

SAMPLE CONSULTANT SERVICES CONTRACT – RFP ATTACHMENT 4

This is a contract, entered into on **April 19, 2019**, in Eureka, California, between the HUMBOLDT COUNTY ASSOCIATION OF GOVERNMENTS, hereinafter called HCAOG, and **GHD Inc.**, hereinafter referred to as CONSULTANT.

HCAOG may retain independent contractors to perform special, technical, expert, or professional services. Consultant is equipped, staffed, licensed, and prepared to provide such services.

WHEREAS HCAOG does not have staff time available to prepare such documents; and WHEREAS, HCAOG has selected CONSULTANT based on review of CONSULTANT'S scope of work and previous work on the project; and

WHEREAS, the CONSULTANT represented itself to HCAOG as an experienced firm having performed various and similar projects for other governmental agencies;

HCAOG and CONSULTANT agree to this Contract as follows:

1. CONSULTANT'S DUTIES:

1.1. Term of Contract. The term of this Contract shall be from the date of its execution until the completion of the work contemplated by this Contract and its final acceptance by HCAOG unless terminated earlier as provided herein. CONSULTANT shall complete all tasks **on or before July 31, 2020** unless otherwise extended by written authorization. Services performed under this Contract shall commence only upon Notice to Proceed by HCAOG to CONSULTANT.

1.2. Standards of Performance

- (a) Standard of Care. The standard of care for all professional services performed or furnished by Consultant under this Contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
- (b) Accuracy of Services. HCAOG shall not be responsible for discovering deficiencies in the technical accuracy of CONSULTANT's services. CONSULTANT shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in HCAOG-furnished information. However, HCAOG shall be responsible for, and CONSULTANT may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by HCAOG to CONSULTANT pursuant to this Agreement. CONSULTANT may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

1.3. Scope of Work. CONSULTANT shall perform services in conformance with the agreed

upon "Project Scope of Work, Timeline and Budget" attached as Exhibit 'A' hereto and incorporated herein by this reference and shall comply with all relevant conditions as set forth in this Contract.

- 1.4. Amendment of Scope of Work. HCAOG shall have the right to amend the Scope of Work within the Project Scope of Work, Timeline and Budget, Exhibit A by written notification to the CONSULTANT. In such event, the compensation and time of performance shall be subject to renegotiation upon written request of either party to this Contract. CONSULTANT shall be entitled to receive full payment for all services performed and all costs incurred to the date of receipt of written notification. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by HCAOG.
- 1.5. Coordination/Staffing. CONSULTANT shall assign **Josh Wolf, as Project Manager** to personally participate in said project. HCAOG also retains the right to approve any substitution of the Project Manager. No portion of the work included in this Contract shall be subcontracted, except as provided herein, without the prior, written authorization of HCAOG.

Services described in the Scope of Work shall be performed by CONSULTANT's staff, subcontractor (s) or other members of the project team, hereinafter referred to as "subcontractor(s)," listed in the "Project Scope of Work, Timeline and Budget," Exhibit A, attached hereto and incorporated by this reference.

- 1.6. Correction of Work. CONSULTANT shall provide professional services in a reasonably timely manner, as identified by HCAOG. CONSULTANT shall deliver to HCAOG Deliverables as called for in the Project Scope of Work, Timeline and Budget," Exhibit A, attached hereto. HCAOG shall complete its acceptance review within ten (10) working days of receiving each Deliverable. HCAOG agrees to provide CONSULTANT with written notice of the result(s) of their review as necessary. The basis for acceptance, acceptance with rework and/or rejection shall be as indicated in the Project Scope of Work, Timeline and Budget," Exhibit A, attached hereto, unless superseded by Technical Data provided to and accepted by HCAOG and CONSULTANT. If Consultant does not receive written notice within ten (10) working days after delivery, or if HCAOG uses the Deliverable in its business operations, then the Deliverable shall be deemed accepted as of the first date of either of these events.
- 1.7. Completion of Work. CONSULTANT shall be relieved of the duty to complete work only if a) the contract is terminated or b) upon notice by the CONSULTANT that work cannot be completed due to circumstances beyond its control or c) should HCAOG fail to make timely payments under the terms of this contract or, d) failure of the CONSULTANT to receive accurate data and/or information from HCAOG or third parties in a timely manner.
- 1.8. Contract Products. The CONSULTANT shall submit deliverables as detailed in the Project Scope of Work, Timeline and Budget, Exhibit A. The CONSULTANT shall provide electronic files suitable for reproduction of all products to become the property of HCAOG.

- 1.9. Title to Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions, equipment and other final work products compiled by the CONSULTANT under the contract shall be vested in HCAOG, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of HCAOG.
- 1.10. Employment Practices. CONSULTANT shall not discriminate in its performance under the contract either directly or indirectly on the grounds of race, color, religion, sex, age, disability, or national origin in their employment practices, and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the aforesaid factors. The CONSULTANT will comply with the regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21).
- 1.11. Retention of Records/Audits. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subcontractor, and HCAOG shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case CONSULTANT agrees to maintain same until HCAOG, Caltrans, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), 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).

The State of California, Office of the State Controller, California Department of Transportation (Caltrans), FHWA, or any duly authorized representative of the Federal or State Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

1.12. Invoicing.

- (a) Invoices for services must be presented to HCAOG no later than the fifteenth day of each month for the month prior. CONSULTANT shall submit an invoice to HCAOG stating the amount due for such services on a monthly basis throughout the duration of the project. Said monthly invoicing shall reflect the task worked on, the percentage of the task completed, and the total dollar amount for the task in comparison to the invoiced amount based upon the percentage of the task then completed. HCAOG shall reimburse the CONSULTANT as promptly as its fiscal procedures permit, upon receipt of itemized invoices submitted in accordance

with this Contract. Payment of the invoices will be made to CONSULTANT after acceptance of work product and approval by HCAOG and upon reimbursement by the State of California. HCAOG will withhold 10% of each invoice until fully reimbursed by the State of California. Such reimbursements shall be based upon actual eligible costs incurred by the CONSULTANT consistent with the "Project Scope of Work, Timeline and Budget," Exhibit A. No interest or carrying charges shall accrue to CONSULTANT by reason of delayed payment.

- (b) The CONSULTANT shall pay any Subcontractor(s) for satisfactorily completed work no later than ten (10) days of receipt of each payment from HCAOG. The ten (10) day period is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with HCAOG's prior written approval. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the CONSULTANT or Subcontractor in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient Subcontractor performance, and/or noncompliance by a Subcontractor. This clause applies to both DBE and non-DBE Subcontractor(s).
- (c) All invoices submitted to HCAOG for payment shall be sent directly to:

Humboldt County Association of Governments
ATTN: Debbie Egger, Fiscal Administrative Officer
611 I Street, Suite B
Eureka, CA 95501

The invoice shall be entitled "Invoice" or otherwise clearly identify that the document is an Invoice, and shall contain the following information:

- i. HCAOG's "Bill To" information as stated in the above paragraph;
 - ii. Invoice number and/or billing number specified by CONSULTANT. The invoice number must be unique for each invoice submitted;
 - iii. Invoice date;
 - iv. Billing period specified with beginning and ending dates. The beginning date must not be sooner than the Notice to Proceed date of the Contract, or within any previous billing dates;
 - v. Percent of Task Completed;
 - vi. Total amount due for the billing period;
 - vi. Total amount billed to date; and
 - vii. Project Name
- 1.13 Contract Completion Retainer. CONSULTANT is prohibited from holding retainage from Subcontractor (s). Any delay or postponement of payment may take place only for good cause and with HCAOG's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT to the penalties, sanctions, and

other remedies specified in Section 7108.5 of the California Business and Professions Code, if applicable. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient Subcontractor (s) performance, and/or noncompliance by Subcontractor (s). This clause applies to both DBE and non-DBE Subcontractor (s).

- 1.14. Satisfactory Performance. Payment for services under this Contract is contingent upon HCAOG's determination that the performance of the CONSULTANT has been satisfactory.

2. HCAOG'S DUTIES:

- 2.1 Payment. HCAOG shall pay CONSULTANT for services on a firm fixed price basis as shown in Exhibit A. In no event shall compensation as described in Exhibit A exceed **\$304,000** without prior written consent of HCAOG.

No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the total firm fixed price compensation will be negotiated between CONSULTANT and HCAOG. Adjustment in the total firm fixed price compensation will not be effective until authorized by contract amendment and approved by HCAOG.

Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the "Project Scope of Work, Timeline and Budget," Exhibit A, HCAOG shall have the right to delay payment or terminate this Contract in accordance with the provisions of Section 3.9: Termination.

HCAOG shall reimburse the CONSULTANT as promptly as its fiscal procedures permit, upon receipt of itemized, monthly, invoices submitted in accordance with this Contract. Payment of the invoices will be made to CONSULTANT after acceptance of work product and approval by HCAOG and upon reimbursement by the State of California. HCAOG will withhold 10% of each invoice until fully reimbursed by the State of California.

3. GENERAL CONDITIONS:

- 3.1 Exhibits: This Contract includes the following Exhibits, which are incorporated herein:
 - Exhibit A. Project Scope of Work, Timeline and Budget**
 - Exhibit B. Debarment and Suspension Certification**
 - Exhibit C. Federal Tax Form W-9, Request for Taxpayer Identification Number and Certification**
 - Exhibit D: Disadvantaged Business Enterprises (DBE) Information Form**
 - Exhibit E: Certifications**

3.2 Insurance/Notification. Prior to the beginning, and throughout the duration, of the work, CONSULTANT will maintain insurance in conformance with the requirements set forth below. CONSULTANT will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. CONSULTANT acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this contract and which is applicable to a given loss, will be available to HCAOG.

CONSULTANT is covered by, and agrees to maintain, general liability insurance for bodily injury and property damage arising directly from its negligent acts or omissions with limits as specified below. Certificates of insurance shall be provided to HCAOG prior to commencement of work by CONSULTANT. CONSULTANT agrees to indemnify, protect, defend and name HCAOG, its public officials, officers and employees as additional insured on the Commercial General Liability and Business Auto Insurance and hold harmless from any loss, damage or liability arising directly from any negligent act or omission by CONSULTANT. CONSULTANT shall not be responsible for any loss, damage or liability arising from any act or omission by HCAOG, its officials, officers or employees.

CONSULTANT shall provide the following types and amounts of insurance:

- (a) Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregates.
- (b) Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.
- (c) Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including owned, non-owned and hired autos, or the exact equivalent. Limits shall be no less than \$1,000,000 per accident, combined single limit. If CONSULTANT owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If CONSULTANT or CONSULTANT'S employees use personal autos in any way on this project, CONSULTANT shall obtain evidence of personal auto liability coverage for each such person.
- (d) Errors and Omissions Liability. CONSULTANT shall provide evidence of professional liability insurance on a policy form appropriate to CONSULTANT'S profession. Limits shall be no less than \$1,000,000/claim.
- (e) Certificate of Insurance. CONSULTANT shall file a certificate of insurance

completed and filed with HCAOG within fifteen (15) days of execution of this Contract and prior to engaging any operation or activities set forth in this Contract. The foregoing policies shall provide that no cancellation, major change in coverage, or expiration by insurance company or insured during the term of this contract shall occur without thirty (30) days written notice to HCAOG prior to the effective date of such cancellation or change in coverage.

- (f) All such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of two (2) years after completion of the contract.
- (g) The Commercial General Liability and Business Auto insurance policies shall provide an endorsement naming HCAOG, its officers, agents, employees and volunteers as Additional Insured, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by HCAOG and that the insurance of the Additional Insured shall not be called upon to contribute to a loss covered by the insurance HCAOG.

3.3 Waiver or Modification Ineffective Unless in Writing. No waiver or modification of this contract or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. No oral understanding or agreement not incorporated in this contract is binding on either of the parties. Time is of the essence in carrying out duties hereunder.

3.4 Independent Contractor. The parties intend that CONSULTANT, in performing the services specified herein, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. CONSULTANT is not to be considered an agent or employee of HCAOG and is not entitled to participate in any pension plan, insurance, bonus or similar benefits HCAOG provides its employees. In the event HCAOG exercises its right to terminate this Contract, CONSULTANT expressly agrees that it shall have no recourse nor right of appeal under rules, regulations, ordinances or laws applicable to employees.

CONSULTANT shall be free to contract for similar services to be performed for others while under contract with HCAOG. CONSULTANT agrees to furnish at its own expense all tools, equipment, services, labor and materials necessary to complete all requirements of this contract.

3.5 Compliance with Laws, Rules and Regulations.

- (a) CONSULTANT shall study and comply with all applicable federal, state and local laws, rules and regulations affecting the CONSULTANT and his/her work hereunder. CONSULTANT represents and warrants to HCAOG that CONSULTANT has and will keep in effect during the term of this Contract all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT's profession and to do the work hereunder.

- (b) CONSULTANT agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all employees of CONSULTANT performing any services under this Contract have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONSULTANT shall make the required documentation available upon request to HCAOG for inspection.
- (c) CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any HCAOG employee. For breach or violation of this warranty, HCAOG shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.
- 3.6 Severability. Any provision or part of the contract held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon HCAOG and Consultant, who agree that the contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 3.7 Attorneys' Fees, Applicable Law and Forum. In the event either party brings an action or proceeding for damages arising out of the other's performance under this Contract or to establish the right or remedy of either party, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as part of such action or proceeding, whether or not such action or proceeding is prosecuted to judgment. This Contract shall be construed and interpreted according to California law, and any action to enforce the terms of this Contract or for the breach thereof shall be brought and tried in the County of Humboldt.
- 3.8 Notices. All notices required or provided for under this contract shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight delivery service. Any such notice shall be delivered in the following manner:

Marcella Clem, Executive Director
Humboldt County Association of Governments
611 I Street, Suite B
Eureka, CA 95501

Notices required to be given to CONSULTANT shall be addressed to the following:

Josh Wolf, Project Manager
GHD Inc.
718 Third Street
Eureka, CA 95501

3.9 Termination.

- (a) Termination of Convenience of HCAOG: HCAOG may terminate this Contract at any time by giving notice to the CONSULTANT of such termination (including the effective termination date) at least thirty (30) calendar days before the effective date of such termination. In such event, all finished or unfinished documents and other materials as described in this Contract, at the option of HCAOG, become HCAOG's property. If this Contract is terminated by HCAOG, as provided herein, HCAOG's only obligation shall be the payment of fees and expenses incurred prior to the termination date, for work deemed satisfactory to HCAOG, in accordance with the cost provisions of this Contract.
- (b) Termination for Cause: If through any cause, the CONSULTANT shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the CONSULTANT violates any of the covenants, terms, or stipulations of this Contract, HCAOG shall thereupon have the right to terminate the Contract by giving not less than ten (10) working days written notice to the CONSULTANT of the intent to terminate and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the CONSULTANT under this Contract shall, at the option of CONSULTANT, become HCAOG's property.

3.10 Ownership, Confidentiality, and Use of Work Products.

- (a) Ownership of any reports, data, studies, surveys, charts, memoranda, and any other documents, which are developed, compiled, or produced as a result of this Contract, whether or not completed, shall vest with HCAOG. HCAOG reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the data.
- (b) HCAOG shall receive copyright and ownership to all data and materials delivered under this contract upon formal acceptance, except for those data and materials that are subject to ownership or copyright of others prior to the execution of this contract. No distribution of the original or derived works shall be made prior to acceptance by HCAOG unless specified in the task order or authorized by the contracting officer. The CONSULTANT may maintain copyright and ownership of all original or derived works which are not required submittals under this contract.
- (c) Methodology and materials developed under this Contract are the property of HCAOG and may be used by HCAOG as it sees fit, including the right to revise or publish the same without limitation. CONSULTANT shall not be liable for use of such methodology, materials, software logic, and systems for purposes other than that for which it is developed.
- (d) Subject to the California Public Records Act, all Work Products and Related Work

Materials including Intellectual Property shall be held confidential by CONSULTANT. Nothing furnished to CONSULTANT, which is otherwise known to CONSULTANT or is generally known, or has become known, to the related industry shall be deemed confidential.

- (e) The CONSULTANT shall not use, release, reproduce, distribute, publish, adapt for future use or otherwise use Work Products and Related Work Materials for purposes other than the performance of the Scope of Work, nor authorize others to do so, without prior written permission of HCAOG Legal Counsel; nor shall such materials be disclosed to any person or entity not connected with the performance of the work. CONSULTANT shall also safeguard such confidential materials from unauthorized disclosure, using the same standard of care to avoid disclosure, as the CONSULTANT treats its confidential information, but in no case less than reasonable care.
- (f) All equipment, including, but not limited to, computer hardware, printing and duplication equipment, multimedia equipment, software tools and programs, and upgrade packages to existing equipment, procured in whole or part by funds provided under this Contract, are the property of HCAOG. HCAOG shall determine the disposition of all such property upon completion or termination of this Contract.
- (g) HCAOG may utilize any Work Products or Related Work Materials provided by CONSULTANT pursuant to this Contract, in any manner which HCAOG deems appropriate without additional compensation to CONSULTANT.

3.11 Indemnification. To the full extent permitted by law, CONSULTANT shall indemnify, hold harmless, release and defend HCAOG (with legal counsel acceptable to HCAOG), its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any person or entity including CONSULTANT, in whole or in part, arising out of CONSULTANT's activities hereunder, including the activities of other persons employed or utilized by CONSULTANT in the performance of this Contract (including design defects and regardless of HCAOG's approval, use or acceptance of the work or work product hereunder) excepting liabilities due to the admitted or adjudicated sole negligence or willful misconduct of HCAOG. If the adjudicated or admitted sole negligence or willful misconduct of HCAOG has contributed to a loss, CONSULTANT shall not be obligated to indemnify HCAOG for the proportionate share of such loss caused by such sole negligence or willful misconduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for CONSULTANT under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by CONSULTANT and shall continue to bind the parties after termination/completion of this Contract.

3.12 Subcontracting: In accordance with Government Code Section 7550, CONSULTANT agrees to state in a separate section of any filed report the numbers and dollars amounts of all contracts and subcontracts relating to preparation of the report.

- (a) Nothing contained in this contract or otherwise, shall create any contractual relation between HCAOG and any subcontractor(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to HCAOG for the acts and omissions of its subcontractor (s) 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 CONSULTANT. CONSULTANT'S obligation to pay its subcontractor (s) is an independent obligation from HCAOG'S obligation to make payments to the CONSULTANT.
- (b) CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by HCAOG, except that, which is expressly identified in the contract.

3.13 Assignment. This contract is not assignable by the CONSULTANT, either in whole or in part.

3.14 Designated Representatives. With the execution of this contract, CONSULTANT and HCAOG shall designate specific individuals to act as CONSULTANT's and HCAOG's representatives with respect to the services to be performed or furnished by CONSULTANT and responsibilities of HCAOG under this contract. Such individuals shall have authority to transmit instructions, receive information, and implement the contract on behalf of each respective party.

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT; to solicit or secure this contract; and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this contract. For breach or violation of this warranty, HCAOG shall have the right to annul this contract without liability, or at its discretion; to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

3.15 Disputes. HCAOG and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking any procedures of this contract, or exercising their rights under law. Prior to court action, the parties agree to pursue mediation as a means to settle any dispute.

3.16 Entire Agreement. This contract together with the exhibits identified constitutes the entire contract between HCAOG and CONSULTANT for the Services and supersedes all prior written or oral understandings.

3.17 Survival. All express representations, waivers, indemnifications, and limitations of liability included in this contract will survive its completion or termination for any reason.

3.18 Waiver. Neither the acceptance of CONSULTANT'S work nor the payment thereof shall constitute a waiver of any provisions of this contract. A waiver of any breach shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this contract.

3.19 Funding Requirements. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

This contract is valid and enforceable only, if sufficient funds are made available to HCAOG for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or HCAOG governing board that may affect the provisions, terms, or funding of this contract in any manner.

It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

HCAOG has the option to void the contract under the termination clause, or by mutual agreement to amend the contract to reflect any reduction of funds.

3.20 Delays and Extensions. Time is of the essence concerning performance of this Contract; however, the CONSULTANT will be granted time extensions for delays beyond the CONSULTANT's control. Time extensions will be equal to the length of the delay or as otherwise agreed upon in writing between the CONSULTANT and HCAOG.

3.21. Statement of Compliance.

(a) CONSULTANT'S signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

During the performance of this Contract, CONSULTANT and its subcontractor(s) shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. CONSULTANT and subcontractor(s) shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subcontractor(s) shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing

Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full.

CONSULTANT and its subcontractor(s) shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement(s).

CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.

In addition, the CONSULTANT agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

The CONSULTANT shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

The CONSULTANT, with regard to the work performed by it during the Contract shall act in accordance with Title VI. Specifically, the CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractor(s), including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Contract covers a program whose goal is employment.

- (b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - i. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, 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. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONSULTANT agrees to comply with any implementing requirements FTA may issue.

- ii. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, 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.
- iii. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONSULTANT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONSULTANT agrees to comply with any implementing requirements FTA may issue.
- iv. The CONSULTANT also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties.

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

3.23 Energy Conservation. The CONSULTANT agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

3.24. No Obligation by the Federal Government.

- (a) HCAOG 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 HCAOG, CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (b) The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration (FTA). It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

3.25. Program Fraud and False or Fraudulent Statements or Related Acts.

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

3.26. Debarment and Suspension Certification. CONSULTANT'S signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (non-procurement)", which certifies that it or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to HCAOG.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

By signing and submitting the contract, the CONSULTANT shall certify those clauses described in the “Debarment and Suspension Certification,” Exhibit B attached hereto and incorporated herein by this reference and shall comply with all relevant conditions as set forth in the CONTRACT.

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

(a) The 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, the CONSULTANT agrees to obtain the express consent of the Federal Government before the CONSULTANT or its employees operate a system of records on behalf of the Federal Government. The 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 contract.

(b) The CONSULTANT also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

3.28 Conflict of Interest. CONSULTANT shall disclose any financial, business, or other relationship with HCAOG that may have an impact upon the outcome of this contract, or any ensuing HCAOG project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing HCAOG project, which will follow.

CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. CONSULTANT further covenants that in the performance of this Contract, no person having any such interest shall be employed.

CONSULTANT shall at all times avoid conflicts of interest, or the appearance of conflicts of interest, in the performance of this contract. CONSULTANT shall file statements of financial interest on forms provided by HCAOG to the extent and at the times required by HCAOG’s Conflict of Interest Code and applicable law.

CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

3.29 Statement of Economic Interest. If HCAOG determines CONSULTANT comes within the definition of CONTRACTOR under the Political Reform Act (Government Code §87100), CONSULTANT shall complete and file and shall require any other person doing work

under this Contract to complete and file a "Statement of Economic Interest" with HCAOG disclosing CONSULTANT and/or such other person's financial interests.

- 3.30 Merger. This Contract shall constitute the entire Contract between the parties and shall supersede any previous contracts, whether verbal or written, concerning the same subject matter. No modification of this Contract shall be effective unless and until evidence by a writing is signed by both parties.
- 3.31 Third Party Beneficiaries. Nothing contained in this Contract shall be construed to create and the parties do not intend to create any rights in third parties.
- 3.32 Taxes. CONSULTANT agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Contract and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. CONSULTANT agrees to indemnify and hold HCAOG harmless from any liability which it may incur to the United States or to the State of California as a consequence of CONSULTANT'S failure to pay, when due, all such taxes and obligations.
- 3.34 Federal Tax Forms. Prior to issuing the initial claim under this Contract, the CONSULTANT shall submit Federal Tax Form W-9, Request for Taxpayer Identification Number and Certification to the following address:

**Humboldt County Association of Governments
ATTN: Debbie Egger, Fiscal Administrative Officer
611 I Street, Suite B
Eureka, CA 95501**

Unless HCAOG receives a completed Tax Form W-9, payments for services performed under this CONTRACT shall be subject to federal backup withholding.

- 3.35 Federal and State Lobbying Activities Certification (43 CFR PART 18). By signing this CONTRACT, the CONSULTANT certifies, to the best of its knowledge and belief, that no State or Federal funds have been paid or will be paid, by or on behalf of CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant, the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-

LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

The CONSULTANT also agrees by signing this Contract that it will require that the language of this certification be included in all subcontracts funded wholly or in part by any funds provided herein and which exceed \$100,000 and that all such Subcontractor(s) shall certify and disclose accordingly.

3.36 Certifications and Assurances.

- (a) CONSULTANT shall adhere to the requirements contained in HCAOG's annual Certification and Assurances (FHWA and FTA "Regional Transportation Planning Process Certification") submitted as part of HCAOG's OWP, pursuant to 23 CFR 450.334 and 23 U.S.C. 134. This Certification shall be published annually in HCAOG's OWP when federal funds are used. Such requirements shall apply to CONSULTANT to the same extent as HCAOG and may include, but are not limited to:
 - i. Title VI of the Civil Rights Act of 1964 and Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794;
 - ii. Pub. Law 105-178, 112 Stat. 107 and any successor thereto, regarding the involvement of disadvantaged business enterprises in FHWA and FTA funded projects (Sec. 105(f), Pub. L. 970424, 96 Stat. 2100, 49 CFR part 26); and
 - iii. The Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and the United States Department of Transportation (US DOT) implementing regulations (49 CFR 27, 37, and 38).
- (b) CONSULTANT shall additionally comply with the requirements contained in the annual FTA "Certifications and Assurances for FTA Assistance," including "Certifications and Assurances Required of Each Applicant" and the "Lobbying Certification" in compliance with 49 U.S.C. Chapter 53; published annually in HCAOG's OWP when federal fund are used. Such assurances shall apply to CONSULTANT to the same extent as HCAOG, and include but are not limited, the following areas:
 - i. Standard Assurances
 - ii. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions
 - iii. Drug Free Work Place Agreement

- iv. Intergovernmental Review Assurance
 - v. Nondiscrimination Assurance
 - vi. DBE Assurance
 - vii. Nondiscrimination on the Basis of Disability
 - viii. Certification and Assurances required by the U.S. Office of Management and Budget
- (c) The CONSULTANT shall require its Subcontractor(s) to comply with these Certifications, and agrees to furnish documentation to HCAOG to support this requirement that all of its contracts with Subcontractor(s) contain provisions requiring adherence to this section in its entirety.

3.37 Cost Principals and Administrative Requirements.

- (a) CONSULTANT agrees to comply with the following:
- i. the Contract Cost Principles and Procedures, 48 Code of Federal Regulations, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq. (Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments)," shall be used to determine the allowability of individual project cost items, and
 - ii. the Federal administrative procedures in accordance with 49 Code of Federal Regulations, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- (b) Any costs for which CONSULTANT receives payment or credit that is determined by a subsequent audit or other review by either HCAOG, Caltrans or other State or Federal authorities to be unallowable under, but not limited to, OMB Circular A-87; 48 CFR, Chapter 1, Part 31; or 49 CFR, Part 18, are to be repaid by CONSULTANT within thirty (30) days of CONSULTANT receiving notice of audit findings. Should CONSULTANT fail to reimburse moneys due HCAOG within thirty (30) days of demand, or within such other period as may be agreed between Parties hereto, HCAOG is authorized to withhold future payments due CONSULTANT.
- (c) CONSULTANT agrees to furnish documentation to HCAOG to support this requirement that all of its agreements with Subcontractor(s) contain provisions requiring adherence to this section in its entirety.

3.38 Disadvantaged Business Enterprise (DBE)

- (a) The CONSULTANT, subrecipient, or subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the

award and administration of State or United States Department of Transportation (DOT) assisted contracts or in the administration of HCAOG's DBE Program. Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as HCAOG deems appropriate, which may include but is not limited to:

- i. Withholding monthly progress payments
 - ii. Assessing sanctions
 - iii. Liquidated damages
 - iv. Disqualifying the contractor from future bidding as non-responsible
- (b) The CONSULTANT must make available to the Caltrans contract manager a copy of all DBE subcontracts upon request.
- (c) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains authorization from Caltrans. Unless the Department provides prior authorization approving a request for termination or substitution of a listed DBE, the Contractor shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBEs.
- (d) It is the policy of HCAOG, Caltrans, and DOT, that the Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, shall have an equal opportunity to receive and participate in DOT-assisted contracts. The CONSULTANT and its Subcontractor(s) shall comply with the requirements of 49 CFR Part 26 and with HCAOG's DBE Program, as amended.
- (e) A "DBE Information Form" is attached hereto and incorporated herein by this reference as Exhibit D. Even if no DBE participation will be reported, the CONSULTANT shall complete and sign such form at the time this Contract is executed.
- (f) During the period of this Contract, the CONSULTANT shall maintain records of all applicable subcontracts advertised and entered into germane to this Contract, documenting the actual DBE participation and records of materials purchased from DBE suppliers. Such documentation shall show the name and business address of each DBE Subcontractor(s) or vendor, and the total dollar amount actually paid each DBE Subcontractor(s) or vendor. Upon completion of the Contract, regardless of whether DBE participation is obtained, a summary of the DBE records shall be prepared, certified correct, and submitted on a form that shall be provided by HCAOG.

3.40 Flow-down Provisions. Any subcontract entered into that exceeds \$10,000 as a result of this CONTRACT shall contain the following provisions of this Contract:

Section 1.2 (Invoicing); Section 1.5 (Coordination/Staffing); Section 1.11 (Retention of Records/Audits); Section 1.13 (Contract Completion Retainer); Section 1.14 (Satisfactory Performance); Section 3.2 (Insurance/Notification); Section 3.4 (Independent Contractor); Section 3.5 (Compliance with Laws, Rules, and Regulations); Section 3.9 (Termination); Section 3.10 (Ownership, Confidentiality, and Use of Work Products); Section 3.11 (Indemnification); Section 3.16 (Disputes); Section 3.22 (Statement of Compliance); Section 3.23 (Federal Changes); Section 3.24 (Energy Conservation); Section 3.25 (No Obligation by the Federal Government); Section 3.26 (Program Fraud and False or Fraudulent Statements and Related Acts); Section 3.27 (Debarment and Suspension Certification); Section 3.28 (Contracts Involving Federal Privacy Act Requirements); Section 3.29 (Conflict of Interest); Section 3.36 (Federal and State Lobbying Activities Certification (43 CFR Part 18)); Section 3.37 (Certifications and Assurances); and Section 3.38 (Cost Principles and Administrative Requirements); Section 3.39 (Disadvantaged Business Enterprise (DBE)).

3.39 Interpretation. Notwithstanding the fact that one or more provisions of this Contract may have been drafted by one of the parties to this Contract, such provisions shall be interpreted as though they were a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed this _____ day of _____, 20__.

HCAOG

CONSULTANT

By _____
Marcella Clem, Executive Director: Date

By _____
Josh Wolf , Project Manager Date

LEGAL COUNSEL REVIEW

By _____
David Tranberg, Attorney-at-Law: Date

**EXHIBIT A. PROJECT TASKS/SERVICES,
TIMELINE, AND BUDGET**

**EXHIBIT B. DEBARMENT AND SUSPENSION
CERTIFICATION**

**TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29
DEBARMENT AND SUSPENSION CERTIFICATION**

1. All persons or firms, including Subcontractor(s), must complete this certification and certify, under penalty of perjury, that, except as noted below, it or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Have not, within the three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and
 - d. Have not, within the three (3) year period preceding this certification, had one or more public transactions (Federal, state, and local) terminated for cause or default.
2. If such persons or firms later become aware of any information contradicting the statements of paragraph (1), they will promptly provide that information to HCAOG.

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

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

The certification in this clause is a material representation of fact relied upon by HCAOG. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to HCAOG, the Federal Government may pursue available remedies, including but not limited to suspension

and/or debarment. The CONTRACTOR agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Name of Firm

Signature (original signature required)

Date

**EXHIBIT C. FEDERAL TAX FORM W-9,
REQUEST FOR TAXPAYER IDENTIFICATION
NUMBER AND CERTIFICATION**

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

... Go to www.irs.gov/FormW9 for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Humboldt County Association of Governments

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

- Individual/sole proprietor or single-member LLC
 Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ""
Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.
 Other (see instructions) "" **Joint Power Agreement - Local Government Agency**

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) 3

Exemption from FATCA reporting code (if any) C

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

611 I Street, Suite B

Requester's name and address (optional)

6 City, state, and ZIP code

Eureka, CA 95501

7 List account number(s) here (optional)

• 0/11- Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. **! TIN provided must match the name given on line 1 to avoid**

backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

DJJ - 0J - 1 | | | |

OR

Employer identification number

9	4	-	1	7	4	2	8	4	0
---	---	---	---	---	---	---	---	---	---

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person

Date"

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

**EXHIBIT D. DISADVANTAGED BUSINESS
ENTERPRISES (DBE) INFORMATION FORM**

EXHIBIT 10-01 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 Section		11. TOTAL CLAIMED DBE PARTICIPATION	%
17. Local Agency Contract Number: 18. Federal-Aid Project Number: 19. Proposed Contract Execution Date:			
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.	
20. Local Agency Representative's Signature	21. Date	12. Preparer's Signature	13. Date
22. Local Agency Representative's Name	23. Phone	14. Preparer's Name	15. Phone
24. Local Agency Representative's Title		16. Preparer's Title	

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

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 PROPOSAL DBE COMMITMENT**CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project 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. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 8. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 10. DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 11. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 12. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 13. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 14. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 15. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
- 20. 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.
- 21. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 22. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 23. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 24. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

EXHIBIT E. CERTIFICATIONS

CALIFORNIA LEVINE ACT DISCLOSURE STATEMENT

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract. Please refer to the attached code for the complete statutory language.

Current members of the HCAOG Board of Directors are attached.

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any HCAOG Director(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

YES NO

If yes, please identify the Director(s): _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any HCAOG Director(s) in the three months following the award of the contract?

YES NO

If yes, please identify the Director(s): _____

Answering yes to either of the two questions above does not preclude RAPS from awarding a contract to your firm. It does, however, preclude the identified Director(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

California Government Code Section 84308

- (a) The definitions set forth in this subdivision shall govern the interpretation of this section.
- (1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
 - (2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.
 - (3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.
 - (4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.
 - (5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.
 - (6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.
- (b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.
- (c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to

know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7. If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

- (d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.
- (e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

For more information, contact the Fair Political Practices Commission,
428 J Street, Suite 800,
Sacramento, CA 95814,
(916) 322-5660.

<u>HCAOG Board of Directors</u>	
Agency	Representative
Arcata Blue Lake Eureka Ferndale Fortuna Rio Dell Trinidad County of Humboldt <u>Ex-Officio Members:</u> Caltrans District 1 Humboldt Transit Authority	To be added after 2019 elections

CERTIFICATION OF RESTRICTIONS ON LOBBYING

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract _____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application _____ b. initial award c. post-award	3. Report Type: a. initial filing _____ b. material change For material change only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: _____ Prime _____ Subawardee _____ Tier _____, if Known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description:	

	CFDA Number, <i>if applicable</i> : _____
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)

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

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section

1352. The filing of a form is required for each payment or agreement to make payment to any 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. 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 followup 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 subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," 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 organizational 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 identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included 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 commitment 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 registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence 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).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No.

0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, 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, DC 20503