RESOLUTION - ACTION REQUESTED 2014-392

MEETING: August 5, 2014

TO: The Board of Supervisors

FROM: Peter Rei, Public Works Director

RE: Approve a Professional Services Agreement with Nolte Associates for Engineering Services

RECOMMENDATION AND JUSTIFICATION:
Approve a Professional Services Agreement with Nolte Associates in an amount not-to-exceed of $178,044 for Engineering Services for the design of West Whitlock Road (PM 10.00 to PM 14.30) and authorize the Board of Supervisors Chair to sign the Agreement. (Pending Obtaining Approval from CDBG)

Nolte Associates will provide surveying/mapping, project management, roadway plans and specifications, right of way plans, bidding services and construction services.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Mariposa County received a California Development Block Grant (CDBG) for $8.5 million under the Disaster Recovery Initiative (DRI) for the rehabilitation of West Whitlock Road, Bondurant Road, Shilling Road, Dogtown Road, and bridge replacements on Bondurant and Dogtown roads.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Board approval is necessary to proceed. Not approving this request will result in a delay of the projects.

FINANCIAL IMPACT:
Funds are available in budget 515-1315-785-0626

ATTACHMENTS:
Nolte Agreement for W Whitlock Road (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Mary Hodson, Deputy CAO
6/4/2014
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: John Carrier, District V Supervisor
AYES: Stetson, Jones, Bibby, Cann, Carrier
COUNTY of MARIPOSA  
P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

KEVIN CANN, CHAIR  
MERLIN JONES, VICE-CHAIR  
LEE STETSON  
JANET BIBBY  
JOHN CARRIER

DISTRICT IV  
DISTRICT II  
DISTRICT I  
DISTRICT III  
DISTRICT V

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: DOUG WILSON, Interim Public Works Director

FROM: RENE' LaROCHE, Clerk of the Board

SUBJECT: Approve a Professional Services Agreement with Nolte Associates in an Amount Not To Exceed of $178,044 for Engineering Services for the Design of West Whitlock Road, and Authorize the Board of Supervisors Chair to Sign the Agreement (Pending Obtaining Approval from CDBG)

RES. 14-392

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on August 5, 2014

ACTION AND VOTE:

CA22. Public Works RES-2014-392

Approve a Professional Services Agreement with Nolte Associates in an Amount Not-To-Exceed of $178,044 for Engineering Services for the Design of West Whitlock Road, and Authorize the Board of Supervisors Chair to Sign the Agreement (Pending Obtaining Approval from CDBG)

Regarding CA22, Chair Cann noted his understanding that timing is an issue with this item, and required clarification that it cannot be signed until CDBG approves the agreement. Tara Schiff/Community Development - Grant Coordinator affirmed that the document cannot be signed until CDBG clears the conditions otherwise we risk not being reimbursed. Supervisor Cann noted that there is an agreement date of June 10, 2014, on the first page of the agreement. Ms. Schiff noted that, per County Counsel's direction, that date will be changed to be effective the date the conditions are cleared. Supervisor Carrier inquired if there is a single point of contact on the matter. Mr. Rei responded by indicating Ms. Schiff.

Cc: Tara Schiff, Economic Development
August 12, 2014

Mr. Richard J. Benson  
County Administrative Officer  
County of Mariposa  
5100 Bullion Street  
Mariposa, CA 95338

RE: 11-DRI-7555 Engineering Services Procurement: West Whitlock Project

Mr. Benson:

The Department of Housing and Community Development (Department) has received the County of Mariposa’s (County) documentation for the procurement of engineering services for the West Whitlock (which is also known as the Mt. Bullion Cutoff) project.

The RFQ solicited consultants in order to establish a “short list of firms...”; however our procurement review did not include a review of, nor does it include an approval of, the "short list" respondents/bidders. Also, the RFQ identified the funding as 2012 State Transportation Improvement program; this procurement review is only related to the expenditure of CDBG-DRI funds.

While the engineering services procurement documentation submitted is in substantial compliance with federal procurement requirements, the County must ensure their records include individual scoring breakdowns for each of the RFQ respondents/bidders that match the scores reported on the comparison sheet (the individual breakdowns were not submitted for Department review).

As of the date of this letter, the County is authorized to incur costs and request reimbursement for engineering expenses for the West Whitlock project. This approval is for NV5/Nolette to design the West Whitlock project, and no other CDBG-DRI activity.

Please feel free to contact Linda Boyle at (916) 263-1666 or Linda.Boyle@hcd.ca.gov if you have questions or need further assistance.

Sincerely,

Karen Patterson  
CDBG Program Manager
PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is made this 22nd day of August, 2014 between:

COUNTY: Mariposa County Department of Public Works
4639 Ben Hur Road
Mariposa, CA 95338

and

CONSULTANT: Nolte Associates
7600 North Ingram, Suite 224
Fresno, CA 93711

ARTICLE 1. TERM OF AGREEMENT

1.01 Agreement Term: This Agreement shall become effective when or after the Community Development Block Grant (CDBG) conditions have been cleared, and shall terminate on June 30, 2015, unless terminated in accordance with the provisions of Article 7 of this Agreement.

ARTICLE 2. INDEPENDENT CONSULTANT STATUS

2.01 Independent Consultant: It is the express intention of the parties that Consultant is an independent Consultant and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Consultant or any employee or agent of Consultant. Both parties acknowledge that Consultant is not an employee for state or federal tax purposes. Consultant shall retain the right to perform services for others during the term of this Agreement.

2.02 Consultant Qualifications: Consultant represents that it has the necessary competence, experience and qualifications for the services to be performed.

2.03 Agreement Management: Consultant shall report to the Public Works Director who will review the activities and performance of the Consultant and administer this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONSULTANT

3.01 Scope of Services: Consultant agrees to perform the services as described on Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in Agreement time. All such services are to be coordinated with County and the results of the work shall be monitored by the Public Works Director or his/her
designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

3.02 Method of Performing Services: Consultant will determine the method, details, and means of performing the above-described services. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Consultant's services.

3.03 Employment of Assistants: Consultant may, at the Consultant's own expense, employ such assistants as Consultant deems necessary to perform the services required of Consultant by this Agreement. County may not control, direct, or supervise Consultant's responsibility for assistants or employees in the performance of those services. Consultant assumes full performance of those services. Consultant assumes full and sole responsibility for the payment of all compensation and expenses of such assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

ARTICLE 4. COMPENSATION

4.01 Compensation: In consideration for the services to be performed by Consultant, County agrees to pay Consultant in proportion to the services satisfactorily performed in the not to exceed amount of $178,044 for services as described above. The total sum to be paid to Consultant includes all labor, materials, travel and other expenses to be incurred by Consultant in the performance of the services described herein. Payment shall be made upon submission of a formal claim approved by the appropriate official of the County as follows:

[ ] Total sum to be paid upon completion of services,
or
[x] Incremental payments based on the following schedule:
    Submittal of monthly invoices

4.02 Invoices: Consultant shall submit detailed invoices for all services being rendered from the Consultant to the County. All invoices shall reference contract number.

4.03 Date for Payment of Compensation: County will endeavor to make payment within 45 days of invoices being submitted from the Consultant to the County, and approval and acceptance of the work by the County.

4.04 Expenses: Consultant shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of equipment provided by Consultant, all fees, fines, licenses, bonds or taxes required of or imposed against Consultant and all other of Consultant's costs of doing business. County shall not be responsible for any expense incurred by Consultant in performing services for County.

ARTICLE 5. OBLIGATIONS OF CONSULTANT

5.01 Tools and Instrumentalities: Consultant will supply all tools and instrumentalities, required to perform the services under this Agreement. Consultant is not required to purchase or rent any tools, equipment or services from County. County shall not provide working space, supplies, materials or other such support to Consultant in the performance of the services and tasks as described herein.

Revised 5/06/13
5.02 **Indemnification:** Consultant shall indemnify and hold County harmless against liability imposed, including reasonable attorney's fees and other legal expenses, to the extent caused by the negligent performance of services by Consultant or employees, including damages relating to the injury or death of any person or damage to property. Consultant agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars ($1,000,000) or an amount as otherwise determined appropriate by the County Risk Manager to cover such claims. Consultant shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.03 **General Liability and Automobile Insurance:** During the term of this Agreement Consultant shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least $1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-Consultants, and that no other insurance effected by County or the named insureds will be called on to cover a loss covered hereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The County will be named as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to County.

5.04 **Professional Liability Coverage:** Consultant shall provide proof of professional liability coverage satisfactory to County prior to commencing work under the Agreement.

5.05 **Certificate of Insurance:** Consultant shall complete and file with the County prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth in paragraphs 5.02, 5.03 and 5.04 above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to County prior to the effective date of such cancellation.

5.06 **Workers' Compensation:** During the term of this Agreement Consultant agrees to provide workers' compensation insurance for Consultant's employees and agrees to hold harmless and indemnify County for claims arising out of injury, disability, or death of any of Consultant's employees or agents.

5.07 **Public Employees Retirement System (CalPERS):** In the event that Consultant or any employee, or subConsultant of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Consultant shall indemnify, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, or subConsultants, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

5.08 **State and Federal Taxes:** As Consultant is not County's employee; Consultant is responsible for paying all required state and federal taxes. In particular:

Revised 5/06/13
a) County will not withhold FICA (Social Security) from Consultant's payments;
b) County will not make state or federal unemployment insurance contributions on behalf of Consultant;
c) County will not withhold state or federal income tax from payment to Consultant;
d) County will not make disability insurance contributions on behalf of Consultant;
e) County will not obtain workers' compensation insurance on behalf of Consultant.

5.09 Records: It is understood and agreed that all plans, studies, specifications, and data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the County, and Consultant hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the County and are not necessarily suitable for any future or other use. Consultant shall maintain such records for a minimum of three (3) years or as otherwise required by law.

5.10 Consultant's Books and Records: Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.

5.11 Assignability of Agreement: It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the County.

ARTICLE 6. OBLIGATIONS OF COUNTY

6.01 Cooperation of County: County agrees to comply with all reasonable requests of Consultant and provide access as allowed by law to all documents reasonably necessary to the performance of Consultant's duties under this Agreement.

6.02 Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by County without the prior written consent of Consultant.

ARTICLE 7. TERMINATION OF AGREEMENT

7.01 Termination Occurrence of Stated Events: This Agreement shall terminate automatically on the occurrence of any of the following events:
1. Bankruptcy or insolvency of Consultant;
2. Death of Consultant.

7.02 Termination by County for Default of Consultant: Should Consultant default in the performance of this Agreement or materially breach any of its provisions, County, at County's option, may terminate this Agreement by giving written notification to Consultant.

Revised 5/06/13
7.03 Termination for Convenience of County: County may terminate this Agreement at any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

7.04 Termination of Funding: The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of County arising from this Agreement shall be immediately discharged. County agrees to inform Consultant no later than thirty (30) calendar days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.

ARTICLE 8. GENERAL PROVISIONS

8.01 Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

8.02 Entire Agreement of the Parties: This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Consultant for County and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged and approved by the County as provided herein or as otherwise required by law.

8.03 Partial Invalidity: If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

8.04 Attorney’s Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys’ fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

8.05 Conformance to Applicable Laws: Consultant shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons who work

Revised 5/06/13
under this Agreement because of race, color, national origin, ancestry, disability, sex or religion of such person. Consultant and County agree to abide by CDBG Terms and Conditions attached as Exhibit “D”.

8.06 **Waiver:** In the event that either County or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation.

8.07 **Governing Law:** This Agreement and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Mariposa.

Executed at Mariposa, California, on the date and year first above written.

**COUNTY:**

KEVIN CANN, Chair
Mariposa County Board of Supervisors
8/22/14
Date:

**CONSULTANT:**

Larry Melo
(Signature)
8/14/14
Date:

**APPROVED AS TO FORM:**

STEVEN W. DAHLEM
County Counsel
8/21/14
Date:

**APPROVED BY:**

DOUG WILSON
Interim Director
8-19-14
Date:

Revised 5/06/13
EXHIBIT A
RECONSTRUCTION OF WHITLOCK ROAD – MARIPOSA COUNTY

Project Understanding
The County of Mariposa would like to reconstruct approximately 4.3 miles of Whitlock Road beginning approximately 0.7 miles north of highway 49. The existing roadway within the project area is a gravel road approximately 20' wide. The County has already prepared an environmental document which will be provided to Nokle at the beginning of the project.

The project will generally consist of providing a paved roadway 28' wide including shoulders. The roadway design is to incorporate a 35 mph design speed to the extent feasible. The project will require the replacement of numerous driveways affected by the roadway reconstruction using Class II AB and asphalt concrete. For the Whitlock Road project, it is assumed that existing drainage culverts may need to be extended but the existing culvert sizes are adequate.

During the initial design phase of the project, Nokle will discuss with the County horizontal alignment options which may improve site distance, safe travel speed, or in other ways improve the safety in areas of concern. The steep terrain associated with the project means that realignment in most areas would be expensive due to the extensive earthwork to maintain the minimum cut and fill slopes. In addition to the earthwork costs, additional right of way may need to be purchased unless temporary construction easements can be acquired.

Scope of Work
Nokle will prepare plans, specifications and estimates suitable for bidding for the construction of the Whitlock Road project.

Project Management
Nokle will provide professional and technical services throughout the duration of the project including construction.

The following will be typical duties/tasks for this project:
- Develop a project team and prepare the project scope of work, activities, schedule, and work plan. Define key issues and goals and coordinate responsibilities of project team members including any sub-consultants.
- Hold progress review meetings with the County and other organizations as may be necessary. The purpose of these meetings will be to discuss work objectives, the work schedule and progress, terms of agreement, and other related issues, in order to resolve project related issues and maintain the progress of the services. Nokle will prepare minutes of the progress review meetings and distribute the minutes to County and other attendees or organizations as required.
- Perform ongoing quality control/quality assurance tasks as necessary.

Task 1—Perform Surveys —and Prepare Base Plans

Surveying/Maps
Surveyors will recover and check the survey control provided, and establish any secondary control necessary for the topographic surveys and cross sections. All control will be tied to the existing County stationing and datum. From this control, monumentation will be located and the existing right of way established for the base mapping.

The aerial survey will cover a strip of land approximately 100' wide centered on the roadway. After the image acquisition, Nokle will review the available data and discuss with the County ways to potentially reduce the
RECONSTRUCTION OF WHITLOCK ROAD – MARIPOSA COUNTY

Work Plan

Scope and footprint of the area in which data compilation is required. Due to the uncertain footprint of the necessary survey and the overall scope, the fee for survey and base mapping is presented as a time and materials, not to exceed fee. To provide topographic base mapping to 50 feet beyond the limits of work, Nolte will utilize standard cross sectioning techniques. The cross sections will be supplemented with intermediate field surveys to locate visible utility facilities; obtain inverts of the utilities where appropriate; detail conforms between existing and new construction; and locate significant visible features such as gutters, curbs, fences, trees, driveways and other data as necessary. Visible utility improvements such as power lines, utility poles, fire hydrants manholes, valves, etc., will be measured and cross sections taken at the intervals specified to provide a complete base map of the existing conditions.

Shortly after the kick-off meeting, an example base plan will be submitted to the County for confirmation of the symbols used, layering nomenclature, line weights, line types, lettering, project legend, etc. In order to save time, it will be conducted concurrently with data collection activities and field survey work. The base plans for this project will be produced utilizing the existing data collected in combination with an aerial survey supplemented with field survey data as necessary. Many of the areas where it may be necessary to cut back the embankments will require infill survey data on the ground due to the thick canopy of brush and trees that will obscure the aerial survey points.

Base plans will be prepared in AutoCAD. It is understood that the base plans are to cover at least 50 feet beyond the limits of work. All base mapping will be field-checked prior to the County review to ensure a complete, quality mapping product. Nolte will be responsible for distributing plans to utility providers.

Early coordination with the utility companies is important because the relocation of utilities may affect the construction schedule. Consequently, the Nolte team proposes sending the existing conceptual mapping to the utility companies to allow for their early input. General utility location information that can be supplied by the utility surveyors at this stage will allow the surveyors to locate most of the utilities when they perform their initial fieldwork. This will reduce field crew time and provide better information early in the design process.

The project Utility Coordinator will receive information returned from the utility surveyors. As necessary, the coordinator will set up meetings with the utility companies and agencies to discuss utility relocation plans and to resolve potential conflicts. The coordinator will also be responsible for relaying information regarding utilities to the design team.

Task 1A—Supplemental Survey

A supplemental survey will be conducted that will provide the following information:

* Survey the centerline of the roadway in enough detail to be able to plot the centerline for use with future right of way surveys by the County.
* Provide information related to existing edge of pavement on both sides of the road. The EP alignment can be assumed to be parallel to the centerline except that EP shots should be taken at approximately 500' intervals to verify the road width and in addition, shots should be taken in areas where there is a pavement width transition.
* Tie in property corners needed by the County Surveyor.
* Provide the County with a map showing the centerline and approximate EP along with the control points and property corners that were tied in at the request of the County.
Task 2—Preliminary Engineering Studies/Reports

Data Collection and Review
Nolte will obtain and review available data and information necessary to the design effort from the County, agencies, utilities, and organizations. Such information will include, at a minimum, the following if available:

- Design traffic data
- As-built plans
- Utility information
- Pertinent engineering studies/reports (traffic, drainage, etc.)
- Right of way information
- Pertinent historical correspondence

Task 3—Geometric Drawings

The geometric drawings are a graphical portrayal of the design. The drawings will assist in the preparation of the preliminary engineering plans and formulate the criteria for the basic design and the geometric design of the project. The first set of geometric drawings will assume there is no realignment and will simply show a 28-foot paved area within the existing right of way. The initial drawings will be the basis for discussion to determine what areas should be reviewed for possible alternative alignments. Issues which may initiate an alignment study for a portion of the project include inordinate construction or right of way costs, non-conformance to Caltrans design standards, or significant environmental impacts. Nolte will review the initial plans to determine if there are any areas which do not meet Caltrans design criteria for horizontal and vertical alignment.

Task 4—Preliminary Roadway Design

After the preferred alignment is determined, Nolte will begin the preliminary roadway design. The preliminary roadway design will include the following sheets/documents:

- Title Sheet—The Title Sheet and Location Map identify the project and show the location of the project within Mariposa County.
- Typical Sections—This sheet shows preliminary typical cross sections for roadways based on the approved standard sections. Cross sections will include the preliminary design of pavement structural sections.
- Plan and Profile Sheets—These plans show the horizontal layout of the roadway improvements on a topographic base. The profiles will show existing centerline, proposed centerline and the existing grades 20 feet off the centerline on both sides.
- Preliminary Cost Estimate—A preliminary cost estimate will be provided which will include construction costs and a preliminary estimate of right of way acquisition costs. The preliminary cost estimate will not include utility relocation costs. Utility relocation costs will be provided when they are obtained from the utility companies.
**Task 5—Right of Way Plans**

Nolte will be responsible for obtaining all necessary title reports, parcel maps, records of survey, deeds, etc., as needed to prepare right of way plans. The title company will invoice the county directly for the cost of providing the reports as stated in the RFP.

Nolte will prepare draft right of way plans in accordance with Caltrans’ Standards. The plans will show but not be limited to existing topography, existing utilities, existing and proposed right of way, existing and proposed centerlines, property lines, survey monuments, and proposed temporary and permanent right of way acquisitions. All right of way plans will be submitted to the County for review. The centerline shown on the preliminary right of way plans will be tied down in the field, but lot corners will be from record information only. In addition, the plans will show the square footage of required right of way acquisition for each property.

**Deeds and Legal Descriptions**

Nolte will prepare right of way deeds and legal descriptions as needed for all temporary and permanent right of way acquisition in accordance with County’s format.

**Task 6—70% PS&E Submittal**

Based on comments received from the County’s review of the Preliminary Design Package, Nolte will complete the 70% design.

**70% Plans**

The following plans and documents will be included in the 70% Submittal:

- **Title Sheet**—The Title Sheet and Location Map identify the project and show the location of the project within Mariposa County.
- **Typical Sections**—This sheet shows preliminary typical cross sections for roadways based on the approved standard sections. Cross sections will include the preliminary design of pavement structural sections.
- **Construction Details**—These sheets will be used to illustrate in greater detail items that cannot be adequately shown on the layouts.
- **Plan and Profile Sheets**—These plans will be modified to reflect any changes since the Preliminary Roadway Design. In addition, the plans will show grades at all curb returns, driveways and other areas where grades are critical.
- **Striping Plans**—Nolte will prepare striping plans with the appropriate Caltrans designation for all line types.
- **Construction Cost Estimate**—Nolte will update the preliminary cost estimate for the 70% submittal.

**Task 7—100% PS&E Submittal**

Based on comments received from County review of the 70% Design Package, Nolte will complete the 100% design. The following will be included in the 100% Submittal:

- Title Sheet
- Typical Cross Sections
- Summary of Quantities
- Profiles
- Construction Details
- Grading & Drainage Plans
RECONSTRUCTION OF WHITLOCK ROAD - MARIPosa COUNTY

Work Plan

- Striping Plans
- Final Cost Estimate

100% Design Submittal
Nolte will submit to the County the design (100% PS&E) package consisting of plans, specifications, and final construction cost estimate. The documents submitted will be ready for bid and construction.

Task 8—Bidding Assistance
Nolte will provide assistance, as required, to the County during bidding of the project. The work may include answering questions from prospective bidders, assisting the County in the preparation of addenda to the PS & E during the advertisement period, and providing consultation and interpretation of the construction documents.

Task 9—Construction Services
Nolte will render services during construction including review of Change Orders, RFI’s, clarifications of the plans and specifications, and general consultation. Upon request by the County, Nolte will visit the job site to resolve construction issues and make changes to the design as necessary. Nolte will submit the appropriate documents to the County for approval prior to issuing a change to the contractor’s scope of work.
### FEE/TASK SUMMARY
**WHITLOCK ROAD – MARIPOSA COUNTY**
REVISED 07-29-13

<table>
<thead>
<tr>
<th>TASK</th>
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<tr>
<td>Surveys and Base Map</td>
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<td>Supplemental Survey</td>
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<td>Preliminary Engineering Studies</td>
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<td>Geometric Drawings</td>
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<td>Preliminary Roadway Design</td>
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<td>Right of Way Plans</td>
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<td>70% PS&amp;E Submittal</td>
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<td>Construction Services</td>
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<tr>
<td><strong>TOTAL FEE</strong></td>
<td><strong>$178,044</strong></td>
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Notes:

- This proposal does not include any environmental documentation.
- Geotechnical Study by County
- The extent of existing base R/W mapping available could not be determined at this time. Therefore, the fee shown for Right of Way Plans is a time and materials, not to exceed fee.
EXHIBIT D

CDBG TERMS AND CONDITIONS

1. Effective Date and Commencement of Work

This Agreement is effective upon approval by the Department.

A. The Grantee cannot incur any costs until the execution of the contract unless prior written approval has been given by CDBG management.

B. For certain activities, Grantees must receive the Authority to Use Grant Funds from the Department prior to the commitment and/or commencement of work.

C. A Grantee cannot be reimbursed for any costs until the Department has issued written clearance of all general conditions requirements.

2. Sufficiency of Funds and Termination

A. The Department may terminate this Agreement at any time for cause by giving at least fourteen (14) days written notice to the Grantee. Cause shall consist of violations of any terms and/or special conditions of this Agreement, upon the request of HUD, or withdrawal of the Department's expenditure authority.

B. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays which would occur if this Agreement were executed after the determination was made.

C. This Agreement is valid and enforceable only if sufficient current funds are made available to the Department by the United States Government for the Federal Fiscal Year. In addition, this Agreement is subject to any additional restrictions, limitations, conditions or statute enacted by the Congress or State Legislature, which may affect the provisions, terms or funding of this Agreement in any manner.

D. If Congress does not appropriate sufficient funds for the Program, the Department may amend this Agreement to reflect any reduction in funds, or it may terminate this Agreement by giving fourteen (14) days written notice to the Grantee.

3. Termination for Convenience and Enforcement

A. Except as provided in 24 CFR 85.43, awards may be terminated in whole or in part only as follows:

1) The Department with the consent of the Grantee or Subgrantee in which case the two parties shall agree upon termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

2) By the Grantee or Subgrantee upon written notification to the Department, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the Department determines that the remaining portion of the award
EXHIBIT D

will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either 24 CFR 85.43 or paragraph (A) of this section.

B. Enforcement for noncompliance may include the following remedies if a Grantee or Subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the Department may take one or more of the following actions, as appropriate in the circumstances.

1) Temporarily withhold cash payments pending correction of the deficiency by the Grantee or Subgrantee or more severe enforcement action by the awarding agency.

2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance.

3) Wholly or partly suspend or terminate the current award for the Grantee’s or Subgrantee’s program.

4) Withhold further awards for the program.

5) Take other remedies that may be legally available.

   a. Hearings, appeals. In taking an enforcement action, the awarding agency will provide the Grantee or Subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the Grantee or Subgrantee is entitled under any statute or regulation applicable to the action involved.

   b. Effects of suspension and termination. Costs of Grantee or Subgrantee resulting from obligations incurred by the Grantee or Subgrantee during a suspension or after termination of an award are not allowable unless the Department expressly authorizes them in the notice of suspension or termination or subsequently. Other Grantee or Subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowed if:

1. The costs resulting from obligations which were properly incurred by the Grantee or Subgrantee before the effective date of suspension or termination, are not in anticipation of suspension or termination; and, in the case of a termination, are noncancellable, and,

2. The costs would be allowable if the award was not suspended or expired normally at the end of the funding period in which the termination takes place.

   c. Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not
EXHIBIT D

preclude a Grantee or Subgrantee from being subject to 2 CFR part 2424. CDBG funds may not be provided to excluded or disqualified persons. [24 CFR 570.489(i)]

4. Litigation

A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.

B. The Grantee shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

5. National Objectives

All grant activities performed under this Agreement must meet one of the National Objectives of the HUD regulations as included in the Application authorized under Title I of the Housing and Community Development Act of 1974, as amended.

A. Benefit to HUD defined low- or moderate-income person or household (LMI). The term low- or moderate-income is defined under CDBG as no more than 80 percent of the median area income, as determined by HUD, per Federal Regulation 24 CFR, Part 570.483(b); and/or,

B. Prevention or elimination of Slums or Blight. In order for an activity to meet the National Objective of Slums and Blight, the activity must take place in an area that meets the definition of a Blighted area and the project must be shown to eliminate Blight or prevent further Blight per Federal Regulation 24 CFR, Part 570.483(c). This National Objective may only be used with prior written approval of the Department.

6. Public Benefit for Special Economic Development

Per 24 CFR 482(f) and (g), the Grantee is responsible to demonstrate fulfillment of the Public Benefit requirement for all CDBG Economic Development (ED) activities that involve assistance to for-profit businesses under section 105(a)(17) of The Act. Public Benefit is generally met through the creation or retention of one permanent full-time equivalent job position for each $35,000 in CDBG funds provided directly to an ED project. Unlike the guidelines for project costs and financial requirements covered under paragraph (a) of this section, the use of the standards for Public Benefit is mandatory.

Any activity where the Grantee has not documented meeting Public Benefit requirements will be deemed an ineligible activity, and the Grantee will be required to repay those ineligible project expenses to the Department.

7. Waivers

No waiver or any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this CDBG Program
EXHIBIT D

Agreement or to require at any time performance by the Grantee of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

8. Uniform Administrative Requirements

The Grantee shall comply with applicable Uniform Administrative Requirements [24 CFR Part 85] as described in 24 CFR, 570.483(d).

9. Non-Performance

In the event that the National Objective and/or Public Benefit requirements are not met, the Department may, in its sole discretion, impose any or all of the following remedies: recapture of part or all of the PI; reimbursement of part or all of the grant amount; and/or exclusion of the Grantee from further CDBG funding for a period of time to be determined by the Department.

Prior to closing out this Agreement, the Department shall review the actual National Objective and/or Public Benefit achievements of the Grantee.

10. Affirmatively Furthering Fair Housing

The Grantee will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

11. Equal Opportunity Requirements and Responsibilities

A. Title VI of the Civil Rights Act of 1964: This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.

B. Title VII of the Civil Rights Act of 1968 (The Fair Housing Act): This Act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promotes fair housing.

C. Restoration Act of 1987: This Act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity which does not directly benefit from such assistance.

D. Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 5305]: This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.

E. The Fair Housing Amendment Act of 1988: This Act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities.
strengthened punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in Federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.

F. The Housing for Older Persons Act of 1995 (HOPA): Retained the requirement that the housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. The Act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 or older.

G. The Age Discrimination Act of 1975: This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving Federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the law. Federal law preempts any State law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 Paragraph 11; 101 KAR 1:375 Paragraph 2(3); 101 KAR 2:085 Paragraphs 6 and 7.

H. Section 504 of the Rehabilitation Act of 1973: It is unlawful to discriminate based on disability in Federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.

I. The Americans with Disabilities Act of 1990 (ADA): This Act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

J. Executive Order 11063: This Executive Order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.

K. Executive Order 11259: This Executive Order provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.

L. The Equal Employment Opportunity Act: This Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964.
EXHIBIT D

M. The Immigration Reform and Control Act (IRCA) of 1986: Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (1-9).

N. The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of Federal laws prohibiting discriminatory employment.

O. The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002): This Act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.

P. Executive Order 11246: This Executive Order applies to all Federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.

12. The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance (Section 3)

The Grantee will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing Regulations at 24 CFR, Part 135. The responsibilities of the Grantee are outlined in 24 CFR Part 135.32 as follows:

A. Implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.

B. Notifying potential contractors for Section 3 covered projects of the requirements of this Part, and incorporating the Section 3 clause set forth in Section 135.38 in all solicitations and contracts.

C. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as described in the Appendix to this Part, as appropriate, to reach the goals set forth in Section 135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents and contract award to Section 3 business concerns that exceed those specified in Section 135.30.

D. Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this Part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR Part 135.
E. Documenting actions taken to comply with the requirements of this Part, the results of those actions taken and impediments, if any.

F. A Grantee which distributes funds for Section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in Section 135.30 regardless of the number of local governments receiving funds from the Section 3 covered assistance which meet the thresholds for applicability set forth at Section 135.30. The State must inform units of local government to whom funds are distributed of the requirements of this Part; assist local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this Part.

13. Environmental Compliance

The Grantee shall have satisfied all National Environmental Policy Act (NEPA) requirements and California Environmental Quality Act (CEQA) requirements. CEQA shall be approved by the Grantee. The level of compliance varies by activity. NEPA review must be completed by the Grantee for each activity and approved in writing by Department staff prior to incurring costs on the grant activity(ies).

14. Clean Air and Water Acts

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR, Part 15, as amended from time to time.

15. Relocation, Displacement, and Acquisition

The provisions of the Uniform Relocation Act, as amended, 49 CFR, Part 24, and Section 104(d) of the Housing and Community Development Act of 1974 shall be followed where any acquisition of real property is carried out by the Grantee and assisted in whole or in part by funds allocated by CDBG. For projects where there will be temporary or permanent displacement, the Grantee must submit signed General Information Notices (GINs) from each tenant who was residing in the project at the time of Application submittal. If a Grantee believes that there will be no displacement as a result of their activities, they must submit a letter explaining why no displacement or relocation will occur, which will be subject to written approval by the Department.

16. Compliance with State and Federal Laws and Regulations

A. The Grantee agrees to comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Grantee, its Subgrantees, contractors or subcontractors, and the grant activity, as well as any other State provisions as set forth in Exhibits C.

B. The Grantee agrees to comply with all Federal laws and regulations applicable to the CDBG Program and to the grant activity(ies), and with any other Federal provisions as set forth.
17. **Federal Labor Standards Provisions**

A. **Davis-Bacon Act (40 U.S.C. 3141-3148)** requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of Federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over $2,000.

B. "**Anti-Kickback Act of 1986** (41 U.S.C. 51-58) The Act prohibits attempted as well as completed "kickbacks," which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The Act also provides that the inclusion of kickback amounts in contract prices is prohibited conduct in itself. This Act requires that the purpose of the kickback was for improperly obtaining or rewarding favorable treatment. It is intended to embrace the full range of government contracting.

C. **Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702)** requires that workers receive "overtime" compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.

D. **Title 29, Code of Federal Regulations CFR, Subtitle A, Parts 1, 3 and 5** are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

The Grantee shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request.

18. **Prevailing Wages**

A. Where funds provided through this Agreement are used for construction work, or in support of construction work, the Grantee shall ensure that the requirements of California Labor Code (LC), Chapter 1, commencing with Section 1720, Part 7 [California Labor Code Section 1720-1743] (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

B. For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "construction contract"). Where the construction contract will be between the Grantee and a licensed building contractor, the Grantee shall serve as the "awarding body" as that term is defined in the LC. Where the Grantee will provide funds to a third party that will enter into the construction contract with a licensed building contractor, the third party shall serve as the "awarding body." Prior to any disbursement of funds, including but not limited to release of any final retention payment, the Department may require a certification from the awarding body that prevailing wages have been or will be paid.

19. **Lead Based Paint Hazards**

CDBG Program
EXHIBIT D

Activity(ies) performed with assistance provided under this Agreement are subject to lead-based paint hazard regulations contained in Title 8 (Industrial Relations) and Title 17 (Public Health) of the CCR and 24 CFR, Part 35 (Lead Disclosure). Any grants or loans made by the Grantee with assistance provided under this Agreement shall be made subject to the provisions for the elimination or mitigation of lead-based paint hazards under these Regulations. The Grantee shall be responsible for the notifications, inspections, and clearance certifications required under these Regulations.

20. Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials

Pursuant to 24 CFR 570.489(h), no member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect to a CDBG-assisted activity or its proceeds, either for themselves or those with whom they have business or immediate family ties, during their tenure, or for one (1) year thereafter. The Grantee shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

21. Conflict of Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

22. Anti-Job Pirating Certification

Job pirating prohibition on use of CDBG assistance for employment relocation activities - (1) Prohibition. CDBG funds may not be used to directly assist a business, including a business expansion, in the relocation of a plant, facility, or operation from one labor market area (LMA) to another LMA if the relocation is likely to result in a significant loss of jobs in the LMA from which the relocation occurs. Job loss of more than 500 employees is always considered significant. Job loss of 25 or fewer positions is never considered significant. [24 CFR 570.482(h)]

23. Anti-Lobbying Certification

The Grantee shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this grant activity(ies) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and no more than $100,000 for such failure.

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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
EXHIBIT D

of Congress in connection with the awarding of any Federal contract, the cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

24. Bonus or Commission, Prohibition Against Payments of

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of:

A. Obtaining the Department's approval of the Application for such assistance; or,

B. The Department's approval of the Applications for additional assistance; or,

C. Any other approval or concurrence of the Department required under this Agreement, Title I of the Housing and Community Development Act of 1974, or the State regulations with respect thereto; provided, however, that reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

25. Contractors and Subrecipients

A. The Grantee shall not enter into any agreement, written or oral, with any contractor or subrecipient without the prior determination that the contractor or subrecipient is eligible to receive CDBG funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

1) Contractors are defined as program operators or construction contractors who are procured competitively.

2) Subrecipients are defined as public or private non-profit agencies or organizations and certain (limited) private for-profit entities who receive CDBG funds from an awarded jurisdiction to undertake eligible activities.

B. An agreement between the Grantee and any contractor or subrecipient shall require:

1) Compliance with the applicable State and Federal requirements described in this Agreement, which pertain to, among other things, labor standards, non discrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug-Free Workplace; and, Compliance with the applicable provisions relating to Labor Standards/Prevailing Wages. In addition to these requirements, all contractors and subcontractors shall comply with the applicable provisions of the California Labor Code.

2) Maintenance of at least the minimum State-required Workers' Compensation
EXHIBIT D

Insurance for those employees who will perform the grant activity(ies) or any part of it.

3) Maintenance, if so required by law, unemployment insurance, disability insurance and liability insurance, which is reasonable to compensate any person, firm, or corporation, who may be injured or damaged by the contractor, or any subcontractor in performing the grant activity(ies) or any part of it.

4) Compliance with the applicable Equal Opportunity Requirements described in Exhibit D, Section 11 of this Agreement.

C. Contractors shall:

1) Perform the grant activity(ies) in accordance with Federal, State and local housing and building codes, as are applicable.

2) Provide security to assure completion of the project by furnishing the borrower and construction lenders with Performance and Payment Bonds, or other security approved in advance in writing by the Department.

D. Subrecipients shall:

1) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a minimum period of five (5) years after HCD notifies the Grantee that the HUD/HCD contract has been closed.

2) Permit the State, Federal government, the Bureau of State Audits, the Department and/or their representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to the agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

E. Contractors and Subrecipients: Drug-Free Workplace Act of 1988

1) All organizations covered by the Drug-Free Workplace Act of 1988 are required to provide a drug-free workplace by taking the following steps:

2) Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.

3) Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.

4) Notify employees that as a condition of employment on a Federal contract or grant, the employee must a) abide by the terms of the policy statement; and b) notify the employer, within (5) five calendar days, if he or she is convicted of a criminal drug violation in the workplace.
EXHIBIT D

5) Notify the contracting or granting agency within 10 (ten) days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.

6) Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.

Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the Act.

26. Insurance

The Grantee shall have and maintain in full force and effect during the term of this Agreement such forms of insurance, at such levels as may be determined by the Grantee and the Department to be necessary for specific components of the grant activity(ies) described in Exhibit A.

27. Periodic Reporting Requirements

During the term of this Agreement, the Grantee must submit the following reports by the dates identified, respectively, or as otherwise required at the discretion of the Department. The Grantee’s performance under this Agreement will be based in part on whether it has submitted the reports on a timely basis.


B. Annual Grantee Performance Report (GPR): Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.

C. Annual Section 3 Reports: Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.

D. Annual Minority Owned Business/Women Owned Business (MBE/WBE) Report: Submit by July 31 starting from the contract effective date to subsequent June 30, and for each State fiscal year.

E. Wage Compliance Reports: Semi-annual Wage Compliance Reports are to be submitted by October 7 and April 7 during the entire construction period. The final Wage Compliance Report is to be submitted thirty (30) days after construction is completed.

F. Funds Request Form: Submit a Funds Request Form (minimum $1,000) as funds are needed.

The Department reserves the right to request any other reports that may be necessary for the implementation of this Agreement.

28. Monitoring Requirements

The Department shall perform a program and/or fiscal monitoring of the grant activity(ies). The Grantee shall be required to resolve any monitoring findings to the Department’s satisfaction by the deadlines set by the Department. If findings are not adequately resolved in a timely manner, the Department may deduct points from the Grantee’s performance score on future applications. CDBG Program
EXHIBIT D

In determining appropriate monitoring for each grant, the Department shall consider prior grant administration, audit findings, as well as factors such as complexity of the project and the amount of funding. The Department shall determine the areas to be monitored, the number of monitoring visits, and their frequency. The monitoring will address program compliance with contract provisions, including but not limited to National Objective, financial management, the requirements of HCDA. 24 CFR, Part 85, 24 CFR 570 Part I, and all applicable Federal overlay requirements.

29. **Inspections of Grant Activity**

The Department reserves the right to inspect any grant activity(ies) performed hereunder to verify that the grant activity(ies) is being and/or has been performed in accordance with the applicable Federal, State and/or local requirements and this Agreement.

A. The Grantee shall inspect any grant activity performed by contractors and subrecipients hereunder to ensure that the grant activity(ies) is being and has been performed in accordance with the applicable Federal, State and/or local requirements and this Agreement.

B. The Grantee agrees to require that all grant activity(ies) found by such inspections not to conform to the applicable requirements be corrected, and to withhold payment to its contractor or subcontractor, respectively, until it is so corrected.

30. **Access**

Access by the Grantee, the Subgrantee, the Federal grantor agency, the State, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions pursuant to 24 CFR 85.36(i)(10).

31. **Audit/Retention and Inspection of Records**

A. The Grantee must have intact, auditable fiscal and program records at all times. If the Grantee is found to have missing audit reports from the California State Controller’s Office (SCO) during the term of this Agreement, the Grantee will be required to submit a plan to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met, the Grantee will be subject to termination of this Agreement and disencumbrance of the funds awarded. The Grantee’s audit completion plan is subject to prior review and approval by the Department.

B. The Grantee agrees that the Department or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Grantee agrees to provide the Department or its designee with any relevant information requested and shall permit the Department or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with
EXHIBIT D

California Public Contract Code (PCC) Section 10115 et seq., Government Code (GC) Section 8546.7 and 2 CCR 1896.60 et seq. The Grantee further agrees to maintain such records for a minimum period of five (5) years after HCD notifies Grantee that the HUD/HCD contract has been closed. The Grantee shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC 10115.10.

C. An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Grantee. Expenditures for grant activity(ies) not described in Exhibit A shall be deemed authorized if the performance of such grant activity(ies) is approved in writing by the Department prior to the commencement of such grant activity(ies).

D. Absent fraud or mistake on the part of the Department, the determination by the Department of the allowability of any expenditure shall be final.

E. For the purposes of annual audits under OMB Circular A-133, Grantee shall use the Federal Catalog number 14.228 for the State CDBG Program.

F. Pursuant to OMB Circular A-133, the Grantee shall perform an annual audit at the close of each fiscal year in which this Agreement is in effect. Audit costs for this Agreement are a general administration expense and are subject to the general administration expenditure limits associated with this Agreement. The costs of the CDBG-related portion of the audit may be charged to the Program in accordance with Public Law 98-502, OMB Circular A-133, and Section 7122 of Title 25 CCR.

G. Notwithstanding the foregoing, the Department will not reimburse the Grantee for any audit cost incurred after the expenditure deadline of this Agreement.

1) The audit shall be performed by a qualified State, Department, local or independent auditor. The agreement/contract for audit shall include a clause which permits access by the Department to the independent auditor's working papers.

2) If there are audit findings, the Grantee must submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends and the Department will notify the Grantee in writing. If the Department is not in agreement, the Grantee will be contacted in writing and informed what corrective actions must be taken. This action may include the repayment of disallowed costs or other remediation.

3) The Department shall not approve reimbursement for any expenditures for the audit, prior to receiving an acceptable audit report.

4) If so directed by the Department upon termination of this Agreement, the Grantee shall cause all records, accounts, documentation and all other materials relevant to the grant activity(ies) to be delivered to the Department as depository.

32. Signs

CDBG Program
EXHIBIT D

If the Grantee places signs stating that the Department is providing financing, it shall indicate in a typeface and size commensurate with the Department’s funding portion of the project that the Department is a source of financing through the CDBG Program.

33. Citizen Participation

The Grantee is subject to the requirements concerning citizen participation contained in Federal Regulations at 24 CFR, Part 570.486, Local Government Requirements, Part 91.105 and 91.115.

34. Flood Disaster Protection

A. This Agreement is subject to the requirements of the Flood Disaster Protection Act (FDPA) of 1973 (Public Law 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under FDPA, Section 3(e) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to FDPA, Section 102(d) of said Act.

B. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program shall be subject to the mandatory purchase of flood insurance requirements of FDPA, Section 102(a) of said Act.

C. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain certain provisions. These provisions will apply if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq.

D. These provisions shall obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under FDPA, Section 102(s) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

35. Procurement

The Grantee shall comply with the procurement provisions in 24 CFR, Part 85.36, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

36. Program income

Program Income (PI) means gross income earned by the Grantee from grant-funded activities and is subject to CDBG regulatory requirements pursuant to 24 CFR, Part 570.489(e) - Program Administrative Requirements as amended in the CDBG Final Rule, 24 CFR, Part 85 - Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments, and OMB Circulars A-87 and A-122 as CDBG Program.
EXHIBIT D

applicable. These regulations include the requirement that the Grantee record receipt and expenditure of PI as part of the financial transactions of the grant activity(ies).

37. **Program Income Reuse Plan**

The Grantee must submit a copy of its plan for administering PI. The plan must include a discussion of how the Grantee will collect and disburse PI for CDBG eligible activities. The Grantee must adopt the most current CDBG PI reuse plan provided by the Department.

38. **Obligations of Grantee with Respect to Certain Third Party Relationships**

The Grantee shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Program with respect to which assistance is being provided under this Agreement to the Grantee. The Grantee shall comply with all lawful requirements of the Department necessary to ensure that the Program, with respect to which assistance is being provided under this Agreement to the Grantee, is carried out in accordance with the Department's Assurance and Certifications, including those with respect to the assumption of environmental responsibilities of the Department under Section 104(g) of the Housing and Community Development Act of 1974 [42 U.S.C. 5304(g)].


This Agreement is subject to mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).