

**HCAOG CONSULTANT SERVICES CONTRACT
FOR PREPARATION OF THE**

This is a contract, entered into on _____, in Eureka, California, between the HUMBOLDT COUNTY ASSOCIATION OF GOVERNMENTS, hereinafter called HCAOG, and _____, 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.

HCAOG and CONSULTANT agree as follows:

1. CONSULTANT'S DUTIES:

A. Term of agreement. Consultant is hereby engaged to provide services for the _____ . Work shall commence upon signing this contract, and shall thereafter be diligently pursued to completion.

B. Standards of Performance:

1. Standard of Care. The standard of care for all professional services performed or furnished by Consultant under this Agreement 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.
2. 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.

C. Scope of Work. All provision of services under this contract shall be performed in conformance with the agreed upon Scope of Work attached as Exhibit 'A' and the Consultant's cost proposal, which is attached hereto as Exhibit 'B', both of which are incorporated herein by this reference.

D. Amendment of Scope of Work. HCAOG shall have the right to amend the Scope of Work within the contract 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 the 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.

- E. Personnel. Consultant shall furnish sufficient qualified personnel to commence work upon execution of this contract, and to complete all work within the schedule period generally specified in the Consultant's proposal and the final scope of work by final completion date of _____.
- F. 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 Scope of Work. 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 Scope of Work, 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.
- G. 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.
- H. Contract Products. The Consultant shall submit deliverables as detailed in the Scope of Work. The Consultant shall provide electronic files suitable for reproduction of all products to become the property of HCAOG.
- I. 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.
- J. 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).

K. Records of Performance. Consultant shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to HCAOG or establishing the basis for an invoice, for a minimum of three (3) years from the date of final payment to Consultant. All such records shall be clearly identifiable. Consultant shall allow HCAOG representatives to inspect, examine, copy and audit such records during regular business hours upon 24 hours' notice.

2. HCAOG'S DUTIES:

HCAOG agrees to pay the Consultant for the time and materials designated in the cost proposal, previously referenced as Exhibit "B" and incorporated herein, with the total fee not to exceed \$_____.

HCAOG shall make progress payments to Consultant, based upon Consultant's submittal of monthly invoices, certifying to partial completion of the work. Ten (10) percent of each progress payment will be withheld pending completion of the project. HCAOG shall pay Consultant within 30 days following the date of each applicable invoice. If HCAOG contests or questions any invoice, HCAOG will contact Consultant within such 30 day period. Invoices will not be paid more frequently than a monthly basis.

3. GENERAL CONDITIONS:

A. Time.

1. Time is of the essence of this agreement. Consultant shall complete all work under this contract on or before _____. An amendment to extend the completion date may be executed upon agreement from both parties.

B. Insurance.

1. Consultant shall take out and maintain, throughout the period of this agreement, comprehensive general liability insurance with minimum limits of \$1,000,000.00 combined single limit (CSL), covering all bodily injury and property damage arising out of its operation under this agreement.
2. Consultant shall provide automobile insurance covering all bodily injury and property liability incurred during the performance of this agreement with minimum coverage of \$1,000,000.00 per accident, combined single limit (CSL). Such automobile insurance coverage shall include non-owned vehicles.
3. Consultant shall take out and maintain errors and omissions insurance to protect HCAOG from damage or loss to the extent caused by any negligent act, error or omission of Consultant or any person employed by Consultant. Such insurance shall be maintained in full force and effect during this entire term of this agreement in an amount not less than \$500,000.00.
4. The Consultant shall, throughout the period of this contract, maintain in full force and affect a policy of workers compensation insurance covering all its employees and volunteers as required by the State of California.

5. Each such policy of insurance required shall not be cancelled except after thirty (30) days with prior written notice from HCAOG.
 6. HCAOG shall be named as an additional insured on the general liability and automobile liability policies.
- C. 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.
- D. Relationship of Parties. The parties intend that Consultant, in performing services herein specified, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. Consultant shall be free to contract for similar services to be performed for others while under contract with HCAOG. Consultant is not to be considered an agent or employee of HCAOG, and is not entitled to participate in any pension plans, workers' compensation insurance, or similar benefits that HCAOG provides for its employees. Consultant agrees to furnish at its own expense all tools, equipment, services, labor and materials necessary to complete all requirements of this contract.
- E. Laws to be Observed. Throughout the term of this agreement, the Consultant shall use the standard of care in its profession to keep themselves fully informed of and shall make every reasonable effort to comply with applicable state and Federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, the use of equipment, safety requirements, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Consultant shall at all times make every reasonable effort to observe and comply with, and shall cause all their agents, subcontractors, and employees to make every reasonable effort to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. If Consultant becomes aware of a conflict of such laws, Consultant will contact HCAOG in writing, and the parties shall work cooperatively to resolve the conflict.
- F. 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.
- G. Attorneys' Fees and Costs. If either party initiates any action at law or in equity to enforce or interpret the terms and conditions of this contract, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled.

- H. 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:

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:

- I. Right to Terminate/Suspend Contract. At any time and for any reason, HCAOG shall have the right to terminate or cancel the contract with 10 days prior written notice. In such event, HCAOG shall pay the Consultant such equitable proportion of the total remuneration for the work actually done by the Consultant at the time of such discontinuance bears to the whole of the work required to be done by the Consultant under the terms of the Contract.
- J. Ownership of Work Product. Documents, data, reports, graphs, maps (Work Products”) created by the Consultant shall be considered the property of HCAOG. Consultant shall not be held liable for any re-use or modification of the HCAOG owned Work Products for purposes outside of this agreement. All Work Products created by the Consultant shall not be reused by the Consultant without written permission from HCAOG.
- K. Indemnity: When the law establishes a professional standard of care for Consultant’s services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless HCAOG, its officials, employees and agents (collectively, “Indemnified Parties”) from and against any and all losses, liabilities, damages, costs and expenses, including attorney’s fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or sub-Consultants or any entity or individual for which Consultant shall bear legal liability in the performance of professional services under this Agreement.

Other than in the performance of professional services and to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless HCAOG, and any all of the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this contract by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-Consultants of Consultant.

- L. Subcontracting: No services covered by the contract shall be subcontracted without the prior written consent of the HCAOG. Consultant shall furnish separate insurance certificates and endorsements for each subcontractor having received consent by

HCAOG in the amounts specified in Section 3B of this Agreement.

- M. Assignment. This contract is not assignable by the Consultant, either in whole or in part.
- N. 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.
- O. Governing Law: This contract and performance hereunder and all suits and special proceedings shall be construed in accordance with the laws of the State of California. In any action or proceeding that may be brought from or connected in anyway to this contract, the laws of the State of California shall be applicable and shall govern to the exclusion of the law any other forum. Venue shall be fixed in Humboldt County.
- P. 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.
- Q. 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.
- R. Survival. All express representations, waivers, indemnifications, and limitations of liability included in this contract will survive its completion or termination for any reason.
- S. 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.

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 _____
Date

LEGAL COUNSEL REVIEW

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