**Request for Proposals** 

for the

BCAG 2024 Sustainable Communities Strategy Update

May 18, 2022

Proposals due by Friday, June 17, 2022

Time: 12:00 pm



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

(530) 809-4616

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# **ATTACHMENTS**

# Proposal Required Attachments/Checklist:

- □ Exhibit A Proposed Scope of Work
- □ Form 1 Equal Employment Opportunity Certification
- □ Form 2 List of Proposed Subcontractors
- □ Form 3 Public Contract Code Section 10162 Questionnaire
- □ Form 4 BCAG Non-Collusion Affidavit
- □ Form 5 Public Contract Code Section 10285.1 Statement
- □ Form 6 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary
- □ Form 7 Lobbying Certification
- □ Form 8 Disclosure of Lobbying Activities
- □ Form 9 Proposer Certification Clauses and Proposal Signature Page
- □ Form 10 Consultant Proposal DBE Commitment
- □ Form 11 Current Client References
- □ Exhibit 10-H1 Cost Proposal (Separate Cover)
- □ Exhibit 10-K Consultant Indirect Costs
- Insurance Certificate
- □ W-9

# Proposal Reference Information: (Not required with Proposal Submittal)

Criteria for Evaluation of Proposal

Draft Contract

Exhibit 10–O2 – Consultant Contract DBE Commitment

Attachment A – Scope of Work (BCAG Expected)

Attachment B – Project Timeline (BCAG Expected)

Attachment I – Standard Insurance Requirements for Professional Services Contracts

# I. Purpose

The Butte County Association of Governments is seeking proposals from qualified consultant teams to complete the non-technical non-transportation modeling portion of the 2024 update of the BCAG Sustainable Communities Strategy (SCS). This includes assisting with public outreach, priority setting, determining preferred land use scenarios, and establishing key policies and strategies to meet BCAG's GHG reduction target established by California Air Resources Board (CARB). A separate RFP will be circulated to retain a qualified consultant to develop the required transportation demand modeling work associated with the 2024 RTP/SCS update.

The selected consultant must demonstrate exemplary project management skills coordinating with subconsultants, stakeholders, and have experience working with the California Department of Transportation (Caltrans). It is also strongly desired that the selected consultant team has experience preparing similar SCS plans, Regional Housing Needs Plans and General Plan Land Use and Housing Element updates.

#### II. Background

The Butte County Association of Governments (BCAG), as the state designated Regional Transportation Planning Agency (RTPA) and federally designated Metropolitan Planning Organization (MPO) and owner/operator of Butte Regional Transit (B-Line), is responsible for preparing all state and federally required transportation plans and programs necessary in securing transportation funding for highways, streets and roads, transit, bike and pedestrian facilities, and other modes. BCAG is the administrative and policy-making agency for the region's public transit service. B-Line is a consolidated transit system providing urban and rural fixed route service together with complementary paratransit service.

BCAG is required to update the RTP/SCS every four years. BCAG's last RTP/SCS was adopted by the BCAG Board on December 11, 2020. The 2024 update will be adopted by the BCAG Board of Directors in December 2024. BCAG is seeking a qualified consultant team to assist with key SCS tasks (identified in Attachment A) including public outreach, priority setting, determining preferred land use scenarios, establishing key policies and strategies to meet BCAG's GHG reduction target established by California Air Resources Board (CARB), and other key tasks to result in an updated SCS that meets state requirements.

In September 2008, SB 375, also known as the Sustainable Communities and Climate Protection Act of 2008 was enacted by the state of California. SB 375 prompts regions to reduce greenhouse gas (GHG) emissions from passenger vehicles through the coordinated planning of long-range transportation plans. The legislation requires all Metropolitan Planning Organizations (MPO) in California to develop a Sustainable Communities Strategy, which meets regional passenger vehicle GHG emissions targets, as an additional element of their regional transportation plans. SB 375 also links the Regional Housing Needs Allocation (RHNA) and RTP/SCS processes to better integrate housing, land use, and transportation planning. Integrating both processes help ensure that the state's and region's housing goals are met.

In July 2021, Assembly Bill 140 was enacted by the state of California providing \$600 million in state and federal funds to accelerate progress towards state housing goals and climate commitments. Named "REAP 2.0", this program provides \$500 million in funding to MPOs to accelerate infill housing development, reduce Vehicle Miles Traveled (VMT), increase housing supply at all affordability levels, affirmatively further fair housing, and facilitate the implementation of adopted regional and local plans to achieve these goals. The draft guidelines released in March 2021 by the California Department of Housing and

Community Development (HCD) (<u>https://www.hcd.ca.gov/regional-early-action-planning</u>) identify an outreach process to be completed by MPOs using the 10% "Advance Application" funding that results in a list of transformative projects and activities to be included in the full REAP 2.0 application. This outreach process and project ranking process are included as Tasks 2 and 3 in "Attachment A, Scope of Work", and are expected to result in projects and activities that will be included in the full REAP 2.0 funding application (to be prepared separately by BCAG staff) as well as 2024 SCS update. For further information on REAP 2.0, see <u>https://www.hcd.ca.gov/regional-early-action-planning</u>.

# Roles and Responsibilities

- Project Consultant: Lead and conduct the required outreach and priority setting and complete draft and final Summary Report. Coordinate with BCAG staff to gather/develop the required data to consider in preparing the SCS. Develop land use, housing, and transportation scenarios, strategies, policies, and implementation actions for the SCS. Coordinate with BCAG staff, land use model consultant, travel model consultant, BCAG advisory committees, and CARB in the development of the SCS. Prepare draft and final SCS documents for incorporation into RTP, approval by BCAG Board, and submittal to CARB for approval.
- BCAG Staff: Oversee the development of the Regional Transportation Plan and the required elements (Policy, Action, Financial, and SCS) and environmental document, as well as consultants working on the project. In addition, BCAG staff will be preparing several specific products related to the SCS, which include: a 2020 SCS Progress Report, the BCAG Regional Growth Forecasts (2022-2045), and the CARB required Technical Methodology. BCAG staff will also complete the full REAP 2.0 funding application and include the transformative planning and implementation projects that result from Tasks 2 and 3 of Attachment A Scope of Work.
- Land Use Model Consultant (Chico State): Oversee the land use allocation model, associated datasets, and output metrics. Develop base year (2022) land use utilizing the most up-to-date information available. Prepare the forecasted allocations for each scenario provided input from the Project Consultant and BCAG staff. Provide output metrics from the land use model for use by Project Consultant for the quantification of land use model results. Provide base and forecasted land use model results for travel model inputs.
- Travel Demand Model Consultant (TBD): Oversee the travel demand model, associated datasets, off-model calculations, and output metrics. Develop base year (2022) regional travel model utilizing the most up-to-date information available. Prepare forecasted travel demands utilizing scenario information from the land use model and strategies related to the transportation network. Prepare off-model calculations, as needed, for those strategies which cannot be included in the model. Provide output metrics from the travel demand model for use by Project Consultant for the quantification of travel results associated with each scenario.

Funding in the amount of **<u>\$340,000</u>** is available for consultant related work.

# III. Related Project Information

Following is information related to the project:

- BCAG staff will administer the contract and submit quarterly reports, progress reports, final reports, and invoices to HCD and Caltrans.
- All final approvals for documents and work products generated as a result of this contract will be made by BCAG.

• BCAG has secured necessary funding and can begin work immediately upon consultant selection and contract execution.

# IV. Consultant Scope of Services

The services consist in general, of performing key activities associated with preparing the 2024 SCS update and conducting outreach to develop a priority list of projects for the full REAP 2.0 funding application (to later be completed by BCAG) and incorporation into the 2024 SCS update. Elements and tasks to be prepared or performed by the consultant are included in the Proposal References Information section as Attachment A Scope of Work. These include:

- Consultant kickoff meeting
- Bi-weekly conference calls
- Monthly invoice reports
- Initial community outreach and priority setting
- Administration of surveys and summarized results
- Draft and final initial community outreach and priority setting summary report
- SCS public outreach and coordination
- Gathering necessary data
- Developing scenarios and strategies for land use, housing and transportation
- Identifying policies and implementation actions for preferred scenario
- Quantifying results
- Performing social equity analysis
- Draft and final Sustainable Communities Strategy
- Preparing materials and presenting at Board, Council, Committee and other meetings

# V. BCAG Responsibilities

- Administer the contract and submit quarterly reports, progress reports, final reports, and invoices to Caltrans and HCD.
- Provide any data and existing studies that BCAG has performed to date relating to the project
- Manage the delivery and review of each work product
- Maintain a website page at <u>www.bcag.org</u>
- Pay all consultant invoices

Caltrans will:

• Provide relevant information (if any) for development of project.

# VI. 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 the primary office work is to be accomplished.
- c. Personnel, Qualifications, Experience and References: Include organizational chart for proposed team(s) and identify the key individuals, including subconsultants, who are proposed to be part of the team along with their qualifications and experience as related to the project. Experience on similar rail studies is highly desired. Describe the responsibilities of key team members and how the team will interact. Explain how the project team will be managed and techniques that will be used to keep the project on schedule. The information should include the expected amount of involvement and time commitment of each of these individuals on the project. The proposal must identify the proposed team members' current work commitments to other projects or activities in sufficient detail to indicate that the organization and all of the individuals assigned to the proposed project will be able to meet the schedule outlined in the proposal for project. Any change in key personnel after the award of the project must be approved by BCAG before the change is made.

References must be included on Form 11 and include similar projects that proposed key staff have completed. References will be contacted as part of the selection process. In the Proposal, also provide additional reference information including the following information:

- Client's (reference) name
- Agency/organization 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 Subcontractors. 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 Exhibit A Proposed Scope of Work for the contract. 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. BCAG has provided a sample work plan in Attachment A Scope of Work (BCAG Expected).

- 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. The schedule should also include proposed public outreach meeting dates. BCAG has provided a sample schedule in Attachment B Project Timeline (BCAG Expected).
- **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 Form 10 Consultant Proposal DBE Commitment and Exhibit 15-H Proposer/Contractor Good Faith Efforts (if applicable). The DBE requirements of Title 49 CFR, Part 26 will apply to any consultant agreement. BCAG's DBE goal for this project is 0.42%. Businesses certified with the California Department of Transportation can be identified at the following website: <u>http://www.dot.ca.gov/hg/bep/find\_certified.htm</u>
- **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 (Proposal Reference Information document, page 44).

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 provided only. Separately in the Cost Proposal, and using Exhibit 10-H1 Cost Proposal and Exhibit 10-K Consultant Annual Certification of Indirect Costs and Financial Management System as examples, provide detailed cost information for the project. Note that consultant Exhibit 10-H1 and 10-K are examples of how this information should be provided – these forms can be used or consultant can use a different format if preferred. These should include 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. The cost information must also be shown for all proposed subconsultants. The proposed total cost for shall be submitted under separate cover, or separate electronic file, titled Cost Proposal and will not be opened until final selection of the preferred consultant.

**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.

# VII. Proposal Submittal Conditions

The Proposal shall not exceed fifteen (15) 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.

#### **Electronic Submittal**

It is acceptable to submit proposals via email. Please submit two (2) separate PDF files, one containing the Proposal, and another containing the Cost Proposal. Maximum file size is 10mb per email. If necessary, send via separate emails if file sizes exceed 10mb. Hosting the files on a shared site (Microsoft OneDrive, Dropbox, etc.) and emailing a link to BCAG for download is also acceptable. Please submit electronic proposals to cdevine@bcag.org.

#### Hard Copy Submittal (optional)

If you wish to submit hard copies of Proposal and Cost Proposal instead of electronically via email, include One (1) sealed Proposal package marked "ORIGINAL COPY". Within that package there shall be one (1) Original Proposal and three (3) photocopies. There shall also be one (1) USB flash drive containing all information except Cost Proposal. 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" along with the Original Proposal.

Please submit: One (1) original Proposal, three (3) copies of your written Proposal, one (1) Original Cost Proposal (sealed under separate cover), and one (1) USB flash drive containing all information except Cost Proposal addressed to:

BCAG 2024 Sustainable Communities Strategy Update Butte County Association of Governments 326 Huss Drive, Suite 150 Chico, CA 95928 Attn: Chris Devine, Planning Manager

All submittals must be received by **12:00 PM on Friday, June 17, 2022.** 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.

<u>RFP Addendum</u>: 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 consultant's 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.

<u>Verbal Agreement or Conversation:</u> 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.

<u>Special Funding Considerations:</u> Any contract resulting from this RFP will be financed with funds available to BCAG through the Federal Transit Administration (FTA) Section 5304 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.

<u>Exceptions and Alternatives:</u> 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 - "Proposer 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 Form 9 is not signed. Electronic signatures are acceptable.

# VIII. Rejection of Proposals

Failure to meet the requirements of items IV, VI, VII, VIII and IX 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 nonresponsive. 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.

# IX. 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.

# X. 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.

# XI. 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 <a href="mailto:cdevine@bcag.org">cdevine@bcag.org</a> or (530) 809-4616.

# PROPOSAL REQUIRED ATTACHMENTS/CHECKLIST

A complete proposal includes 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 Forms identified below are applicable to this Request for Proposal (RFP) and must be returned, as instructed, for your Proposal to be responsive. Return this checklist with your Proposal.

# **Proposal and Forms**

**NOTE:** This Checklist must be submitted as a cover with the following Forms in Proposal:

	Form 1 - Equal Employment Opportunity Certification (Fill in and Sign at Bottom)
	Form 2 - List of Proposed Subcontractors/Subconsultants (Fill out or DNA)
	Form 3 - Public Contract Code Section 10162 Questionnaire (Yes or No)
	Form 4 - BCAG – Non-Collusion Affidavit (Signature at Bottom)
	Form 5 – Public Contract Code Section 10285.1 Statement (Signature at Bottom)
Covere	Form 6 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier d Transaction (Date, Signature Company and Title)
	Form 7 - Lobbying Certification (Fill in, Sign and Date)
	Form 8 - Disclosure of Lobbying Activities (Fill in, Sign and Date)
	Form 9 – Proposer Certification Clauses and Proposal Signature Page (Must be filled out, dated and signed)
	Form 10 – Consultant Proposal DBE Commitment (Must be filled out as indicated) "DBE Information – Good Faith Efforts" (GFE) required with proposal submittal if DBE Goal not met. If goal is met, GFE form not required with submittal * <i>Note – Form 10A and 10B are supplemental information only and not required to be submitted with Form 10 in the Submittal Package</i>
	Form 11 – Current Client References (Must be filled out as indicated)
	Exhibit 10-H1 Cost Proposal (Submitted under separate cover)
	Exhibit 10-K – Consultant Indirect Costs (Must be filled out as indicated)
	Insurance Certificate
	W-9

#### EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The Proposer/Operator \_\_\_\_\_\_\_, proposed sub-consultant \_\_\_\_\_\_\_, 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 and has an Affirmative Action Program/Plan in place that will be utilized for this agreement.

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 Proposer and proposed sub-consultants 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.

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

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

Proposer Signature:

#### LIST OF PROPOSED SUBCONTRACTORS

The Proposer/Operator shall list the name and address of each proposed subcontractor, to whom the Proposer/Operator expects to subcontract portions of the work. (If no Subcontracts are proposed please indicate by entering "DNA" (Does Not Apply)

Company:						_	
Address:						City, State, Zip:	
Telephone:	(	)	Fax:	(	)	email:	
Certified DBE?	_ Yes		No If yes, pro	ovide ce	rtificatior	n #	
Company:						_	
Address:						City, State, Zip:	
Telephone:	(	)	Fax:	(	)	email:	
Certified DBE?	Yes		No If yes, pro	ovide ce	rtificatior	n #	
Company:						_	
Address:						City, State, Zip:	
Telephone:	(	)	Fax:	(	)	email:	
Certified DBE?	_ Yes		No If yes, pro	ovide ce	rtificatior	n#	
Company:						_	
Address:						City, State, Zip:	
Telephone:	(	)	Fax:	(	)	email:	
Certified DBE?	Yes		No If yes, pro	ovide ce	rtificatior	n#	

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

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

#### QUESTIONNAIRE

Has the Proposer/Operator, any officer of the Proposer/Operator, or any employee of the Proposer/Operator who has a proprietary interest in the Proposer/Operator, 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.

#### 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/Operator 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/Operator has not directly or indirectly induced or solicited any other Proposer/Operator to put in a false or sham proposal, and has not directly or indirectly colluded or conspired, connived, or agreed with any Proposer/Operator or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Proposer/Operator has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Proposer/Operator or any other Proposer/Operator, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Proposer/Operator, 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/Operator 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/Operator, 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/Operator within the immediately preceding two-year period because of the Proposer/Operator's failure to comply with an order of a federal court which orders the Consultant to comply with an order of the National Labor Relations Board.

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

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

Proposer Signature:

#### PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the Proposer/Operator hereby declares under penalty of perjury under the laws of the State of California that the Proposer/Operator 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/Operator" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

## CERTIFICATION REGARDING DEBARMENT, SUSPENSION INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTION

# **Instructions for Certification**

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, BCAG may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to BCAG if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact BCAG for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by BCAG.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

# Form 6 (continued)

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is

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

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

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

Date	
Signature	
Company Name	
Title	

## LOBBYING CERTIFICATION

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

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

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

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

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

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

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

Signature of CONSULTANT'S Authorized Official

Name and Title of CONSULTANT'S Authorized Official

Date \_\_\_\_\_

# DISCLOSURE OF LOBBYING ACTIVITIES

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

Type of Federal Action:	2. Status of	Federal Action:	3. Report Type:
a. contract b. grant c. cooperative agreement d. loan	a. bid/offe b. initial a c. post-aw		a. initial b. material change For Material Change Only:
e. Ioan guarantee f. Ioan insurance			year quarter date of last report
Name and Address of Reportin	g Entity		g Entity in No. 4 is Subawardee, e and Address of Prime:
	awardee · , if known		
Congressional District, if knowr	1	Congressio	nal District, if known
. Federal Department/Agency:		7. Federal Pro	ogram Name/Description:
		CFDA Num	<b>ber,</b> if applicable
Federal Action Number, if known	:	9. Award Am	<b>ount,</b> if known:
0. a. Name and Address of Lobby (If individual, last name, first	•	address if c	Performing Services (including lifferent from No. 10a) first name, MI)
	(attach Continuatio	on Sheet(s) if necessar	ry)
<ol> <li>Amount of Payment (check all \$</li> </ol>	that apply)	13. Type of P	Payment (check all that apply)
Actual	planned		etainer me-time fee
2. Form of Payment (check all tha	t apply):		ommission
a. cash	· · · · · · · · · · · · · · · · · · ·		ontingent fee
b. in-kind; specify: nat	ure		eferred
	alue		ther, 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:

## Form 8 (continued)

Standard Form LLL Rev. 09-12-97

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

15.	Continuation Sheet(s) attached:	Yes	Νο	
16.	Information requested through this form is an			
	Title 31 U.S.C. Section 1352. This disclosure of reliance was placed by the tier above when h	, 0	Signature:	
	was made or entered into. This disclosure is a pursuant to 31 U.S.C. 1352. This information		Print Name:	
	to Congress semiannually and will be availabl inspection. Any person who fails to file the re	e for public	Title:	
	disclosure shall be subject to a civil penalty of \$10,000 and not more than \$100,000 for each	not less than	Telephone No.:	Date:
	, ,,			

#### Federal Use Only: Standard Form LLL

Standard ForAuthotized for Local Reproduction

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. (a) 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.
  (b) 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).

# Form 8 (continued)

Standard Form LLL Rev. 09-12-97

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

- 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.
- 12. 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.
- 13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
- 14. 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.
- 15. Check whether or not a continuation sheet(s) is attached.
- 16. 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 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.

## PROPOSER CERTIFICATION CLAUSES AND PROPOSAL SIGNATURE PAGE

## **PROPOSER/OPERATOR CERTIFICATION CLAUSES**

- 1. <u>STATEMENT OF COMPLIANCE</u>: 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. <u>DRUG-FREE WORKPLACE REQUIREMENTS</u>: 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. <u>NATIONAL LABOR RELATIONS BOARD CERTIFICATION</u>: 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. <u>UNION ORGANIZING</u>: 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. <u>CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT</u>: 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. <u>LABOR CODE/WORKERS' COMPENSATION</u>: 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. <u>AMERICANS WITH DISABILITIES ACT</u>: 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. <u>CONTRACTOR NAME CHANGE</u>: 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. <u>RESOLUTION</u>: 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. <u>AIR OR WATER POLLUTION VIOLATION</u>: 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. <u>PAYEE DATA RECORD FORM STD. 204</u>: 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/Operator 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 Non-collusion 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/Operator to the clauses listed above. This certification is made under the laws of the State of California. The <u>undersigned is duly authorized to certify that the contents</u> of the technical proposal are true and accurate and the commitment to perform the requested services is certified for a 90 day period.

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

NOTE - If Proposer/Operator 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/Operator is a copartnership, 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/Operator 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.

#### CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency:\_\_\_\_\_

2. Contract DBE Goal: \_\_\_\_\_

3. Project Description:

- 4. Project Location:
- 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 Sec	ction		
<ol> <li>17. Local Agency Contract Number:</li> <li>18. Federal-Aid Project Number:</li> <li>19. Proposed Contract Execution Date:</li> </ol>		11. TOTAL CLAIMED DBE PARTICIPATION	%
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.		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
		12. Preparer's Signature   13. Date	
		14. Preparer's Name 15. Phor	le
		16. Preparer's Title	

DISTRIBUTION: Original - Included with consultant's proposal to local agency.

# **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 projectadvertisement.

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 commitmentform.

**16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitmentform.

#### 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 commitmentform.

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

## Form 10 (Continued) DBE INFORMATION - GOOD FAITH EFFORTS (REQUIRED IF GOAL NOT MET)

Federal-aid Project No. \_\_\_\_\_\_ Bid Opening Date \_\_\_\_\_\_

The <u>Butte County Association of Governments</u> established a Disadvantaged Business Enterprise (DBE) goal of  $\underline{x\%}$  for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Note: If the goal is met, this form is not required with submittal. <u>However, bidders are</u> cautioned to maintain the following information even if the "Proposer/Operator DBE Commitment" form indicates that the bidder has met the DBE goal. This will protect the 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.

Submittal of only the "Local Agency Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions:

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):

Publications	Dates of Advertisement			

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.):

Nai	mes of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates	

## Form 10 (Continued)

C. The items of work which the bidder made available to DBE 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 DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

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 made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

F. Efforts made to assist interested DBEs in obtaining 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:

# Form 10 (Continued)

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

H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

#### Form 10A

# NOTICE TO PROPOSER/BIDDERS DISADVANTAGED BUSINESS ENTERPRISE INFORMATION

#### (Note: Portions or all Form 10A may not apply for all agreements dependent upon scope of services required)

# 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/Operator" 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/Operator shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Bidders/Proposer are encouraged to use services offered by financial institutions owned and controlled by DBEs.

# 3. SUBMISSION OF DBE INFORMATION

A "Local Agency Proposer/Operator/Bidder-DBE (Consultant Contracts)-Information" form will be included in the Agreement documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

# 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 contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

# Form 10A (continued)

- C. 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.
- D. 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.
- E. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- F. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

# 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. Bidder/Proposer/Operator may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: http://www.dot.ca.gov/hq/bep/.

Click on the link in the left menu titled Find a Certified Firm

Click on Query Form link, located in the first sentence

Click on Certified DBE's (UCP) located on the first line in the center of the page

Click on Click To Access DBE Query Form

Searches can be performed by one or more criteria

Follow instructions on the screen

- "Start Search," "Requery," "Civil Rights Home," and "Caltrans Home" links are located at the bottom of the query form
- C. How to Obtain a List of Certified DBEs without Internet Access

# Form 10A (continued)

**DBE Directory**: If you do not have Internet access, Caltrans also publishes a <u>directory</u> 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. WHEN REPORTING DBE PARTICIPATION, MATERIAL OR SUPPLIES PURCHASED FROM DBES MAY COUNT AS FOLLOWS:

- A. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent of the cost of the materials or supplies will count toward the DBE participation. 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 Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies toward DBE participation. 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 Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

# 7. WHEN REPORTING DBE PARTICIPATION, PARTICIPATION OF DBE TRUCKING COMPANIES MAY COUNT AS FOLLOWS:

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.
- B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.

# Form 10A (continued)

- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
- D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

#### Form 10B

#### STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION

#### (Note: Portions or all of Form 10B may not apply for all agreements dependent upon scope of services required)

#### 1. Subcontractors

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

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

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Proposer who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. If the contract has an underutilized DBE (UDBE) goal, the Consultant must meet the UDBE goal by committing UDBE participation or document a good faith effort to meet the goal. If a UDBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another UDBE subconsultant, if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Native Americans, Asian-Pacific Americans, or Women.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, sub-recipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

#### Form 10B (continued)

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

A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing; and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

#### 4. Prompt Payment of Funds Withheld to Subcontractors

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

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

#### 5. DBE Records

A. The Consultant shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to

#### Form 10B (continued)

all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

- B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25% of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to the Contract Manager.
  - Prior to the fifteenth of each month, the Consultant shall submit documentation to the Agency's Contract Manager showing the amount paid to DBE trucking companies. The Consultant shall also obtain and submit documentation to the Agency's Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Consultant may count only the fee or commission the DBE receives as a result of the lease arrangement.
  - 2) The Consultant shall also submit to the Agency's Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans" <u>Monthly DBE Trucking Verification</u>, CEM-2404(F) form provided to the Consultant by the Agency's Contract Manager.

#### 6. DBE Certification and Decertification Status

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

# Materials or supplies purchased from DBEs will count towards DBE credit, and if a DBE is also a UDBE, purchases will count towards the UDBE goal under the following conditions:

- A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. 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 Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. A 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 Agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that

#### Form 10B (continued)

engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

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

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.

#### Form 11

#### **CURRENT CLIENT REFERENCES**

Proposer by its signature below, certifies that the following references supplied to other clients over the last seven (7) years (use additional pages as necessary): (A minimum of 5 are required)

Agency Name:		Contact Name and Phone		Year
1			-	
2			-	
3			-	
4			-	
5			-	
Signature:				
Name:				
Date:				
Company Name:	<u> </u>			
Title:				

	Ехнівіт 10-Н1 С	Cost Prop	OSAL P	age 1 of 3	
<u>COST</u> Note: Mark-ups are Not Allowed	<u>PPLUS-FIXED FEE</u> OR <u>LUMP</u> (DESIGN, ENGINEERING ☐ Prime	and Enviro	NMENTA		Tier Subconsultant
Consultant					
Project No.					
DIRECT LABOR					
Classification/Title	Name	E	lours	Actual Hourly Rate	Total
LABOR COSTS a) Subtotal Direct Labor Cost	ts	l		I	I
b) Anticipated Salary Increas	ses (see page 2 for calculatio	n)			
<ul> <li>d) Fringe Benefits (Rate:</li></ul>	) / (Rate:) i) Gen	) Overhead [ 1 & Admin [( FOTAL IND	(c) x (f)] c) x (h)] DIRECT	COSTS [(e) + (g) + (i)]	
1) CONSULTANT'S OTHEI					
Descriptio	n of Item	Quantity	Unit	Unit Cost	Total
			гиго г		
m) <b>SUBCONSULTANTS' C</b> Subconsultant 1: Subconsultant 2: Subconsultant 3: Subconsultant 4:	OSTS (Add additional pag	es if necessa	ry)	ANTS' COSTS	
n) TOTAL OTHER R					
n) IOIAL OIHER D	IRECT COSTS INCLUDI			<b>ANTS</b> [(1)+(m)] - (j) + (k) + (n)]	

NOTES:

- 1. Key personnel **<u>must</u>** 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.

#### EXHIBIT 10-H1 COST PROPOSAL Page 2 of 3

#### COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS

(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

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

Direct Labor <u>Subtotal</u> per Cost Proposal	Total Hours per Cost Proposal		Avg Hourly Rate	5 Year Contract Duration
\$250,000.00	500	=	\$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 %)

	Avg Hourly Rate	F	Proposed Escalat	ion		
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 C	Cost wit	th Escalation	=	\$257,871.10	
	Direct Labor Subtota	al befoi	re Escalation	=	\$250,000.00	
	Estimated total of	Direct	Labor Salary	=		Transfer to Page 1
			Increase		\$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.

#### EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

#### **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. <u>Title 23 United States Code Section 112</u> Letting of Contracts
- 4. 48 Code of Federal Regulations Part 31 Contract Cost Principles and Procedures
- 5. <u>23 Code of Federal Regulations Part 172</u> Procurement, Management, and Administration of Engineering and Design Related Service
- 6. <u>48 Code of Federal Regulations Part 9904 Cost Accounting Standards Board</u> (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.	

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

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.

#### Proposed 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.

#### **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 <u>Title 23</u> <u>United States Code (U.S.C.) Section 112(b)(2)</u>; <u>48 CFR Part 31.201-2(d)</u>; <u>23 CFR, Chapter 1, Part 172.11(a)(2)</u>; 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 <u>23 CFR Part 172.11(c)(4)</u>
- 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 <u>Title 18 U.S.C. Section 1031</u>

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.

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. \*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.

Name:	Title:

Signature: \_\_\_\_\_\_ Email: \_\_\_\_\_\_

#### **PROPOSAL REFERENCE INFORMATION**

#### **CRITERIA FOR EVALUATION OF PROPOSAL**

	Proposal Evaluation	Maximum Possible Score (Weighted Score)	Score
Ι.	Introductory Letter and Location of Work	10	
١١.	Personnel (5)		
	Qualifications (15)		
	Experience (15)	50	
	References (5)		
	Sub-Consultants (10)		
III.	Scope of Work	25	
IV.	Schedule	10	
V.	DBE Commitment	5	

TOTAL POSSIBLE (100 points)	
TOTAL ACTUAL	
TOTAL PERCENT	

**DRAFT CONTRACT** 



## BUTTE COUNTY ASSOCIATION OF GOVERNMENTS

## Agreement to Prepare the 2024 Sustainable Communities Strategy Update

THIS AGREEMENT made and entered into this <u>day of MM 2022</u>, by and between Butte County Association of Governments, hereinafter referred to as "BCAG", and Consultant, hereinafter referred to as "CONSULTANT".

## <u>WITNESSETH;</u>

WHEREAS, CONSULTANT submitted a proposal dated <u>day of</u> <u>MM 2022</u> 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**

<b>SECTION 1</b>	ORGANIZATION AND CONTENTS
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## **EXHIBITS**

EXHIBIT A	SCOPE OF WORK
EXHIBIT B	COMPENSATION
EXHIBIT C	CERTIFICATION OF OWNER
EXHIBIT D	CERTIFICATION OF CONSULTANT
EXHIBIT E	SCOPE OF CONSULTING SERVICES – ADDITIONAL
EXHIBIT F	REQUEST FOR PROPOSALS
EXHIBIT G	CONTRACTOR'S PROPOSAL
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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 North Valley Passenger Rail Strategic Plan (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 <u>\$xxx,xxx</u> 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 <u>et seq</u>. 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 x/xx/xxxx* 

## **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
  - 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 CONSUTANT 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 DOTassisted 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).

The DBE goal for this project is xx%. 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. **The DBE goal for this project is 16%.** 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:	Chris Devine, Planning Manager 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: \_\_\_\_\_

EXHIBIT "A" – SCOPE OF WORK

To Be Inserted

**EXHIBIT "B" – COMPENSATION** 

To Be Inserted

# **Exhibit "C" – CERTIFICATION OF OWNER**

I HEREBY CERTIFY that I am the *Executive Director of the Butte County Association* of *Governments* 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. C	lark, Exec	utive Dired	ctor/Chair
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Date

# **EXHIBIT "D" – CERTIFICATION OF CONSULTANT**

I HEREBY CERTIFY that I am <u>Name</u>, and the duly authorized representative of <u>**Consultant**</u>, whose address is <u>**Address**</u>, 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.

Date

Signature: Name	
Company	

Title

## EXHIBIT "E" – SCOPE OF CONSULTANT SERVICES – ADDITIONAL

To Be Inserted

# EXHIBIT "F" – REQUEST FOR PROPOSALS

# EXHIBIT "G" – CONTRACTOR'S PROPOSAL

To Be Inserted

### EXHIBIT "10-I" – STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION

# ATTACHMENT I – STANDARD INSURANCE REQUIREMENTS (Professional Services)

## **EXHIBIT "10-O2" – DBE Utilization**

To Be Inserted

#### **EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT**

1. Local Agency:	Butte County Association of C	Governments	2. Contract Goal:	t DBE	x%					
3. Project Description:	2024 SCS Update		-	-						
4. Project Location:	Butte County, CA									
5. Consultant's Name:		6. Prime Certif	fied DBE: 🛛		al Contract Amount:					
8. Total Dollar A Subconsultants			9. Total Nu Subconsult		<u> </u>					
10. Description of	Work, Service, or Materials Su		DBE ication	12. DI	13. DBE Dollar					
		Nur	mber			Amount				
	Local Agency to Complete th	nis Section	Section 14. TOTAL CLAIMED DBE PARTICIPATION							
20. Local Agency (					PARTICIPATION	\$				
21. Federal-Aid Pro 22. Contract Execu	oject Number:					%				
Local Agency certi this form is comple	fies that all DBE certifications a te and accurate.	ire valid and inform	ation on	for credit,	ANT: Identify all DBE fir regardless of tier. Writi sted DBE is required.	ms being claimed ten confirmation				
23. Local Agency	Representative's Signature	24. Date		15. Prej	parer's Signature	16. Date				
25. Local Agenc	y Representative's Name	26. Phone		17. Prej Name	parer's	18. Phone				
27. Local Agenc	y Representative's Title			19. Prej Title	parer's					

DISTRIBUTION: 1. Original – Local Agency

2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

#### **INSTRUCTIONS – CONSULTANT CONTRACT 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 Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).

4. Project Location - Enter the project location as it appears on the project advertisement.

5. Consultant's Name - Enter the consultant's firm name.

6. Prime Certified DBE - Check box if prime contractor is a certified DBE.

7. Total Contract Award Amount - Enter the total contract award dollar amount for the prime consultant.

**8. Total Dollar Amount for <u>ALL</u> Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.

**9. Total number of** <u>ALL</u> **subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.

**10. 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.

**11. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.

**12. 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.

**13. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.

**14. Total Claimed DBE Participation** - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). 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).

**15. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.

16. Date - Enter the date the DBE commitment form is signed by the consultant's preparer.

**17. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.

18. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.19. Preparer's Title - Enter the position/title of the person signing the consultant's DBE commitment form.

#### LOCAL AGENCY SECTION

**20. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.

**21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.

22. Contract Execution Date - Enter the date the contract was executed.

**23.** 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.

24. Date - Enter the date the DBE commitment form is signed by the Local Agency Representative.

**25.** Local Agency Representative's Name - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.

26. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
27. Local Agency Representative Title - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

### APPENDIX E OF THE TITLE VI ASSURANCES To Be Inserted

# Attachment A - Scope of Work

#### Task 1. Project Initiation

#### Task 1.1 Consultant Kickoff Meeting

• Consultant will coordinate with BCAG staff to schedule an initial kickoff meeting to review the project scope, schedule, work products, management and communication procedures, finalize project priorities and objectives, and identify any critical and/or regional issues as background to the project.

#### Task 1.2 Administrative Coordination

• Bi-weekly conference calls with Consultant and BCAG staff, as needed, to discuss progress towards meeting schedule, producing key deliverables, and coordinating with separate technical transportation demand modeling consultant and land use modeling consultant. Monthly progress reports will be submitted to the BCAG project manager in association with invoicing.

#### Task Deliverables

- Copy of Executed Contract with Consultant and Detailed Project Delivery
   Schedule
- Consultant Kickoff Meeting Agenda, Minutes
- Agendas and Meeting Minutes; Monthly Progress Reports

#### Task 2. Initial Community Outreach and Priority Setting

#### Task 2.1 Initial Community Outreach Program

Consultant will implement an initial outreach program that will result in a list of • transformative planning and implementation activities, as well as key land use, housing and transportation strategies and policies that will be integrated into both the 2024 SCS and the full REAP 2.0 grant application. This outreach program, largely driven by the REAP 2.0 requirements, will meet state and federal requirements related to equity and seek input from member jurisdictions, Tribal Entities, disadvantaged and historically underserved communities, low-income communities, interregional stakeholders, households impacted and disproportionately impacted by the COVID-19 public health emergency (as defined by the SLFRF Final Rule), etc. This information will be used to develop a priority list of land use and transportation projects and activities that reduce VMT and per capita GHG emissions for integration into the REAP 2.0 application and 2024 SCS. These projects will also be reflective and consistent with BCAG's sixth cycle Regional Housing Needs Plan as well as member jurisdiction sixth cycle housing element updates.

- Community outreach and engagement will proactively employ a variety of methods to reach individuals and organizations representing pertinent interests such as housing, transportation, infrastructure, climate change, infill development and equity. Methods may include public workshops, pop-up workshops at community and other events, establishment of stakeholder and advisory committees with representatives of pertinent special interests and neighborhood groups, interviews and/or focus group meetings, and one-onone meetings with Tribal Entities.
- A community-based survey will be developed and implemented via equitable targeted outreach. The survey will expand upon the input received through the public workshops and committees to ensure projects and activities reflect the diverse needs of the community and advance equity. The survey may be administered in concert with the outreach described above, and will be broadly distributed but also target key groups including low-income communities, interregional stakeholders, households impacted and disproportionately impacted by the COVID-19 public health emergency (as defined by the SLFRF Final Rule), etc. The survey will include two parts:
  - Part 1 Develop further information regarding the types of transformative planning and implementation activities that will be most beneficial to community members
  - Part 2 Develop post-COVID-19 public health emergency demographic, housing and travel data to establish current baseline dataset of demographics and commute/travel data to help inform project ranking for full REAP 2.0 application and for integration into BCAG's 2024 RTP/SCS.

#### Task 2.2 Priority Setting

- After gathering information through the community outreach process and community-based survey, a priority setting process will result in the draft and final list of land use, housing and transportation projects and activities to be included in the full REAP 2.0 application 2024 SCS. Potential projects and activities that are identified via the community outreach process and survey will be ranked based on their ability to contribute towards achieving the SCS GHG reduction target and address REAP 2.0 grant program requirements, including nexus to grant program objectives. The priority setting ranking criteria will include, but not be limited to, a project or activity's ability to:
  - Reduce per capita VMT and GHG emissions.
  - Develop and accelerate implementation of requirements described in Health and Safety Code section 50515.08, subdivision (c)(1).
  - Further transformative planning and implementation activities, as defined in Health and Safety Code section 50515.06, subdivision (f)(1)&(2).
  - Advance state planning priorities as described in section 65041.1 of Government Code.
  - Affirmatively further fair housing consistent with Government Code section 8899.50.
  - Facilitate housing element compliance for the sixth cycle regional housing need assessment pursuant to Government Code section 65302.

- Further housing goals that also result in per capita VMT reductions consistent with BCAG's SCS as described in Government Code section 65080.
- Address Coronavirus economic recovery associated with affordable housing goals as stated in the Department of Treasury's Interim Final Rule's "Services to Disproportionately Impact Communities" eligibility category.
- Address all goals and objectives in sections 201 and 202 of the REAP 2.0 draft Guidelines for Metropolitan Planning Organizations (MPOs). Including:
  - Accelerating infill development that facilitates housing supply, choice, and affordability.
  - Affirmatively furthering fair housing
  - Coronavirus economic recovery
  - Reducing vehicle miles traveled
- Address consistency with sections 203, 204 and 205 of the REAP 2.0 draft guidelines for MPOs.
- Address state and federal requirements for equity.
- o Address community members' concerns and preferences.

#### Task Deliverables

- Initial community outreach and engagement materials
- Survey materials
- Priority setting ranking criteria

# Task 3. Draft and Final Initial Community Outreach and Priority Setting Summary Report

- A draft and final community outreach and priority setting summary report will be developed to document all targeted outreach conducted and input received including outreach and input from Tribal Entities, disadvantaged and historically underserved communities, low-income communities, interregional stakeholders, households impacted and disproportionately impacted by the COVID-19 public health emergency (as defined by the SLFRF Final Rule), etc as required in the REAP 2.0 guidelines. It will also describe survey methodology, sample size, results, etc.
- The report will explain how the sum of the outreach was compiled and incorporated into the priority list of transformative planning and implementation activities, as well as key land use, housing and transportation strategies and policies, and explain how these reflect the input received. It will also include an explanation of the priority setting process, as well as how each activity addresses criteria included in the priority setting process. Responses to stakeholder and public input will be documented in the report to provide transparency and demonstrate how input was incorporated into the priority list of transformative planning and implementation activities.

• A draft report will be prepared and circulated with all relevant groups and agencies for input before a final report is prepared and shared with the BCAG Board of Directors.

#### **Task Deliverables**

- Draft Community Outreach and Priority Setting Summary Report
- Final Community Outreach and Priority Setting Summary Report

#### Task 4. Sustainable Communities Strategy Comprehensive Update

The project consultant will prepare a comprehensive update of the Sustainable Communities Strategy (SCS), as required by Senate Bill 375 (SB 375), which meets the regional passenger vehicle greenhouse gas reductions targets established by the California Air Resources Board (CARB) for the BCAG region. In preparing the SCS, the project consultant shall consider the latest Regional Transportation Plan Guidelines adopted by the California Transportation Commission and the Final Sustainable Communities Strategy Program Evaluation Guidelines prepared by CARB.

In preparing the comprehensive SCS update, the project consultant shall coordinate with BCAG staff, BCAG's travel demand and land use modeling consultants, BCAG's Planning Director's Group (PDG) and Transportation Advisory Committee (TAC), the BCAG Board of Director's, and CARB, in addition to the community outreach included in Task 2.

BCAG staff will oversee separate technical contracts for the land use and travel demand modeling, as well as the environmental impact report. The general roles and responsibilities of each member of the project are listed below. These roles will be reviewed and revised, as necessary, at the project kick-off meeting.

#### Roles and Responsibilities

- Project Consultant: Lead and conduct the required outreach and priority setting. Coordinate with BCAG staff to gather/develop the required data to consider in preparing the SCS. Develop land use, housing, and transportation scenarios, strategies, policies, and implementation actions for the SCS. Coordinate with BCAG staff, land use model consultant, travel model consultant, BCAG advisory committees, and CARB in the development of the SCS. Prepare draft and final SCS documents for incorporation into RTP, approval by BCAG Board, and submittal to CARB for approval.
- BCAG Staff: Oversee the development of the Regional Transportation Plan and the required elements (Policy, Action, Financial, and SCS) and environmental document, as well as consultants working on the project. In addition, BCAG staff will be preparing several specific products related to the SCS, which include: a 2020 SCS Progress Report, the BCAG Regional Growth Forecasts (2022-2045), and the CARB required Technical Methodology.

- Land Use Model Consultant (Chico State): Oversee the land use allocation model, associated datasets, and output metrics. Develop base year (2022) land use utilizing the most up-to-date information available. Prepare the forecasted allocations for each scenario provided input from the Project Consultant and BCAG staff. Provide output metrics from the land use model for use by Project Consultant for the quantification of land use model results. Provide base and forecasted land use model results for travel model inputs.
- Travel Demand Model Consultant (TBD): Oversee the travel demand model, associated datasets, off-model calculations, and output metrics. Develop base year (2022) regional travel model utilizing the most up-to-date information available. Prepare forecasted travel demands utilizing scenario information from the land use model and strategies related to the transportation network. Prepare off-model calculations, as needed, for those strategies which cannot be included in the model. Provide output metrics from the travel demand model for use by Project Consultant for the quantification of travel results associated with each scenario.

#### Task 4.1 SCS Public Outreach and Coordination

- Project Consultant will organize and prepare materials and advertisements for public workshops and meetings to present results of major SCS deliverables throughout the plan update process and solicit input from the diverse communities throughout the region. This work will be separate from the initial outreach associated with Task 2 and will continue through the development and approval of the 2024 SCS in December 2024. The workshops and meetings will be at various locations in the study area and/or held virtually online. Pop-up meetings at key community events or locations will also be included to obtain input from as many diverse and disadvantaged communities and groups as possible.
- Consultant will participate in quarterly City/Town/County Planning Directors Group meetings (held virtually), to provide the group with updates and review key deliverables.

#### Task 4.2 Gather/Develop Required Data to Consider

• Project Consultant will prepare a review of existing and available data sources for completion of the project. If a necessary dataset is not available, the project consultant will propose a process for developing the data. The review will be presented to BCAG staff for comment prior to proceeding with collection or development.

#### Task 4.3 Develop Scenarios and Strategies for Land Use, Housing, and Transportation

- Consultant will develop four (4) distinct long-range (2035 or 2045) scenarios of land use, housing, and transportation to ultimately be considered by the BCAG Board of Director's for selection as a Preferred Scenario to achieve the region's passenger vehicle greenhouse gas reduction target. One of the scenarios will be the 2020 RTP/SCS.
- The scenarios shall contain reasonable strategies applicable to the BCAG region. Example strategies to consider should include, but are not limited to:

- Increasing the density, diversity, and accessibility of land uses
- Increasing the mix of housing within the region
- Increasing the jobs-housing balance
- Expanding and improving pedestrian and bicycle networks
- Expanding and increasing transit service frequency and speed
- Implementing car-sharing, ridesharing, bike-sharing, and micro-mobility options
- Increasing telecommuting and alternative work schedules
- o Increasing the use of Alternative Fuel Vehicles
- Implementing parking pricing strategies
- Upon selection of a Preferred Scenario for the long-range analysis year (2035 or 2045), the strategies within the scenario will be applied to two (2) additional mid-term years. These years could be 2030, 2035, 2040, or 2045 depending on the selected long-range year and federal air quality conformity requirements.
- Consultant will prepare a summary report of the four scenarios with the associated strategies and applicable metrics, including identification of the Preferred Scenario.

#### Task 4.4 Identify Policies and Implementation Actions for Preferred Scenario

• Upon selection of a Preferred Scenario, Consultant will identify the policies and actions for implementation and include in a memorandum for review by BCAG staff, BCAG's PDG and TAC, as well as the BCAG Board. Comments will be reviewed and addressed in the Draft SCS.

#### Task 4.5 Quantify Results

 The Consultant will quantify the land use, housing, and travel related metrics of the preferred scenario for inclusion in the SCS. Metrics should include those identified in CARB's SCS Submittal Package Summary Guide -<u>https://ww2.arb.ca.gov/sites/default/files/2020-</u> 07/SCS Submittal Package Summary Guide July2020.pdf and SCS Submittal Package Example Tables - <u>https://ww2.arb.ca.gov/sites/default/files/2020-</u> 07/SCS Submittal Package Example Tables\_July2020.xlsx.

#### Task 4.6 Equity Analysis

• The Consultant will develop a quantitative and qualitative equity analysis of the Preferred Scenario that includes any disparate impacts of the 2024 SCS on the basis of race, color, or national origin and whether any disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations are identified and addressed, as appropriate.

#### **Task Deliverables**

- Public outreach and coordination materials
- Memorandum of required data to consider in development of SCS
- Memorandum describing four (4) scenarios with associated strategies, applicable metrics, and identification of a proposed Preferred Scenario
- Memorandum identifying policies and implementation actions for the proposed Preferred Scenario
- Memorandum with the quantified results for the SCS Preferred Scenario
- Memorandum detailing the Equity Analysis of the proposed Preferred Scenario

#### Task 5. Draft and Final SCS Document

#### **Draft Document**

• The consultant will prepare the draft document incorporating memorandums and reports as well as input from committees, groups, and general public. Implementation and next steps will be documented. Document will include background and executive summary.

#### **Final Document**

• The consultant will prepare a final document based on comments received on draft document from relevant parties, and general public.

#### Task Deliverables

- Draft SCS Document
- Final SCS Document

#### Task 6. BCAG Board of Directors Review/Approval

#### **BCAG Board of Directors Meetings**

• Consultant will attend BCAG Board of Directors meetings in person or virtually to provide technical information related to the project. This will include providing an introductory presentation early in the development of the project, and several additional presentations during development of the project focusing on key findings. Consultant will also present details associated with the draft and final SCS to the Board.

#### **Task Deliverables**

• BCAG Board of Directors Meeting Presentation Materials

### Attachment B -Project Timeline

#### BUTTE COUNTY ASSOCIATION OF GOVERNMENTS - 2024 SUSTAINABLE COMMUNITIES STRATEGY

Draft Schedule

		Draft Schedule																															
	2021						2022							2023						2024								2025					
Project Work Plan (Draft)	J F	= M 4	A M	JJ	A	s o r	N D	J F	• M .	A M	1 1	A S	ON	DJ	FM	1 A I	MJ	JA	s o	ND	J	FM	AM	J	JA	S C	N D	J F	MA	Μ.	JJ	A S O	οΝ
Task I. Project Initiation																																	
Task 1.1 Consultant Kickoff Meeting																																	
Task 1.2 Administrative Coordination																																	
Task 2. Community Outreach Program & Priority Setting																																	
Task 2.1 Community Outreach Program																																	
Task 2.2 Priority Setting																																	
Task 3. Draft and Final Summary Report																																	
Draft Report												- 12																					
Final Report																																	
Task 4. Prepare Sustainable Communties Strategy																																	
Task 4.1 SCS Public Outreach and Coordination																																	
Task 4.2 Gather/Develop Required Data to Consider																												i —					
Task 4.3 Develop Strategies & Scenarios (Land Use, Housing, and Transp.)																												i —					
Task 4.4 Identify Policies and Imp. Actions for Preferred Scenario																																	
Task 4.5 Quantify Results																												i –					
Task 4.6 Equity Analysis																																	
Task 5. Finalize Sustainable Communties Strategy																																	
Prepare Draft and Final SCS																												i —					
Submit Final SCS to CARB																																	
Task 6. BCAG Board of Directors Review/Approval																																	
BCAG Board Meetings																																	
SCS Related Tasks (Not Part of Consultant Scope of Work)		_	_		_	_							_	_		_	_						_								_		
Modeling Updates	_											_				-						-											
Land Use Allocation Model Improvements	_	_																															
Update Traffic Counts		_																															
Update GIS Datasets (Land Use, Road Network, Growth Areas)		_																															
Update Travel Model																																	
Prepare Land Use & Transportation Scenarios																		_															

Date:May 2022

Anticipated Adoption of 2024 RTP/SCS

#### 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

- 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. <u>Construction contracts only</u> 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.) <u>General Liability</u>: 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.) <u>Automobile Liability</u>: 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.) <u>Workers' Compensation and Employers Liability</u>: 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.) <u>Professional Liability Insurance (If not contracting for professional services, delete this paragraph)</u> 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. <u>DEDUCTIBLES</u>

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 <u>http://www.ambest.com/</u>)

#### 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.