CONTRACT FOR PROFESSIONAL SERVICES
WITH [CONSULTANT NAME]

In consideration of the mutual promises herein, Hydaburg Cooperative Association "HCA" and [CONSULTANT NAME] agree as follows. This contract consists of:

A. Part I, consisting of fourteen (14) sections of Special Provisions;
B. Part II, consisting of eleven (11) sections of General Provisions;
C. Appendix A – Scope of Services, consisting of two (2) pages;
D. Appendix B – Fee Schedule, consisting of two (2) pages; and
E. Appendix C – Required Provisions for Federal Aid Contracts, consisting of fourteen (14) pages.

PART I
SPECIAL PROVISIONS

Section 1. Definitions.

In this contract:

A. "Administrator" means the Tribal Administrator of the Hydaburg Cooperative Association or his designee.
B. "HCA" means the Hydaburg Cooperative Association.
C. "Consultant" means [CONSULTANT LEGAL NAME].

Section 2. Scope of Services.

A. The Consultant shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this section by reference.
B. A Task Order will be issued against this contract for each specific scope of work. No work is authorized nor may commence without receipt of a Task Order. Once received, the Consultant shall perform the Professional Services required to complete the scope of work contained therein. Individual Task Orders are not expected to exceed $150,000.
C. HCA shall not allow any claim for services other than those described in this section. However, the Consultant may provide, at its own expense, any other services that are consistent with this contract.

Section 3. Time for Performance.

A. This contract becomes effective when signed on behalf of HCA and shall remain in effect for five (5) years from the date of final signature.
B. Upon receipt of a Task Order authorizing work, the Consultant shall commence performance of that work and complete that performance in accordance with the schedule contained therein.
C. This contract may be extended for two (2) one-year option period(s) upon mutual consent of both parties.

Section 4. Compensation; Method of Payment.

A. HCA shall pay the Consultant in accordance with the schedule of professional fees attached as Appendix B and incorporated herein by reference for services actually performed under this contract. Professional fees may be adjusted over the term of the contract based on the formula described in Appendix B: annual escalation for Contract Years 2–5 not to exceed [4]% per year.
B. Each month, the Consultant shall present a bill to the Administrator describing the work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Consultant's performance is unsatisfactory, the Administrator must, within 7 days of the payment denial, notify the Consultant of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
C. The Consultant is not entitled to any compensation under this contract, other than is expressly provided for in this section.

Section 5. Termination of the Consultant's Services.

The Consultant's services under Section 2 may be terminated:

A. By mutual consent of the parties.
B. For the convenience of HCA, provided that HCA notifies the Consultant in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
C. For cause, by either party where the other party fails in any material way to perform its obligations under this contract. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within thirty (30) days after receiving the notice.

Section 6. Duties Upon Termination.

A. If HCA terminates the Consultant's services for convenience, HCA shall pay the Consultant for its actual costs reasonably incurred in performing before termination. Payment under this subsection shall never exceed the amount of the affected Task Order(s). All finished and unfinished documents and materials prepared by the Consultant shall become the property of HCA.

B. If the Consultant's services are terminated for cause, HCA shall pay the Consultant the reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by HCA because of the Consultant's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed the contract rate for such services, and payment under this subsection shall not exceed ninety percent (90%) of the amount of the affected Task Order(s). Any finished or unfinished documents or materials prepared by the Consultant under this contract shall become the property of HCA at its option.

C. If the Consultant receives payments exceeding the amount to which it is entitled under subsections A or B of this section, he shall remit the excess to the Administrator within thirty (30) days of receiving notice to do so.

D. The Consultant shall not be entitled to any compensation under this section until the Consultant has delivered to the Administrator all documents, records, work product, materials and equipment owned by HCA and requested by the Administrator.

E. If the Consultant's services are terminated, for whatever reason, the Consultant shall not claim any compensation under this contract, other than that allowed under this section.

F. Except as provided in this section, termination of the Consultant's services under Section 5 does not affect any other right or obligation of a party under this contract.

Section 7. Insurance.

A. The Consultant shall maintain in good standing, for the entire period of the contact, the insurance described in subsection B of this section. Before rendering any services under this contract, the Consultant shall furnish the Administrator with a Certificate of Insurance in accordance with subsection B of this section in a form acceptable to HCA.

B. The Consultant shall provide the following insurance:

1.) $500,000 Employers Liability and Workers Compensation as required by Alaska Law.

2.) Commercial Automobile Liability in the amount of $1,000,000 combined single limit to include: owned, hired, and non-owned.

3.) Commercial General Liability including:

$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations
$1,000,000 Personal & Advertising Injury
$1,000,000 Each Occurrence
$5,000 Medical Payments

4.) Professional Liability insurance with limits not less than $1,000,000 per occurrence and $2,000,000 aggregate.

C. Policies written on a "claims-made basis" must have a two (2) year tail of coverage, or an unbroken continuation of coverage for two (2) years from the completion of the contract requirements.

D. Each policy of insurance required by this section shall provide for advance notice to the Administrator prior to cancellation in accordance with the policy. If the insurer does not notify HCA on policy cancellation it shall be the consultant's responsibility to notify HCA of such cancellation.

E. With the exception of Workers Compensation and Professional Liability each policy shall name HCA as an "additional insured" and the actual policy endorsement shall accompany each Certificate of Insurance.

F. General Liability, Workers Compensation, and Automobile policies shall be endorsed to waive all rights of subrogation against the Hydaburg Cooperative Association by reason of any payment made for claims under the above coverage. This policy endorsement shall accompany each Certificate of Insurance.

G. All policies for general liability shall be primary and noncontributing with any insurance that may be carried by HCA.

H. If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, HCA requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to HCA.

I. Consultant shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Consultant shall ensure that HCA is an additional insured on insurance required from subcontractors.

Section 8. Assignments.

Unless otherwise allowed by this contract or in writing by the Administrator, any assignment by the Consultant of its interest in any part of this contract or any delegation of duties under this contract shall be void, and an attempt by the Consultant to assign any part of its interest or delegate duties under this contract shall give HCA the right immediately to terminate this contract without any liability for work performed.

Section 9. Ownership; Publication, Reproduction and Use of Material.

A. Except as otherwise provided herein, all data, documents and materials produced by the Consultant under this contract shall be the property of HCA, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright.

B. Should HCA elect to reuse Work products provided under this Contract for other than the original project and/or purpose, HCA will not hold Consultant liable for any damages resulting from HCA's reuse of work products for an unintended purpose. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation and the original Constructor's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

C. Equipment purchased by the Consultant with designated contract funds shall be the sole property of HCA marked and inventoried as such with a copy of the inventory forwarded to HCA.

Section 10. Notices.

Any notice required pertaining to the subject matter of this contract shall be either sent via email or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

HCA: Hydaburg Cooperative Association
Attn: Leslie Isaacs, Tribal Administrator
P.O. Box 349
Hydaburg, AK 99922
leslie.isaacs@hcatribe.org

Consultant: [CONSULTANT NAME]
[Attn: name, title]
[Street or P.O. Box]
[City, State ZIP]
[Email]

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or five (5) days after proof of proper posting.

Section 11. Force Majeure.

A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.

B. As used in this contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this contract, including without limitation:

1. Any interruption, suspension or interference resulting solely from the act of HCA or negligent act(s) of HCA not otherwise governed by the terms of this contract.
2. Strikes or work stoppages.
3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
4. Order of court, administrative agencies or governmental officers other than HCA.

Section 12. Financial Management System

The Consultant shall establish and maintain a financial management system that:

A. Provides accurate, current, and complete disclosure of all financial transactions relating to the contract;

B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Consultant's performance under this contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;

C. Effectively controls and accounts for all HCA or Grant funds and contract property;

D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;

E. Minimizes the time between receipt of funds from HCA and their disbursement by the Consultant;

F. Provides accounting records supported by source documentation; and

G. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 13. Funding Requirements.

In the event that any funding source for this contract should impose additional requirements upon HCA for the use of those funds, the Consultant agrees to abide by those additional requirements immediately upon receipt of written notice thereof from HCA.

Section 14. Subcontracts.

The Consultant may enter into subcontracts for the purchase of goods and services necessary for the performance of this contract, provided:

A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefore.

B. Every subcontract under which the Consultant delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Consultant.

C. Every subcontract in an amount exceeding $1,000.00 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

PART II

GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

The Consultant shall perform its obligations hereunder as an independent contractor of HCA. HCA may administer the contract and monitor the Consultant's compliance with its obligations hereunder. HCA shall not supervise or direct the Consultant other than as provided in this section.

Section 2. Nondiscrimination.

A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, or marital status, or who is a "qualified individual with a disability", as that phrase is defined in the Americans With Disabilities Act of 1990. The Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, mental or physical disability, sexual orientation or gender identity. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Consultant agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. The Consultant shall state, in all solicitations or advertisements for employees to work on contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital status, or mental or physical disability.

C. The Consultant shall comply with any and all reporting requirements that may apply to it. The Administrator may accept the consultant’s compliance with federal requirements or the consultant’s federal reporting documents in lieu of reporting under this section.

D. The Consultant shall include the provisions of subsections A through C of this section in every subcontract or purchase order under this contract, so as to be binding upon every such subcontractor or vendor of the Consultant under this contract. The Administrator may accept the consultant’s compliance with federal requirements or the consultant’s federal reporting documents in lieu of reporting under this section.

E. The Consultant shall comply with all applicable federal, state and tribal laws concerning the prohibition of discrimination.

Section 3. Permits, Laws and Taxes.

The Consultant shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this contract. All actions taken by the Consultant under this contract shall comply with all applicable statutes, ordinances, rules and regulations. The Consultant shall pay all taxes pertaining to its performance under this contract.

Section 4. Nonwaiver.

The failure of either party at any time to enforce a provision of this contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

A. This contract shall only be amended, modified or changed by a writing, executed by authorized representatives of the parties, with the same formality as this contract was executed.
B. For the purposes of any amendment modification or change to the terms and conditions of this contract, the only authorized representatives of the parties are:

Consultant: [Name of authorized officer]
(title of position)

HCA: Leslie Isaacs, Tribal Administrator

C. Any attempt to amend, modify, or change this contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this contract shall be brought in the Superior Court for the First Judicial District of the State of Alaska at Ketchikan. The law of the State of Alaska shall govern the rights and obligations of the parties under this contract.

Section 7. Severability.

Any provision of this contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

A. The Consultant shall indemnify, defend, save, and hold HCA harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Consultant or any subcontractor as a result of the Consultant's or any subcontractor's performance pursuant to this contract.

B. The Consultant shall not indemnify, defend, save and hold HCA harmless from claims, lawsuits, liability, including reasonable attorneys' fees and costs arising from a wrongful or negligent act, error or omission solely of HCA occurring during the course of or as a result of HCA's performance pursuant to this contract.

C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both HCA and the Consultant, the Consultant shall indemnify, defend, save and hold HCA harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Consultant's or any subcontractor's wrongful or negligent acts occurring as a result of the Consultant's performance pursuant to this contract.

Section 10. Inspection and Retention of Records.

The Consultant shall, at any time during normal business hours and as often as HCA may deem necessary, make available to HCA, for examination, all of its records with respect to all matters covered by this contract for a period ending three years after the date HCA submits the final expenditure report for each federal award that funds this contract, or longer if required by the award or by any pending audit, claim, or litigation. Upon request, and within a reasonable time, the Consultant shall submit such other information and reports relating to its activities under this contract, to HCA, in such form and at such times as HCA may reasonably require. The Consultant shall permit HCA to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel and other data relating to all matters covered by this contract. HCA may, at its option, permit the Consultant to submit its records to HCA in lieu of the retention requirements of this section.

Section 11. Availability of Funds.

Payments under this contract are subject to the award and availability of federal grant funds and other funding for the Task Orders issued under it. If sufficient grant or other funds are not awarded or available for payments required under this contract, this contract or any affected Task Order shall terminate without penalty to HCA, and HCA shall not be obligated to make payments under this contract beyond those for which funds have been awarded and obligated.

IN WITNESS WHEREOF, the parties have executed this contract on the date and at the place shown below.

HYDABURG COOPERATIVE ASSOCIATION

_____

HCA Tribal Administrator

Date:_____

[CONSULTANT NAME]

_____

Title:

Date:_____

IRS Tax Identification No._____

RECOMMEND FOR APPROVAL:

_____

Name

Title:_____

Date:_____

APPENDIX A

SCOPE OF SERVICES

Contract for Professional Services – Hydaburg Cooperative Association and [CONSULTANT NAME]

The Consultant shall provide the following services as assigned by Task Order. Services will be assigned as needed by Task Order. The services listed below are representative of those expected under the Program. The list is representative, not exhaustive, and not every service will apply to every project. Other applicable or related services may also be requested. This Appendix incorporates Section 3 of RFP No. 2026-001, including addenda, and the Consultant's proposal as accepted by HCA in negotiations.

1. Program and Project Management

A. Confirm roles, decision authority, reporting, and procedures with HCA at the start of the contract.

B. Maintain a program schedule and budget for active projects, organized by funding source.

C. Maintain project files that meet federal record retention requirements and turn them over to HCA at close-out.

D. Provide a monthly progress report for each active project.

E. Attend HCA Council or staff meetings as requested, and assist HCA with public relations and community engagement.

F. Apply quality control procedures to the Consultant's deliverables.

2. Grant Administration and Compliance Support

A. Review grant agreements, award conditions, and program regulations, and identify the requirements that apply to each Task Order.

B. Track grant budgets, obligations, expenditures, and deadlines by funding source.

C. Assist with draft drawdown requests, budget revisions, and progress reports for HCA review and submittal.

D. Support environmental review where required, and Build America, Buy America (HUD) and Buy America (FHWA) documentation.

E. Prepare grant close-out documentation.

3. Procurement and Contracting Support

A. Prepare solicitations for design, construction, materials, and services using HCA's procurement procedures and the federal provisions required for the funding source.

B. Prepare independent cost estimates; advertise solicitations; conduct pre-bid and pre-proposal meetings; answer questions; and issue addenda.

C. Support HCA evaluation committees; prepare bid tabulations, cost/price analyses, recommendations of award, and draft contracts for HCA execution.

D. Prepare written justifications for HCA approval when a sole-source or other noncompetitive purchase is proposed.

E. Support HCA's affirmative steps to include small, minority-owned, and women-owned businesses, and require prime contractors to do the same when subcontracting.

F. Conduct contract negotiations on behalf of HCA, and maintain files for each procurement.

4. Planning, Engineering, and Design

A. Project planning and site investigations, including site selection, survey, geotechnical and utility coordination, and land status and right-of-way research.

B. Conceptual and preliminary design, cost estimates, constructability review, final plans, specifications, and independent cost estimates, and permitting support, by design professionals licensed in the State of Alaska.

C. Recommend project delivery methods, and manage preconstruction services and contracts for selected contractors.

D. For projects with design procured separately by HCA: prepare and manage the design solicitation, manage the design contract, review submittals, and coordinate HCA input.

5. Owner's Representation and Construction Management

A. Provide oversight and contract management for construction contractors, and represent HCA at preconstruction and progress meetings.

B. Review submittals, RFIs, and schedules; evaluate and negotiate change orders for HCA approval; review pay applications and recommend payment.

C. Provide field observation and inspection, and coordinate special inspections and testing; monitor contractor safety.

D. Conduct substantial completion and final inspections, manage commissioning and punch lists, and coordinate turnover of warranties, O&M information, as-builts, and record drawings.

6. Labor and Preference Compliance

A. Monitor contractor compliance with Davis-Bacon or tribally determined wage requirements, including certified payroll review.

B. Monitor Alaska Native and tribal preference in subcontracting, hiring, and training.

7. Project Close-Out

A. Assemble close-out documents for each project and grant, and turn over complete project files to HCA.

B. Prepare final project reports required by funding agencies.

APPENDIX B

FEE SCHEDULE

Contract for Professional Services – Hydaburg Cooperative Association and [CONSULTANT NAME]

1. Fee Schedule

The fully loaded hourly billing rates below were negotiated before award from the fee schedule submitted under RFP Section 4.5, are subject to confirmation by the HCA Council, and apply to all Task Orders. Rates include direct labor, overhead, fringe benefits, G&A, insurance, and profit. [Complete at award.]

Labor category	Contract Year 1 ($/hr)	Name(s)
A. Program and project management		
Lead Program Manager		
Deputy Program Manager		
Senior Project Manager		
Project Manager		
Assistant Project Manager		
B. Engineering, architecture, and design		
Design Project Manager		
Engineer of Record		
Senior Engineer (Alaska PE) – civil, structural, mechanical, electrical		
Project Engineer (Alaska PE)		
Staff Engineer		
Engineer-in-Training (EIT)		
Architect (Alaska licensed)		
Designer / CAD Technician		
Environmental Scientist / Permitting Specialist		
Geotechnical Engineer		
C. Survey		
Professional Land Surveyor (Alaska PLS)		
Survey Technician		
D. Construction management and inspection		
Construction Manager		
Field Inspector		
Special Inspector (certified)		
Materials Testing Technician (certified)		

Labor category	Contract Year 1 ($/hr)	Name(s)
Safety		
E. Project Support Staff		
Grant Compliance Specialist		
Public Relations / Communications		
Scheduler / Project Controls		
Document Control / Administrative		

Beginning in Contract Year 2, including option years, Appendix B rates may be adjusted annually by the year-over-year change in BLS CPI-U, U.S. City Average, All Items, not seasonally adjusted (CUUR0000SA0), using the month three months before the contract anniversary. Increases shall not exceed [4]% annually and require HCA's written approval and compliance with funding requirements. Adjustments apply prospectively; index decreases shall not reduce rates.

Rates for a Task Order may be adjusted by mutual written agreement where needed to meet the wage requirements of its funding source.

APPENDIX C

REQUIRED PROVISIONS for FEDERAL AID CONTRACTS

Contract for Professional Services – Hydaburg Cooperative Association and [CONSULTANT NAME]

I. DEFINITIONS

A. **Government** means the United States of America and any executive department or agency thereof.

B. **The Federal Entity** means the Agency of the Federal Government providing the funding.

C. **Third Party Subcontract** means a subcontract at any tier entered into by Consultant or subcontractor, financed in whole or in part with Federal assistance.

D. **"HCA"** means Hydaburg Cooperative Association.

II. FEDERAL CHANGES

A. Consultant shall at all times comply with all applicable regulations, policies, procedures, and the Federal Entity Directives as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 CFR 200.317 through 200.326 and more fully set forth in Appendix II to Part 200—Contract Provisions for non–Federal Entity Contracts Under Federal Awards, which is included herein by reference. Consultant's failure to so comply shall constitute a material breach of this contract.

B. The Consultant agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

III. ACCESS TO RECORDS

A. The Consultant agrees to provide HCA, the Federal Entity, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

B. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Consultant agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date HCA makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Consultant agrees to maintain same until HCA, the Federal Entity, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

D. The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Part II, Section 10 of the Agreement.

IV. DEBARMENT AND SUSPENSION

A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the consultant is required to verify that none of the consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

B. Consultant represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or on the USEPA's List of Violating Facilities. Consultant agrees that neither Consultant nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or on the USEPA's List of Violating Facilities. Gov. Code § 4477.

C. The consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. Consultant agrees to the provisions of the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached to this Appendix and incorporated herein. For purposes of this Agreement and that certification, Consultant is the "prospective lower tier participant."

D. The Consultant agrees to include paragraphs A and B above in each third-party subcontract financed in whole or in part with Federal assistance provided by the Federal Entity. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.

E. This certification is a material representation of fact relied upon by HCA. If it is later determined that the consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, HCA, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

F. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

A. HCA 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 Government, the Government is not a party to this contract and shall not be subject to any obligations or liabilities to HCA, 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 third-party subcontract financed in whole or in part with Federal assistance provided by the Federal Entity. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. **EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** (applicable to all construction contracts awarded meeting the definition of "federally assisted construction contract" under 41 CFR 61-1.3)

Consultant agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60.14 is hereby incorporated by reference.

A. Contractors and subcontractors 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, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

B. Contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

C. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (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 Agreement by reference and made a part hereof as if set forth in full.

D. Contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

VII. **ANTI-KICKBACK ACT COMPLIANCE** (applicable to all contracts and subgrants for construction or repair; 44 CFR §13.36(i)(4))

Consultant agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

VIII. **DAVIS-BACON ACT COMPLIANCE** (applicable to construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation;)

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of HCA's expenses incurred in connection with the services provided under this Agreement, Consultant agrees to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth below. These requirements are in addition to the requirements set forth in Part I, Section 13 of the Agreement.

A. The Consultant shall be bound to the provisions of the Davis-Bacon Act and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California

Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at http://www.dir.ca.gov/lcp.asp.

B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on "Selecting DBA WDs." In the drop-down menu for State, select, "California." In the drop-down menu for HCA, select "Napa." In the drop-down menu for Construction Type, make the appropriate selection. Then, click Search.

IX. CONTRACT WORK HOURS AND SAFETY STANDARDS (applicable to all contracts in excess of $100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

A. **Compliance:** Consultant agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

B. **Overtime:** No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

C. **Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the Consultant, and any subcontractor responsible therefore, shall be liable to any affected employee for his unpaid wages. In additions, such Consultant and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.

D. **Withholding for unpaid wages and liquidated damages:** HCA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.

E. **Subcontracts:** The consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

A. Consultant acknowledges that it has read and understands the reporting requirements of Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.

B. The Consultant agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by the Federal Entity. It is further agreed the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

A. Consultant agrees the Federal Entity shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

1) The copyright in any work developed with the assistance of funds provided under this Agreement;

2) Any rights of copyright to which Consultant purchases ownership with the assistance of funds provided under this Agreement.

B. The Consultant agrees to include paragraph A above in each third-party subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XII. PATENT RIGHTS (applicable to contracts for experimental, research, or development projects financed the Federal Entity; 44 CFR §13.36(i)(8))

A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, HCA and Consultant agree to take actions necessary to provide immediate notice and a detailed report to the Federal Entity.

B. Unless the Government later makes a contrary determination in writing, irrespective of Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), HCA and Consultant agree to take the necessary actions to provide, through the Federal Entity, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.

C. The Consultant agrees to include paragraphs A and B above in each third-party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by the Federal Entity.

XIII. ENERGY CONSERVATION REQUIREMENTS

A. 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 (42 USC 6201).

B. The Consultant agrees to include paragraph A above in each third-party subcontract financed in whole or in part with Federal assistance provided the Federal Entity. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XIV. CLEAN AIR AND WATER REQUIREMENTS (applicable to all contracts and subcontracts in excess $100,000, including indefinite quantities where the amount is expected to exceed $100,000 in any year)

A. Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to the Federal Entity and the Regional Office of the Environmental Protection Agency (EPA).

B. Consultant agrees to report each violation of these requirements to HCA and understands and agrees that HCA will, in turn, report each violation as required to assure notification to the Federal Entity and the appropriate EPA regional office.

C. The Consultant agrees to include paragraph A and B above in each third-party subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by the Federal Entity.

XV. TERMINATION FOR CONVENIENCE OF HCA (applicable to all contracts in excess of $10,000)

See Part I, Sections 5 and 6 of the Agreement.

XVI. TERMINATION FOR DEFAULT (applicable to all contracts in excess of $10,000)

Consultant's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Part I, Sections 5 and 6 of the Agreement.

XVII. LOBBYING (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).)

A. Consultant shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. Consultant agrees to the provisions of the Certification Regarding Lobbying, attached to this Appendix and incorporated herein (applicable for contracts or subcontracts in excess of $100,000).

C. Consultant agrees to include paragraphs A and B above in each third-party subcontract financed in whole or in part with Federal assistance provided by the Federal Entity. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XVIII. MBE / WBE REQUIREMENTS

HCA intends to seek reimbursement of its costs incurred in connection with this project from the Federal Entity. Accordingly, the CONSULTANT shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321. Failure to perform the "Good Faith Effort" process and submit the forms listed below with the bid shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the contract.

PRIME CONSULTANT RESPONSIBILITIES

All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported.

"GOOD FAITH" EFFORT PROCESS

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a CONSULTANT fails to take the steps outlined below shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.

A. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
C. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
D. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
E. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
F. If subcontracts are to be let, Consultant shall take the affirmative steps listed in 2 CFR 200.321.

XIX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

Consultant shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and

resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XX. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

The preceding provisions include, in part, certain standard terms and conditions required by the Federal Entity, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the Federal Entity are hereby incorporated by reference. Anything to the contrary herein notwithstanding, the Federal Entity mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Consultant shall not perform any act, fail to perform any act, or refuse to comply with any HCA requests that would cause HCA to be in violation of the Federal Entity terms and conditions.

APPENDIX C – FORMS

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

(Lower Tier refers to the agency or contractor receiving Federal funds, as well as any subcontractors that the agency or contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, HCA may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Consultant is required to sign the certification below which specifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Consultant will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

Instruction for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it

determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____ _____

Consultant Signature Date

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.

_____ _____

Consultant Signature Date

DBE Subcontractor Utilization Form

This form is intended to capture the prime consultant's actual and/or anticipated use of identified certified DBE[1] subcontractors[2] and the estimated dollar amount of each subcontract.

Prime Consultant Name	**Project Name**
Bid/Proposal No. | Assistance Agreement ID No. (If known)	Point of Contact
Address	
Telephone No.	Email Address
Issuing/Funding Entity:	

I have identified potential DBE certified subcontractors	**o YES o NO**

Subcontractor Name/ Company Name	**Company Address/Phone/Email**	**Est. Dollar Amt**	**Currently DBE Certified?**

[1] A DBE is a Disadvantaged, Minority, Small or Woman Business Enterprise that has been certified as described in 40 CFR 33.204-33.205.

[2] Subcontractor is defined as a company, firm, joint venture or individual who enters into an agreement with a contractor to provide services.

I certify under penalty of perjury that the foregoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CRF Part 33 Section 33.302(c).

Prime Consultant Signature	**Print Name**
Title	Date

MBE/WBE/SBE FORMS

DBE Subcontractor Performance

This form is intended to capture the DBE[3] subcontractors'[4] description of work to be performed and the price of the work submitted to the prime consultant. Prime consultant is required to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package unless subcontractors will not be used.

Subcontractor Name	**Project Name**
Bid/Proposal No. | Assistance Agreement ID No. (If known)	Point of Contact
Address	
Telephone No.	Email Address
Prime Consultant Name	Issuing/Funding Entity:

Contract Item Number	**Description of Work Submitted to the Prime Consultant Involving construction, Services, Equipment or Supplies**	**Price of Work Submitted to the Prime Consultant**
BDE Certified by ○ DOT ○ SBA ○ Other: _____	Meets/ exceeds the Federal Entity certification standards: ☐ YES ○ NO ○ Unknown	

[3] A DBE is a Disadvantaged, Minority, Small or Woman Business Enterprise that has been certified as described in 40 CFR 33.204-33.205

[4] Subcontractor is defined as a company, firm, joint venture or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

I certify under penalty of perjury that the foregoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CRF Part 33 Section 33.302(c).

Prime Consultant Signature	**Print Name**
Title	Date

Subcontractor Signature	**Print Name**
Title	Date

Subcontractor Signature	Print Name