

REQUEST FOR PROPOSALS
FOR THE
ROUTE 191 BLUE OAK WOODLAND MITIGATION PROJECT –
MITIGATION SITE ASSESSMENT

03-But-191 pm 6.8/8.6
EA: 03-3F760
Project ID: 0313000165
Co Op: 03-0654

August 9, 2019

PROPOSALS DUE:
12:00PM, FRIDAY, AUGUST 30, 2019



Butte County Association of Governments
326 Huss Drive, Suite 150
Chico, CA 95928
(530) 809-4616

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I. **Purpose**

On behalf of the California Department of Transportation (Caltrans), the Butte County Association of Governments (BCAG) is seeking proposals from qualified consulting firms to conduct a mitigation site assessment, including generation of a Biological Resources Summary Report, for potential blue oak woodland mitigation lands for the “**State Route 191 (Paradise Realignment) Oak Woodlands Mitigation**”. Services will require field surveys of approximately 2,000 acres of blue oak woodland habitat located northeasterly of Chico, California. BCAG is leading the effort to obtain a qualified consulting firm under contract as part of its effort to assist Caltrans with completing their required mitigation responsibilities under the California Environmental Quality Act (CEQA) for the State Route 191 project.

II. **Background**

In late 2017, Caltrans completed an approximately 2 - mile roadway realignment project that included drainage improvements and roadway re-construction of State Route 191 from Post Mile 6.8 to 8.6. The completed construction impacted blue oak woodland habitat requiring mitigation per CEQA.

On February 25, 2019, BCAG entered into a cooperative agreement with Caltrans to accomplish the required mitigation. BCAG has identified by previous Letter of Interest process, approximately 2,000 acres of blue oak woodland habitat that could meet the mitigation requirements. BCAG seeks a qualified consulting firm that can conduct the required field surveys and generate a Biological Resources Summary Report described below. This information will be used by BCAG to help with the selection of the preferred parcel(s) to purchase for the mitigation project.

III. **Consultant Scope of Services:**

Task 1 – Field Survey

Consultant staff qualified biologists will field verify areas of blue oak woodland habitat to assess the mitigation goal of approximately 30 trees per acre and/or 50% canopy cover. Consultant will document all applicable plant and animal species within the potential sites. As part of the assessment, Consultant biologists will identify locations where there is an average of approximately 30 trees per acre, with approximately 50% canopy cover for all trees present within the potential mitigation sites (includes tree species such as grey pine (*Pinus sabiniana*), interior live oak (*Quercus wislizenii*), valley oak (*Quercus lobata*), canyon live oak (*Quercus chrysolepidis*), bay laurel (*Larus nobilis*), etc.).

This Assessment does not require any other acreage calculations of aquatic features, impact assessment, soil samples, or wetland vegetation characterization.

Task 2 – Biological Resources Summary Report

Consultant will prepare a Biological Resources Summary Report for the project site. The purpose of the field review and subsequent report is to 1) evaluate the existing setting and presence of blue oak woodland habitat, 2) document species and habitats observed, and 3) make recommendations on site locations that meet mitigation requirements.

As part of the preparation of a Biological Resources Summary Report, Consultant will review applicable databases and relevant documentation (i.e., topographic

maps, aerial photos, local plans and resources) to identify potential mitigation site locations within the proposed 2,000 acres. The Biological Resources Summary Report will be prepared following the 50% canopy analysis and biological field verification surveys of approximately 30 trees per acre within the potential mitigation areas. Consultant biologists will confirm that potential mitigation sites are comprised of similar habitats as those identified in the CEQA documentation, including habitat that is dominated by blue oaks with interspersed grey pine (*Pinus sabiniana*), interior live oak (*Quercus wislizenii*), and valley oak (*Quercus lobata*) as well as locations where Canyon live oak (*Quercus chrysolepis*) and bay laurel (*Laurus nobilis*) make up a minor component of the woodland.

A Biological Resources Summary Report will be prepared by Consultant and will include an overview and purpose of the project, a description of the environmental setting and the blue oak woodland habitat surveyed, a description of the methods used, and results/ recommendations. A summary of the blue oak woodland habitat assessed will be prepared and supported by maps and photos identifying the blue oak woodland habitat, for each parcel identified as a potential mitigation site by BCAG. Maps and photos will be compiled, displaying the blue oak woodland habitat for each parcel.

Task 3 – Project Management

Key project team members will conduct a project initiation meeting with BCAG staff, as appropriate. The purpose of this meeting will be to outline procedural/processing requirements, identify and discuss opportunities to streamline the schedule, finalize the deliverables schedule, obtain all relevant documentation, and resolve any other outstanding scope and cost issues.

Maintaining the proposed project schedule and identifying and responding to issues that may arise will require frequent and effective communication between Consultant and BCAG. Ongoing communication, status meetings and updates will provide opportunities for consultation coordination throughout the project process.

IV. Proposal Content Requirements:

Consultants interested in providing the scope of services must submit a proposal by the deadline date and time defined in this RFP. At 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.

- a. Introductory Letter:** A letter describing the firm's interest in providing the scope of services for the project. Indicate the name of the firm submitting the proposal and the name of an individual to contact if further information is desired. This letter should contain a statement of the Consultant's basic understanding of the project and be based on existing information available in the Request for Proposal, available documents, and from applicable regulations or requirements. This letter should also contain an expression of the Consultant's interest in the work, a statement regarding the qualifications of the Consultant to do the work, and any summary information on the project team or the Consultant that may be useful or informative to BCAG. The introductory letter should explain how the prime Consultant is qualified to manage the project.

Along with the introductory letter, the Consultant should indicate his/her acceptability of the terms and conditions of the standard Consultant services

agreement contained in the Proposal Attachments. Any proposed deviations and modifications to the agreement should be noted, with reasons given, in the introductory letter for review by BCAG. Changes to the agreement may not be considered by BCAG once selection has been made.

- b. Office Location of Prime Consultant:** The Consultant must state where office work is to be accomplished.
- c. Personnel, Qualifications, Experience and References:** Identify proposed team(s) and key individuals, including any subconsultants, along with their qualifications and experience as related to the project. Experience on similar projects is highly desired.

References must be stated for each key individual or similar project. References may be contacted as part of the selection process. References of agency project managers or other responsible individuals, who have recent, direct working experience with the proposed key individuals on similar projects, are strongly recommended and should include the following information:

- Client's (Reference) Name
- Contact Name
- Proposed staff role on project
- Telephone Number, Street Address, City, State, Zip Code
- Brief Description of Service provided
- Service Dates
- Service Value/Cost

- d. Subconsultants:** If subconsultants are to be used, the prospective Consultant must include in the Proposal, a description of the work to be done by each subconsultant. The Consultant must also submit Form 2 List of Proposed Subconsultants. All subcontracts must be approved by BCAG, and no work shall be subcontracted without the prior written approval of BCAG. It is expected that the discussion of subconsultants will also include experience and references to similar types of work. It is encouraged for local consulting firms to be contacted and included for portions of work that can be performed locally within Butte County.
- e. Work Plan:** The work plan will ultimately become part of the contract and will serve as the basis for developing proposed Scope of Work for the project. The work plan is expected to contain a specific and straightforward discussion of the Consultant's understanding of the development of the requested services. The description of how the objectives will be achieved shall be presented in a logical, innovative manner such that it is clearly understood how the stated work products can efficiently be delivered.
- f. Project Schedule:** The Consultant shall prepare a comprehensive schedule showing the delivery schedule of the products to be accomplished. The schedule should show each activity, when that activity begins and how long it will continue. Provide the number of weeks required for completion of activities and identify activities that are interdependent.
- g. Conflict of Interest Statement:** The prospective Consultant shall disclose any financial interest or relationships that may constitute a conflict of interest in

proposing on this request.

- h. Disadvantaged Business Enterprise (DBE):** It is the policy of BCAG that Disadvantaged Business Enterprises (DBEs), as defined in Title 49 Code of Federal Regulations (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. The Consultant must complete Exhibit 10-O1 Consultant Proposal DBE Commitment and Exhibit 15-H Proposer/Consultant Good Faith Efforts (if applicable). The DBE requirements of Title 49 CFR, Part 26 will apply to any Consultant agreement. BCAG's overall goal for FFY 2018 – 2020 is 1.28% as seen in Exhibit 10-I Notice to Proposers DBE Information. Businesses certified with the California Department of Transportation can be identified at the following website:

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

- i. Insurance Coverage:** The prospective Consultant shall provide a summary of the firm's insurance coverage for:
- Comprehensive General Liability Insurance
 - Professional Errors and Omissions Insurance
 - Automotive Liability Insurance, and
 - Worker's Compensation Insurance

For additional information regarding insurance requirements, see Attachment I Standard Insurance Requirements – Professional Services.

- j. Cost, Employee Hours and Rates:** The contract will be an Actual Cost Plus Fixed Fee Type contract. For submittal within the body of the Proposal, the proposed personnel identified in item "C" above shall be itemized and their hourly rates shown using Exhibit 10-H1 Cost Proposal and Exhibit 10-K Consultant Annual Certification of Indirect Costs and Financial Management System as examples. The proposal must also state the cost multipliers, overhead rates, fees, profits etc., that would be utilized in developing the cost proposal for the Scope of Work. Hourly rates may be shown as "base" or "loaded/burdened", yet should clearly indicate what is included if presented as a "loaded/burdened" rate.

Cost information must be included separately under separate sealed cover (See V. Proposal Submittal Conditions) and must include subtotal costs for each subtask and task, with the total cost estimate for all required tasks shown clearly. This cost information must also include all proposed subconsultants.

- k. Title VI Compliance:** BCAG policy prohibits discrimination or preferential treatment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation.

It is the policy of BCAG to encourage and facilitate full and equitable opportunities for small local businesses to participate in its contracts for the provision of goods and services. It is further BCAG policy that no discrimination shall be permitted in small local business participation in BCAG contracts or in the subcontracting of BCAG contracts.

The successful Consultant shall comply with the BCAG's non-discrimination policy. Title VI Solicitation Notice: BCAG, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

BCAG reserves the right to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate the proposals submitted, and to award the contract according to the proposal which best serves the interests of BCAG.

V. Proposal Submittal Conditions

One (1) sealed Proposal package marked "ORIGINAL COPY". Within that package there shall be one (1) Original Proposal and three (3) photocopies. The Original Proposal shall contain the "Attachment Checklist" as the first page with all required attachments. The additional two Proposal copies may contain photocopies of the original package only, and must be included in the sealed package marked "ORIGINAL COPY" containing the Original Proposal.

The Proposal shall not exceed twenty (20) single-sided printed pages, excluding 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 also submit one (1) sealed Cost Proposal marked "COST PROPOSAL". Within that package there shall be one (1) Original Cost Proposal and three (3) photocopies under separate sealed cover addressed to:

Butte County Association of Governments (BCAG)
SR 191 Oak Woodland Mitigation Site Assessment
Attn: Chris Devine
326 Huss Drive, Suite 150
Chico, CA 95928

Submittals must be received by **12:00 PM on Friday, August 30, 2019**. 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 Consultant. 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 Board of Directors and resides within the authority granted to the Executive Director to accomplish the execution of any contract.

1. 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 Consultant. 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.

RFP Addendum: Any changes to the RFP requirements (if required) will be made by written addenda by the Project Manager and shall be considered part of the RFP. Upon issuance, such addenda shall be incorporated into the agreement documents, and shall prevail over inconsistent provisions of earlier issued documentation and be forwarded to prospective Consultants. It will be the Consultants responsibility to assure that all addenda are incorporated into the Proposal as required according to all the terms and conditions for submittal of the Proposal.

Verbal Agreement or Conversation: No prior, current, or post award verbal conversations or agreement(s) with any officer, agent, or employee of BCAG shall affect or modify any terms or obligations of this RFP, or any contract resulting from this procurement.

Special Funding Considerations: Any contract resulting from this RFP will be financed with funds available to BCAG through the Federal Highway Administration (FHWA) Metropolitan Planning (PL) program, Senate Bill 1 (SB 1) Planning Funds, and Local Transportation Funds (LTF). In the event the requested service is eliminated or reduced due to lack of funds, BCAG reserves the right to terminate or revise any contract or not enter into an agreement at all.

Exceptions and Alternatives: Consultants may not, after exhausting protest avenues, take exception or make alterations to any requirement of the RFP. If alternatives or options are proposed, Consultant must clearly identify such. BCAG expressly reserves the right in its sole discretion to consider such alternatives and to award a contract based thereon if determined to be in the best interest of BCAG. Since BCAG desires to enter into one contract to provide all of the intended services, only those Proposals to provide all service will be considered responsive

2. Signature

Only an individual who is authorized to bind the proposing firm contractually shall sign Form 9, "Proposal Certification Clauses and Proposal Signature Page". The signature must indicate the title or position that the individual holds in the firm who is authorized to certify that the Proposal is a firm offer for at least a ninety (90) day period. Submitted Proposals shall be rejected if the Proposal/Consultant Certification Sheet is not signed.

VI. Rejection of Proposals

Failure to meet the requirements of items IV, V, and VI, 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.

Proposals not including the proper "required attachments" shall be deemed non-responsive. A non-responsive Proposal is one that does not meet the basic Proposal requirements. Failure to meet the submittal requirements of the Proposal shall deem it non-responsive and therefore be cause for rejection.

More than one Proposal from an individual, firm, partnership, corporation or association under the same or different names, will not be considered. Reasonable grounds for believing that any Consultant has submitted more than one proposal for the work contemplated herein will cause the rejection of all proposals submitted by that Consultant. If there is reason to believe that collusion exists among the Consultants, none of the participants in such collusion will be considered in this or future procurements.

The decision to approve and award a contract is at the discretion of the BCAG Board of Directors and resides within the authority granted to the Executive Director to accomplish the execution of any contract.

VII. Proposal Evaluation

Evaluation of the Proposals will be accomplished by a BCAG-appointed selection committee. The selection committee will utilize the included "Criteria for Evaluation of Proposal" for submitted Proposal evaluations. 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 (see above) 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. Cost proposals will be opened for the top ranked consultant selected. 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. Unopened cost proposals will be returned.

VIII. 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.

1. Award and Protest

- a) Notice of the proposed award shall be posted at the Butte County Association of Governments, 326 Huss Drive, Suite 150, Chico, CA 95928. (Lobby door), and on the following Internet site: www.bcag.org five (5) working days prior to awarding the Agreement.
- b) Consultants have the right to protest the award of Butte County Association of Governments Agreements subject to the following grounds, processes and procedures.
 1. If any Consultant, prior to the award of Contract, files a protest with the BCAG, it is suggested that any protests be by certified or registered mail to:

Butte County Association of Governments (BCAG)
State Route 191 Oak Woodland Mitigation
Attn: Chris Devine
326 Huss Drive, Suite 150
Chico, CA 95928

2. Within five (5) days after filing the initial protest, the protesting Consultant shall file with BCAG a full and complete written statement specifying the grounds for the protest. It is suggested that complete written statements be submitted by certified or registered mail.
3. Upon award of the Contract, the Consultant must complete and submit to BCAG the Payee Data Record (STD 204), to determine if the Consultant is subject to state income tax withholding pursuant to California Revenue and Taxation Code Sections 18662. This form can be found on the Internet at www.osp.dgs.ca.gov under the heading FORMS MANAGEMENT CENTER. No payment shall be made unless a completed STD 204 has been returned to the State.

IX. Contact Person

All questions concerning this Request for Proposal (RFP) may be directed to Chris Devine, Planning Manager, of the Butte County Association of Governments at (530) 809-4616 or cdevine@bcag.org.

Proposal Required Attachments/Check List

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

- One (1) sealed Proposal packaged containing one original and three (3) photocopies
- Form 1 – Equal Employment Opportunity Certification (Fill Out and Sign at the Bottom)
- Form 2 – List of Proposed Subconsultants (Fill out or DNA on the first line)
- Form 3 – Public Contract Code Section 10162 Questionnaire (Check Yes or No)
- Form 4 – BCAG – Non-Collusion Affidavit (Sign at the Bottom)
- Form 5 - Public Contract Code Section 10285.1 Statement (Check and Sign at Bottom)
- Form 6 – Debarment and Suspension (Sign at the Bottom)
- Form 7 – Non-Lobbying Certification for Federal Aid Contracts (Sign at the Bottom)
- Form 8 – Disclosure of Lobbying Activities (Fill Out/Check Box at Beginning, Sign at Bottom)
- Form 9 - Proposer Certification Clauses and Proposal Signature. (Must be signed and submitted with Proposal)
- Exhibit 10-O1 –Consultant Proposal DBE Commitment – Information (Fill out and sign at the Bottom)

Form 1

**EQUAL EMPLOYMENT OPPORTUNITY
CERTIFICATION**

The proposer _____,
proposed subcontractor _____,
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 subcontractors 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 subcontractors 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.

Sign below to acknowledge understanding.

Proposer Signature: _____

Form 3

**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 4

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 Contractor to comply with an order of the National Labor Relations Board.

Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution. Sign below to acknowledge understanding.

Proposer Signature: _____

Form 5

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.

Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution. Sign below to acknowledge understanding.

Proposer Signature: _____

Form 6

DEBARMENT AND SUSPENSION CERTIFICATION

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The Proposer, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, manager;

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgments rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

NOTES: Providing false information may result in criminal prosecution or administrative sanctions.

Sign below to acknowledge understanding.

Proposer Signature: _____

Form 7

Non-Lobbying Certification for Federal Aid Contracts

The prospective participant certifies, by signing and submitting this bid or proposal, 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 any Federal 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 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 influencing or attempting to influence an officer or employee of any Federal 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 of Lobbying Activities," in accordance with its instructions.

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 Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000.00 and that all such sub-recipients shall certify and disclose accordingly.

Sign below to acknowledge understanding.

Proposer Signature: _____

Form 8

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

No Lobbying Activities Peformed by Proposer
(check if true and skip to signature box beside box 16)

- 1. Type of Federal Action: a. contract, b. grant, c. cooperative agreement, d. loan, e. loan guarantee, f. loan insurance
2. Status of Federal Action: a. bid/offer/application, b. initial award, c. post-award
3. Report Type: a. initial, b. material change
For Material Change Only: year, quarter, date of last report

- 4. Name and Address of Reporting Entity: Prime, Subawardee, Tier
5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District

- 6. Federal Department/Agency: Congressional District
7. Federal Program Name/Description: CFDA Number

- 8. Federal Action Number, if known:
9. Award Amount, if known:

- 10. a. Name and Address of Lobby Entity (If individual, last name, first name, MI)
b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

- 11. Amount of Payment (check all that apply): \$, Actual, planned
12. Form of Payment (check all that apply): a. cash, b. in-kind; specify: nature, value
13. Type of Payment (check all that apply): a. retainer, b. one-time fee, c. commission, d. contingent fee, e. deferred, f. other, specify

- 14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:
(attach Continuation Sheet(s) if necessary)

- 15. Continuation Sheet(s) attached: Yes No
16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
Signature:
Print Name:
Title:
Telephone No.: Date:

Authorized for Local Reproduction

Federal Use Only:

Standard Form - LLL

Form 8 (continued)

Standard Form LLL Rev. 09-12-97

INSTRUCTIONS FOR COMPLETION OF SF- LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered Federal action.

Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

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

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and

Form 8 (continued)

completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Form 9
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.

Form 9 (continued)

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.

Form 9 (continued)

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.



326 Huss Drive, Suite
 150 Chico, California
 95928
 (530) 809-4616 FAX (530) 879-2444

EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: Butte County Association of Governments 2. Contract DBE Goal: 1.28%
3. Project Description: Blue Oak Woodland Mitigation Site Assessment
4. Project Location: Butte County
5. Consultant's Name: _____ 6. Prime Certified DBE:

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION	%
17. Local Agency Contract Number: 18. Federal-Aid Project Number: 19. Proposed Contract Execution Date: 20. Consultant's Ranking after Evaluation: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
		12. Preparer's Signature _____	13. Date _____
		14. Preparer's Name _____	15. Phone _____
		16. Preparer's Title _____	

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Location** - Enter the project location as it appears on the project advertisement.
- 4. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials 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.
- 8. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 10. 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.
- 11. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 12. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 13. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 14. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 15. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
- 20. Consultant's Ranking after Evaluation** – Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
- 21. Local Agency Representative's 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.
- 22. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 23. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.

24. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.

25. Local Agency Representative Title - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

This form will be included in the Agreement documents to be executed by the successful Proposer. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful proposer/bidder must execute and return the form prior to executing a contract with BCAG. The form will be used as a basis for determining DBE utilization during performance of the contract.

**Reference Information (Not required with Proposal
Submittal)**

Criteria for Evaluation of Proposal

Proposal Evaluation	Maximum Possible Score (Weighted Score)	Score
I. Introductory Letter and Location of Work	10	
II. Personnel (5) Qualifications (15) Experience (15) References (5)	40	
III. Workplan (Scope)	25	
IV. Schedule	10	
V. DBE	5	
TOTAL POSSIBLE (90 points)		
TOTAL ACTUAL		
TOTAL PERCENT		



BUTTE COUNTY ASSOCIATION OF GOVERNMENTS

Agreement to Conduct Blue Oak Woodland Mitigation Site Assessment

THIS AGREEMENT made and entered into this *day of MM 2019*, by and between Butte County Association of Governments, hereinafter referred to as "BCAG", and Consultant, hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, CONSULTANT submitted a proposal dated *day of MM 2019* in response to the request for proposal to provide such services in the method and manner and for the costs set forth in the proposal, subsequent clarifications and the "best and final offer"; and,

WHEREAS, BCAG has determined that CONSULTANT has the management and technical personnel, expertise and other useful assets of sufficient quantity and quality to provide services; and,

WHEREAS, the subject RFP is attached to this agreement as **Exhibit F** and CONSULTANT 's proposal is attached as **Exhibit G** and both are by this reference made a part of this agreement;

NOW, THEREFORE, in consideration of the foregoing recital and covenants and agreements of each of the parties, the parties do agree as follows:

SECTION 1 - ORGANIZATION AND CONTENTS

1	ORGANIZATION	AND
1	CONTENTS	
SECTION 2	SCOPE OF CONSULTING SERVICES - BASIC	
SECTION 3	SCOPE OF CONSULTING SERVICES - ADDITIONAL	
SECTION 4	NOTICE TO PROCEED; PROGRESS; COMPLETION	
SECTION 5	TIME OF PERFORMANCE	
SECTION 6	COMPENSATION	
SECTION 7	CHANGES TO SCOPE - BASIC	
SECTION 8	COMPLIANCE	WITH LAWS, RULES,
REGULATIONS	SECTION 9	EXHIBITS INCORPORATED
SECTION 10	RESPONSIBILITY OF CONSULTANT	
SECTION 11	RESPONSIBILITY OF BCAG	
SECTION 12	NO OBLIGATION	BY THE FEDERAL
GOVERNMENT	SECTION 13	TERM
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SECTION 15	TERMINATION OF AGREEMENT FOR CAUSE
SECTION 16	GOVERNMENT-WIDE DEBARMENT AND SUSPENSION
SECTION 17	PRIVACY ACT
SECTION 18	INTEREST OF OFFICIALS AND CONSULTANT
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SECTION 20	SUCCESSORS AND ASSIGNS
SECTION 21	INDEPENDENT CONSULTANT
SECTION 22	BREACHES AND DISPUTES
SECTION 23	EQUAL EMPLOYMENT OPPORTUNITY
SECTION 24	DISADVANTAGED BUSINESS ENTERPRISE
SECTION 25	TITLE VI CIVIL RIGHTS LAWS AND
REGULATIONS	SECTION 26 PUBLICATIONS
SECTION 27	COPYRIGHTS
SECTION 28	INDEMNIFICATION
SECTION 29	INSURANCE REQUIREMENTS
SECTION 30	OWNERSHIP OF DOCUMENTS
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SECTION 32	NOTICES
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SECTION 34	INTEGRATION

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 F	REQUEST FOR PROPOSALS
EXHIBIT G	CONTRACTOR’S PROPOSAL
EXHIBIT 10-I	STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE
	PARTICIPATION
ATTACHMENT I	STANDARD INSURANCE REQUIREMENTS (Professional
	Services)
Exhibit 10-O2	DBE Utilization

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 accomplishing the Blue Oak Woodland Mitigation Site Assessment (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 or equivalent. 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 \$510,000 as shown in the estimated budget in "*Exhibit B - Compensation*", without prior notice by the CONSULTANT and approval in writing by BCAG. Upon clarification of scope, compensation may be adjusted as approved in writing by BCAG.

A. Other Direct Costs

The CONSULTANT agrees that the Contract Cost Principles and Procedures, Title 48 CFR, 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 Title 49 CFR, 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 Title 48 CFR, 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 regulations, policies, procedures and directives, including without limitation those listed directly or by reference, 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 - EXHIBITS INCORPORATED

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

SECTION 10- 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 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 FHWA 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 FHWA if applicable. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

SECTION 11 - 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 12 - 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 FHWA as applicable. 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 13 - 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 from the date of contract execution through 4/30/2022.*

SECTION 14 - 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 BCAG'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 15 - 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 CONSULTANT 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 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 subconsultant, CONSULTANT shall not be liable for failure to perform, unless the services to be furnished by the subconsultant 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 16 – 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 this agreement and/or submitting a bid, Request for Proposals (RFP) or Request for Qualifications (RFQ), the submission will satisfy the following:

The certification in this clause is a material representation of fact relied upon by BCAG. If it is later determined that the bidder/proposer/submitting body 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/proposer/submitting body further agrees to include a provision requiring such compliance in its lower tier covered transactions.

SECTION 17 – PRIVACY ACT

Contracts Involving Federal Privacy Act Requirements (if applicable) - 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 FHWA.

SECTION 18 - 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 19 - 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 subconsultants, 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 subconsultants 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 subconsultants is an independent obligation for BCAG's obligation to make payments to the CONSULTANT.
- C. CONSULTANT shall pay its subconsultants within thirty (30) calendar days from receipt of each payment made to the CONSULTANT by BCAG.
- D. Any substitution of subconsultants must be approved in writing by BCAG's Contract Manager in advance of assigning work to a substitute sub-CONSULTANT.

SECTION 20 - 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 21 - 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 22 – 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 23 - 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 24 - DISADVANTAGED BUSINESS ENTERPRISE

- (a) It is the policy of the BCAG and the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in

whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

It is also policy of BCAG to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBE's in DOT assisted contracts;
6. To promote the use of DBE's in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

CONSULTANT must satisfy the requirements for DBE participation as set forth herein. There requirements are in addition to all other equal opportunity employment requirement of this agreement. BCAG shall make all determinations with regard to whether or not

- (a) CONSULTANT, sub-recipient or subconsultant shall not discriminate on the basis or race, color, national origin, or sex in the performance of this agreement. The CONSULTANT shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by CONSULTANT to carry out these requirements is a material breach of the agreement, which may result in the termination of the agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
1. Withholding monthly progress payments;
 2. Assessing sanctions;
 3. Liquidated damages; and /or
 4. Disqualifying the CONSULTANT from future bidding as non-responsible. 49 C.F.R. section 26.13(b),
- (b) CONSULTANT agrees to ensure that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, CONSULTANT and subconsultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. CONSULTANT and its

subconsultants shall not discriminate on the basis of race, creed, national origin, age or sex in the award and performance of federal-assisted contracts.

(d) CONSULTANT shall cooperate fully with BCAG in meeting any of BCAG's commitments and goals with regard to the maximum utilization of disadvantaged business enterprises. CONSULTANT shall keep records of DBE participation in all activities carried out pursuant to this agreement, and shall report to BCAG all such participation and efforts made to encourage DBE participation as required by BCAG.

(c) BCAG requires CONSULTANT pay subconsultants for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment BCAG makes to CONSULTANT. 49 C.F.R. section 26.29(a).

BCAG's Overall DBE Goal for FFY 2018-2020 is 1.28%. CONSULTANT shall incorporate the provisions of the following paragraph in all applicable subcontracts.

"This project is subject to Title 49, Code of Federal Regulations (CFR), Part 26, entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs ("Regulations")." The Regulations in their entirety are incorporated herein by this reference. BCAG has established a Race-Neutral Federal Transportation Administrations (FTA) DBE program. BCAGs Overall DBE Goal for FFY 2018-2020 is 1.28%. It is the policy of BCAG to ensure non - discrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts."

A new Overall DBE Goal will be amended in this agreement beyond the FFY 2020 as determined by BCAG.

If at any time BCAG has reason to believe that CONSULTANT is in violation of its obligations under this agreement or has otherwise failed to comply with terms of the DBE section, BCAG may in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- a. Suspension of any payment or part due to CONSULTANT until such time as the issues concerning the CONSULTANT's compliance are resolved; and
- b. Termination or cancellation of the agreement, in whole or in part, unless the successful CONSULTANT is able to demonstrate within a reasonable time that it is in compliance with the DBE terms state herein.

SECTION 25 - TITLE VI CIVIL RIGHTS LAWS AND REGULATIONS

BCAG is an Equal Opportunity Employer. As such, BCAG agrees to comply with all applicable civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, BCAG agrees to comply with the requirements of 49 U.S.C. section 5323 (h)(3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this agreement, the CONSULTANT shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination

In accordance with Federal transit law at 49 U.S.C. section 5332, the CONSULTANT agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the CONSULTANT agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the 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. chapter 60, and Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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, the CONSULTANT agrees to comply with any implementing requirements FTA may issue.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the CONSULTANT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONSULTANT agrees to comply with any implementing requirements FTA may issue.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the CONSULTANT agrees that it will not discriminate against individuals on the basis of disability. In addition, the CONSULTANT agrees to comply with any implementing requirements FTA may issue.

Sanctions for Noncompliance. In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, BCAG shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:

(1) Withholding of payments to CONSULTANT under the contract until the CONSULTANT complies, and/or,

(2) Cancellation, termination or suspension of the contract, in whole or in part.

SECTION 26 - 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 27 - 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 28 - 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, sub-CONSULTANTS or anyone for whom BCAG is legally liable, and arising from the project that is the subject of this AGREEMENT.

SECTION 29 - 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 (Standard Insurance Requirements [Professional Services])* attached to and made a part of this AGREEMENT.

SECTION 30 - 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 31 - 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, 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 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). FHWA does not require the inclusion of these requirements in subcontracts.

SECTION 32 - 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: Andy Newsum, Deputy Director
Butte County Association of Governments 326
Huss Drive, Suite 150
Chico, CA 95928

B. To CONSULTANT: Name, Title
Address
Address
City, State, Zip

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

SECTION 33 – 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 34 – INTEGRATION

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 are hereby incorporated by reference. Anything to the contrary herein notwithstanding DOT 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 causing BCAG to be in violation of DOT terms and conditions

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 _____
Name, Title

Date: _____

Date: _____

DRAFT

EXHIBIT “A” – SCOPE OF WORK
To Be Inserted

DRAFT

EXHIBIT “B” – COMPENSATION

To Be Inserted

DRAFT

Exhibit “C” – CERTIFICATION OF OWNER

I HEREBY CERTIFY that I am the *Executive Director of the Butte County Association of Governments* and the Chairperson of the Butte Regional Transportation Corporation, and that the consulting firm of _____ 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/Chair

Date

DRAFT

EXHIBIT “D” – CERTIFICATION OF CONSULTANT

I HEREBY CERTIFY that I am Name, and the duly authorized representative of Consultant, whose address is Address, 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 Highway Administration in connection with this AGREEMENT involving participation of Federal Highway Administration funds, and is subject to applicable State and Federal laws, both criminal and civil.

Signature: Name
Company
Title

Date

**EXHIBIT “E” – SCOPE OF CONSULTANT SERVICES – ADDITIONAL
To Be Inserted**

DRAFT

**EXHIBIT “F” – REQUEST FOR PROPOSALS
To Be Inserted**

DRAFT

EXHIBIT “G” – CONTRACTOR’S PROPOSAL

To Be Inserted

DRAFT

**EXHIBIT "10-I" – STANDARD AGREEMENT FOR
SUBCONTRACTOR/DBE PARTICIPATION
To Be Inserted**

DRAFT

**ATTACHMENT I – STANDARD INSURANCE
REQUIREMENTS (Professional Services)
To Be Inserted**

DRAFT

**EXHIBIT “10-O2” – DBE Utilization
To Be Inserted**

DRAFT

April 2019

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

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

BCAG has established a DBE goal for this Contract of **1.28%**

1. TERMS AS USED IN THIS DOCUMENT

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term “bidder” also means “proposer” or “offerer.”
- 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 Agreements 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 Contractor should 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 bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Bidders/Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

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 by completing Exhibit 15-H Proposer/Contractor Good Faith Efforts. All DBE participation will be counted towards the contract goal; therefore, all DBE participation shall be collected and reported.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the bidder’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 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.

DBE Directory: If you do not have Internet access, Caltrans also publishes a [directory](#) of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE 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

- C. 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.
- D. 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.
- E. 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 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Federal-aid Project No(s). N/A Bid Opening Date: 4/24/2019

BCAG has established a Disadvantaged Business Enterprise (DBE) goal of **1.28%** for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) business days from bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer’s or bidder’s eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled “Submission of DBE Commitment” of the Special Provisions, **please attach additional sheets as needed:**

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

<u>Publications</u>	<u>Dates of Advertisement</u>

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of UDBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates

C. The items of work which the bidder made available to UDBE firms, including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate UDBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate UDBE participation was made available to UDBE firms.

Items of Work	Bidder Normally Performs Item	Breakdown of Items	Amount (\$)	Percentage Of Contract
				0.00%
				0.00%
				0.00%

D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

H. Any additional data to support a demonstration of good faith efforts:

EXHIBIT 10-H1 COST PROPOSAL

**ACTUAL COST-PLUS-FIXED FEE OR LUMP SUM (FIRM
FIXED PRICE) CONTRACTS**
(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Prime Consultant Subconsultant 2nd Tier Subconsultant

Consultant _____

Project No. _____ Contract No. _____ Date _____

DIRECT LABOR

Classification/	Name	Hours	Actual Hourly	Total
(Project	_____	_____	\$ _____	\$ _____
(Sr. Civil	_____	_____	\$ _____	\$ _____
(Envir. Scientist)	_____	_____	\$ _____	\$ _____
(Inspector)**	_____	_____	\$ _____	\$ _____

LABOR COSTS

a) Subtotal Direct Labor Costs \$ _____

b) Anticipated Salary Increases (see page 2 for calculation) \$ _____

c) **TOTAL DIRECT LABOR COSTS [(a) + (b)] \$ _____**

INDIRECT COSTS

d) Fringe Benefits (Rate: _____%) e) Total Fringe Benefits [(c) x (d)] \$ _____
Overhead (Rate: _____%) g) Overhead [(c) x (f)] \$ _____

h) General and Administrative (Rate: _____%) i) Gen & Admin [(c) x (h)] \$ _____

j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)] \$ _____**

FIXED FEE

k) **TOTAL FIXED FEE [(c) + (j)] x fixed fee _____%] \$ _____**

l) **CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)**

Description of Item	Quantity	Unit	Unit	Total
Mileage Costs			\$	\$
Equipment Rental and Supplies			\$	\$
Permit Fees			\$	\$
Plan Sheets			\$	\$
Test			\$	\$

l) **TOTAL OTHER DIRECT COSTS \$ _____**

m) **SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

Subconsultant 1:	\$
Subconsultant 2:	\$
Subconsultant 3:	\$
Subconsultant 4:	\$
m) TOTAL SUBCONSULTANTS' COSTS	\$

n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]** \$.

TOTAL COST [(c) + (j) + (k) + (n)] \$ _____

NOTES:

1. Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
3. Anticipated salary increases calculation (page 2) must accompany.

(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

<u>Direct Labor Subtotal per Cost</u>	<u>Total Hours per Cost Proposal</u>		<u>Avg Hourly Rate</u>	<u>5 Year Contract Duration</u>
\$250,000.00	5000	=	\$50.00	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	<u>Avg Hourly Rate</u>		<u>Proposed Escalation</u>			
Year 1	\$50.00	+	2%	=	\$51.00	Year 2 Avg Hourly Rate
Year 2	\$51.00	+	2%	=	\$52.02	Year 3 Avg Hourly Rate
Year 3	\$52.02	+	2%	=	\$53.06	Year 4 Avg Hourly Rate
Year 4	\$53.06	+	2%	=	\$54.12	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year		Total Hours per Cost Proposal	=	Total Hours per Year	
Year 1	20.0%	*	5000	=	1000	Estimated Hours Year 1
Year 2	40.0%	*	5000	=	2000	Estimated Hours Year 2
Year 3	15.0%	*	5000	=	750	Estimated Hours Year 3
Year 4	15.0%	*	5000	=	750	Estimated Hours Year 4
Year 5	10.0%	*	5000	=	500	Estimated Hours Year 5
Total	100%		Total	=	5000	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)		Estimated hours (calculated above)	=	Cost per Year	
Year 1	\$50.00	*	1000	=	\$50,000.00	Estimated Hours Year 1
Year 2	\$51.00	*	2000	=	\$102,000.00	Estimated Hours Year 2
Year 3	\$52.02	*	750	=	\$39,015.00	Estimated Hours Year 3
Year 4	\$53.06	*	750	=	\$39,795.30	Estimated Hours Year 4
Year 5	\$54.12	*	500	=	\$27,060.80	Estimated Hours Year 5
Total Direct Labor Cost with Escalation				=	\$257,871.10	
Direct Labor Subtotal before Escalation				=	\$250,000.00	
Estimated total of Direct Labor Salary Increase				=		Transfer to Page 1
					\$7,871.10	

NOTES:

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable. (i.e. \$250,000 x 2% x 5 yrs= \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: _____

Title *: _____

Signature : _____

Date of Certification (mm/dd/yyyy)

Email: _____

Phone Number

Address: _

List services the consultant is providing under the proposed contract:

**EXHIBIT 10-K CONSULTANT ANNUAL CERTIFICATION OF
INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM**

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required.)

Consultant's Full Legal Name: _____

Important: Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

Indirect Cost Rate:

Combined Rate _____ % **OR**

Home Office Rate _____ % and Field Office Rate (if applicable) _____

_____ % Facilities Capital Cost of Money _____

_____ % (if applicable)

Fiscal period * _____

* Fiscal period is annual one year applicable accounting period that the Indirect Cost Rate was developed (not the contract period). The Indirect Cost Rate is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an Indirect Cost Rate(s) for the **fiscal period** as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the indirect cost rate(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31);
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31;
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on Exhibit 10-A.

Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\)](#); [48 CFR Part 31.201-2\(d\)](#); [23 CFR, Chapter 1, Part 172.11\(a\)\(2\)](#); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost accounts;
- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirement Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

All A&E Contract Information:

- Total participation amount \$_____ on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is ____.
- Years of consultant's experience with 48 CFR Part 31 is .
- Audit history of the consultant's current and prior years (if applicable)
 - Cognizant ICR Audit Local Gov't ICR Audit Caltrans ICR Audit
 - CPA ICR Audit Federal Gov't ICR Audit

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the Indirect Cost Rate Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are

noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name**: _____ Title**: _____
Signature: _____ Date of Certification (mm/dd/yyyy): _____
Email**: _____ Phone Number**: _____

**An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: ***Both prime and subconsultants as parties of a contract must complete their own Exhibit 10-K forms. Caltrans will not process local agency's invoices until a complete Exhibit 10-K form is accepted and approved by Caltrans Audits and Investigations.***

Distribution: 1) Original - Local Agency Project File
2) Copy - Consultant
3) Copy - Caltrans Audits and Investigations

Attachment I – Standard Insurance Requirements (Professional Services) (rev.11-16)

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 04 13).
- 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 03 10 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/BRTC 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 Acord 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/BRTC.

D. OTHER INSURANCE PROVISIONS

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

- a.) BCAG/BRTC, 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/BRTC, its officers, officials, employees or volunteers. Auto coverage as provided by unendorsed CA 0001 03 10.
- b.) Consultant's insurance coverage shall be primary insurance, except for auto, as respects BCAG/BRTC, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by BCAG/BRTC, 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/BRTC **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/BRTC before work under the contract has begun. BCAG/BRTC reserves the right to require complete, certified copies of all insurance policies required by this contract.

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/BRTC certificates of insurance and endorsements before beginning work under this contract.