

Draft Consultant Contract

**BUTTE COUNTY ASSOCIATION OF  
GOVERNMENTS**

**CONSULTING SERVICES AGREEMENT**

Consultant

**Consultant**

Project

**BCAG Traffic Data Collection 2018**

THIS AGREEMENT made and entered into this Month/Day/Year, by and between Butte County Association of Governments, hereinafter referred to as "BCAG", and **Consultant**, hereinafter referred to as "CONSULTANT".

**WITNESSETH:**

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#### SECTION 2 - SCOPE OF CONSULTING SERVICES - BASIC

CONSULTANT agrees to perform all work necessary to complete in a manner satisfactory to BCAG, those items described in “*Exhibit A, Scope of Work*”, attached hereto and incorporated herein by this reference as if set forth in full.

For the purposes of a general description, the work to accomplish under this AGREEMENT is generally referred to as the **BCAG Traffic Data Collection 2018** (PROJECT).

CONSULTANT shall submit a detailed progress report to BCAG with each billing invoice describing the progress of the work completed during the billing period.

#### SECTION 3 - SCOPE OF CONSULTING SERVICES - ADDITIONAL

It is understood by BCAG and CONSULTANT that it may be necessary, in connection with

this project, for CONSULTANT to perform or secure the performance of related services other than those set forth in **“Exhibit A - Scope of Work”**. In each such instance, CONSULTANT shall advise BCAG, in advance and in writing, of the need for such additional services, their cost and the estimated time required to perform them (if appropriate). CONSULTANT shall not proceed to perform any such additional service until BCAG has determined that such service is beyond the scope of the basic services to be provided by CONSULTANT, is required, and has given its written authorization to perform or obtain it. Each additional service so authorized shall constitute an amendment to this AGREEMENT, shall be identified and sequentially numbered as "Additional Consulting Service No. 1" and so forth, shall be subject to all of the provisions of this AGREEMENT, and shall be attached as **Exhibit "E"** entitled **"SCOPE OF CONSULTING SERVICES - ADDITIONAL"**.

#### **SECTION 4 - NOTICE TO PROCEED; PROGRESS; COMPLETION**

Upon execution of this AGREEMENT by the parties, BCAG shall give CONSULTANT notice to proceed with the work by issuance of signed letter. Such notice may authorize CONSULTANT to render all of the services contemplated herein, or such portions or phases as may be mutually agreed upon. In the latter event, BCAG shall, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the work. Upon receipt of such notices, CONSULTANT shall diligently proceed with the work authorized and complete it within the agreed time period.

#### **SECTION 5 - TIME OF PERFORMANCE**

CONSULTANT shall commence work upon receipt of Notice to Proceed. The various items involved in the Project shall be completed as indicated in **“Exhibit A- Scope of Work”**. CONSULTANT shall complete the performance of its obligations under this AGREEMENT within the specified time period, unless an extension of time is granted in writing by BCAG, which said extension, if any, shall be granted only for good cause as determined at the sole discretion of BCAG.

#### **SECTION 6 - COMPENSATION**

For services performed pursuant to this AGREEMENT, BCAG agrees to pay CONSULTANT in accordance with the work scope shown in **“Exhibit A- Scope of Work”**. All payment will be on the basis of the Estimated Budget as shown in **“Exhibit B - Compensation”** for the completion of this project. Total payments shall not exceed **\$X,XXX** as shown in the estimated budget in **“Exhibit B – Compensation”**, without prior notice by the CONSULTANT and approval in writing by BCAG.

##### **A. Other Direct Costs**

The CONSULTANT agrees that the Contract Cost Principles and Procedures, CFR 48, Federal Acquisition Regulations System, Chapter 1, Part 31, shall be used to determine the allowability of individual items of cost. The CONSULTANT also agrees to comply with **CFR 49, part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments**. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under CFR 48, Federal Acquisition Regulations System, Chapter 1, Part 31,

are subject to repayment by CONSULTANT to BCAG.

Other direct costs which may be allowed for compensation are included in ***“Exhibit B – Compensation”***

B. Monthly Compensation

CONSULTANT shall be reimbursed monthly no later than thirty (30) days following submission of a written, acceptable billing to BCAG. Said billing shall indicate the number of hours worked by each category of CONSULTANT'S personnel, and the other direct and indirect costs incurred to the date of such billing, if any, and the fixed fee determined proportionately based on the percentage of work completed. BCAG will pay, to CONSULTANT, 100% of submitted monthly invoices for work completed under ***“Exhibit A - Scope of Work”*** until 90% of ***“Exhibits B - Compensation”***, including any compensation for all agreed upon amendments, has been reached. At this time, the remaining 10% of ***“Exhibits B – Compensation”***, including compensation for all agreed upon amendments, will be retained until the completion of all work as defined in ***“Exhibit A - Scope of Work”***.

C. Final Payment

CONSULTANT shall, after the completion of all work under the AGREEMENT, submit a final billing for work done thereunder, and BCAG shall pay the entire sum up to the Cost Ceiling stated in ***“Exhibit B – Compensation”***, as found due after deducting therefrom all previous payments. All prior payments shall be subject to correction in the final payment. The final payment shall not be due and payable until the expiration of thirty (30) days following submission, by CONSULTANT, of a written acceptable final billing to BCAG or as otherwise determined by BCAG. It is mutually agreed between the parties to this AGREEMENT that no payments made under the AGREEMENT, except the final payment, shall be conclusive evidence of the performance of the AGREEMENT, either wholly or in part, against any claim of the CONSULTANT, and no payment shall be construed to be in acceptance of any defective work or improper materials.

**SECTION 7 - CHANGES TO SCOPE - BASIC**

BCAG may at any time, and upon a minimum of ten (10) days' written notice, modify the scope of basic services to be provided under this AGREEMENT. CONSULTANT shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify BCAG in writing. Upon AGREEMENT between BCAG and CONSULTANT as to the extent of said impacts on time and compensation, an amendment to this AGREEMENT shall be prepared describing such changes. Execution of the amendment by BCAG and CONSULTANT shall constitute the CONSULTANT's notice to proceed with the changed scope, including all adjustments in compensation.

**SECTION 8 - COMPLIANCE WITH LAWS, RULES, REGULATIONS-FEDERAL CHANGES**

All services performed by CONSULTANT pursuant to this AGREEMENT shall be performed in accordance and full compliance with all applicable Federal, State or City statutes, and any rules or regulations promulgated thereunder.

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between BCAG and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONSULTANT's failure to so comply shall constitute a material breach of this contract.

#### **SECTION 9 – ENERGY CONSERVATION**

CONSULTANT agrees to comply with 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.

#### **SECTION 10 – CLEAN WATER**

A. CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* CONSULTANT agrees to report each violation to BCAG and understands and agrees that BCAG will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. CONSULTANT also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **SECTION 11 – CLEAN AIR**

CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* CONSULTANT agrees to report each violation to the Purchaser and understands and agrees that the BCAG will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONSULTANT also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **SECTION 12 – RECYCLED PRODUCTS**

**Recovered Materials** - The CONSULTANT agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

### **SECTION 13 - EXHIBITS INCORPORATED**

All Exhibits referred to in this AGREEMENT and attached to it are hereby incorporated in it by this reference.

### **SECTION 14 - RESPONSIBILITY OF CONSULTANT**

By executing this AGREEMENT, CONSULTANT warrants to BCAG that he/she possesses, or will arrange to secure from others, all of the necessary professional consulting capabilities, experience, resources and facilities to provide to BCAG the services contemplated under this AGREEMENT. CONSULTANT further warrants that he/she will follow the best current, generally accepted practice of the consulting profession to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the project for which services are rendered under this AGREEMENT.

#### **Program Fraud and False or Fraudulent Statements or Related Acts**

- A. CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, CONSULTANT further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONSULTANT to the extent the Federal Government deems appropriate.
- B. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on CONSULTANT, to the extent the Federal Government deems appropriate.
- C. CONSULTANT agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-CONSULTANT who will be subject to the provisions.

## **SECTION 15 - RESPONSIBILITY OF BCAG**

To the extent appropriate to the project contemplated by this AGREEMENT, BCAG shall:

- A. Assist CONSULTANT by placing at his/her disposal all available information pertinent to the project, including previous reports and any other relevant data.
- B. Guarantee access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform his/her services.
- C. Examine all studies, reports, proposals and other documents presented by CONSULTANT, and render verbally or in writing as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.
- D. Designate in writing a person to act as BCAG's representative with respect to all work to be performed under this AGREEMENT. Such person shall have complete authority to transmit instructions, receive information, interpret and define BCAG's policies and decisions with respect to materials, equipment, elements and systems pertinent to CONSULTANT's services.
- E. Furnish approvals and permits from all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from others as may be necessary for completion of the PROJECT.

## **SECTION 16 – NO OBLIGATION BY THE FEDERAL GOVERNMENT**

- A. BCAG and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to BCAG, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-CONSULTANT who will be subject to its provisions.

## **SECTION 17 - TERM**

The term of this AGREEMENT shall commence upon BCAG's issuance to CONSULTANT of a "Notice to Proceed" for all or a portion of the work as hereinabove provided, and shall end upon BCAG's acceptance and payment for such portion of the work as was authorized by such notice. **The term of the contract shall be in effect through January 31, 2019.**

## **SECTION 18 - TERMINATION FOR CONVENIENCE OF BCAG**

BCAG may terminate this AGREEMENT, in whole or in part, at any time by written notice to

the CONSULTANT when it is in the Government's best interest. The CONSULTANT shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The CONSULTANT shall promptly submit its termination claim to BCAG to be paid the CONSULTANT. If the CONSULTANT has any property in its possession belonging to BCAG, the CONSULTANT will account for the same, and dispose of it in the manner BCAG directs. If this contract is terminated, BCAG shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

## **SECTION 19 - TERMINATION OF AGREEMENT FOR CAUSE**

If CONSULTANT fails to perform in the manner called for in the contract, or if the CONSULTANT fails to comply with any other provisions of the contract, BCAG may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which CONSULTANT is in default. CONSULTANT will only be paid the contract price for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by BCAG that CONSULTANT had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of CONSULTANT, BCAG, after setting up a new delivery of performance schedule, may allow CONSULTANT to continue work, or treat the termination as a termination for convenience.

- A. BCAG may, by written notice to CONSULTANT, terminate the whole or any part of this AGREEMENT in any one of the following circumstances:
1. If CONSULTANT fails to perform the services called for by this AGREEMENT within the time(s) specified herein, or any extension thereof; or
  2. If CONSULTANT fails to perform the services called for by this AGREEMENT or so fails to make progress as to endanger performance of this AGREEMENT in accordance with its terms, and in either of these two circumstances does not correct such failure within a period of ten (10) days (or such longer period as BCAG may authorize in writing) after receipt of notice from BCAG specifying such failure.
- B. In the event BCAG terminates this AGREEMENT in whole or in part as provided in Paragraph "A" above, BCAG may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.
- C. Except with respect to defaults of subcontractors/subCONSULTANTS, CONSULTANT shall not be liable for any excess costs if the failure to perform arises out of causes beyond the control and without the fault or negligence of CONSULTANT. Such causes include, but are not limited to, acts of God or of the public enemy, acts of government, in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather. In the event the failure to perform is caused by the default of a subcontractor/subCONSULTANT, CONSULTANT shall not



be liable for failure to perform, unless the services to be furnished by the subcontractor were obtainable from other sources in sufficient time and within budgeted resources to permit CONSULTANT to meet the required delivery schedule or other performance requirements.

- D. Should the AGREEMENT be terminated as provided in Paragraph "A" above, CONSULTANT shall provide BCAG with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, compact disks (CDs), etc., prepared by CONSULTANT pursuant to this AGREEMENT. Upon termination as provided in Paragraph "A" above, CONSULTANT shall be paid the value of the work performed, as determined by BCAG, less payments of compensation previously made. Payments previously made by BCAG to CONSULTANT shall be credited to the amount payable to CONSULTANT for allowable costs as provided herein, except, however, CONSULTANT shall be entitled to a proportionate fixed fee, if any, which in the opinion of BCAG, it has legitimately earned and was not related to the cause for which this AGREEMENT was terminated.
- E. If after notice of termination of this AGREEMENT, as provided for in this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section or that the default was excusable under the provisions of this Section, then the rights and obligations of the parties shall be the same as if the AGREEMENT had been terminated for the convenience of BCAG.
- F. **Opportunity to Cure:** BCAG in its sole discretion may, in the case of a termination for breach or default, allow CONSULTANT ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If CONSULTANT fails to remedy to BCAG's satisfaction the breach or default of any of the terms, covenants, or conditions of this AGREEMENT within ten (10) days after receipt by CONSULTANT of written notice from BCAG setting forth the nature of said breach or default, BCAG shall have the right to terminate the AGREEMENT without any further obligation to CONSULTANT. Any such termination for default shall not in any way operate to preclude BCAG from also pursuing all available remedies against CONSULTANT and its sureties for said breach or default.

- G. **Waiver of Remedies for any Breach:** In the event that BCAG elects to waive its remedies for any breach by CONSULTANT of any covenant, term or condition of this AGREEMENT, such waiver by BCAG shall not limit BCAG's remedies for any succeeding breach of that or of any other term, covenant, or condition of this AGREEMENT.

## **SECTION 20 – GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

This AGREEMENT is a covered transaction for purposes of 49 CFR Part 29. As such, the CONSULTANT is required to verify that neither the CONSULTANT, or its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or

disqualified as defined at 49 CFR 29.940 and 29.945.

CONSULTANT is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by BCAG. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to BCAG, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any AGREEMENT that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **SECTION 21 – PRIVACY ACT**

**Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to CONSULTANT and its employees that administer any system of records on behalf of the Federal Government under any AGREEMENT:

- A. CONSULTANT agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, CONSULTANT agrees to obtain the express consent of the Federal Government before CONSULTANT or its employees operate a system of records on behalf of the Federal Government. CONSULTANT understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying AGREEMENT.
- B. CONSULTANT also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **SECTION 22 - INTEREST OF OFFICIALS AND CONSULTANT**

- A. No member of or delegate to the Congress of the United States of America or any Resident Commissioner shall be admitted to any share or part hereof or to any benefits to arise here from.
- B. CONSULTANT hereby covenants that he or she has, at the time of the execution of this AGREEMENT, no interest, and that he or she shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this AGREEMENT. CONSULTANT further covenants that in the performance of this work, no person having any such interest shall be employed.

## **SECTION 23 - SUBCONTRACTING**

- A. CONSULTANT shall not subcontract or otherwise assign any portion of the work to be performed under this AGREEMENT without the prior written approval of BCAG.
- B. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between BCAG and any sub-CONSULTANTS, and no subcontract shall relieve the CONSULTANT of his/her responsibilities and obligations hereunder. The CONSULTANT agrees to be fully responsible to BCAG for the acts and omissions of its sub-CONSULTANTS and of the persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT'S obligation to pay its sub-CONSULTANTS is an independent obligation for BCAG'S obligation to make payments to the CONSULTANT.
- C. In no event shall CONSULTANT subcontract for work in excess of 50% of the AGREEMENT amount, excluding specialized services. Specialized services are those items not ordinarily furnished by a consultant performing the particular type of study.
- D. Any subcontract in excess of \$25,000, entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in the AGREEMENT to be applicable to sub-CONSULTANTS.
- E. CONSULTANT shall pay its sub-CONSULTANTS within thirty (30) calendar days from receipt of each payment made to the CONSULTANT by BCAG.
- F. Any substitution of sub-CONSULTANTS must be approved in writing by BCAG'S Contract Manager in advance of assigning work to a substitute sub-CONSULTANT.

## **SECTION 24 - SUCCESSORS AND ASSIGNS**

This AGREEMENT shall be binding upon and shall insure to the benefit of any successors to or assigns of the parties. CONSULTANT shall not assign, delegate or transfer the rights and duties under this AGREEMENT or any part thereof without the prior written consent of BCAG.

## **SECTION 25 - INDEPENDENT CONSULTANT**

BCAG and CONSULTANT agree that CONSULTANT is an independent Consultant. CONSULTANT shall be solely responsible for the conduct and control of the work performed under this AGREEMENT. CONSULTANT shall be free to render consulting services to others during the term of this AGREEMENT, so long as such activities do not interfere with or diminish CONSULTANT's ability to fulfill the obligations established herein to BCAG.

## **SECTION 26 – BREACHES AND DISPUTES**

**Disputes** - Disputes arising in the performance of this AGREEMENT which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of BCAG's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, CONSULTANT mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, CONSULTANT shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon CONSULTANT and CONSULTANT shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by BCAG, CONSULTANT shall continue performance under this AGREEMENT while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the AGREEMENT suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

**Remedies** - Unless this AGREEMENT provides otherwise, all claims, counterclaims, disputes and other matters in question between the BCAG and CONSULTANT arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which BCAG is located.

**Rights and Remedies** - The duties and obligations imposed by the AGREEMENT Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by BCAG or CONSULTANT shall constitute a waiver of any right or duty afforded any of them under the AGREEMENT, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as

may be specifically agreed in writing.

## **SECTION 27 - EQUAL EMPLOYMENT OPPORTUNITY**

In connection with the execution of this AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. CONSULTANT shall take affirmative action to ensure that applicants are employed, and the employees are treated during their employment, without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT shall comply with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60), the California Fair Employment and Housing Act, and any other applicable Federal and State laws and regulations relating to equal employment opportunity.

## **SECTION 28 - DISADVANTAGED BUSINESS ENTERPRISE**

CONSULTANT agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

- A. This AGREEMENT is subject to the requirements of Title 49, Part 26 of the Code of Federal Regulations entitled, "Participation by Disadvantaged Business Enterprises in the Department of Transportation's Financial Assistance Programs".

The Overall DBE Goal for FFY's 2015/17 for BCAG's DOT-assisted contract is 1.10%. BCAG will implement race-neutral measures to meet its Overall DBE Goal objectives in accordance with 49 CFR Part 26.51. "Notice to Proposers DBE Information", Exhibit "10-1" is attached to this AGREEMENT. The purpose of this form is to provide information regarding DBE participation and to reference Exhibit "10-01" and Exhibit "10-02" as necessary forms to collect data required under 49 CFR 26. Even if not DBE participation will be reported, CONSULTANT agrees to complete and sign the forms and return them with the executed AGREEMENT.

- B. DBE and other small businesses (SB), 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. The CONSULTANT, sub-recipient or sub-CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.
- C. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

- D. A DBE performs a commercially useful function when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether the DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- E. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- F. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.
- G. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- H. CONSULTANT must promptly notify BCAG, whenever a DBE subcontractor performing work related to this AGREEMENT is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. CONSULTANT may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of BCAG.

## **SECTION 29 - TITLE VI COMPLIANCE**

The following requirements apply to the underlying AGREEMENT:

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, CONSULTANT agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, CONSULTANT agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying AGREEMENT:
1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, CONSULTANT agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. CONSULTANT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue.
  2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, CONSULTANT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, CONSULTANT agrees to comply with any implementing requirements FTA may issue.
  3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, CONSULTANT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, CONSULTANT to comply with any implementing requirements FTA may

issue.

- C. CONSULTANT also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### **SECTION 30 - PUBLICATION**

- A. Any and all reports published by CONSULTANT shall acknowledge that it was prepared in cooperation with BCAG.
- B. Articles, reports, or works reporting on the work provided for herein or on portions thereof which are published by CONSULTANT shall contain in the foreword, preface, or footnote the following statement:

"The contents of this report reflect the view of the author who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views of BCAG. This report does not constitute a standard, specification, or regulation."

### **SECTION 31 - COPYRIGHTS**

CONSULTANT shall be free to copyright material developed under this AGREEMENT with the provision that BCAG reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the material for government or public purposes.

### **SECTION 32 - INDEMNIFICATION**

CONSULTANT agrees to indemnify and hold BCAG, its officers, boards and commissions, and members thereof, its employees and agents harmless of and free from any and all liabilities, including all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against BCAG that result from the negligent acts, errors or omissions of CONSULTANT, CONSULTANT's employees, and CONSULTANT's agents. BCAG agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by BCAG's negligent acts, errors or omissions and those of BCAG's CONSULTANTS, subCONSULTANTS or anyone for whom BCAG is legally liable, and arising from the project that is the subject of this AGREEMENT.

### **SECTION 33 - INSURANCE REQUIREMENTS**

CONSULTANT shall procure and maintain for the duration of the AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of work hereunder by the CONSULTANT, his/her agents, representatives, or employees. At the very least, CONSULTANT shall maintain the insurance coverage, limits of coverage and other requirements as described in **Attachment I (Professional Services)** attached to and made a part of this AGREEMENT.



### **SECTION 34 - OWNERSHIP OF DOCUMENTS**

Original documents, methodological explanations, CD-ROMs, computer programs, drawings, designs and reports generated by this AGREEMENT shall belong to and become the property of BCAG in accordance with accepted standards relating to public work contracts. Any additional copies, not otherwise provided for herein, shall be the responsibility of BCAG. BCAG shall indemnify and hold harmless CONSULTANT for any use or reuse of said documents except of the original intent related to the PROJECT covered by this AGREEMENT.

### **SECTION 35 - ACCESS TO RECORDS**

CONSULTANT shall document the results of the work to the satisfaction of BCAG. Such documentation may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of AGREEMENT objectives.

CONSULTANT and its subCONSULTANTS shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, and make such materials available at their respective offices at all reasonable times during the AGREEMENT period and for three years from the date of final payment to CONSULTANT. Such materials shall be available for inspection by authorized representatives of BCAG, or the copies thereof shall be furnished if requested.

CONSULTANT agrees to provide the BCAG, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the CONSULTANT which are directly pertinent to this AGREEMENT for the purposes of making audits, examinations, excerpts and transcriptions.

CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

CONSULTANT agrees to maintain all books, records, accounts and reports required under this AGREEMENT for a period of not less than three years after the date of termination or expiration of this AGREEMENT, except in the event of litigation or settlement of claims arising from the performance of this AGREEMENT, in which case CONSULTANT agrees to maintain same until BCAG, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

### **SECTION 36 - NOTICES**

Any notices required to be given pursuant to this AGREEMENT shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

- A. To BCAG: Jon Clark, Executive Director  
Attn: Brian Lasagna, Regional Analyst

Butte County Association of Governments  
326 Huss Drive, Suite 150  
Chico, CA 95928

B. To CONSULTANT: *Name, Title*  
*Consulting Firm Title*  
*Street Address, Suite #*  
*City, State ZIP*

Nothing hereinabove shall prevent either BCAG or CONSULTANT from personally delivering any such notices to the other.

### **SECTION 37 – JURISDICTION**

Except as otherwise specifically provided, this AGREEMENT shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this AGREEMENT shall be in that State. If any part of this AGREEMENT is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the AGREEMENT shall be in full force and effect.

### **SECTION 38 – INTEGRATION - INCORPORATION OF FTA 4220.1E TERMS**

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

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding AGREEMENT provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any BCAG requests which would cause BCAG to be in violation of the FTA terms and conditions.

**Exhibit “A” – Scope of Work**

**Exhibit “B” – Compensation**

**Exhibit “C” – Certification of Owner**

**Exhibit “D” – Certification of CONSULTANT**

**Exhibit “E” – Scope of Consulting Services – Additional**

**Exhibit “10-01” – Consultant Proposal DBE Commitment**

**Exhibit “10-02” – Consultant Contract DBE Information**

***Note: Contract DBE Exhibits are attached to the Agreement. The purpose of these forms is to provide information regarding DBE participation and to reference Exhibit 10-01 and Exhibit 10-02, as necessary forms to collect data required under 49 CFR 26. Even if no DBE participation will be reported, CONSULTANT agrees to***

**complete and sign the forms and return them with the executed Agreement.  
Exhibit "10-J" – Standard Agreement for Subcontractor/DBE Participation  
Attachment I – Insurance Services**

**IN WITNESS WHEREOF**, the parties hereto have made and executed this AGREEMENT the day and year first above written.

**BCAG:**

**CONSULTANT:**

By \_\_\_\_\_  
Jon A. Clark, Executive Director

By \_\_\_\_\_  
Authorized Representative

Date: \_\_\_\_\_

Date: \_\_\_\_\_

DRAFT

**Exhibit "A"**  
**SCOPE OF WORK**

DRAFT

**Exhibit “B”**  
**COMPENSATION**

DRAFT

## Exhibit "C"

### CERTIFICATION OF OWNER

I HEREBY CERTIFY that I am **Jon A. Clark**, the **Executive Director of the Butte County Association of Governments**, and that the consulting firm of **Consultant**, or its representatives have not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out the AGREEMENT to:

- a. Employ, retain, agree to employ or retain, any firm or person; or
- b. Pay or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) and the Federal Transit Administration in connection with this AGREEMENT involving participation of Federal Transit Administration funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Jon A. Clark, Executive Director

\_\_\_\_\_  
Date

## Exhibit “D”

### CERTIFICATION OF CONSULTANT

I HEREBY CERTIFY that I am **authorized representative**, and the duly authorized representative of **Company Name**, whose address is **Address, City and State**, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- employed or retained for a commissions, percentage, brokerage, contingent fee, or other consideration, any firm or person, (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this AGREEMENT;
- nor agreed, as an express or implied condition, for obtaining this AGREEMENT, to employ or retain the services of any firm or person in connection with carrying out the AGREEMENT;
- nor paid, or agreed to pay, to any firm, organization or person (other than a bona fide employees working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) and the Federal Transit Administration in connection with this AGREEMENT involving participation of Federal Transit Administration funds, and is subject to applicable State and Federal laws, both criminal and civil.

Signature: **authorized representative**

\_\_\_\_\_ Date

**Exhibit “E”**

**SCOPE OF CONSULTING SERVICES-ADDITIONAL**

DRAFT



## **Exhibit “10-01”**

### **Consultant Proposal DBE Commitment** *(to be included with final contract)*

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**Exhibit “10-O2”**

**Consultant Contract DBE Information**  
*(to be included with final contract)*

DRAFT

## **Exhibit 10-J Standard Agreement for Subconsultant/DBE Participation**

**(Note: Portions of Exhibit 10-I may not apply for all agreements dependent upon scope of services required)**

### **1. Subconsultants**

- A. Nothing contained in this Contract or otherwise, shall create any contractual relation between the Agency and any subconsultants, and no subcontract shall relieve the Consultant of his/her responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the Agency for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. The Consultant's obligation to pay its subconsultants is an independent obligation from the Agency's obligation to make payments to the Consultant.
- B. Any subcontract in excess of \$25,000, entered into as a result of this Contract, shall contain all the provisions stipulated in this Contract to be applicable to subconsultants.
- C. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to the Consultant by the Agency.
- D. Any substitution of subconsultants must be approved in writing by the Agency's Contract Administrator in advance of assigning work to a substitute subconsultant.

### **2. Disadvantaged Business Enterprise (DBE) Participation**

- A. This Contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Proposers who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. If the contract has a DBE goal, the Consultant must meet the goal by committing DBE participation or document a good faith effort to meet the goal. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met. A DBE is a firm meeting the definition of a DBE as specified in 49 CFR.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Consultant 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 the local agency deems appropriate.
- D. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- E. A DBE may be terminated only with prior written approval from the local agency and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting local agency consent for the termination, the prime consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

### **3. Performance of DBE Consultant and other DBE Subconsultants/Suppliers**

- A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing; and other relevant factors.
- B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work force, or the DBE subcontracts a greater portion of the work of the Contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

### **4. Prompt Payment of Funds Withheld to Subconsultants**

- A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.  
*(Local agency to include either B, C, or D below; delete the other two.)*
- B. No retainage will be withheld by the Agency from progress payments due the prime Consultant. Retainage by the prime Consultant or subconsultants is prohibited, and no retainage will be held by the prime Consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime Consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime Consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime Consultants and subconsultants.
- C. No retainage will be held by the Agency from progress payments due the prime Consultant. Any retainage held by the prime Consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime Consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

- D. The Agency shall hold retainage from the prime consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime consultant based on these acceptances. The prime consultant, or subconsultant, shall return all monies withheld in retention from a subconsultant within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime Consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

## **5. DBE Records**

- A. The Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants," CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25 percent of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

## **6. DBE Certification and Decertification Status**

If a DBE subconsultant is decertified during the life of the Contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify the Consultant in writing with the date of certification. Any changes should be reported to the Agency's Contract Administrator within 30 days.

## Attachment I – Standard Insurance Requirements (Professional Services)

Before the commencement of work, Consultant shall submit Certificates of Insurance and Endorsements evidencing that Consultant has obtained the following forms of coverage and minimal amounts specified:

### A. MINIMUM SCOPE OF INSURANCE

- 1.) Commercial General Liability coverage (Insurance Services Office (ISO) “occurrence” form CG 0001 1001).
- 2.) Automobile Liability Insurance – standard coverage offered by insurance carriers licensed to sell auto liability insurance in California. Construction contracts only - Insurance Services Office’s Business Auto Coverage form number CA 0001 1001 covering “any auto”.
- 3.) Workers’ Compensation Insurance as required by the Labor Code and Employers Liability Insurance.
- 4.) Professional Liability Insurance - when the contract involves professional services such as engineering architectural, legal, accounting, instructing, and consulting, professional liability insurance is required.

### B. MINIMUM LIMITS OF INSURANCE

- 1.) **General Liability:** At least \$1,000,000 combined single limit **per occurrence** coverage for bodily injury, personal injury and property damage, plus an annual aggregate of at least \$2,000,000. If a general aggregate limit is used, then either the general aggregate limit shall apply separately to this project/location, or the general aggregate limit shall be **twice** the required per occurrence limit. The Consultant or consultant’s insurance carrier shall notify BCAG if incurred losses covered by the policy exceed 50% of the annual aggregate limit.
- 2.) **Automobile Liability:** Policy limits for work in connection with construction projects shall be at least \$1,000,000 combined single limit per accident for bodily injury and property damage for autos used by the Consultant to fulfill the requirements of this contract, and coverage shall be provided for “Any Auto”, Code 1 as listed on the Accord form Certificate of Insurance.
- 3.) **Workers’ Compensation and Employers Liability:** Workers’ Compensation insurance up to policy limits and Employers Liability insurance each with policy limits of at least \$1,000,000 for bodily injury or disease.
- 4.) **Professional Liability Insurance (If not contracting for professional services, delete this paragraph)** Professional liability insurance covering professional services shall be provided in an amount of at least \$1,000,000 per occurrence or \$1,000,000 or on a claims made basis. However, if coverage is written on a claims made basis, the policy shall be endorsed to provide at least a two-year extended reporting provision.

### C. DEDUCTIBLES

Any deductibles must be declared on certificates of insurance and approved by BCAG.

### D. OTHER INSURANCE PROVISIONS

#### 1. General liability insurance policies shall be endorsed to state:

- a.) BCAG, its officers, officials, employees and volunteers are to be covered as insured as respects liability arising out of activities performed by or at the direction of the Consultant, including products

and completed operations of the Consultant, premises owned, occupied or used by the Consultant;. The coverage shall contain no special limitations on the scope of protection afforded to BCAG, its officers, officials, employees or volunteers. Auto coverage as provided by unendorsed CA 0001 1001.

- b.) Consultant's insurance coverage shall be primary insurance, except for auto, as respects BCAG, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by BCAG, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- c.) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**E. ACCEPTABILITY OF INSURANCE CARRIERS.**

Insurance is to be placed with insurers who are licensed to sell insurance in the State of California and who possess a Best's rating of no less than A-: VII. If the consultant's insurance carrier is not licensed to sell insurance in the State of California, then the carrier must possess a Best rating of at least A: VIII. (For Best ratings go to <http://www.ambest.com/>)

**F. VERIFICATION OF COVERAGE.**

Consultant shall furnish BCAG **certificates of insurance** and original **endorsements** affecting coverage required by this clause. All certificates of insurance and endorsements are to be received and approved by BCAG before work under the contract has begun. BCAG reserves the right to require complete, certified copies of all insurance policies required by this contract.

Certificates of insurance shall state that the insuring agency agrees to endeavor to mail to BCAG written notice 30 days before any of the insurance policies described herein are cancelled. Consultant agrees to notify BCAG within two working days of any notice from an insuring agency that cancels, suspends, reduces in coverage or policy limits the insurance coverages described herein.

**G. SUBCONTRACTORS.**

Consultant shall include all subcontractors as insured under its policies or require all subcontractors to be insured under their own policies. If subcontractors are insured under their own policies, they shall be subject to all the requirements stated herein, including providing BCAG certificates of insurance and endorsements before beginning work under this contract.

**Attachment IA - Request To Change Contract Insurance Requirements**

1. Department \_\_\_\_\_ Contact Person \_\_\_\_\_  
Telephone \_\_\_\_\_ FAX \_\_\_\_\_ Email \_\_\_\_\_
2. Contractor \_\_\_\_\_ Contact Person \_\_\_\_\_  
Telephone \_\_\_\_\_ FAX \_\_\_\_\_ Email \_\_\_\_\_
3. What change is being requested? \_\_\_\_\_  
\_\_\_\_\_
4. Reason: \_\_\_\_\_
  - a) Consultant cannot obtain required limits. If so, limits Consultant currently has: \_\_\_\_\_
  - b) Consultant cannot afford premium. If so, current premium: \_\_\_\_\_
  - c) Consultant cannot obtain insurance at all. Which type of insurance? \_\_\_\_\_
  - d) Insurance carrier will not agree to additional insured endorsement. Name and phone number of Consultant's insurance agent: \_\_\_\_\_
  - e) Other: \_\_\_\_\_
5. Brief description of services to be performed. If the contract is for construction or road work, please include the location of the project.  
\_\_\_\_\_
6. Length of Contract: \_\_\_\_\_ Cost: \_\_\_\_\_
7. Special certificates, licenses, degrees, education, etc., required of Contractor:  
\_\_\_\_\_
8. Is Consultant a corporation or individual? \_\_\_\_\_
9. Will Consultant need to use his/her auto to perform services? \_\_\_\_\_
10. Will Consultant be transporting people? If so, maximum number at one time: \_\_\_\_\_
11. Will services be performed at BCAG worksite or Consultant's office? \_\_\_\_\_
12. Tools or special equipment Consultant will utilize: \_\_\_\_\_
13. Will Consultant be using BCAG property? \_\_\_\_\_ If yes, describe (car, van, office space, etc.): \_\_\_\_\_
14. Does Consultant have employees? \_\_\_\_\_ Will Consultant use sub-contractors? \_\_\_\_\_
15. Risk Manager Comments: \_\_\_\_\_  
\_\_\_\_\_