.S.C. 101 note).

■ 16. Amend § 26.1 by revising paragraph (c) to read as follows:

§ 26.1 What are the objectives of this part?

* * * * *

(c) To ensure that the Department's DBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;

* * * * *

■ 17. Amend § 26.5 as follows:

■ a. Add definitions for DBE-conscious and DBE-neutral in alphabetical order;

■ b. Remove the definitions of Race-conscious and Race-neutral; and

■ c. Revise the definition of Socially and economically disadvantaged individual.

The addition and revision read as follows:

§ 26.5 Definitions.

* * * * *

DBE-conscious measure or program is one that is focused specifically on assisting only DBEs.

DBE-neutral measure or program is one that is, or can be, used to assist all small businesses.

* * * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on race or sex. For that reason, all applicants shall qualify as socially and economically disadvantaged if they can meet the relevant criteria described in § 26.67. Being born in a particular country does not, standing alone, mean that a person is necessarily socially and economically disadvantaged.

* * * * *

§ 26.11 [Amended]

■ 18. Amend § 26.11 as follows:

■ a. Remove paragraph (c)(2)(iv);

■ b. Redesignate paragraphs (c)(2)(v), (c)(2)(vi), and (c)(2)(vii) as subparagraphs (c)(2)(iv), (c)(2)(v), and (c)(2)(vi), respectively;

■ c. Remove paragraph (e)(1);

■ d. Redesignate paragraphs (e)(2), (e)(3), and (e)(4) as paragraphs (e)(1), (e)(2), and (e)(3), respectively; and

■ e. Remove paragraphs (e)(5) and (e)(6).

■ 19. Amend § 26.37 by revising paragraph (b) to read as follows:

§ 26.37 What are a recipient's responsibilities for monitoring?

(b) A recipient's DBE program must also include a monitoring and enforcement mechanism to ensure that work committed, or in the case of DBE-neutral participation, the work subcontracted, to all DBEs at contract award or subsequently is performed by the DBEs to which the work was committed or subcontracted to, and such work is counted according to the requirements of § 26.55. This mechanism must include a written verification that you have reviewed contracting records and monitored the work site to ensure the counting of each DBE's participation is consistent with its function on the contract. The monitoring to which this paragraph (b) refers may be conducted in conjunction with monitoring of contract performance for other purposes such as a commercially useful function review.

■ 20. Amend § 26.39 by revising paragraphs (b)(1) and (b)(5) to read as follows:

§ 26.39 Fostering small business participation.

(1) Establishing a DBE-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

(5) To meet the portion of your overall goal you project to meet through DBE-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

■ 21. Amend § 26.45 as follows:

- a. Revise paragraph (a)(2);
- b. Revise paragraph (b);
- c. Revise paragraph (c)(3);
- d. Revise paragraph (d)(1)(ii);
- e. Revise paragraph (d)(3);
- f. Revise paragraph (f)(3);
- g. Revise paragraph (g)(1); and
- h. Revise paragraph (h);

The revisions read as follows:

§ 26.45 How do recipients set overall goals?

(2) If you are an FTA Tier II recipient who intends to operate a DBE-neutral program, or if you are an FAA recipient who reasonably anticipates awarding \$250,000 or less in FAA prime contract funds in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA, respectively, for that Federal fiscal year.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of social and economic disadvantage. You cannot simply rely on either the 10 percent national goal, your previous overall goal, or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study. Any disparity study utilized must provide a detailed capacity analysis, including the methodology used.

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure. To the extent that the disparity study provides a detailed capacity analysis, include the methodology used;

(3) If you attempt to make an adjustment to your base figure to account for the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through DBE-neutral and DBE-conscious measures, respectively (see § 26.51(c)).

(g)(1) In establishing an overall goal, you must provide for consultation and publication. This includes:

(i) Consultation with general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.

(ii) A published notice announcing your proposed overall goal before submission to the operating administration on August 1st. The notice must be posted on your official internet website and may be posted in any other sources (e.g., trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your official internet website.

(h) Effective October 3, 2025 you are not required to update your overall goals until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 22. Amend § 26.47 as follows:

- a. Revise paragraph (c)(4);
- b. Revise paragraph (d); and
- c. Add paragraph (e).

§ 26.47 Can recipients be penalized for failing to meet overall goals?

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your DBE-conscious/DBE-neutral split, or the introduction of additional DBE-neutral or DBE-conscious measures.

(d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current

trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your DBE-conscious/DBE-neutral or introducing additional DBE-neutral or DBE-conscious measures for the remainder of the fiscal year.

(e) Effective October 3, 2025, you are not subject to this section until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 23. Amend § 26.51 as follows:

- a. Revise paragraph (a);
- b. Revise the introductory text to paragraph (b);
- c. Revise paragraph (c);
- d. Revise paragraph (d);
- e. Revise paragraph (e)(2);
- f. Revise paragraph (f);
- g. Revise paragraph (g); and
- h. Add paragraph (h).

The revisions read as follows:

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using DBE-neutral means of facilitating DBE-neutral participation. DBE-neutral participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

(b) DBE-neutral means include, but are not limited to, the following:

* * * * *

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through DBE-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using DBE-neutral means.

* * * * *

(e) * * *

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work

involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of DBE-neutral means.

* * * * *

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of social and economic disadvantage, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through DBE-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order to meet your overall goal.

Example 1 to paragraph (f)(1): Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through DBE-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I. However, if part way through Year I, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year I, you could begin setting DBE-conscious contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of DBE-neutral or DBE-conscious measures to allow you to meet the overall goal.

Example 2 to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of DBE-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your

participation for the year is likely to be only 8 percent total, then you would increase your use of DBE-neutral or DBE-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by DBE-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only DBE-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example 3 to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through DBE-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using DBE-neutral means. You simply use DBE-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) of this section projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years using contract goals (*i.e.*, not through DBE-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example 4 to paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) of this section projection estimates that you will obtain 4 percent DBE participation through DBE-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (*i.e.*, from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two consecutive years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through DBE-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

(h) Effective October 3, 2025, you may not set any contract goals until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 24. Amend § 26.55 by adding paragraph (i) to read as follows:

§ 26.55 How is DBE participation counted toward goals?

* * * * *

(i) Effective October 3, 2025, you may not count any DBE participation toward DBE goals until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 25. Amend § 26.61 by revising paragraph (b) to read as follows:

§ 26.61 Burden of proof.

* * * * *

(b) The firm has the burden of demonstrating, by a preponderance of the evidence, *i.e.*, more likely than not, that it satisfies all of the requirements in this subpart. In determining whether the firm has met its burden, the certifier must consider all the information in the record, viewed as a whole. In a decertification proceeding the certifier bears the burden of proving, by a preponderance of the evidence, that the firm is no longer eligible for certification under the rules of this part.

■ 26. Revise § 26.67 to read as follows:

§ 26.67 Social and economic disadvantage.

(a) Non-presumptive Disadvantage. All applicants must demonstrate social and economic disadvantage (SED) affirmatively based on their own experiences and circumstances within American society, and without regard to race or sex.

(1) To satisfy the SED requirement and ensure all determinations of disadvantage are not based in whole or in part on race or sex, an owner must provide the certifier a Personal Narrative (PN) that establishes the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including

obtaining financing on terms available to similarly situated, non-disadvantaged persons.

(2) The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and must establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.

(3) The owner must attach to the PN a current PNW statement and any other financial information he considers relevant.

■ 27. Add § 26.111 to subpart F to read as follows:

§ 26.111 DBE Reevaluation Process.

(a) Effective October 3, 2025, each UCP must:

(1) Identify each currently certified DBE;

(2) Provide each firm identified pursuant to subparagraph (a)(1) with the opportunity to submit documentation demonstrating its DBE eligibility under the standards set forth in this part;

(3) Determine whether each firm identified pursuant to subparagraph (a)(1) meets the DBE eligibility standards set forth in this part; and

(4) Issue a written decision to each firm reevaluated pursuant to subparagraph (a)(3), indicating that it has either been recertified or is decertified.

(b) The provisions of § 26.87 of this part shall not apply to any action taken pursuant to paragraph (a).

(c) Each UCP must reevaluate each firm identified pursuant to subparagraph (a)(1) as quickly as practicable and must promptly notify the Department when it has done so. The Department reserves the right to review a UCP's reevaluation process.

[FR Doc. 2025–19460 Filed 10–2–25; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622

[Docket No. 250915–0853]

RIN 0648–BM94

Fisheries of the Caribbean, Gulf of America, and South Atlantic; Fishery Management Plans of Puerto Rico, St. Croix, and St. Thomas and St. John; Amendment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Amendment 2 to the Fishery Management Plans (FMPs) for Puerto Rico, St. Croix, St. Thomas and St. John FMP (Amendment 2), as prepared by the Caribbean Fishery Management Council (Council). This final rule prohibits and restricts the use of certain net gear in U.S. Caribbean Federal waters and requires a descending device to be available and ready for use on vessels when fishing for federally managed reef fish species in U.S. Caribbean Federal waters. The purpose of this final rule and Amendment 2 is to protect habitats and species from the potential negative impacts associated with the use of certain net gear and to enhance the survival of released reef fish in U.S. Caribbean Federal waters.

DATES: This final rule is effective November 3, 2025, except for the revisions for §§ 622.437(a)(4), 622.477(a)(4), and 622.512(a)(4), which are effective April 1, 2026.

ADDRESSES: Electronic copies of Amendment 2, which includes a fishery impact statement, an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-2-puerto-rico-st-croix-and-st-thomas-and-st-john-fishery-management-plans-trawl>.

FOR FURTHER INFORMATION CONTACT: Maria Lopez-Mercer, NMFS Southeast Regional Office, 727–824–5305, maria.lopez@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS, with the advice of the Council, manages the Puerto Rico, St. Croix, and St. Thomas and St. John fisheries in U.S. Caribbean Federal waters under the Puerto Rico, St. Croix, and St. Thomas and St. John FMPs. The Council prepared the FMPs, which the Secretary of Commerce approved, and NMFS implements the FMPs through regulations at 50 CFR parts 600 and 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 27, 2024, NMFS published a notice of availability for Amendment 2 and requested public comment (89 FR 68572). On September 30, 2024, NMFS published a proposed rule for Amendment 2 and requested public comment (89 FR 79492). NMFS

REQUEST FOR PROPOSALS – No. DPW2026-005
DESIGN ENGINEERING AND ENVIRONMENTAL SERVICES FOR THE REHABILITATION OF
MAPLE CREEK BRIDGE 04C0061

ATTACHMENT D – LAPM EXHIBIT 10-Q – DISCLOSURE OF LOBBYING ACTIVITIES
(Submit with Proposal)

Local Assistance Procedures Manual

EXHIBIT 10-Q
Disclosure of Lobbying Activities

EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____			
4. Name and Address of Reporting Entity <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known			5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known		
6. Federal Department/Agency:			7. Federal Program Name/Description: CFDA Number, if applicable _____		
8. Federal Action Number, if known:			9. Award Amount, if known:		
10. Name and Address of Lobby Entity (If individual, last name, first name, MI) (attach Continuation Sheet(s) if necessary)			11. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI) (attach Continuation Sheet(s) if necessary)		
12. Amount of Payment (check all that apply) \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned			14. Type of Payment (check all that apply) <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____		
13. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____					
15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) if necessary)					
16. Continuation Sheet(s) attached: Yes <input type="checkbox"/> No <input type="checkbox"/>					
17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.					
			Signature: _____		
			Print Name: _____		
			Title: _____		
			Telephone No.: _____ Date: _____		
			Authorized for Local Reproduction		
			Standard Form - LLL		

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Standard Form LLL Rev. 04-28-06

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Local Assistance Procedures Manual

**EXHIBIT 10-Q
Disclosure of Lobbying Activities**

INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant, or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

**REQUEST FOR PROPOSALS – No. DPW2026-005
DESIGN ENGINEERING AND ENVIRONMENTAL SERVICES FOR THE REHABILITATION OF
MAPLE CREEK BRIDGE 04C0061**

**ATTACHMENT E – SAMPLE CONSULTANT SERVICES AGREEMENT
AGREEMENT FOR CONSULTANT SERVICES
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
[NAME OF CONSULTANT]**

This Agreement for Consultant Services (“Agreement”) entered into this ____ day of _____, 2026, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and [Name of Consultant], a [Name of State] [Type of Business], hereinafter referred to as “CONSULTANT,” is made upon the following considerations:

WHEREAS, COUNTY, by and through its Department of Public Works – Engineering Division, desires to retain a qualified professional to assist COUNTY in performing [name of services] that are further described in Attachment [] – Scope of Work, which is attached hereto and incorporated herein by reference as if set forth in full; and

WHEREAS, such work involves the performance of professional and technical services of a temporary and occasional character; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for this temporary period; and

WHEREAS, pursuant to California Government Code Section 31000, COUNTY may retain independent contractors to perform special services for COUNTY or any department thereof; and

WHEREAS, CONSULTANT represents that it is adequately trained, skilled, experienced and qualified to perform the duties and services set forth in this Agreement; and

NOW THEREFORE, the parties hereto mutually agree as follows:

ARTICLE I – INTRODUCTION

- A. CONSULTANT’s Project Manager will be [Name]. COUNTY’s Contract Administrator will be Tony Seghetti, Deputy Director of Public Works, or a designee thereof.
- B. The work to be performed under this Agreement is described in Article II – Statement of Work and the approved Cost Proposal dated [Date], which is attached hereto as Attachment [] – Cost Proposal & Schedule of Work and incorporated herein by reference as if set forth in full. If there is any conflict between the approved Cost Proposal and the terms and conditions of this Agreement, this Agreement shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend and hold harmless COUNTY, and its agents, officers, officials, employees and volunteers, from and against any and all claims, demands, damages, losses, liabilities and costs and expenses, including, without limitation, court costs and reasonable attorneys’ and expert witness fees, arising out of any failure to

comply with applicable law, injury to, or death of, any person, damage to, or loss of, property or economic loss arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to CONSULTANT's performance hereunder, except such loss or damage which was caused by the sole negligence, or willful misconduct of COUNTY, as determined by a court of competent jurisdiction. The provisions of this article shall survive termination or suspension of this Agreement.

- D. In the performance of this Agreement, CONSULTANT shall act in an independent capacity. It is understood and agreed that CONSULTANT, and its agents, officers, officials, employees and subconsultants, is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of COUNTY.
- E. COUNTY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT pursuant to the terms and conditions of this Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligations hereunder, is only subject to the control or direction of COUNTY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third parties employed by CONSULTANT shall be entirely and exclusively under the direction, supervision and control of CONSULTANT. CONSULTANT hereby agrees to indemnify and hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
- G. Except as expressly authorized herein, CONSULTANT's obligations hereunder are not assignable or transferable, and CONSULTANT shall not subcontract any work, without COUNTY's prior written approval. However, claims for money due to CONSULTANT under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to COUNTY.
- H. CONSULTANT shall be fully responsible to COUNTY for the negligent acts and omissions of its agents and subconsultants, and of persons either directly or indirectly employed thereby, in the same manner as persons directly employed by CONSULTANT.
- J. No alteration or variation of the terms of this Agreement shall be valid, unless made in writing and signed by the parties hereto; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- K. The consideration to be paid to CONSULTANT as provided herein, shall be compensation for all of CONSULTANT's expenses incurred in the performance hereof, including, without limitation, travel and per diem expenses, unless otherwise expressly so provided.

ARTICLE II – STATEMENT OF WORK

The work to be performed under this Agreement is described in Attachment [] – Scope of Work and Attachment [] – Cost Proposal & Schedule of Work.

ARTICLE III – CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for COUNTY's Contract Administrator or Project Coordinator to determine, if CONSULTANT

is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

- B. CONSULTANT's Project Manager shall meet with COUNTY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the projects.

ARTICLE IV – PERFORMANCE PERIOD

- A. This Agreement shall go into effect on [Date], contingent upon approval by COUNTY, and CONSULTANT shall commence work after receiving notification to proceed from COUNTY's Contract Administrator. This Agreement shall end on [Date], unless extended by written amendment.
- B. CONSULTANT is advised that any recommendation for award of this Agreement is not binding on COUNTY until this Agreement is fully executed and approved by COUNTY.

ARTICLE V – ALLOWABLE COSTS AND PAYMENTS

- A. The method of payment for this Agreement will be based on .. COUNTY will reimburse CONSULTANT for actual costs, including, without limitation, labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs, incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for in a written amendment to this Agreement. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds COUNTY's approved overhead rate set forth in the Cost Proposal. In the event, that COUNTY determines that a change to the work from that specified in Attachment [] – Scope of Work and Attachment [] – Cost Proposal & Schedule of Work is required, the time or actual costs reimbursable by COUNTY shall be adjusted by a written amendment to this Agreement to accommodate the changed work. The maximum total cost as specified herein shall not be exceeded, unless authorized by a written amendment to this Agreement.
- B. The indirect cost rate established for this Agreement is extended through the duration of this specific Agreement. CONSULTANT's agreement to the extension of the applicable one (1) year period shall not be a condition or qualification to be considered for award of this Agreement.
- C. In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee of [AMOUNT] (\$,). The fixed fee is nonadjustable for the term of this Agreement, except in the event of a significant change in the scope of work and such adjustment is made by a written amendment to this Agreement.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal. CONSULTANT shall be responsible for transportation and subsistence costs in excess of applicable state rates.
- E. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an amendment to this Agreement for a revised milestone cost estimate from COUNTY's Contract Administrator before exceeding such cost estimate.
- F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule

set forth in Attachment [REDACTED] – Cost Proposal & Schedule of Work, COUNTY shall have the right to delay payment or terminate this Agreement.

- G. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.
- H. CONSULTANT will be reimbursed promptly according to any and all applicable local, state and federal laws, regulations and standards upon COUNTY's receipt of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number and project title. The final invoice must contain the final cost and all credits due COUNTY including any equipment purchased pursuant to the terms and conditions of this Agreement. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:

COUNTY: Humboldt County Department of Public Works – Engineering Division
Attention: Tony Seghetti, Contract Administrator
1106 Second Street
Eureka, California 95501

- I. The total amount payable by COUNTY including the fixed fee shall not exceed [AMOUNT] (\$[REDACTED], [REDACTED]. [REDACTED]).
- J. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

ARTICLE VI – TERMINATION

- A. This Agreement may be terminated by COUNTY, provided that COUNTY gives not less than thirty (30) calendar days' written notice of its intent to terminate in accordance with the noticing requirements set forth in Article XXXII – Notification of this Agreement. Upon termination, COUNTY shall be entitled to all work, including, without limitation, any and all reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- B. COUNTY may temporarily suspend this Agreement, at no additional cost to COUNTY, provided that CONSULTANT is given written notice of the temporary suspension in accordance with the noticing requirements set forth in Article XXXII – Notification of this Agreement. If COUNTY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this Agreement. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding anything to the contrary, CONSULTANT shall not be relieved of liability for damages sustained by COUNTY by virtue of any breach of this Agreement by CONSULTANT, and COUNTY may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due COUNTY from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this Agreement. Upon termination, COUNTY shall be entitled to all work, including, without limitation, any and all reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

ARTICLE VII – COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. CONSULTANT agrees that the applicable contract cost principles and procedures set forth in Part 31 of Title 48 of the Code of Federal Regulations (“CFR”) shall be used to determine the allowability of individual terms of cost.
- B. CONSULTANT also agrees to comply with the applicable administrative requirements, cost principles and audit procedures for federal awards set forth in 2 CFR Part 200.
- C. Any and all costs for which payment has been made that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 shall be subject to repayment by CONSULTANT.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VIII – RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with California Government Code Section 8546.7, COUNTY, CONSULTANT and any subconsultants hereunder shall maintain any and all books, documents, papers, accounting records, Indirect Cost Rate (“ICR”) work papers, and other evidence pertaining to each party’s performance hereunder, including, without limitation, the costs of administering this Agreement. All parties, including, without limitation, CONSULTANT’s independent Certified Public Accountant (“CPA”), shall make such work papers and materials available at their respective offices at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment hereunder. Records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. COUNTY, the California Department of Transportation (“Caltrans”), the Federal Highway Administration (“FHWA”) and any other duly authorized representative of the federal government having jurisdiction under federal laws or regulations, including, without limitation, the basis of federal funding in whole or in part, shall have access to any such books, records and documents for audit, examination and review, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX – AUDIT REVIEW PROCEDURES

- A. 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 Humboldt County Auditor-Controller.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may submit a written request for review of unresolved issues to the Humboldt County Auditor-Controller.
- C. Neither the pendency of a dispute nor its consideration by COUNTY will excuse CONSULTANT from full and timely performance, in accordance with the terms and conditions of this Agreement.
- D. This Agreement, and any subcontracts related hereto, including, without limitation, cost proposals and ICR, may be subject to audits or reviews such as, but not limited to, an agreement audit, an incurred cost audit, an ICR audit or a CPA ICR audit work paper review. If selected for audit or review, the agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review, CONSULTANT shall be responsible for ensuring that any and all duly authorized local, state and federal government officials are allowed full access to the CPA’s work papers including making

copies as necessary. The agreement, cost proposal and ICR shall be adjusted by CONSULTANT and approved by COUNTY's Contract Administrator 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 agreement by this reference if directed by COUNTY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, COUNTY or local governments have access to CPA work papers, will be considered a breach of the terms and conditions of this Agreement, and will be cause for termination of this Agreement and disallowance of prior reimbursed costs.

- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigation ("IOAI"). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by CONSULTANT and approved by COUNTY's Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the terms and conditions of this Agreement, and will be cause for termination of this Agreement and disallowance of prior reimbursed costs.
1. During IOAI's review of the ICR audit work papers created by CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, COUNTY will reimburse CONSULTANT at an accepted ICR until a Federal Acquisition Regulation compliant ICR [e.g. 48 CFR Part 31; Generally Accepted Auditing Standards; Cost Accounting Standards, if applicable; in accordance with the procedures and guidelines of the American Association of State Highways and Transportation Officials Audit Guide; and other applicable procedures and guidelines] is received and approved by IOAI. Accepted rates will be as follows:
 - a. If the proposed rate is less than one hundred fifty percent (150%) – the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) – the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) – the accepted rate will be seventy-five percent (75%) of the proposed rate.
 2. If IOAI is unable to issue a cognizant letter per subsection E(1) of this article, IOAI may require CONSULTANT to submit a revised independent CPA audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review CONSULTANT's and/or the independent CPA's revisions.
 3. If CONSULTANT fails to comply with the requirements set forth herein, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR as set forth in subsection E(1) of this article for all rendered services. In this event, the accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

4. CONSULTANT may submit a final invoice to COUNTY only when all of the following items have occurred: IOAI accepts or adjusts the original or revised independent CPA audited ICR; all work under this Agreement has been completed to the satisfaction of COUNTY; and IOAI has issued its final ICR review letter. CONSULTANT must submit its final invoice to COUNTY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all other agreements executed between COUNTY and CONSULTANT, either as a prime or subcontractor, with the same fiscal period ICR.
5. COUNTY and CONSULTANT hereby agree to fix the ICR for the period of time set forth in Article IV – Period of Performance of this Agreement. If the term of this Agreement is extended by a duly executed amendment hereto, COUNTY and CONSULTANT may adjust the ICR to the current IOAI approved ICR.

ARTICLE X – SUBCONTRACTING

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between COUNTY and any of CONSULTANT's subconsultants hereunder, and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to COUNTY for the acts and omissions of its subconsultants 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 subconsultants is an independent obligation from COUNTY's obligation to make payments to CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by COUNTY's Contract Administrator, except that which is expressly identified in CONSULTANT's approved Cost Proposal.
- C. Any subcontract entered into as a result of this Agreement, shall contain all of the applicable provisions set forth in this Agreement.
- D. Any substitution of subconsultants must be approved in writing by COUNTY's Contract Administrator in advance of assigning work to a substitute subcontractor.
- E. CONSULTANT shall pay to any subconsultant hereunder, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts owed to CONSULTANT on account of the services performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over any portion of the amount due on a progress payment from CONSULTANT to a subconsultant, CONSULTANT may withhold no more than one hundred fifty percent (150%) of the disputed amount. Any violation of this provision shall constitute a cause for disciplinary action and shall subject CONSULTANT to a penalty, payable to the subconsultant, of two percent (2%) of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to its attorney's fees and costs. The sanctions authorized under this provision shall be separate from, and in addition to, all other remedies, either civil, administrative or criminal.

CONSULTANT must submit Exhibit 9-P to the COUNTY administering the contract by the 15th of the month following the month of any payment(s). If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

The COUNTY must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for all subcontractors, and address any prompt payment issues until the end of the project. The COUNTY must email a copy of Exhibit 9-P to DBE.Forms@dot.ca.gov before the end of the month after receiving the Exhibit 9-P from the CONSULTANT.

- F. No retainage will be held by COUNTY from progress payments due to CONSULTANT. Retainage by CONSULTANT, or any subconsultants hereunder, is prohibited and no retainage will be held by CONSULTANT, or any subconsultant hereunder, from progress due to its subconsultants. Any delay or postponement of payment may take place only for good cause and with COUNTY's prior written approval. Any violation of this provision shall subject CONSULTANT, or any subconsultants hereunder, to the penalties, sanctions and other remedies specified in Section 3321 of the California Civil Code. This provision shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT, or any subconsultants hereunder, in the event of a dispute involving late payment or nonpayment by CONSULTANT and/or deficient subconsultant performance or noncompliance. This provision applies to both DBE and non-DBE subconsultants.

ARTICLE XI – EQUIPMENT PURCHASE

- A. Prior authorization in writing by COUNTY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding Five Thousand Dollars (\$5,000.00) for supplies, equipment or consultant services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding Five Thousand Dollars (\$5,000.00), with prior authorization by COUNTY's Contract Administrator, three (3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased with funds provided under the terms and conditions of this Agreement is subject to the following:
1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two (2) years and an acquisition cost of Five Thousand Dollars (\$5,000.00) or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY shall receive a proper refund or credit at the conclusion of this Agreement, or if this Agreement is terminated, CONSULTANT may either keep the equipment and credit COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit COUNTY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by COUNTY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY.
 2. 2 CFR Part 200 requires a credit to federal funds when participating equipment with a fair market value greater than Five Thousand Dollars (\$5,000.00) is credited to the project.

ARTICLE XII – STATE PREVAILING WAGE RATES

- A. Neither CONSULTANT nor its subconsultants may be awarded an agreement containing public work elements unless registered with the California Department of Industrial Relations (“DIR”) pursuant to California Labor Code Section 1725.5. Registration with DIR must be maintained throughout the entire term of this Agreement, including any subsequent extensions thereof.
- B. CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work pursuant to the terms and conditions of this Agreement are on file with Caltrans’ District Labor Compliance Officer and available online at the following address: http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/DistrictRegion_Map_Construction_7-8-15.pdf. These wage rates are hereby incorporated into this Agreement by reference as if set forth in full, pursuant to California Labor Code Section 1773.2, and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at COUNTY construction sites, at COUNTY facilities and at off-site locations that are set up by the construction contractor or one of its subconsultants solely and specifically to serve COUNTY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from DIR’s website at <http://www.dir.ca.gov>.
- D. By executing this Agreement, CONSULTANT, for itself, and its subconsultants, assignees and successors in interest, agrees to comply with the following requirements pertaining to preparation, retention, certification, reproduction and disclosure of payroll records:
 - 1. CONSULTANT and its subconsultants shall keep accurate certified payroll records and supporting documents, as mandated by California Labor Code Section 1776 and as defined in Section 16000 of Title 8 of the California Code of Regulations (“CCR”), showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONSULTANT or its subconsultants in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of California Labor Code Sections 1771, 1811 and 1815 for any work performed by its employees on the public works project.
 - 2. The payroll records enumerated under subsection D(1) of this article shall be certified as correct by CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by COUNTY representatives at all reasonable hours at the principal office of CONSULTANT. CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee’s payroll record shall be made available for inspection or furnished to the employee or the employee’s authorized representative upon request.
 - b. A certified copy of all payroll records enumerated in subsection D(1) of this article shall be made available for inspection or furnished upon request to a representative of COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of

the DIR. Certified payrolls submitted to COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated.

- c. CONSULTANT shall not give the public access to certified payroll records. CONSULTANT shall forward any requests for certified payrolls to COUNTY's Contract Administrator by both email and regular mail on the business day following receipt of the request.
3. CONSULTANT shall submit a certified copy of the records enumerated in subsection D(1) of this article to the requesting entity within ten (10) calendar days after receipt of a written request.
4. Any records made available for inspection as copies and furnished upon request to the public or any public agency by COUNTY shall be redacted or obliterated in such a manner as to prevent disclosure of each individual's name, address and social security number. The name and address of CONSULTANT or its subconsultants performing the work shall not be redacted or obliterated.
5. CONSULTANT shall inform COUNTY of the location of the records enumerated under subsection D(1) of this article, including, without limitation, the street address, city and county, and shall, within five (5) business days, provide a notice of a change of location and address.
6. CONSULTANT and its subconsultants shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in subsection D(1) of this article. In the event of CONSULTANT's failure to comply within the ten (10) day period, CONSULTANT shall, as a penalty to COUNTY, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by COUNTY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this subsection due to the failure of a subcontractor to comply with the requirements set forth herein.
- E. When prevailing wage rates apply, CONSULTANT shall be responsible for verifying compliance with certified payroll requirements. Payment will not be made until the invoice is approved by COUNTY.
- F. By executing this Agreement, CONSULTANT, for itself, and its subconsultants, assignees and successors in interest, agrees to comply with the following requirements pertaining to the imposition and payment of any and all penalties resulting from CONSULTANT's noncompliance with any applicable local, state and federal prevailing wage laws, regulations and standards:
 1. CONSULTANT and its subconsultants shall comply with California Labor Code Sections 1774 and 1775. Pursuant to California Labor Code Section 1775, CONSULTANT and its subconsultants shall forfeit to COUNTY a penalty of not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under this Agreement by CONSULTANT or by its subconsultants in violation of the requirements of any applicable local, state or federal laws, regulations or standards, including, without limitation, California Labor Code Sections 1770, *et seq.*
 2. The amount of the forfeiture described in subsection F(1) of this article shall be determined by the California Labor Commissioner and shall be based on consideration of mistake, inadvertence or neglect of CONSULTANT or its subconsultants in failing to pay the correct rate of prevailing wages, or the previous record of CONSULTANT or its subconsultants in meeting their respective prevailing wage obligations, or the willful failure by CONSULTANT or its subconsultants to pay the correct rates of prevailing wages. A mistake, inadvertence or neglect in failing to pay the correct

rates of prevailing wages is not excusable if CONSULTANT or its subconsultants had knowledge of the obligations under the California Labor Code. CONSULTANT shall be responsible for paying the appropriate rate, including, without limitation, any escalations that take place during the term of this Agreement and any extensions thereof.

3. In addition to the penalty described in subsection F(1) of this article, and pursuant to California Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by CONSULTANT or its subconsultants.
4. If workers employed by CONSULTANT's subconsultants on a public works project are not paid the general prevailing per diem wages by the subconsultants, CONSULTANT shall not be liable for the penalties described in subsections F(1) and F(3) of this article, unless CONSULTANT had knowledge of the subconsultants' failure to pay the specified prevailing rate of wages to those workers or CONSULTANT fails to comply with all of the following requirements:
 - a. The subcontracts executed between CONSULTANT and the subconsultants for the performance of work on public works projects shall include a copy of the requirements in California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815.
 - b. CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the subconsultants to their employees by periodic review of the subconsultants' certified payroll records.
 - c. Upon becoming aware of the subconsultants' failure to pay the specified prevailing rate of wages to the subconsultants' employees, CONSULTANT shall diligently take corrective action to halt or rectify the failure, including, without limitation, retaining sufficient funds due the subconsultants for work performed on the public works project.
 - d. Prior to making final payment to the subconsultants for work performed on the public works project, CONSULTANT shall obtain an affidavit signed under penalty of perjury from the subconsultants that they have paid the specified general prevailing rate of per diem wages to their employees on the public works project and any amounts due pursuant to California Labor Code Section 1813.
5. Pursuant to California Labor Code Section 1775, COUNTY shall notify CONSULTANT within fifteen (15) calendar days after the receipt of a complaint that any of its subconsultants have failed to pay their employees the general prevailing rate of per diem wages.
6. If COUNTY determines that any of CONSULTANT's subconsultants have not paid their employees the general prevailing rate of per diem wages, and if COUNTY did not retain sufficient money to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, CONSULTANT shall withhold an amount of money due the subconsultants sufficient to pay those employees the general prevailing rate of per diem wages, if requested by COUNTY.
- G. CONSULTANT shall forfeit, as a penalty to COUNTY, Twenty-Five Dollars (\$25.00) for each worker employed in the execution of this Agreement by CONSULTANT or any of its subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week in violation of the provisions of the California Labor Code, including, without limitation, Sections 1810 to 1815 thereof, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one (1)

week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in California Labor Code Section 1815.

- H. By executing this Agreement, CONSULTANT, for itself, and its subconsultants, assignees and successors in interest, agrees to comply with the following requirements pertaining to the employment of apprentices:
1. CONSULTANT, and any of its subconsultants working under a subcontract exceeding Thirty Thousand Dollars (\$30,000.00), shall comply with all applicable requirements regarding the employment of apprentices set forth in California Labor Code Sections 1777.5, 1777.6 and 1777.7.
 2. CONSULTANT and its subconsultants shall comply with any and all California Labor Code requirements regarding the employment of apprentices, including, without limitation, mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and its subconsultants are advised to review the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios. CONSULTANT shall be responsible for its subconsultants' compliance with these requirements. Penalties are specified in California Labor Code Section 1777.7.

ARTICLE XIII – CONFLICT OF INTEREST

- A. During the term of this Agreement, and any extensions thereof, CONSULTANT shall disclose any financial, business or other relationship with COUNTY that may have an impact upon the outcome of this Agreement or any ensuing COUNTY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing COUNTY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to COUNTY any actual, apparent or potential conflicts of interest that may exist relative to the services to be provided hereunder. CONSULTANT agrees to advise COUNTY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. CONSULTANT further agrees to complete any statements of economic interest if required by any applicable local, state or federal laws, regulations or standards.
- C. CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.
- D. CONSULTANT hereby certifies that neither CONSULTANT nor any of its subconsultants, or any firm affiliated with CONSULTANT or its subconsultants, that bids on any construction contract or on any agreement to provide construction inspection for any construction project resulting from this Agreement, has established necessary controls to ensure that a conflict of interest does not exist. For purposes of this Agreement, an affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV – 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 COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right, in its sole discretion, to terminate this Agreement without liability,

to pay only for the value of the work actually performed or to deduct from the amount owed under this Agreement, or otherwise recover, the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV – PROHIBITION OF EXPENDING COUNTY, STATE OR FEDERAL FUNDS FOR LOBBYING

A. CONSULTANT certifies, to the best of its knowledge and belief, that:

1. No local, state or federal appropriated funds have been paid or will be paid, by or on behalf of CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, state or federal agency, a member of the California State Legislature or United States Congress, an officer or employee of the California State Legislature or Congress or any employee of a member of the California State Legislature or Congress in connection with the awarding or making of this Agreement, or with the extension, continuation, renewal, amendment or modification of this Agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this Agreement, CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this Agreement was made and entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352 of Title 31 of the United States Code ("USC"). Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00) for each such failure.

C. CONSULTANT also agrees by executing this Agreement that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed One Hundred Thousand Dollars (\$100,000.00), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI – NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

A. CONSULTANT's signature affixed herein shall constitute a certification, under penalty of perjury under the laws of the State of California, that CONSULTANT has, unless exempt, complied with any and applicable nondiscrimination requirements set forth in California Government Code Section 12990 and 2 CCR Section 8103.

B. During the performance of this Agreement, CONSULTANT and its subconsultants shall not deny any benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation or military and veteran status, nor shall they unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation or military and veteran status. CONSULTANT and its subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. CONSULTANT and its subconsultants shall comply with the provisions of the Fair Employment and Housing Act (California Government Code Sections 12990, *et seq.*) and the applicable regulations promulgated thereunder (2 CCR Sections 11000, *et seq.*), the provisions of California Government Code Sections 11135 through 11139.5 and the regulations or standards adopted by COUNTY to implement this article. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in 2 CCR Sections 8100 through 8504, are hereby incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of COUNTY and any other duly authorized local, state and federal agencies, including, without limitation, the California Department of Fair Employment and Housing, upon reasonable notice at any time during normal business hours, but in no case less than twenty-four (24) hours' notice, to its facilities, books, records, accounts and all other sources of information as COUNTY or any other duly authorized local, state or federal agency shall require to ascertain compliance with this article.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this article to any and all labor organizations with which they have a collective bargaining or other agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this article in all subcontracts to perform work under this Agreement.
- G. CONSULTANT, with regard to the work performed pursuant to the terms and conditions of this Agreement, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 USC Sections 2000d, *et seq.*) which provides that recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age or disability, be excluded from participation in, denied the benefits of or be subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. CONSULTANT shall comply with any and all applicable local, state and federal laws, regulations and standards pertaining to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 CFR Part 21 – Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Section 21.5, including, without limitation, employment practices and the selection and retention of subconsultants.
- I. Neither party hereto, nor any subconsultants hereunder, shall exclude any person from participation in, deny any person the benefits of or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex or national origin.

ARTICLE XVII – DEBARMENT AND SUSPENSION CERTIFICATION

- A. CONSULTANT's signature affixed herein shall constitute a certification, under penalty of perjury under the laws of the State of California, that CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - 1. Is not currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency;

2. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years.
 3. Does not have a proposed debarment pending; and
 4. Has not been indicted, convicted or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to COUNTY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the United States General Services Administration are to be determined by FHWA.

ARTICLE XVIII – DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

On October 3, 2025, the U.S. Department of Transportation issued an Interim Final Rule (IFR) that temporarily suspended DBE contract goal setting and DBE participation counting and reporting requirements under 49 CFR Part 26. Consistent with the IFR:

- A. No DBE contract goal applies to this solicitation;
- B. During the suspension period, the County may not: set a DBE goal; require DBE participation plans; evaluate or count DBE participation; perform CUF reviews; require or accept DBE Good Faith Effort (GFE) submissions; require submission of any inactive DBE LAPM forms;
- C. DBE protections still apply. The Consultant and all subconsultants must comply with the nondiscrimination requirements of 49 CFR 26.7; prompt payment requirements (LAPM Exhibit 9-P); termination procedures for DBE subconsultants requiring prior written County consent and "good cause" as defined in 49 CFR 26.53;
- D. The suspension of certain DBE program elements does not relieve the Consultant from compliance with all other federal and state contracting laws, including PCC §4100 et seq.

ARTICLE XIX – INSURANCE AND INDEMNIFICATION

- A. Prior to the execution of this Agreement, CONSULTANT shall furnish to COUNTY satisfactory proof that CONSULTANT has taken out for the entire term of this Agreement, as further described below, the following insurance, in a form satisfactory to COUNTY, and with an insurance carrier satisfactory to COUNTY, authorized to do business in the State of California with a current A.M. Bests rating of no less than A; VII or its equivalent, which will protect those described below from claims which arise out of, or in connection with, the acts or omissions of CONSULTANT for which CONSULTANT may be legally liable, whether performed by CONSULTANT, or by those employed directly or indirectly thereby, or by anyone for whose acts CONSULTANT may be liable:
 1. Commercial General Liability Insurance, written on an "occurrence" basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, products liability, blasting, explosion, collapse of buildings or structures, damage to underground structures and utilities, liability for slander, false arrest and invasion of privacy arising out of construction

management operations, blanket contractual liability, broad form endorsement, a construction management endorsement, products and completed operations, personal and advertising liability, with per location limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, subject to a deductible of not more than Fifty Thousand Dollars (\$50,000.00) payable by CONSULTANT. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.

2. Business Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) for each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than Ten Thousand Dollars (\$10,000.00) payable by CONSULTANT.
 3. Workers' Compensation Insurance, as required by the California Labor Code, with statutory limits and Employers' Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY and its agents, officers, officials, employees and volunteers. In the event CONSULTANT is self-insured, a Certificate of Permission to Self-Insure, signed by the California Department of Industrial Relations – Administration of Self-Insurance, shall be filed with the Clerk of the Humboldt County Board of Supervisors.
 4. Professional Liability Insurance – Error and Omission Coverage, including coverage in an amount no less than Two Million Dollars (\$2,000,000.00) for each occurrence (Four Million Dollars (\$4,000,000.00) general aggregate), subject to a deductible not to exceed Fifty Thousand Dollars (\$50,000.00) payable by CONSULTANT. Said insurance shall be maintained for the statutory period during which CONSULTANT may be exposed to liability regarding the work performed pursuant to the terms and conditions of this Agreement. Such coverage shall be incorporated into CONSULTANT's agreements with any other entities.
- B. CONSULTANT's insurance policies shall, unless otherwise specified herein, be endorsed with the following provisions:
1. CONSULTANT's Commercial General Liability policy and Automobile Liability policy shall name COUNTY, and its agents, officers, officials, employees and volunteers, as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Is the primary insurance with regard to COUNTY.
 - c. Does not contain exclusions as to property damage caused by explosion or collapse of structures or underground damage, commonly referred to as "XCU Hazards."
 - d. Does not contain a pro-rated excess only and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.
 2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) calendar days prior written notice being provided to COUNTY in accordance with the notice provisions set forth herein. It is further understood that CONSULTANT

shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.

3. The inclusion of more than one (1) insured shall not operate to impair the rights of one (1) insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one (1) insured shall not operate to increase the limits of the insurer's liability.
 4. Any failure to comply with the terms and conditions of this Agreement shall not affect the coverage provided to COUNTY or its agents, officers, officials, employees and volunteers.
 5. For claims related to this Agreement, CONSULTANT's insurance is the primary coverage to COUNTY, and any insurance or self-insured programs maintained thereby are excess to CONSULTANT's insurance and will not be used to contribute therewith.
 6. CONSULTANT shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If CONSULTANT does not keep all required policies in full force and effect, COUNTY may, in addition to any other available remedies, take out the necessary insurance and deduct the cost of said insurance from the monies owed to CONSULTANT under this Agreement.
 7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and CONSULTANT shall be required to purchase additional coverage to meet the above-referenced aggregate limits.
 8. Nothing contained herein shall be construed as limiting the extent to which CONSULTANT or its subconsultants may be held responsible for payment of damages resulting from their operations.
- C. Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

CONSULTANT: [Name of Consultant]
Attention: [Name of Project Manager], Project Manager
[Street Address]
[City], [State] [Zip Code]

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

AND

Humboldt County Department of Public Works – Engineering Division
Attention: Tony Seghetti, Contract Administrator
1106 Second Street
Eureka, California 95501

- D. In connection with the performance of the design professional services required hereunder, CONSULTANT shall, to the fullest extent permitted by law, and in accordance with California Civil

Code Section 2782.8, indemnify, defend and hold harmless COUNTY, and its agents, officers, officials, employees and volunteers, from any claim, liability, loss, injury or damage (referred to collectively as "Litigation") that arises out of, pertains to, relates to, or is connected with, performance of this Agreement due to the negligence, recklessness or willful misconduct of CONSULTANT and/or its agents, employees or subconsultants. CONSULTANT shall reimburse COUNTY for all costs, attorneys' fees, expenses and liabilities incurred with respect to any Litigation in which CONSULTANT is obligated to indemnify and defend COUNTY under this Agreement.

- E. In connection with the performance of the non-design professional services required hereunder, if any, CONSULTANT shall hold harmless, defend and indemnify COUNTY and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense and costs of any kind or nature, including, without limitation, costs and fees of Litigation, arising out of, or in connection with, CONSULTANT's performance of, or failure to comply with, any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY. CONSULTANT shall reimburse COUNTY for all costs, attorneys' fees, expenses and liabilities incurred with respect to any Litigation in which CONSULTANT is obligated to indemnify and defend COUNTY under this Agreement.

ARTICLE XX – FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only, if sufficient funds are made available to COUNTY for the purpose of this Agreement. In addition, this Agreement is subject to any additional local, state and federal restrictions, limitations, conditions and legal obligations that may affect the provisions, terms, conditions or funding of this Agreement in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds.
- D. COUNTY has the option to terminate this Agreement pursuant to Article VI – Termination, or by mutual agreement to amend this Agreement to reflect any reduction of funds.

ARTICLE XXI – CHANGE IN TERMS

- A. This Agreement may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by COUNTY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this Agreement without prior written approval by COUNTY's Contract Administrator.

ARTICLE XXII – CONTINGENT FEE

CONSULTANT warrants, by execution of this Agreement that no person or selling agency has been employed, or retained, to solicit or secure this Agreement upon an agreement or understanding, for a commission,

percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, COUNTY has the right to annul this Agreement without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the price or consideration to be paid hereunder, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII – DISPUTES

Prior to either party commencing any legal action under this Agreement, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) calendar days of good-faith negotiations, and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of COUNTY's Contract Administrator and other COUNTY officials, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may submit a written request for review by COUNTY's governing board of unresolved claims or disputes, other than audit.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

ARTICLE XXIV – INSPECTION OF WORK

CONSULTANT and its subconsultants shall permit COUNTY, the State of California and the FHWA, if federal participating funds are used in this Agreement, to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement.

ARTICLE XXV – SAFETY

- A. CONSULTANT shall comply with any and all California Division of Occupational Safety and Health ("Cal-OSHA") regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by the Humboldt County Risk Manager and other COUNTY representatives. CONSULTANT's personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to Section 591 of the California Vehicle Code, COUNTY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11 through 15 of the California Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. CONSULTANT must have any and all applicable CAL-OSHA permits, as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation or process related to the construction or excavation of trenches which are five (5) feet deep or deeper.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

ARTICLE XXVI – OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT pursuant to the terms and conditions of this Agreement shall become the property of COUNTY, and CONSULTANT shall have no property rights therein whatsoever. Immediately upon termination of this Agreement, COUNTY shall be entitled to, and CONSULTANT shall deliver to COUNTY, any and all reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this Agreement, which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to COUNTY which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered pursuant to the terms and conditions of this Agreement must be approved in writing by COUNTY.
- B. Additionally, it is agreed that the parties intend this Agreement to be an agreement for services and each considers the products and results of the services rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work and all rights therein, including, without limitation, copyrights, belongs to and shall be the sole and exclusive property of COUNTY without restriction or limitation upon its use or dissemination by COUNTY. Any reuse of such works made for hire outside the scope of work for which it was developed, or any alteration of them whatsoever, without CONSULTANT's review and approval shall be at COUNTY'S sole risk.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one (a) detailed in a particular Task. Any reuse by COUNTY for another project or project location shall be at COUNTY's sole risk.
- D. Each party hereto agrees to comply with any and all applicable local, state and federal laws, regulations and standards pertaining to patent rights, including, without limitation, 48 CFR Subpart 27.3 – Patent Rights under Government Contracts.
- E. COUNTY may permit CONSULTANT to copyright reports or other byproducts of this Agreement. If copyrights are permitted; FHWA shall be granted a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use; and to authorize others to use, the work for government purposes.
- F. Any subcontract in excess of Twenty-Five Thousand Dollars (\$25,000.00) entered into as a result of this Agreement shall contain all of the provisions of this article.

ARTICLE XXVII – CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by COUNTY's construction contractor relating to work performed by CONSULTANT, and additional information or assistance from CONSULTANT is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with COUNTY's Contract Administrator and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT shall, upon reasonable notice from COUNTY, allow interviews of all personnel that COUNTY considers essential to assist in defending against construction contractor claims. Consultation or testimony will be reimbursed at the same rates, including, without limitation, travel costs, that are being paid for CONSULTANT's services under this Agreement.

- C. Services of CONSULTANT in connection with COUNTY's construction contractor claims will be performed pursuant to a written contract amendment which extends the expiration date of this Agreement, if necessary, in order to resolve such construction claims.
- D. Any subcontract in excess of Twenty-Five Thousand Dollars (\$25,000.00) entered into as a result of this Agreement shall contain all of the provisions of this article.

ARTICLE XXVIII – CONFIDENTIALITY OF DATA

- A. CONSULTANT hereby agrees to protect any and all confidential information obtained in the performance of this Agreement in accordance with any and all applicable local, state and federal laws, regulations and standards.
- B. All financial, statistical, personal, technical or other information relative to COUNTY's operations, which are designated confidential by COUNTY and made available to CONSULTANT in order to carry out this Agreement, shall be protected by CONSULTANT from unauthorized use and disclosure.
- C. Permission to disclose information on one (1) occasion, or disclosure at a public hearing held by COUNTY relating to this Agreement, shall not authorize CONSULTANT to further disclose such information or disseminate the same on any other occasion.
- D. CONSULTANT shall not comment publicly to the press or any other media outlet regarding this Agreement or COUNTY's actions on the same, except to COUNTY's staff, CONSULTANT's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from a legislative committee.
- E. 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 COUNTY, and receipt of COUNTY's written permission.
- F. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than COUNTY, Caltrans and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to the terms and conditions of this Agreement are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of COUNTY or except by court order. If CONSULTANT, or any of its agents, officers, employees or subconsultants, does voluntarily provide information in violation of this Agreement, COUNTY has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing such information, including, without limitation, COUNTY's attorney's fees, expert witness fees and disbursements.
- G. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

ARTICLE XXIX – NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with California Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one (1) final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within two (2) years prior to the execution this Agreement because of CONSULTANT's failure to comply with an order of a federal court that requires CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX – EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by COUNTY. A copy of COUNTY's evaluation report will be sent to CONSULTANT for comments. COUNTY's evaluation report along with CONSULTANT's comments shall be retained in accordance with the record retention provisions set forth herein.

CONSULTANT must submit Attachment [] – Prompt Payment Certification (Exhibit 9-P) to the COUNTY administering the contract by the 15th of the month following the month of any payment(s). If the CONSULTANT does not make any payments to subconsultants, supplier(s), and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Attachment [] – Prompt Payment Certification (Exhibit 9-P).

The COUNTY must verify all Attachment [] – Prompt Payment Certification (Exhibit 9-P) information, monitor compliance with prompt payment requirements for all subcontractors, and address any prompt payment issues until the end of the project. The COUNTY must email a copy of Attachment [] – Prompt Payment Certification (Exhibit 9-P) to DBE.Forms@dot.ca.gov before the end of the month after receiving the Attachment [] – Prompt Payment Certification (Exhibit 9-P) from the CONSULTANT.

ARTICLE XXXI – TITLE VI ASSURANCES

APPENDICES A - E of the TITLE VI ASSURANCES

The U.S. Department of Transportation Order No.1050.2A requires all federal-aid Department of Transportation contracts between an agency and a consultant to contain Appendices A and E of the Title VI Assurances. Include Appendices B, C, and D if applicable as shown below. In addition, the consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract.

The clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to the COUNTY.

The clauses set forth in Appendix C and Appendix D of this Assurance shall be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the COUNTY with other parties:

- A. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
- B. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

APPENDIX A

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- A. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

- B. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT 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.
- C. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: CONSULTANT 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 FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
1. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 2. cancellation, termination or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title

23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above- mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].* (*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the “CONSULTANT”) agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 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 U.S.C. § 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 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), 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, sub-recipients 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 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 U.S.C. 1681 et seq).

ARTICLE XXXII – NOTIFICATION

Any and all notices required hereunder, and communications regarding interpretation of, and changes to, the terms and conditions of this Agreement, shall be affected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONSULTANT: [Name of Consultant]

Attention: [Name of Project Manager], Project Manager

[Street Address]
[City], [State] [Zip Code]

COUNTY: Humboldt County Department of Public Works – Engineering Division
Attention: Tony Seghetti, Contract Administrator
1106 Second Street
Eureka, California 95501

ARTICLE XXXIII – GOVERNING LAW, PRACTICE STANDARDS AND BINDING EFFECT

- A. This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.
- B. CONSULTANT agrees to comply with any and all local, state and federal laws, regulations and standards applicable to its performance hereunder, including, without limitation, the Americans with Disabilities Act. CONSULTANT further agrees to comply with any and all applicable local, state and federal accrediting, licensure and certification requirements.
- C. This Agreement is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the provisions, terms, conditions or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.
- D. In the event any law, regulation or standard referred to herein is amended during the term of this Agreement, the parties agree to comply with the amended provision as of the effective date thereof.
- E. CONSULTANT warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CONSULTANT's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.
- F. The terms of this Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties.

ARTICLE XXXIV – NO WAIVER OF DEFAULT

- A. The waiver by either party of any breach of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.
- B. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement which may then exist on the part of CONSULTANT. Neither shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default. COUNTY shall have the right to demand repayment of, and CONSULTANT shall promptly refund, any funds disbursed to CONSULTANT hereunder, which COUNTY determines were not expended in accordance with the terms of this Agreement.

ARTICLE XXXV – ATTORNEY FEES ON BREACH

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its obligations hereunder, the prevailing party in said action shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached or other considerations

substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

ARTICLE XXXVI – NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE

By executing this Agreement, CONSULTANT certifies that it is not a Nuclear Weapons Contractor, in that CONSULTANT is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. CONSULTANT agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor, as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONSULTANT subsequently becomes a Nuclear Weapons Contractor.

ARTICLE XXXVII – CONTRACT

The two (2) parties to this Agreement, who are the before named CONSULTANT and the before named COUNTY, hereby agree that this Agreement constitutes the entire agreement which is made and concluded in duplicate between the two (2) parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this Agreement as evidenced by the signatures below.

[Signatures on Following Page]

ARTICLE XXXVIII – SIGNATURES

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND

(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

[NAME OF CONSULTANT]:

By: _____

Date: _____

Name: _____

Title: _____

By: _____

Date: _____

e
Name: _____

Title: _____

COUNTY OF HUMBOLDT:

By: _____

Date: _____

[Name of Board Chair]

Humboldt County Board of Supervisors

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: _____

Date: _____

Risk Management

LIST OF ATTACHMENTS:

Attachment ☐ – Scope of Work

Attachment ☐ – Cost Proposal & Schedule of Work

Attachment ☐ – Prompt Payment Certification (Exhibit 9-P)

Attachment ☐ – Inspector General's Certification of Indirect Costs and Financial Management System

Attachment ☐ – Disclosure of Lobbying Activities (Exhibit 10-Q)

Attachment ☐ – Liability Insurance