

CONSULTANT REQUEST FOR PROPOSALS

TO

**Assist in Updating the Regional Travel Demand Model and Preparing
Additional Strategies to Consider in Meeting SB 375 Greenhouse Gas
Reduction Targets for the 2020 Butte County Regional Transportation
Plan & Sustainable Communities Strategy**

May 29, 2018

Proposals due by Thursday, June 28, 2018

Time: 3:00 pm



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

(530) 809-4616

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ATTACHMENTS:

Proposal Required Attachments: (Must be Completed and Returned with Application)

Proposal

Cost Proposal

Form Checklist

Form 1 - Lobbying Certification

Form 2 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction

Form 3 - Equal Employment Opportunity Certification

Form 4 - List of Proposed Subcontractors

Form 5 - Public Contract Code Section 10162 Questionnaire

Form 6 - BCAG – Non-Collusion Affidavit

Form 7 - Public Contract Code Section 10285.1 Statement

Form 8 - Proposer Certification Clauses and Proposal Signature Page

Form 9 - Local Agency Proposer/Bidder DBE – (Consultant Contracts) Information

Reference Information: (Not Required for Proposal Submittal)

Proposal Criterion

Figure 1 Butte County Location Map

Exhibit 10-I Notice to Bidders/Proposers Disadvantaged Business Enterprise Information

Exhibit 10-J Standard Agreement for Subconsultant/DBE Participation

Exhibit 10-01 Consultant Proposal DBE Commitment

Attachment I – Standard Insurance Requirements (Professional Services)

Attachment IA – Request to Change Contract Insurance Requirements

Draft Consultant Contract

I. Purpose

The Butte County Association of Governments (BCAG) is seeking proposals from qualified consultants to assist in preparing the regional Travel Demand Model (TDM) and developing additional strategies to consider in meeting Senate Bill 375 (SB 375) greenhouse gas reduction targets for the 2020 Butte County Regional Transportation Plan (RTP) & Sustainable Communities Strategy (SCS). The TDM will be prepared in manner which complies with all recent legislation, including SB 375, and is subject to any new requirements established in the federal surface transportation reauthorization and federal clean air act. The final TDM will be used in preparing the 2020 RTP/SCS, which will be considered for approval by the BCAG Board of Directors in December 2020.

II. Background

In accordance with California Government Code Section 65080, BCAG is mandated to prepare and periodically update the Regional Transportation Plan (RTP), which defines the policies, plans, and programs for the coordination and programming of transportation improvements throughout the Butte County region. Under SB 375, BCAG is required to prepare a Sustainable Communities Strategy (SCS) as an additional component of the RTP. The SCS demonstrates the integration of land use, housing, and transportation for the purpose of reducing greenhouse gas emissions from passenger vehicles. The current RTP/SCS was adopted by BCAG's Board of Directors in December 2016. The 2020 RTP/SCS will be comprised of goals, policies, and objectives, as well as a list of transportation network improvements and transportation programs that are intended to improve movement of people and goods through the region. The region includes the cities of Biggs, Chico, Gridley, and Oroville, the Town of Paradise and the County of Butte.

Geography

Butte County is located in California's central Sacramento Valley approximately 75 miles north of the California state capital of Sacramento (Figure 1). Butte County encompasses approximately 1,670 square miles (1,068,000 acres) with the western part of the county located in the central Sacramento Valley, and the eastern portion extending into the foothills and mountains of the Cascade and Sierra Nevada Mountain Ranges. Elevations range from 50 feet above sea level at Butte Sink along the Sacramento River at the southwest portion of the county, to 7,087 feet above sea level at Humboldt Summit near the county's northeastern border.

Agency

Butte County Association of Governments (BCAG) is an association of all the local governments within Butte County. Its members include the cities of Biggs, Chico, Gridley, Oroville, the Town of Paradise and the County of Butte. BCAG is also the designated Metropolitan Planning Organization/Regional Transportation Planning Agency for Butte County.

Air Quality

As a Federal non-attainment area for ozone and PM2.5 and a maintenance area for carbon monoxide as defined under the Federal Clean Air Act Amendments, BCAG must develop an Air Quality Conformity determination for the Regional Transportation Plan (RTP) and the Federal Transportation Improvement Program (FTIP) to demonstrate conformity to the air quality goals established in the State Implementation Plan (SIP) for the area.

III. Related PROJECT information

The following are important items of information related to the project:

- BCAG will be administering this contract and will be the lead agency. Staff from BCAG will lead the monitoring and assess progress of the work product produced by the consultant during regularly scheduled meetings. The consultant will be expected to produce a timeline under which the work product is to be delivered on time and on budget.

All final approvals for all documents and work products generated as a result of this contract will be made by BCAG.

- The adopted 2016 BCAG RTP/SCS is available at the following link:
<http://www.bcag.org/Planning/RTP--SCS/index.html>

IV. Consultant Scope of Services

BCAG seeks a qualified consultant to assist in updating the regional Travel Demand Model (TDM) and preparing additional strategies to consider in meeting Senate Bill 375 (SB 375) greenhouse gas reduction targets for the 2020 Butte County Regional Transportation Plan (RTP) & Sustainable Communities Strategy (SCS).

A responsive proposal will address the following tasks.

Task A – Project Management. Consultant team will work closely with BCAG staff throughout the project to ensure that expectations and the schedule are being met. BCAG staff and consultant team will initiate the project with a kick-off meeting to clarify project objectives, priorities, work products, project management, and communication procedures. Once underway, BCAG staff and project manager and/or consultant team will meet monthly via conference-call to review the details of the project and address any critical items.

Task B – Regional Travel Model Update. Consultant will update the BCAG regional travel model for use in preparing and analyzing the 2020 RTP/SCS for the BCAG region. The updated model must conform to the requirements included in latest California Transportation Commission (CTC) RTP Guidelines, Federal

Transportation Conformity Regulations, Federal Surface Transportation Act, California Air Resources Board (ARB) SCS Review Guidelines, and California Environmental Quality Act (CEQA).

A preliminary listing of sub-tasks are provided below which identify the principal elements that BCAG would like addressed.

- 1.) Data Collection – Consultant will collect latest available and reliable data to be used in developing the model. Data may include, but shall not be limited to, the following: BCAG 2017/18 traffic counts, U.S. Census Bureau demographic data, California Department of Finance housing and population data, California Statewide Household Travel Survey travel data, National Household Travel Survey travel data, California Statewide Travel Demand Model, Longitudinal Employer-Household Dynamics data, California Department of Motor Vehicles data, Employment Development Department data, National Transit Database data, BCAG transit route and ridership data, BCAG land use data, BCAG road network data, BCAG bike facility data, and any additional survey's or vendor supplied data. Consultant will review all data with BCAG staff prior to utilization and prepare a memorandum describing the data sources reviewed and how they will be applied to the model.
- 2.) Model Calibration – Based on data collected in task B.1, consultant will apply new land use, traffic counts, and road network and review and revise assumptions for model calibration to the 2017/18 base year. Consultant will update the existing trip generation, trip distribution, and trip assignment components of the model. **Consultant will implement a new mode choice component to account for trips related to transit, bike, and pedestrian modes.** Consultant will review model calibration with BCAG staff and prepare a memorandum describing the calibration process and results.
- 3.) Model Validation – Consultant will test and document the models performance in the base year against observed or empirical travel data. At a minimum, static validation tests will be completed and meet recommended validation thresholds contained in the CTC's 2017 RTP Guidelines. Consultant will review model validation with BCAG staff and prepare a memorandum describing the validation process and results.
- 4.) Model Sensitivity Analysis – Consultant will perform sensitivity analysis for individual components of the model, particular those which affect the accuracy related to measuring regional vehicle miles of travel. Consultant will review model sensitivity analysis with BCAG staff and prepare a memorandum describing the sensitivity analysis and results.

- 5.) Forecast and Backcast – Consultant will prepare model runs for one (1) backcast year (2005) and four (4) forecast years (2020, 2030, 2035, and 2040). Each forecast year will include new land use and road network information. Consultant will review results of forecast/backcast with BCAG staff and prepare a memorandum describing the results for each. Results will include a summary of Vehicle Miles Traveled (VMT), disaggregated by 5 mile per hour speed bin, and separated by II, IX-XI, and XX trip classes.
- 6.) Alternatives Analysis – Consultant will prepare model runs for four (4) alternatives to be applied to the 2040 forecast year. Alternatives will include changes to land use, transportation network, and mode split. Consultant will assist in the development of the alternatives, review results of analysis with BCAG staff, and prepare a memorandum describing the results for each. Results will include a summary of Vehicle Miles Traveled (VMT), disaggregated by 5 mile per hour speed bin, and separated by II, IX-XI, and XX trip classes.
- 7.) Modeling Software – Consultant will prepare model in the latest version of TransCAD or Cube modeling software. The current model utilizes an older version of TransCAD. Prior to selection of software, Consultant will review with BCAG staff.
- 8.) Modeling Development Report – Consultant will prepare a model development report describing the update and results of the model. It is anticipated that the document will be based on the memorandums prepared at various stages of the models development. Consultant will review a draft report with BCAG staff and incorporate any comments prior to finalizing.

Task C – Additional Strategies for Reducing VMT & Passenger Vehicle Related GHG Emissions. Consultant will explore strategies, beyond those included in the 2016 RTP/SCS, to further reduce VMT and passenger vehicle related GHGs in the BCAG region. Identify projects/programs applicable to the BCAG region and potential funding sources and strategies to assist with implementation. Review existing goals and policies in 2016 RTP/SCS and make recommendations to incorporate applicable strategies. Quantify reductions (VMT & GHG) associated with each strategy and, if needed, apply to selected RTP/SCS alternatives. Example strategies include: car and bike share; ridesharing; commuter bus and rail services; employer-based commute strategies; school trip strategies; bike and pedestrian enhancement; telecommuting policies; transportation system management (TSM) and intelligent transportation system (ITS); plug-in electrical vehicle (PEV) programs, and; pricing.

A preliminary listing of sub-tasks are provided below which identify the principal elements that BCAG would like addressed.

- 1.) Data Collection – Data collection will be accomplished in coordination with BCAG staff to obtain relevant existing reports and all materials related to additional strategies for reducing VMT & GHG's and methodologies for quantifying reductions from each.
- 2.) Identify Applicable Strategies – Consultant will identify projects/programs applicable to the BCAG region and potential funding sources and strategies to assist with implementation.
- 3.) Review of Existing Strategies – Consultant will review existing goals and policies in 2016 RTP/SCS and make recommendations to incorporated applicable strategies.
- 4.) Quantify Reductions – Consultant will quantify (VMT & GHG) reductions associated with each strategy and, if needed, apply to selected RTP/SCS alternatives. This may be in the form of on- or off-model methods.

V. **Schedule**

The project shall be completed and all deliverables received by **March 1st, 2021**.

VI. **BCAG Responsibilities**

BCAG will:

- Manage the delivery of the work product
- Participate in and assist in coordinating the various meetings and hearings
- Maintain a website page at www.bcag.org
- Pay all consultant invoices

VII. **Proposal Contents:**

Consultants interested in providing the scope of services must submit a proposal by the deadline date and time defined in this RFP. Proposals should be concise and to the point. The proposal is limited to 20 pages (8.5"x11") with no smaller than 10 point font. Resumes (limited to 1 page each) may be included and are not part of the page count. The cost estimate is not part of the page count.

As a minimum, the following information should be included in the proposal, as actual selection will be based on careful consideration of all pertinent data provided.

1. **Cover Letter:** A letter describing the firm's interest in providing the scope of services for the project. Cover letter should describe the Consultants key strengths and identify the project manager.
2. **PROJECT Understanding, Approach and Methodology:** Describe the firm's understanding of the project, and the approach the firm would take in providing the required services in an efficient and expeditious manner,

including coordination with BCAG. Present the firm's proposed detailed schedule of activities and identify major deliverables for development of the project.

3. **Location:** The address of the office where the Project Manager will reside and where a majority of the work will be performed.
4. **Consultant Team:** Include a table of organization for the accomplishment of the project showing the proposed principal-in-charge, Project Manager, and key staff. Provide a narrative description of the qualifications and experience of each key person, along with their proposed responsibilities for the development of the project. A resume may be included for each of the persons shown on the table of organization. Indicate the workload of the Project Manager and necessary staff, and their capacity to complete the scope of services according to the proposed schedule. List the names, addresses, and telephone numbers of anticipated sub consultants, if any.
5. **Conflicting Projects, Commitments and Schedule:** The proposal must include a discussion of any other projects currently being undertaken or projected to be undertaken by the firm/team that might result in delays to completing the project in a timely manner. The proposal shall contain a statement to the effect that the proposer is not currently or projected to be committed to another project that would constitute a conflicting interest in conforming to this RFP. **As previously stated, approval of the 2020 RTP/SCS by the BCAG Board of Directors will be considered no later than December 2020.**
6. **Related Experience and References:** Include descriptions of travel model updates and development of passenger vehicle GHG reduction strategies or similar efforts completed within the past four (4) years that are comparable to the proposed request. Provide references for the comparable projects upon which proposed Project Manager and related staff have worked. Describe their role on the project and include the name and title of the client's project manager. Interested consultants must have a demonstrated record of accomplishing similar projects, with respect to the scope and size of the one required within this RFP. References will be contacted during proposal evaluations.
7. **Disadvantaged Business Enterprise (DBE):** It is the policy of BCAG that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, shall have equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under any agreement. **BCAG's established overall DBE Goal for FFY's 2015/17 is 12%.** BCAG will implement race-neutral measures to meet its Overall DBE Goal objective in accordance with 49 CFR Part 26.51.

http://www.dot.ca.gov/hq/bep/dbe_query.htm

8. **Cost (Under Separate Cover):** Provide, under separate cover, a not-to-exceed cost broken down by task (as listed in the “scope of services” above) and by staff on the project team. Include staff hours and rates. All staff should be named in the cost estimate, including sub consultants, along with their billing category. Include a rate sheet with billing categories and staff names. **The estimated budget for the project is \$190,000.**
9. **Resumes.** Resumes for the project team may be included. A resume for the project manager must be included. Resumes are limited to 1 page each. Not included in page count.

VIII. Proposal Submittal

The proposal shall not exceed twenty (20) single-sided printed pages, excluding the required forms, cover sheet, table of contents, index sheets and resumes. Double-sided pages will be allowed and counted as two (2) pages. Resumes included with the proposal shall not exceed one single-sided printed page per person listed in the table of organization. Please submit one original and three (3) copies (total 4) of your written proposal addressed to:

**BCAG Regional Travel Model Update
Butte County Association of Governments
326 Huss Drive, Suite 150
Chico, CA 95928
Attn: Brian Lasagna, Regional Analyst**

Submittals must be received by **3:00 PM on June 28, 2018**. This is a firm deadline, and no proposals will be accepted after this time.

All proposals become the property of BCAG. The cost of preparing, submitting and presenting a proposal and participating in an interview are at the sole expense of the proposer. BCAG has the right to reject any or all of the proposals received as a result of this request. Solicitation of proposals in no way obligates BCAG to contract with any firm or individual. The decision to approve and award a contract is at the discretion of the BCAG.

IX. Modification or Withdrawal of Proposal

Any proposal received prior to the date and time specified above for receipt or proposals may be withdrawn or modified by written request of the proposer. To be considered, the modification must be received in writing, and the same number of copies as the original proposal, prior to the date and time specified above for receipt of proposals.

X. Signature

The proposal will also provide the following information: name, title, address and telephone number of individual with authority to bind the company and also who may be contacted during the period of proposal evaluation. The proposal shall be signed by an official authorized to bind the consultant and shall contain a statement to the effect that the proposal is a firm offer for at least a ninety (90) day period.

XI. Rejection of Proposals

Failure to meet the requirements of items IV, V, VII, VIII, IX and X of this RFP, shall be cause for rejection of the proposal. BCAG may reject any proposal if it is conditional, incomplete, contains irregularities or reflects inordinately high cost rates. BCAG may waive immaterial deviations in a proposal. Waiver of an immaterial deviation shall in no way modify the RFP documents or excuse the proposing firm/team from full compliance with the contract requirements if the proposer is awarded the contract.

XII. Proposal Evaluation

A consultant selection committee composed of BCAG staff shall accomplish evaluation of the proposals.

Following proposal evaluations, a “short list” of qualified consultants may be developed by the committee with up to three consultants being invited to interview with the consultant selection committee to explain their relevant experience, approach and methodology. The “short list” will be based on proposal evaluations and other actions and submissions pursuant to this RFP, information provided by former clients for whom similar work has been performed, and consideration of any exceptions taken to the proposed contract terms and conditions. Following the interview process, the consultant selection committee will rank the interviewed firms. ***The consultant selection committee may choose to forgo the interview process and begin negotiations with a top ranked consultant.***

The cost proposal will be opened for the top ranked consultant and contract negotiations initiated. In the event an agreement cannot be successfully negotiated with the top ranked consultant, the second ranked consultant will be invited to enter into negotiations. This process will be continued, if required, until a satisfactory agreement can be negotiated.

XIII. Contract Award

Upon recommendation from the consultant selection committee, the Executive Director of BCAG will award the contract to the chosen consultant. The contract is not in force until it is awarded by the Executive Director.

XIV. Contact Person

All questions concerning this Request for Proposal (RFP) should be directed to Brian Lasagna, Regional Analyst for the Butte County Association of Governments at (530) 809-4616.

ATTACHMENT CHECK LIST

A complete Proposal package will consist of the items identified below. Complete this checklist to confirm the items in your Proposal. Place a check mark or “X” next to each item that you are submitting to BCAG. All attachments identified below are applicable to this RFP and must be returned, as instructed, for your Proposal to be responsive. **Return this checklist with your Proposal package.**

Proposal and Attachments

Note: This Checklist with the following must be included with the Proposal Package:

- Proposal as stated in this RFP including “Exhibit A – Proposed Scope of Work”
- Cost Proposal (under separate cover) as stated in this RFP including “Exhibit B – Proposed Cost”
- Form Checklist
- Form 1 – Lobbying Certification (Fill in, Sign and Date)
- Form 2 – Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction (Date, Signature Company and Title)
- Form 3 – Equal Employment Opportunity Certification (Fill in and Sign at Bottom)
- Form 4 – List of Proposed Subconsultants (Fill out or DNA)
- Form 5 – Public Contract Code Section 10162 Questionnaire (Yes or No)
- Form 6 – BCAG – Non-Collusion Affidavit (Signature at Bottom)
- Form 7 – Public Contract Code Section 10285.1 Statement (Signature at Bottom)
- Form 8 – Proposer Certification Clauses and Proposal Signature Page (Must be filled out, dated and signed)
- Form 9 – Local Agency Proposer/Bidder DBE – (Consultant Contracts) Information. (Must be filled out as indicated)

Forms not required with submittal (Information Only):

Proposal Criterion

Figure 1- Butte County Location Map

Exhibit 10-I Notice to Bidders/Proposers Disadvantaged Business Enterprise Information

Exhibit 10-J Standard Agreement for Subconsultant/DBE Participation

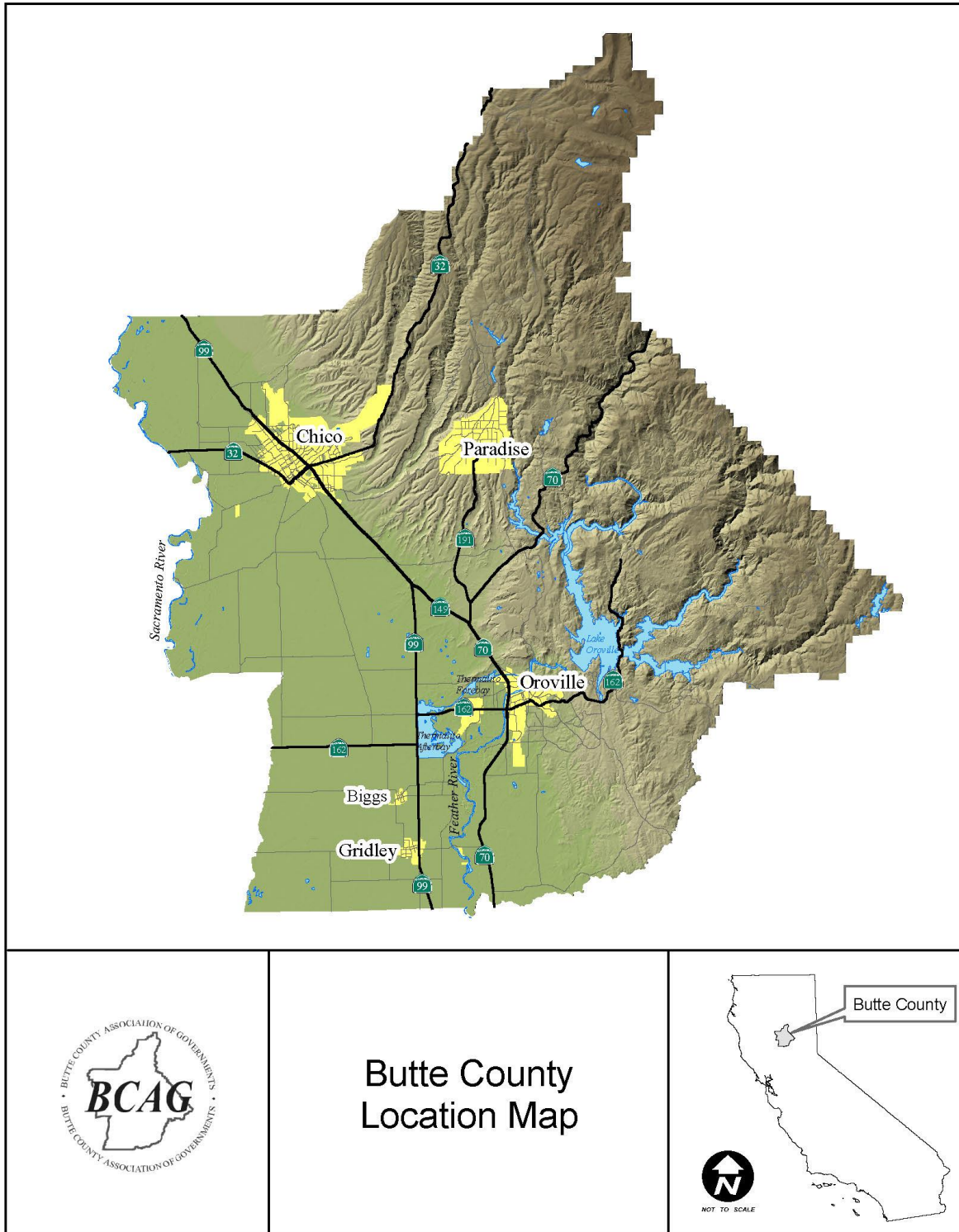
Exhibit 10-01 Consultant Proposal DBE Commitment

Attachment I – Standard Insurance Requirements for Professional Services Contract

Attachment IA – Request to Change Contract Insurance Requirements

Draft Consultant Contract

Figure 1. Butte County Location Map



Form 1

LOBBYING CERTIFICATION

The undersigned _____ certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all SUBCONSULTANTS shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The CONSULTANT, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONSULTANT understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of CONSULTANT'S Authorized Official

Name and Title of CONSULTANT'S Authorized Official

Date _____

Form 2
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION INELIGIBILITY
AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTION**

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, BCAG may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to BCAG if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact BCAG for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by BCAG.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who

is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, BCAG may pursue available remedies including suspension and/or debarment.

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date _____

Signature _____

Company Name _____

Title _____

Form 3

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The proposer _____
_____, proposed subconsultant _____
_____, hereby certifies that he has _____, has not _____ participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that, he has filed with the Joint Reporting committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1), and must be submitted by proposers and proposed subconsultants only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5 (Generally, only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposers and proposed subconsultants who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.07(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

The above certification is part of the Proposal. Sign below to acknowledge understanding.

Proposer Signature: _____

Form 5

**PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE
(Must Check Yes or No)**

In accordance with Public Contract Code Section 10162, the Proposer shall complete, under penalty of perjury, the following questionnaire:

QUESTIONNAIRE

Has the Proposer, any officer of the Proposer, or any employee of the Proposer who has a proprietary interest in the Proposer, ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of the law or a safety regulation?

Yes _____

No _____

If the answer is **Yes**, explain the circumstances in the following space.

Form 6

BUTTE COUNTY ASSOCIATION OF GOVERNMENTS
NON-COLLUSION AFFIDAVIT

(Title 23, United States Code Section 112 and Public Contract Code 7106)

In conformance with **Title 23, United States Code, Section 112 and Public Contract Code 7106**, the proposer declares that the proposal is not made in the interest of or on behalf of, an undisclosed person, partnership, company, association, organization or corporation; that the proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal, and has not directly or indirectly colluded or conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further that the proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal, depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

PUBLIC CONTRACT SECTION 10232 STATEMENT

In accordance with **Public Contract code Section 10232**, the proposer, hereby states under penalty of perjury, that no more than one final appealable finding of contempt of court by a federal court has been issued against the proposer within the immediately preceding two-year period because of the proposer's failure to comply with an order of a federal court which orders the Consultant to comply with an order of the National Labor Relations Board.

Note: The Equal Employment Opportunity Certification (Form 1), the above statement, the Questionnaire (Form 3) and this, this statement and Non-Collusion Affidavit are part of the proposal.

Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution. The above certification is part of the Proposal. Sign below to acknowledge understanding.

Proposer Signature: _____

Form 7

PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the proposer hereby declares under penalty of perjury under the laws of the State of California that the proposer has___ , has not ___ been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the proposing upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "proposer" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The proposer must place a check mark after "has" or "has not" in one of the blank spaces provided.

The above Statement is part of the Proposal. Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution. Sign below to acknowledge understanding.

Proposer Signature: _____

Form 8

Proposer Certification Clauses and Proposal Signature

PROPOSER CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Consultant has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. DRUG-FREE WORKPLACE REQUIREMENTS: Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 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 organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs;
 - 4) penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both and Consultant may be ineligible for award of any future BCAG agreements if BCAG determines that any of the following has occurred: (1) the Consultant has made a false certification or has violated the certification by failing to carry out the requirements as noted above (GC 8350 et seq.).

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Consultant certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant's failure to comply with an order of a Federal court, which orders Consultant to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
4. UNION ORGANIZING: Consultant hereby certifies that no request for reimbursement, or payment under this agreement, will seek reimbursement for costs incurred to assist, promote or deter union organizing.
5. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Consultant hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

DOING BUSINESS WITH BCAG

The following laws apply to persons or entities doing business in the State of California.

1. LABOR CODE/WORKERS' COMPENSATION: Consultant needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
2. AMERICANS WITH DISABILITIES ACT: Consultant assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
3. CONTRACTOR NAME CHANGE: An amendment is required to change the Consultant's name as listed on this Agreement. Upon receipt of legal documentation of the name change BCAG will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
4. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:
 - a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the Consultant is currently qualified to do business in California in order to ensure that all obligations due to BCAG are fulfilled.
 - b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate Consultant performing within the state not be subject to the franchise tax.
 - c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
5. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
6. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Consultant shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
7. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other government entity.

By my signature on this proposal I certify, under penalty of perjury under the laws of the state of California that the included questionnaire and statements of Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the proposer has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California administrative Code). By my signature on this proposal I Further certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Noncollusion Affidavit required by Title 23 United States Code, Section 112 and Public Contract Code Section 7106; and the Title 49 code of Federal Regulations, Part 29 Debarment and Suspension certification are true and correct. (Forms 1-8)

The undersigned hereby certify and declare under penalty of perjury that the foregoing is true and correct and that I am duly authorized to legally bind the prospective Proposer to the clauses listed above. This certification is made under the laws of the State of California. **The undersigned is duly authorized to certify that the contents of the technical proposal are true and accurate and the commitment to perform the requested services is certified for a 90 day period.**

<i>Proposer Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

NOTE - If Proposer is a corporation, the legal name of the corporation shall be set forth above together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation: if Proposer is a co-partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts in behalf of the co-partnership: and if Proposer is an individual, his signature shall be placed above. If signature is by an agent other than of an officer of a corporation or a member of a partnership, a power of attorney must be on file with BCAG prior to opening proposals or submitted with the proposal; otherwise, the proposal will be discarded as irregular and unauthorized.

Form 9

Local Agency Proposer/Bidder-DBE (Consultant Contracts)- Information

This information shall be provided by the successful Proposer/Bidder with the award document.

- Preliminary Engr.
 Studies
 Environmental Document
 Prelim Design
 Professional Services
 Final Design Right of Way
 Right of Way Engineering
 Right of Way Utility Relocation
 Construction
 Construction Engineering
 Construction Management

AGENCY: **Butte County Association of Governments** LOCATION: **Butte County, CA**
 PROJECT DESCRIPTION: **Travel Demand Model and Additional Strategies for the 2020 RTP/SCS**
 BCAG Work Element Number: **WE 19-102 & 19-121**
 FEDERAL-AID PROJECT NUMBER:
 TOTAL CONTRACT AMOUNT: \$ *To be determined.*
 FEDERAL SHARE (For local agency to complete) : \$ *To be determined*
 PROPOSAL/BID DATE:
 PROPOSER'S/BIDDER'S NAME: _____

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED ²	DBE Cert. No. AND EXPIRATION DATE	NAME OF DBEs ¹ (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE
IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Copies of the DBE quotes are helpful. Names of the First-Tier DBE Subcontractors and their respective item(s) of work listed above shall be consistent with the names and items of work in the "List of Subcontractors" submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions. 1. Enter DBE prime and subcontractors certification number. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own DBE forces. 2. If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE.			Total Claimed Participation	\$ _____ _____%
			Signature of Proposer/Bidder _____ Date _____ (Area Code) Tel. No. _____ Person to Contact _____ (Please Type or Print)	

Form 9 Cont.

INSTRUCTIONS - LOCAL AGENCY PROPOSER/BIDDER-DBE (CONSULTANT CONTRACTS) INFORMATION FORM *(Revised 10/05)*

The form requires specific information regarding the consultant contract: Agency, Location, Project Descriptions, Contract Number (assigned by local agency), Federal Aid Project Number (if available and required and as assigned by Local Agency or FTA), Total Dollar Contract Amount, Proposal/Bid Date, and **Proposer's/Bidder's Name**.

The form has a column for the Contract Item Number (or Item No's) and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. The DBE should provide a certification number to the Contractor. Notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (include DBE address and phone number).

There is a column for the total DBE dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your proposal/bid pursuant to the Contract Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.)

Form 9 - must be signed and dated by the person proposing/bidding. At a minimum this form must be returned and is a required element prior to any contract award. Also list a phone number in the space provided and print the name of the person to contact.

Note: If no DBE participation is to be claimed or is unknown at the time of proposal submittal, indicate this in the box titled "Total Claimed participation" as either "0" for no participation claimed or "UK" for unknown at this time.

Exhibit 10-I Notice to Proposers DBE Information

The Overall DBE Goal for FFY's 2015/17 for BCAG's DOT-assisted contracts is 12%. BCAG will implement race-neutral measures to meet its Overall DBE Goal objectives in accordance with 49 CFR Part 26.51. Proposers are encouraged to obtain DBE participation for this contract.

1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-01 *Consultant Proposal DBE Commitment* must be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-02 *Consultant Contract DBE Information* must be included with the Request for Proposal. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
 - 2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
 - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

5. **RESOURCES**

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity Web site at: <http://www.dot.ca.gov/hq/bep/>.
 - 1. Click on the link in the left menu titled *Disadvantaged Business Enterprise*;
 - 2. Click on Search for a DBE Firm link;
 - 3. Click on *Access to the DBE Query Form* located on the first line in the center of the page.Searches can be performed by one or more criteria. Follow instructions on the screen.

6. **MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS DBE CREDIT, AND IF A DBE IS ALSO A UDBE, PURCHASES WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:**

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

Exhibit 10-J Standard Agreement for Subconsultant/DBE Participation

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.

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

(Inclusive of all DBEs listed at bid proposal. Refer to instructions on next page of this form)

Consultant to Complete this Section			
1. Local Agency Name: _____			
2. Project Location: _____			
3. Project Description: _____			
4. Consultant Name: _____			
5. Contract DBE Goal %: _____			
DBE Commitment Information			
6. Description of Services to be Provided	7. DBE Firm Contact Information	8. DBE Cert. Number	9. DBE %
Local Agency to Complete this Section			10. Total % Claimed
16. Local Agency Contract Number: _____			_____ %
17. Federal-aid Project Number: _____			
18. Proposed Contract Execution Date: _____			
Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate:			11. Preparer's Signature _____
19. Local Agency Representative Name (Print) _____			12. Preparer's Name (Print) _____
20. Local Agency Representative Signature _____		21. Date _____	
22. Local Agency Representative Title _____		23. (Area Code) Tel. No. _____	
		14. Date _____	
		15. (Area Code) Tel. No. _____	

Distribution: (1) Original – Consultant submits to local agency with proposal
 (2) Copy – Local Agency files

INSTRUCTIONS - CONSULTANT PROPOSAL DBE COMMITMENT

Consultant Section

The Consultant shall:

1. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
4. **Consultant Name** - Enter the consultant's firm name.
5. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I *Notice to Proposers DBE Information* form. See LAPM Chapter 10.
6. **Description of Services to be Provided** - Enter item of work description of services to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
7. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
8. **DBE Cert. Number** - Enter the DBEs Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
9. **DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
10. **Total % Claimed** – Enter the total DBE participation claimed. If the Total % Claimed is less than item “6. Contract DBE Goal”, an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H *DBE Information - Good Faith Efforts* of the LAPM).
11. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
12. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
13. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
14. **Date** - Enter the date this section of the form is signed by the preparer.
15. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the consultant.

Local Agency Section:

The Local Agency representative shall:

16. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
17. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
18. **Contract Execution Date** - Enter date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
19. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
20. **Local Agency Representative Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
21. **Date** - Enter the date the Local Agency Representative signs the form.
22. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
23. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

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. **(If not contracting for professional services, delete this paragraph.)**

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: _____

Proposal Criterion

Proposal Evaluation	Maximum Possible Score (Weighted Score)	Score
I. Cover Letter and Location	5	
II. Personnel (5) Qualifications (15) Experience (15) References (15)	50	
III. Project Understanding and Workplan (Scope)	35	
IV. Schedule	10	
TOTAL POSSIBLE (100 points)		
TOTAL ACTUAL		
TOTAL PERCENT		

Draft Consultant Contract

**BUTTE COUNTY ASSOCIATION OF
GOVERNMENTS**

CONSULTING SERVICES AGREEMENT

Consultant

Consultant

Project

Assist in Updating the Regional Travel Demand Model and Preparing Additional Strategies to Consider in Meeting SB 375 Greenhouse Gas Reduction Targets for the 2020 Butte County Regional Transportation Plan & Sustainable Communities Strategy

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 1	ORGANIZATION AND CONTENTS
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EXHIBITS

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 COMMITMENT
EXHIBIT 10-J	STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION
ATTACHMENT I	– STANDARD INSURANCE REQUIREMENTS (Professional Services)
ATTACHMENT IA	– REQUEST TO CHANGE CONTRACT INSURANCE REQUIREMENTS

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 regional travel demand model update** (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 **\$XXX,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 March 1, 2021.**

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

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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)

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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: _____
