

SUBRECIPIENT AGREEMENT
BETWEEN THE
NEVADA COUNTY TRANSPORTATION COMMISSION
AND
NEVADA COUNTY

FOR LOCAL AGENCY PARTICIPATION IN THE REGIONAL TRANSPORTATION PLANNING PROCESS, AND PREPARATION OF THE NEVADA COUNTY COLLISION ANALYSIS & SAFETY STUDY AND THE NEVADA COUNTY ROUGH & READY HIGHWAY/RIDGE ROAD INTERSECTION FEASIBILITY STUDY DURING FISCAL YEAR 2017/18

THIS SUBRECIPIENT AGREEMENT is made and entered into effective July 1, 2017, by and between NEVADA COUNTY (“Subrecipient”), and the **NEVADA COUNTY TRANSPORTATION COMMISSION** (“NCTC”), the Regional Transportation Planning Agency for Nevada County, California.

WHEREAS, NCTC has been awarded Rural Planning Assistance (RPA) and State Transportation Improvement Program (STIP) Planning, Programming, and Monitoring (PPM) funds administered through the California Department of Transportation (“Caltrans”), to implement and support regional transportation planning activities; and

WHEREAS, Subrecipient is eligible to apply for and receive state and federal financial assistance as a public body corporate and politic of the State of California; and

WHEREAS, Subrecipient has agreed to participate with NCTC, local and state agencies, the general public, and the private sector in planning efforts to identify and plan policies, strategies, programs and actions that maximize and implement the regional transportation infrastructure, consistent with NCTC’s adopted Overall Work Program, and to participate in the regional planning process; and

WHEREAS, the parties wish to enter into this Subrecipient Agreement (“Agreement”) to document the terms and conditions of NCTC’s reimbursement to Subrecipient for Subrecipient’s services.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Scope of Work: Subrecipient will participate in the activities identified in “Exhibit A”, attached hereto and incorporated herein by this reference (hereinafter “Project”). Exhibit A includes a detailed scope of the work to be performed by Subrecipient, as well as Project deliverables, a timeline, and budget. Any proposed amendment to Exhibit A must be agreed to in advance by the parties pursuant to a written amendment in accordance with Section 11 and is subject to approval by Caltrans, FHWA or any other federal or state agency having jurisdiction.
2. Time of Performance:
 - a. Subrecipient will commence work upon the effective date of this Agreement and will complete work as expeditiously as is consistent with generally accepted standards of professional skill and care and the orderly progress of work.

Subrecipient agrees to follow, and to require its consultants to follow, the timeline identified in Exhibit A. If a substantive change to the identified timeline is desired, Subrecipient's Project Manager will provide an immediate written request for approval to NCTC's Project Manager, including the reasons for the requested change. Approval by NCTC's Project Manager will not be unreasonably withheld.

- b. All work will be completed and this Agreement will expire on **June 30, 2018** unless otherwise terminated as provided for in this Agreement or extended by written agreement between the parties, which agreement is subject to approval by Caltrans, FHWA or any other federal or state agency having jurisdiction.
3. **Compliance with Laws:** Subrecipient will comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, circulars, and directives, including, without limitation, all federal regulatory requirements associated with the applicable federal funding.
4. **Funding Amount:** Under this Agreement, Subrecipient will be reimbursed by NCTC for Subrecipient's staff time related to the Project. Subrecipient will also be reimbursed for all related consultant invoices paid by Subrecipient. NCTC shall pay Subrecipient in full for all services performed pursuant to this Agreement, a total sum not to exceed **One Hundred Seventeen Thousand Five Hundred Dollars (\$117,500)**. Subrecipient will not perform work, nor be required to perform work, outside those services specified in this Agreement or which would result in billings in excess of **\$117,500**, without the prior written agreement of both parties. In no instance will NCTC be liable for any unauthorized or ineligible costs.
5. **Reporting and Payment:**
 - a. On a quarterly basis, Subrecipient will provide NCTC with both a written report on the progress made on the Scope of Work in Exhibit A and an invoice for reimbursement pursuant to Subsection 5(b) of this Agreement.
 - b. Payments to Subrecipient will be made in arrears. Subrecipient will submit a detailed and properly documented invoice for reimbursement not more often than quarterly, which will include the following: (i) a description of the work performed, (ii) a detailed accounting of costs incurred, and (iii) evidence that Subrecipient has already incurred costs for the project.
 - c. Subrecipient will be notified within ten (10) business days following receipt of its invoice by NCTC of any circumstances or data identified in Subrecipient's invoice that would cause withholding of approval and subsequent payment. Subrecipient's invoice will include documentation of reimbursable expenses and billed items sufficient for NCTC, in its opinion, to substantiate billings. NCTC reserves the right to withhold payment of disputed amounts.
 - d. Subrecipient agrees that the Contract Cost Principles and Procedures, found in 2 CFR, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Chapter I Part 200 et seq (formerly found in the Office of Management and Budget Circular A-87, Revised "Cost Principles for

State, Local, and Indian Tribal Governments”) will be used to determine the allowability of individual items of cost.

- e. NCTC also agrees to comply with Federal procedures in 49 CFR, Part 18, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.”
 - f. Any costs for which payment has been made to NCTC that are determined by subsequent audit or are otherwise determined to be unallowable under 2 CFR, Chapters I and II, Parts 200, 215, 220, 225, and 230 (formerly set forth in 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.; Office of Management and Budget Circular A-87, Revised “Cost Principles for State, Local, and Indian Tribal Governments”; or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), 23 CFR, and any other applicable State or Federal Regulations, are subject to repayment by Subrecipient to NCTC. Disallowed costs must be reimbursed to NCTC within sixty (60) days unless NCTC approves in writing an alternative repayment plan.
 - g. Subrecipient shall comply with, and shall require its subcontractors to comply with, the requirements for non-State employee travel and subsistence (per diem) expenses found in the California Department of Transportation (“Caltrans”) Travel Guide, Non-State Employee Travel (referencing the current California Department of Personnel Administration rules) at the following link: <http://www.dot.ca.gov/hq/asc/travel/index.htm>. Lodging rates shall not exceed rates authorized to be paid non-State employees unless written verification is supplied that such rates are not commercially available to Contractor and/or its subcontractors at the time and location required as specified in the Caltrans Travel Guide Exception Process.
 - h. Subrecipient and subcontractors shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) which segregates and accumulates reasonable, allowable, and allocable costs and matching funds for work elements by line item and produces quarterly reports which clearly identify reimbursable costs and other expenditures and shall provide support for all invoices sent to NCTC.
 - i. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, will contain all of the provisions of Subsections 5(e) through 5(h) above.
6. Independent Contractor: Subrecipient, and the agents and employees of Subrecipient, in the performance of this Agreement, will act as and be independent contractors and not officers or employees or agents of NCTC. Subrecipient, its officers, employees, agents, and subcontractors, if any, will have no power to bind or commit NCTC to any decision or course of action, and will not represent to any person or business that they have such power. Subrecipient has and will retain the right to exercise full control of the supervision of the work and over the employment, direction, compensation and discharge of all persons assisting Subrecipient in the performance of work funded by this Agreement. Subrecipient will be solely responsible for all matters relating to the payment of its employees and

contractors, including but not limited to compliance with all laws, statutes, and regulations governing such matters.

7. Termination:

- a. Either party may terminate this Agreement for any reason, with or without cause, at any time, by giving the other party fifteen (15) days written notice. The notice will be deemed served and effective for all purposes on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to the other party at the address indicated in Section 15 below.
 - b. If either party issues a notice of termination, NCTC will reimburse Subrecipient for work actually performed up to the effective date of the notice of termination, subject to the limitations in Section 5 and less any compensation to Subrecipient for damages suffered as a result of Subrecipient's failure to comply with the terms of this Agreement.
 - c. Subrecipient will have the right to terminate this Agreement in the event NCTC is unable to make required payments, including, without limitation, a failure of Caltrans to appropriate funds. In such event, Subrecipient will provide NCTC with seven (7) days written notice of termination. The notice will be deemed served and effective on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to NCTC at the address indicated in Section 15. NCTC will make payment to Subrecipient through the date of termination, subject to the provisions of Section 5 above including, but not limited to, the provisions of Subsection 5(d).
8. Assignment: The parties understand that NCTC entered into this Agreement based on the Project proposed by Subrecipient. Therefore, without the prior express written consent of NCTC, this Agreement is not assignable by the Subrecipient either in whole or in part.
9. Binding Agreement: This Agreement will be binding on the parties hereto, their assigns, successors, administrators, executors, and other representatives.
10. Time: Time is of the essence in this Agreement and will follow the timeline set forth in the Scope of Work in Exhibit A, unless modified pursuant to Section 11.
11. Amendments: No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, will be binding on any of the parties hereto.
12. Contractors and Subcontractors: Subrecipient will be fully responsible for all work performed by its contractors and subcontractors.
- a. NCTC reserves the right to review and approve any contract or agreement to be funded in whole or in part using funds provided under this Agreement.
 - b. Any contract or subcontract to be funded in whole or in part using funds provided under this Agreement will require the contractor and its subcontractors, if any, to:

- (1) Comply with applicable state and federal requirements that pertain to, among other things, labor standards, non-discrimination, the Americans with Disabilities Act, Equal Employment Opportunity, Drug-Free Workplace, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000, *et seq.*, 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and 2 CFR, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Chapters I and II, Parts 200, 215, 220, 225, and 230.
- (2) Maintain at least the minimum state-required Workers' Compensation Insurance for those employees who will perform the work or any part of it.
- (3) Maintain unemployment insurance and disability insurance as required by law, along with liability insurance in an amount that is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the Subrecipient or any subcontractor in performing work associated with this Agreement or any part of it.
- (4) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a period of three (3) years from the date of termination of this Agreement, or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.
- (5) Permit NCTC and/or its representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to this Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.
- (6) Comply with all applicable requirements of Title 49, Part 26 of the Code of Federal Regulations, as set forth in Section 28.

13. Indemnity: Subrecipient specifically agrees to indemnify, defend, and hold harmless NCTC, its directors, officers, agents, and employees (collectively the "Indemnitees") from and against any and all actions, claims, demands, losses, costs, expenses, including reasonable attorneys' fees and costs, damages, and liabilities (collectively "Losses") arising out of or in any way connected with the performance of this Agreement, excepting only Losses caused by the sole, active negligence or willful misconduct of an Indemnitee. Subrecipient shall pay all costs and expenses that may be incurred by NCTC in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this Section shall survive the expiration, termination, or assignment of this Agreement.

14. Audit, Retention and Inspection of Records:

- a. NCTC or its designee, including but not limited to any State or Federal agency, will have the right to review, obtain, copy, and audit all books, records, computer records, accounts, documentation, and any other materials (collectively "Records") pertaining to performance of this Agreement, including any Records in the possession of any contractors or subcontractors. Subrecipient agrees to provide

NCTC or its designee with any relevant information requested and will permit NCTC or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of interviewing employees and inspecting and copying such Records for the purpose of determining compliance with any applicable federal and state laws and regulations. Subrecipient further agrees to maintain such Records for a period of three (3) years after final payment under the Agreement, or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.

- b. If so directed by NCTC upon expiration of this Agreement, Subrecipient will cause all Records relevant to the Scope of Work to be delivered to NCTC as depository.
15. **Project Managers:** NCTC's Project Manager for this Agreement is **Daniel B. Landon**, unless NCTC otherwise informs Subrecipient in writing. With the exception of notice of termination sent by certified mail pursuant to Section 7 above, any notice, report, or other communication required by this Agreement will be mailed by first-class mail to the NCTC's Project Manager at the following address:

Daniel B. Landon, Executive Director
Nevada County Transportation Commission
101 Providence Mine Road, Suite 102
Nevada City, California 95959
Telephone: (530) 265-3202

Subrecipient's Project Manager for this Agreement is **Joshua Pack**. No substitution of Subrecipient's project manager is permitted without prior written agreement by NCTC, which agreement will not be unreasonably withheld. With the exception of notice of termination sent by certified mail pursuant to Section 7(a) above, any notice, report, or other communication to Subrecipient required by this Agreement will be mailed by first-class mail to:

Joshua Pack, Principal Civil Engineer
Nevada County Department of Public Works
950 Maidu Avenue
Nevada City, California 95959
Telephone: (530) 265-7059

16. **Successors:** This Agreement will be binding on the parties hereto, their assigns, successors, administrators, executors, and other representatives.
17. **Waivers:** No waiver of any breach of this Agreement will be held to be a waiver of any prior or subsequent breach. The failure of NCTC to enforce at any time the provisions of this Agreement or to require at any time performance by the Subrecipient of these provisions, will in no way be construed to be a waiver of such provisions, nor to affect the validity of this Agreement or the right of NCTC to enforce these provisions.
18. **Litigation:** Subrecipient will notify NCTC immediately of any claim or action undertaken by it or against it that affects or may affect this Agreement or NCTC, and will take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of NCTC.

19. Americans with Disabilities Act (ADA) of 1990: By signing this Agreement, Subrecipient assures NCTC that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. Subrecipient also agrees that it will award no construction contract unless its plans and specifications for such facilities conform to the provisions of California Government Code section 4450 and 4454, if applicable.
20. Compliance with Non-discrimination and Equal Employment Opportunity Laws: It is NCTC's policy to comply with state and federal laws and regulations including Title VI of the Civil Rights Act of 1964, ADA, and other federal discrimination laws and regulations, as well as the Unruh Civil Rights Act of 1959, the California Fair Employment and Housing Act, and other California State discrimination laws and regulations. NCTC does not discriminate on the basis of race, color, sex, creed, religion, national origin, age, marital status, ancestry, medical condition, disability, sexual orientation or gender identity in conducting its business. NCTC prohibits discrimination by its employees, Subrecipient, and Subrecipient's contractors and consultants.

Subrecipient hereby certifies, under penalty of perjury under the laws of California, that it complies with, and that Subrecipient will require that its contractors and subcontractors comply with, the following non-discrimination and equal opportunity laws. Any failure by Subrecipient to comply with these provisions shall constitute a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as NCTC may deem appropriate.

- a. Subrecipient and its contractors and subcontractors shall comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., with U.S. D.O.T. regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act", 49 C.F.R. Part 21, and with any applicable implementing federal directives that may be issued.
- b. Subrecipient and its contractors and subcontractors shall comply with all applicable equal employment opportunity (EEO) provisions of 42 U.S.C. §§ 2000e, implementing federal regulations, and any applicable implementing federal directives that may be issued. Subrecipient and its contractors and subcontractors shall ensure that applicants and employees are treated fairly without regard to their race, color, creed, sex, disability, age, or national origin.
- c. Subrecipient and its contractors and subcontractors will act in accordance with Title VI and will not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religion, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age or marital status. Subrecipient and its contractors and subcontractors will insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Subrecipient and its contractors and subcontractors will comply with all applicable federal and state employment

laws and regulations including, without limitation, the provisions of the California Fair Employment and Housing Act (Government Code § 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0, et seq.), as well as Title 2, California Administrative Code, Section 8103. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §§ 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Subrecipient and its contractors and subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- d. Subrecipient and its contractors will include the non-discrimination and equal employment opportunity provisions of this section (provisions a. through c. above) in all contracts to perform work funded under this Agreement.

21. Drug-Free Certification: By signing this Agreement, Subrecipient hereby certifies under penalty of perjury under the laws of the State of California that Subrecipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The person's or the organization's policy of maintaining a drug-free workplace;
 - (3) Any available counseling, rehabilitation, and employee assistance programs; and
 - (4) Penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee of Subrecipient who works under this Agreement will:
 - (1) Receive a copy of Subrecipient's Drug-Free Workplace Policy Statement; and
 - (2) Agree to abide by the terms of Subrecipient's Statement as a condition of employment on this Agreement.

22. Union Organizing: By signing this Agreement, Subrecipient hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.

- a. Subrecipient will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.

- b. Subrecipient will not meet with employees or supervisors on NCTC or state property if the purpose of the meeting is to assist, promote, or deter union organizing, unless the property is equally available to the general public for meetings.

23. Prohibition of Expending State or Federal Funds for Lobbying:

- a. Subrecipient certifies, to the best of its knowledge or belief, that:
 - (1) No State or Federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds, other than Federally appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal Agreement, Subrecipient will 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 entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- c. Subrecipient also agrees by signing this Agreement that it will require that the language of this certification be included in all lower tier contracts and subcontracts.

24. Prevailing Wage and Labor Requirements:

- a. Should Subrecipient award any construction contracts utilizing Federal funds under this Agreement, Subrecipient agrees to comply with all pertinent statutes, rules and regulations promulgated by the federal government including, but not limited to, (i) prevailing wage requirements of the Davis Bacon Act (40 U.S.C. §276a, *et seq.*) and related regulations (29 CFR Part 5); (ii) anti-kick back and payroll records requirements of the Copeland "Anti-Kickback" Act (40 U.S.C. §276c and 18 U.S.C. §874) and related regulations (29 CFR Part 3); and (iii) workweek computation and overtime requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. §327-333) and related regulations (29 CFR Part 5).

- b. Should Subrecipient award any “public work” contract, as defined by California Labor Code Section 1720, utilizing State funds under this Agreement, Subrecipient agrees to comply with all pertinent California statutes, rules, and regulations including, but not limited to, prevailing wage provisions of Labor Code Section 1771.
 - c. Any contract or subcontract entered into as a result of this Agreement will contain all of the provisions of this section.
25. Disadvantaged Business Enterprise (DBEs) Participation: This Agreement is subject to, and Subrecipient agrees to comply with, Title 49, Part 26 of the Code of Federal Regulations (CFR) entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Financial Assistance Programs.” DBE’s and other small businesses, as defined in Title 49 CFR Part 26, are encouraged to participate in the performance of agreements financed in whole or in part with federal funds; however, DBE participation is not a condition of award. Subrecipient agrees to complete the NCTC DBE Information Form so that NCTC may compile statistics for federal reporting purposes. The NCTC DBE Information Form is attached hereto as “Exhibit B” and incorporated herein by this reference.
- a. Non-Discrimination: Subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Subrecipient shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure by Subrecipient to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as NCTC deems appropriate.
 - b. Prompt Payments to DBE and Non-DBE Subcontractors: Subrecipient shall insert the following clauses in any contract funded under this Agreement:
 - (1) A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-day rule is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30-days may take place only for good cause and with Subrecipient 's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
 - (2) Subrecipient shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by

Subrecipient of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30-days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by Subrecipient. Any delay or postponement of payment may take place only for good cause and with Subrecipient's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

- c. Records: Subrecipient shall maintain records of all contracts and subcontracts entered into with certified DBEs and records of materials purchased from certified DBE suppliers. The records shall show the name and business address of each DBE contractor, subcontractor or vendor and the total dollar amount actually paid each DBE contractor, subcontractor or vendor. The records shall show the date of payment and the total dollar figure paid to all firms. Upon completion of the contract, a summary of these records shall be prepared and submitted to NCTC.

- d. Termination of a DBE: In conformance with 49 CFR Section 26.53:
 - (1) Subrecipient shall not permit its contractor to terminate a listed DBE subcontractor unless the contractor has received prior written authorization from Subrecipient's Project Manager. Subrecipient's Project Manager will authorize termination only if the Project Manager determines that the contractor has good cause to terminate the DBE subcontractor. As used in this Section, "good cause" includes those circumstances listed in 49 CFR Section 26.53(f)(3).

 - (2) Prior to requesting Subrecipient's authorization to terminate and/or substitute a DBE subcontractor, the contractor shall give notice in writing to the DBE subcontractor, with a copy to Subrecipient, of its intent to request termination and/or substitution, and the reason for the request. The DBE subcontractor shall have five days to respond to the contractor's notice and state the reasons, if any, why it objects to the proposed termination of its subcontract and why Subrecipient should not approve the contractor's action. Subrecipient may, in instances of public necessity, approve a response period shorter than five days.

 - (3) If a DBE subcontractor is terminated or fails to complete its work for any reason, the contractor shall be required to make good faith efforts to replace the original DBE subcontractor with another DBE.

- e. DBE Certification and Decertification: If a DBE subcontractor is decertified during the life of the contract, the decertified subcontractor shall notify the contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the contract, the subcontractor shall notify the contractor in writing with the date of certification. The contractor shall then provide to Subrecipient 's Project Manager written documentation indicating the DBE's existing certification status.
 - f. Noncompliance by Subrecipient: Subrecipient's failure to comply with any requirement of this Section is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as NCTC may deem appropriate.
 - g. Any contract entered into by Subrecipient as a result of this Agreement shall contain all of the provisions of this Section.
26. Non-Liability of NCTC: NCTC shall not be liable to Subrecipient or any third party for any claim for loss of profits or consequential damages. Further, NCTC shall not be liable to Subrecipient or any third party for any loss, cost, claim or damage, either direct or consequential, allegedly arising from a delay in performance or failure to perform under this Agreement.
27. Debarment Responsibilities: Subrecipient agrees that it will comply with the provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or placement in ineligibility status.
28. Costs and Attorneys' Fees: If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and reasonable attorneys' fees.
29. Governing Law and Choice of Forum: This Agreement will be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement will be brought in the Superior Court of Nevada County.
30. Integration: This Agreement represents the entire understanding of NCTC and Subrecipient as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 11.
31. Severability: If any term or provision of this Agreement or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

32. Headings: The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.
33. Authority: Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.
34. Ownership; Permission: Subrecipient represents and warrants that all materials used in the performance of the project work, including, without limitation, all computer software materials and all written materials, produced are owned by Subrecipient or that all required permissions and license agreements have been obtained and paid for by Subrecipient. Subrecipient will defend, indemnify and hold harmless NCTC and its directors, officers, employees, and agents from any claim, loss, damage, cost, liability, or expense to the extent of any violation or falsity of the foregoing representation and warranty.
35. Counterparts: This Agreement may be executed in multiple counterparts, each of which will constitute an original, and all of which taken together will constitute one and the same instrument.
36. Amendments Required by Federal or State Agencies: If the FTA, FHWA, Caltrans, or any other federal or state agency having jurisdiction, requires a change to the terms of this Agreement, the parties will amend this Agreement as necessary, or will terminate it immediately.
37. Ambiguities: The parties have each carefully reviewed this Agreement and have agreed to each term and condition herein. No ambiguity will be construed against either party.
38. Press Releases: Each party will obtain other party's prior written approval of any press releases, or other public outreach materials, that include any reference to such other party or such other party's logo.
39. Rebates, Kickbacks, or Other Unlawful Consideration: Subrecipient warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any NCTC employee. For breach or violation of this warranty, NCTC shall have the right, in its discretion: to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price, or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.
40. State Prevailing Wage Rates: If the Scope of Work is for a public works project pursuant to California Labor Code Section 1720, *et seq.*, including surveying work, then the following provisions apply:
 - a. Subrecipient shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
 - b. Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition,

repair, or maintenance of public works, shall contain all of the provisions of this Section.

- c. When prevailing wages apply to the services described in the Scope of Work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS AGREEMENT AS OF THE DATE FIRST APPEARING ABOVE:

NEVADA COUNTY

[name]
[title]


Date: _____

APPROVED AS TO FORM:

[name]
LEGAL COUNSEL

Date: _____

**NEVADA COUNTY TRANSPORTATION
COMMISSION**



LAWRENCE A. JOSTES
CHAIRMAN

Date: 7/19/17

APPROVED AS TO FORM:



Renne Sloan Holtzman Sakai, LLP
LEGAL COUNSEL

Date: July 20, 2017

EXHIBIT B
DISADVANTAGED BUSINESS ENTERPRISE INFORMATION FORM

Background

The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR). It is the policy of the Nevada County Transportation Commission (NCTC), the California Department of Transportation (Caltrans), and the U.S. Department of Transportation that DBE's have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal transportation funds. A certified DBE may participate in the performance of NCTC funded contracts as a contractor, subcontractor, joint venture partner, or as a vendor of material or supplies.

Requirements and Purpose of Form

The Subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Even if no DBE participation will be reported, the Subrecipient shall check the "No DBE Participation" option below (Option #1), and sign and return this form.

Resources

The California Unified Certification Program (CUCP) may be used for DBE certification and to identify firms eligible to participate as DBE's. The CUCP database may be accessed on-line at <http://www.californiaucp.com> If you believe a firm is certified but cannot locate it in the CUCP database, you may contact the CalTrans Office of Certification toll free number 1-866-810-6346 for assistance. If you do not have internet access, you may order a written directory of certified DBE firms from the CalTrans Division of Procurement and Contracts/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

DBE/UDBE Participation Information (Subrecipient *must check at least one of the options below, provide required information regarding certified DBE's, and sign this Information Sheet on page 3*)

Option #1 - No Certified DBE participation proposed for this contract.

Option #2 - It is proposed that the following DBE(s) be used on this contract:

(Please attach an additional sheet if necessary)

Name of Certified DBE	DBE Certification No.
DBE Address	DBE Telephone No.
	DBE E-Mail Address

