



## *Santa Cruz County Regional Transportation Commission*

**--NOTICE--**

### **Request for Qualifications (RFQ) for Professional Services**

---

## **Transportation Funding Poll of Likely Voters in Santa Cruz County**

Interested Parties are invited to submit a Statement of Qualifications, including a sealed cost proposal setting forth a proposed fee schedule, for services relative to the above project.

**Issue Date: January 24, 2012**

**Closing Date: 12 noon, Tuesday, February 7, 2012**

Please submit transmittal letter, one (1) unbound reproducible original and five (5) hard copies and one (1) electronic copy of response materials to the Santa Cruz County Regional Transportation Commission (RTC), Attention: Rachel Moriconi, 1523 Pacific Avenue, Santa Cruz, CA 95060, and [rmoriconi@scrtc.org](mailto:rmoriconi@scrtc.org) by noon on Tuesday, February 7, 2012.

---

**Contact Person:**

**Rachel Moriconi, Sr. Transportation Planner/Contract Manager**

**Phone: 831-460-3200 / Email: [rmoriconi@scrtc.org](mailto:rmoriconi@scrtc.org)**

*This notice, along with its enclosures, comprises the Request for Qualifications (RFQ) for this project. The RTC reserves the right to amend the RFQ by addendum before the final submittal closing date. This RFQ and addenda will be posted on the website: <http://scrtc.org/about/opportunities/RFP/>. Copies of the RFQ are also available at the RTC office. Responses should be submitted in accordance with the instructions set forth in this RFQ.*

The RTC is an Equal Opportunity Employer and encourages the participation of Disadvantaged Business Enterprises (DBE) in this contract.



## MEMORANDUM

DATE: January 24, 2012  
TO: Interested Consultants  
FROM: George Dondero, Executive Director  
RE: Request for Qualifications for Transportation Funding Poll

---

## INVITATION

The Santa Cruz County Regional Transportation Commission (RTC) invites qualified and experienced consultants to submit Qualifications to poll Santa Cruz County voters on transportation funding. This Request for Qualifications (RFQ) and any addenda can be accessed at the RTC website: <http://sccrtc.org/about/opportunities/RFP/>.

## PROJECT DESCRIPTION

Santa Cruz County's transportation system is in jeopardy. Investments to preserve our multi-modal transportation system simply have not kept pace with the demands on them, and this underfunding has led to the deterioration of the local and regional transportation system. Existing transportation revenues make up less than 50% percent of what is required to maintain, let alone enhance, roads, highways, bridges, sidewalks, bicycle facilities, and public transit to the levels necessary to sufficiently provide for a transportation system that is safe, reliable, and which moves people and goods efficiently. The shortfall for ongoing local road maintenance alone is over \$12 million per year.

Additional investments are necessary at a time when the national economy is struggling to recover from the financial shocks of 2008, and when many states and local governments face huge budget shortfalls for many programs and services. Now, more than ever, it is critical to set clear priorities and identify payment strategies. The Regional Transportation Commission (RTC) is investigating new local revenue options for addressing a portion of this shortfall that would be agreeable to a super majority of county voters.

The Regional Transportation Commission plans to conduct a poll to help develop a ballot measure that will have the highest likelihood of being successfully supported by Santa Cruz County voters.

The poll should survey a statistically valid and geographically balanced sample size of Santa Cruz County likely voters to assist in determining whether a super majority of support (2/3) is possible for three main topics:

- acceptable funding options
- transportation funding plan options
- specific projects

The RTC is interested in understanding whether certain projects and what types of fees and taxes, such as vehicle registration fees, gas taxes, and sales taxes might be more acceptable voters. The poll should not take more than 15-20 minutes of total phone time and would include demographic information questions, as well as some questions that have been asked in previous polls to get a sense of whether voter attitudes have changed over time. The polling staff should also have the capability to administer the poll in Spanish and to separately quantify the results of those questions.

The poll should take place in early 2012 and the results should be ready no later than April 2012. The poll should be politically neutral.

Consultants will need to meet with staff to develop the poll and will be required to present poll results to the Regional Transportation Commission. In addition, poll results should be made available in a format that can be analyzed by demographic and geographic information.

### **SUBMITTAL REQUIREMENTS/CONTENTS**

All interested firms are required to submit a transmittal letter signed by a person authorized on behalf of the consulting firm to solicit business for the firm, one (1) unbound reproducible original, five (5) copies, and an electronic file of their Qualifications. The Qualifications must be less than 20 pages and must include the following:

- Project Team
  - Resumes of 1 page or less for people directly working on this project
  - Two pages or less about subcontractors and prime's previous experience working with subcontractor, including oversight/quality control mechanisms
  - Bilingual capability of staff to conduct the poll
- Demonstrated Knowledge, Experience and Ability
  - Identify and describe approach for at least three similar projects (polling for sales tax measures, transportation funding, communication with boards and/or advisory groups)
  - Include at least three references
  - Include sample(s) of presentation materials that synthesize poll results
- Proposed Cost Outline including direct/indirect costs, equipment/materials, subcontractor costs, etc.
- Proposed schedule to complete work

The transmittal letter shall indicate the name of the organization submitting the response; whether the proposing firm is an individual, partnership, corporation, or joint venture; the name, telephone number, email, and business address of the contact person who will be authorized to respond to questions regarding the response; the name of the individual authorized to negotiate the contract on behalf of the consulting firm; and include a statement of California licensing.

**Conflict of Interest:** The prospective consultant shall disclose any financial, business or other relationship with the RTC that may have an impact upon the outcome of this contract or potential future RTC construction projects resulting from this effort. The prospective consultant shall also list current clients who may have a financial interest in the outcome of this contract or RTC projects that will follow. In particular, the prospective consultant shall disclose any financial interest or relationship with any construction company that might submit a bid on RTC projects.

**Response Due Date:** All Qualifications must be submitted to the Santa Cruz County Regional Transportation Commission (RTC), 1523 Pacific Avenue, Santa Cruz, CA, 95060 and [rmoriconi@scrtc.org](mailto:rmoriconi@scrtc.org), Attention: Rachel Moriconi, **no later than noon on February 7, 2012.** Responses received after the date and time specified above will not be considered.

### **SELECTION PROCESS**

The selection process shall be based upon the determination of the most qualified consultant and upon project cost information. Factors to be considered in selecting the consultant(s) are indicated below:

1. Experience of the key personnel assigned to the project

2. Proposed approach to the project
3. Understanding of the project and its particular challenges and constraints
4. Demonstrated ability to complete projects by specified deadlines.
5. Committed degree of participation for key personnel
6. Evaluation and references from past clients
7. Results from the interview, if applicable
8. Presentation methods to communicate poll results in easy-to-understand language/format
9. Estimated cost

The RTC will review the qualifications and reserves the right to conduct interviews with poll consultants. The consultant selection and contract oversight will take place by RTC staff and a few members of the RTC board. Based on the decision of the RTC, a final Scope of Work and a Fee Schedule for the project will be negotiated. The final Scope of Work will include a full description of each task, a description of deliverable products, meetings to attend, and a schedule of the due dates for the deliverable products and other important milestones. The final negotiated contract will meet all local and state requirements as well as agency and project needs. Should the most qualified consultant and the RTC fail to successfully negotiate a final Scope of Work and a mutually agreed upon Fee Schedule for these consulting services, then the RTC reserves the right to enter into negotiations with the next most qualified consultant for performance of the work. This Request for Qualifications does not commit the RTC to procure or contract for services.

**Selection Disputes:** Respondents not selected for interview or contract award will be informed by mail and/or email. Upon request, the RTC will offer a debriefing in person or by phone to respondents who were not selected, at a mutually agreeable time after award of the contract.

A proposer may object to a provision of the RFQ on the grounds that it is arbitrary, biased, or unduly restrictive, or may object the selection of a particular consultant on the grounds that RTC procedures, the provisions of the RFQ or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied. Any objection must be submitted in writing to the RTC Contract Manager and must include an explanation of the basis for the objection:

1. No later than five (5) working days prior to the date responses are due, for objections to RFQ provisions; or
2. No later than three (3) working days after the date the proposer is notified that it's submittal was found to be non-responsive or failed to demonstrate the necessary experience; or
3. No later than three (3) working days after the date on which a contract is authorized by the RTC board for objections to consultant selection.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the RTC authorizes the award.

The RTC Contract Manager will respond to the objection in writing within thirty days. No contract to a consultant shall be executed until the expiration of the objection period or, if an objection is filed, the issuance of a written response to the protest by the RTC Contract Manager. The proposer may appeal the decision of the RTC Contract Manager by filing a written appeal with the RTC Executive Director, no less than three (3) working days after receipt of the written response from the RTC Contract Manager. The Executive Director's decision will be final. The RFQ selection process is considered concluded when a consultant is selected and the final contract is approved by all parties.

**PROJECT SCHEDULE** (Subject to change)

Release RFQ for 2 weeks	January 24, 2012
Qualifications Due	February 7, 2012
Review Qualifications	February 7-February 16
Interviews – if necessary	February 21 – if necessary
Selection of Pollster	March 1, 2012
Finalize Contract including Scope of Work & Budget	March 7, 2012
Development & Implementation of poll	March-April
Present Results – RTC	April 19, 2012

**COSTS**

The Regional Transportation Commission authorized expenditures up to \$30,000 for this effort; however every attempt will be made to realize cost savings. Consultants should be prepared to discuss their approach and costs with RTC staff and the Polling Consultant.

**OTHER INFORMATION**

**Requests for clarification or exceptions:** Requests for clarification or exceptions to RFQ requirements must be received by RTC no later than by noon on Friday, February 3, 2012 to guarantee response or consideration.

**Modification of RFQ:** The RTC reserves the right to amend this RFQ before the final submittal due date. This RFQ and any addenda will be posted on the website: <http://sccrtc.org/about/opportunities/rfp/>. It is the sole responsibility of prospective and actual respondent to check for modifications of and additional information pertaining to the RFQ on the RTC website. To receive email notifications of addenda to this RFQ, prospective proposers must submit an email request to [rmoriconi@sccrtc.org](mailto:rmoriconi@sccrtc.org).

**Non-discrimination:** It is the policy of the RTC to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which firms can compete fairly for contracts and subcontracts relating to the RTC’s construction, procurement and professional services activities. Consultants or subconsultants shall not discriminate on the basis of race, color, national origin, religion, age, disability, or sex in the performance of this contract. This applies to all consultant’s and subconsultant’s employment, solicitations, selection of subconsultants and procurement of materials. The prospective consultant must certify compliance with nondiscrimination requirements of RTC pertaining to the development, implementation and maintenance of a nondiscrimination program. The prospective consultant’s signature affixed to and dated on the cover letters shall constitute a certification under penalty of perjury under the laws of the State of California that the consultant has, unless exempted, complied with state and federal nondiscrimination program requirements.

**Respondent’s Preparation Expenses:** Respondents are solely responsible for their own expenses in preparing and submitting a response to this RFQ as well as for subsequent interviews and contract negotiations with the RTC. The RTC will not be liable to any respondent for any costs or damages incurred by the respondent in preparing the RFQ response, loss of anticipated profit, or for any other claim.

**Ownership of RFQ Responses:** All documents, including specific RFQ responses, submitted to the RTC become the property of the RTC. All materials submitted by proposers are subject to public inspection under the California Public Records Act (Government Code § 6250 *et seq.*), unless exempt. After award of the contract (or if not awarded, after rejection of all responses), all responses will be regarded as public records and will be subjected to review by the public. Any language purporting to render all or portions of the response confidential will be regarded as non-effective and will be disregarded.

**Collection and Use of Personal Information:** Respondents are solely responsible for familiarizing themselves and ensuring that they comply with the laws applicable for the collection and dissemination of personal information, including resumes and other personal information concerning respondent employees and employees of any proposed subconsultants.

**Acceptance of RFQ Responses:** This RFQ is not an agreement to purchase or contract for services. The RTC reserves the right, in its sole discretion, not to enter into a contract as a result of this RFQ. All responses will be assessed in light of the needs described in this RFQ, including the Scope of Services. The RTC is under no obligation to receive further information, written or oral, from any respondent. Any award will be to the consultant(s) whose Response is, in the sole judgment of the RTC board, most advantageous to RTC.

**Changes to RFQ Response Wording:** Any responses received prior to the due date and time specified above may be modified by written request of the proposer. Any modification must be received by the response due date and time specified in this RFQ. After that date, no additional wording or comments will be added to the response unless requested by the RTC for purposes of clarification.

**Notification of Further RFQ Respondent Review and Interview Not Binding:** A respondent may withdraw from consideration at any time by notifying the RTC in writing, by phone or by email. The RTC may, at its sole discretion, withdraw the name of a respondent for further review by notifying the respondent in writing, by phone or by email. Notice in writing, by email or by phone to a respondent that it has been identified as a candidate for further review and an interview will neither constitute a contract, nor give the respondent any legal or equitable rights or privileges relative to this RFQ.

**Contract:** Any contract proposed with a selected respondent shall comply with all public contracting statutes applicable in the State of California. For your reference, a sample RTC's agreement is attached. If mutual agreeable terms are not reached, the RTC reserves the right to terminate negotiations and negotiate with the next highest ranked firm. RTC further reserves the right to terminate negotiations at any point without obligation to contract for services with any firm.

**Point of Contact:** Responses and inquiries relating to this RFQ shall be submitted to:  
Santa Cruz County Regional Transportation Commission  
Attn: Rachel Moriconi, Sr. Transportation Planner/RTC Contract Manager  
1523 Pacific Ave., Santa Cruz, CA 95060  
Phone: 831-460-3200 / Email: [rmoriconi@sccrtc.org](mailto:rmoriconi@sccrtc.org)  
Email inquiries relating to this RFQ should include "Poll RFQ" in the subject header.

**Thank you for your interest in this project. We look forward to receiving your response.**

*Attachment – Sample RTC Standard Contract*

\\Rtcserv2\shared\CONTRACT\2012Poll\RFQfundingSurvey.doc

*Sample Contract*

**Contract No. \_\_\_\_\_**  
**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, hereinafter called COMMISSION, and \_\_\_\_\_, hereinafter called CONSULTANT for \_\_\_\_\_ (*services/project name*).

**1. DUTIES.**

A. CONSULTANT agrees to exercise special skill to accomplish the following results in a manner reasonably satisfactory to COMMISSION: \_\_\_\_\_, as specified in Exhibit A: Scope of Services, which by this reference is incorporated herein.

B. CONSULTANT shall provide the personnel listed below to perform the above-specified services, which persons are hereby designated as key personnel under this Agreement.

<u>Name</u>	<u>Firm</u>	<u>Function</u>
		Principal in Charge
		Project Manager

C. No person named in paragraph B of this Section, or his or her successor, shall be removed or replaced by CONSULTANT, nor shall his or her agreed-upon function hereunder be changed, without the prior written consent of COMMISSION. Such consent shall not be unreasonably withheld.

**D. CONSULTANT’S PROGRESS REPORTS AND/OR MEETINGS**

- 1) The CONSULTANT shall submit written progress reports with each invoice. The report should be sufficiently detailed for the Contract Manager to determine if the CONSULTANT is performing to expectations or is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- 2) The CONSULTANT’s Project Manager shall meet with the COMMISSION’s Contract Manager, as needed, to discuss progress on the contract.

**2. COMPENSATION.**

In consideration for CONSULTANT accomplishing said result, COMMISSION agrees to pay CONSULTANT as follows:

- A. Total payment is not to exceed \$\_\_\_\_\_ for time and materials at the rates and conditions set forth in Exhibit B: Fee Schedule, which by this reference is incorporated herein.
- B. In no event, will the CONSULTANT be reimbursed for overhead costs at a rate that exceeds the overhead rate set forth in the Fee Schedule.
- C. Transportation and subsistence costs shall not exceed the rates authorized to employees under current U.S. General Service Administration rules.
- D. Reimbursable expenses will be billed by CONSULTANT and processed for payment upon approval of the Contract Manager.
- E. Progress payments will be made no less than monthly in arrears based on satisfactory services provided and actual allowable incurred costs. A pro rata portion of the CONSULTANT’s fixed fee, if applicable, will be included in the monthly progress payments. If CONSULTANT fails to submit the required

deliverable items according to the schedule set forth in the Scope of Services, the COMMISSION may delay payment and/or terminate this Agreement in accordance with the provisions of Section 4 of this Agreement.

- F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.
- G. CONSULTANT shall not exceed milestone cost estimates as shown in Exhibit B, except with the prior written approval of the Contract Manager.
- H. The CONSULTANT will be reimbursed after receipt by the COMMISSION's Contract Manager of itemized invoices. Invoices shall be submitted no later than 45calendar days after the performance of work for which the CONSULTANT is billing. Invoices shall be mailed to the COMMISSION's Contract Manager at the following address:  
SCCRTC, 1523 Pacific Ave, Santa Cruz, CA, 95060

The invoices must include the following information:

- 1. Labor (staff name, hours charged, hourly billing rate, current charges and cumulative charges) performed during the billing period by task;
  - 2. Itemized expenses incurred during the billing period;
  - 3. Total invoice/payment requested;
  - 4. Total amount previously paid under this Agreement;
  - 5. Report of expenditures by CONSULTANT and subconsultants for each task and subtask or milestone and estimated percentage completion by such divisions of work;
  - 6. Written progress reports, in a format to be mutually agreed upon, that is sufficiently detailed for the Contract Manager to determine if the CONSULTANT is performing to expectations and is on schedule; provides communication of interim findings; addresses any difficulties or special problems encountered, so remedies can be developed; and other information as requested by COMMISSION.
  - 7. CONSULTANT's final invoice must be submitted within 60-calendar days after acceptance of the CONSULTANT's work by the Contract Manager.
- I. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

3. **TERM.** This Agreement shall take effect on (DATE); contingent upon prior approval by the COMMISSION governing board, and the CONSULTANT shall commence work after notification to proceed by the COMMISSION'S Contract Manager. The Agreement shall end on (DATE), unless earlier terminated or extended by contract amendment. The CONSULTANT is advised that this Agreement is not binding and enforceable until it is fully executed and approved by the COMMISSION's board.

4. **EARLY TERMINATION.**

- A. COMMISSION may terminate this Agreement for its convenience any time, in whole or part, by giving CONSULTANT thirty-day (30-day) written notice thereof. Within thirty days of the COMMISSION's receipt of CONSULTANT's final billing, COMMISSION shall pay CONSULTANT its allowable costs incurred to date of termination and those allowable costs determined by COMMISSION to be reasonably necessary to effect such termination. Thereafter, CONSULTANT shall have no further claims against COMMISSION under this Agreement.
- B. COMMISSION may terminate this Agreement for CONSULTANT's default if a federal or state proceeding for the relief of debtors is undertaken by or against CONSULTANT, or CONSULTANT's

principal, or if CONSULTANT or CONSULTANT's principal makes an assignment for the benefit of creditors, or if CONSULTANT breaches any term(s) or violates any provision(s) of this Agreement and does not cure such breach or violation within ten (10) days after written notice thereof by COMMISSION. CONSULTANT shall be liable for any and all reasonable costs incurred by COMMISSION as a result of such default, including but not limited to reprourement costs of the same or similar services defaulted by CONSULTANT under this Agreement.

C. CONSULTANT may terminate this Agreement by giving the COMMISSION at least one hundred and twenty (120) days advance written notice. CONSULTANT shall be liable for any and all reasonable costs incurred by COMMISSION as a result of such default, including but not limited to reprourement costs of the same or similar services defaulted or not provided by CONSULTANT under this Agreement.

**5. INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.**

CONSULTANT shall exonerate, indemnify, defend, and hold harmless the COMMISSION (which for the purpose of this Agreement shall include, without limitation, its officers, agents, employees and volunteers) from and against:

- A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COMMISSION may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property which arise out of, pertain to, or relate to CONSULTANT'S negligence, recklessness, or willful misconduct under the terms of this Agreement. Such indemnification includes any damage to the person(s), or property(ies) of CONSULTANT and third persons.
- B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONSULTANT and CONSULTANT'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

**6. INSURANCE.** CONSULTANT, at its sole cost and expense, for the full term of this Agreement, and any extensions thereof, shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COMMISSION and any insurance or self-insurance maintained by COMMISSION shall be excess of CONSULTANT'S insurance coverage and shall not contribute to it.

If CONSULTANT utilizes one or more subconsultants in the performance of this Agreement, CONSULTANT shall obtain and maintain Independent CONSULTANT's Insurance as to each subconsultant or otherwise provide evidence of insurance coverage from each subconsultant equivalent to that required of CONSULTANT in this Agreement.

**A. Types of Insurance and Minimum Limits**

- 1) Workers' Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the CONSULTANT has no employees and certifies to this fact by initialing here \_\_\_\_\_.
- 2) Automobile Liability Insurance for each of CONSULTANT'S vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by CONSULTANT'S employees), leased or hired vehicles, in the minimum amount of \$1,000,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by the CONSULTANT is not a material part of performance of this Agreement and CONSULTANT and COMMISSION both certify to this fact by initialing here \_\_\_\_ / \_\_\_\_.

- 3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of one million dollars (\$1,000,000) combined single limit (CSL), including coverage for: (a) bodily injury, (b) personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.
- 4) Professional Liability Insurance in the minimum amount of one million dollars (\$1,000,000) combined single limit, if, and only if, this Subparagraph is initialed by CONSULTANT and COMMISSION \_\_\_ / \_\_\_\_.

**B. Other Insurance Provisions**

- 1) If any insurance coverage required in this Agreement is provided on a “Claims Made” rather than “Occurrence” form, CONSULTANT agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter “post agreement coverage”) and any extensions thereof. CONSULTANT may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable. The COMMISSION will not be responsible for any premiums or assessments on the policy.

- 2) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause:

“Santa Cruz County Regional Transportation Commission, its officials, employees, agents and volunteers are added as an additional insured as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the Commission.”

- 3) All required insurance policies shall be endorsed to contain the following clause:  
“This insurance shall not be canceled until after thirty (30) days prior written notice has been given to:

**Santa Cruz County Regional Transportation Commission  
Attn: Yesenia Parra  
1523 Pacific Avenue  
Santa Cruz, CA 95060**

- 4) CONSULTANT agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COMMISSION on or before the effective date of this Agreement with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to:

**Santa Cruz County Regional Transportation Commission  
Attn: Yesenia Parra  
1523 Pacific Avenue  
Santa Cruz, CA 95060**

- 5) The CONSULTANT agrees that the insurance herein provided for, shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, the CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of the COMMISSION. In the event the CONSULTANT fails to keep in effect at all times insurance

coverage as herein provided, the COMMISSION may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

- 6) If any insurance policy of CONSULTANT required by this document includes language conditioning the insurer's legal obligation to defend or indemnify COMMISSION on the performance of any act(s) by the named insured, then said insurance policy, by endorsement, shall also name the COMMISSION as a named insured. Notwithstanding the foregoing, both the CONSULTANT and its insurers agree that by naming the COMMISSION as a named insured, the COMMISSION may at its sole direction, but is not obligated to, perform any act required by the named insured under said insurance policies.
- 7) CONSULTANT shall do all things required to be performed by it pursuant to its insurance policies including but not limited to paying within five (5) work days, all deductibles and self-insured retentions (SIR) required to be paid under any insurance policy that may provide defense or indemnity coverage to COMMISSION or any additional insured.
- 8) CONSULTANT shall cause the foregoing provisions to be inserted in all subcontracts for any work covered under this Agreement by a subconsultant compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

7. **FEDERAL, STATE AND LOCAL LAWS.** CONSULTANT warrants that in the performance of this Agreement, it shall exercise usual and customary professional care in its efforts to comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder. In the event of a conflict between the laws and lawful regulations of any government entities having jurisdiction over the project, the CONSULTANT shall notify COMMISSION of the nature and impact of such conflict. The COMMISSION agrees to cooperate and work with the CONSULTANT in an effort to resolve any conflict.

8. **EQUAL EMPLOYMENT OPPORTUNITY.** During and in relation to the performance of this Agreement, CONSULTANT agrees to the following:

The CONSULTANT shall not discriminate or permit discrimination against any employee or applicant for employment in any manner prohibited by Federal, State and local laws, including but not limited to race, color, gender, religion, national origin, ancestry, physical or mental disability, medical condition, marital status, sexual orientation, age (over 18), veteran status, pregnancy, or any other non-merit factor unrelated to job duties.

Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

CONSULTANT shall comply fully with all federal, State and local laws and regulations which prohibit discrimination. The CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

In the event of CONSULTANT'S non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations or orders the COMMISSION may cancel, terminate or suspend the Agreement in whole or in part. CONSULTANT may also be declared ineligible for further agreements with the COMMISSION.

9. **HARASSMENT.** The COMMISSION maintains a strict policy prohibiting unlawful harassment, including sexual harassment, in any form, including verbal, physical and visual harassment by any employee, supervisor, manager, officer or Board member, or agent of the employer. Vendors, CONSULTANTS, and consultants shall not engage in conduct that has an effect of unreasonably interfering with a COMMISSION employee's work performance or creates an intimidating, hostile or offensive work environment.
10. **LICENSES.** If a license of any kind is required of CONSULTANT, its employees, agents, or sub CONSULTANTS by Federal or State law, CONSULTANT warrants that such license has been obtained, is valid and in good standing, that CONSULTANT shall keep it in effect at all times during the terms of this Agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.
11. **INDEPENDENT CONSULTANT STATUS.** CONSULTANT and COMMISSION have reviewed and considered the principal test and secondary factors herein and agree that CONSULTANT is an independent CONSULTANT and not an employee of COMMISSION. CONSULTANT is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONSULTANT is not entitled to any employee benefits. COMMISSION agrees that CONSULTANT shall have the right to control the manner and means of accomplishing the result contracted for herein.

**PRINCIPAL TEST:** The CONSULTANT rather than COMMISSION has the right to control the manner and means of accomplishing the result contracted for.

**SECONDARY FACTORS:** (a) The extent of control which, by agreement, COMMISSION may exercise over the details of the work is slight rather than substantial; (b) CONSULTANT is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONSULTANT is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONSULTANT rather than the COMMISSION supplies the instrumentalities, tools and work place; (f) The length of time for which CONSULTANT is engaged is of limited duration rather than indefinite; (g) The method of payment of CONSULTANT is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COMMISSION; (i) CONSULTANT and COMMISSION believe they are creating an independent CONSULTANT relationship rather than an employer-employee relationship; and (j) The COMMISSION conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent CONSULTANT relationship, but rather that overall there are significant secondary factors which indicate that CONSULTANT is an independent CONSULTANT.

By their signatures to this Agreement, each of the undersigned certifies that it is his or her considered judgment that the CONSULTANT engaged under this Agreement is in fact an independent CONSULTANT.

12. **RETENTION AND AUDIT OF RECORDS.** 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., if applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7: CONSULTANT, subconsultants, and the COMMISSION shall maintain 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 Agreement . All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for five (5) years from the date of final payment under this Agreement or until a final audit report is accepted by COMMISSION, whichever occurs first. The COMMISSION and any state or federal auditor, or any duly authorized representative of the state or federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the Agreement for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Subcontracts in excess of \$25,000 shall contain this provision.

**13. INSPECTION OF WORK**

The CONSULTANT and any subconsultant shall permit the COMMISSION, the state, and the FHWA if federal participating funds are used in this contract, to review and inspect the project activities and files at all reasonable times during the term of this Agreement including review and inspection on a daily basis.

**14. ACKNOWLEDGMENT**. CONSULTANT shall acknowledge in all reports and literature that the material is prepared for and on behalf of the COMMISSION.

**15. WORK PRODUCTS**. All material, data, information, and written, graphic or other work produced under this Agreement is subject to the unqualified and unconditional right of the COMMISSION to use, reproduce, publish, display, and make derivative use of all such work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so. If any of the work is subject to copyright, trademark, service mark, or patent, CONSULTANT now grants to the COMMISSION a perpetual, royalty-free, nonexclusive and irrevocable license to use, reproduce, publish, use in the creation of derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense.

CONSULTANT shall include in any subcontract with a third party for work under this Agreement terms that preserve the rights, interests, and obligations created by this Section, and that identify the COMMISSION as a third-party beneficiary of those provisions.

The CONSULTANT shall not utilize the work produced under this Agreement for any profit-making venture, or sell or grant rights to a third party for that purpose.

- A. Upon completion of all work under this contract, ownership and title to all custom letters, reports, documents, plans, specifications, and estimates and other products produced as part of this Agreement (herein "deliverables") will automatically be vested in the COMMISSION; and no further agreement will be necessary to transfer ownership to the COMMISSION. The CONSULTANT shall furnish the COMMISSION all necessary copies of data needed to complete the review and approval process. Copies may be made for CONSULTANT's records but shall not be furnished to others without the COMMISSION's prior written authorization. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by COMMISSION. All information derived from these deliverables is deemed confidential and may not be disclosed to any other party without the express prior written consent of COMMISSION. No information obtained during audit work performed under this Agreement may be used by CONSULTANT for any purpose (internal or external), nor may the information be discussed with others without the prior written consent of COMMISSION.
- B. The COMMISSION may permit copyrighting reports or other contract products. If copyrights are permitted, the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

- C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Section.

**16. SAFETY**

- A. The CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. The CONSULTANT shall comply with safety instructions issued by the COMMISSION Safety Officer and other COMMISSION representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the Santa Cruz Branch Rail Line.
- B. Areas within the limits of the project are open to public and private traffic. The CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Section.

**17. MODIFICATION OF AGREEMENT.**

- A. This Agreement may be amended or modified only by mutual written agreement of the parties.
- B. The CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the COMMISSION's Contract Manager.
- C. There shall be no change in the CONSULTANT's Project Manager or members of the project team, as listed in the approved Fee Schedule, which is a part of this Agreement without prior written approval by the COMMISSION's Contract Manager.
- D. No oral understanding or agreement not incorporated herein shall be binding on the parties.

**18. DISPUTES.** This Agreement shall be construed under the laws of the State of California. Pending final resolution of a dispute hereunder, CONSULTANT shall proceed diligently with the performance of this Agreement and shall comply with COMMISSION's instructions.

- A. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of the COMMISSION's Contract Manager and Executive Director, who shall consider written or verbal information submitted by the CONSULTANT.
- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, the CONSULTANT may request review by the COMMISSION GOVERNING BOARD of unresolved claims or disputes, other than audit. The request for review must be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse the CONSULTANT from full and timely performance in accordance with the terms of this contract.

**19. AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post-completion audit of this Agreement that is not disposed of by agreement, shall be reviewed by the COMMISSION'S Contract Manager.
- B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the COMMISSION'S Executive Director of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by the COMMISSION will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this contract.

**20. SUBCONTRACTING**

- A. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without prior written authorization by the COMMISSION'S Contract Manager, except that, which is expressly identified in the approved Fee Schedule.
- B. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all the provisions required by this Agreement to be applicable to those subconsultants.
- C. No substitution of subconsultants shall be valid until approved in writing by the COMMISSION'S Contract Manager.

21. **NONASSIGNMENT.** The CONSULTANT shall not assign the Agreement without the prior written consent of the COMMISSION.

22. **REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION.** The CONSULTANT warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COMMISSION employee. For breach or violation of this warranty, COMMISSION shall have the right in its discretion to terminate the Agreement 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.

23. **NOTIFICATION.** All notices hereunder and communications regarding interpretation of the terms of this Agreement and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

\_\_\_\_\_  
 (*CONSULTANT*)  
 \_\_\_\_\_, Project Manager  
 (*NAME*)  
 \_\_\_\_\_  
 (*ADDRESS*)

COMMISSION:

Santa Cruz County Regional Transportation Commission (SCCRTC)  
 Luis Mendez, Contract Manager  
 1523 Pacific Ave, Santa Cruz, CA 95060

24. **COMPLETE AGREEMENT**

- A. **AGREEMENT:** The two parties to this Agreement, who are the before named CONSULTANT and the before named COMMISSION, hereby agree that this Agreement constitutes the entire Agreement which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this Agreement as evidenced by the signatures below.
- B. **COMMISSION DESIGNEE:** The Executive Director of COMMISSION, or his or her designee, shall have the authority to act for and exercise any of the rights of COMMISSION as set forth in this Agreement subsequent to, and in accordance with the authorization granted by the COMMISSION.
- C. **COMPLETE AGREEMENT, INCLUDING ATTACHMENTS.** This Agreement includes all exhibits, attachments, and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the Agreement between COMMISSION and CONSULTANT, and supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other terms or conditions. The COMMISSION'S waiver of CONSULTANT's performance of any term(s)

or condition(s) of this Agreement shall not be construed as a waiver for any future performance of such term(s) or conditions(s)

D. Attachments are:

- Exhibit A: Scope of Services
- Exhibit B: Fee Schedule

Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity for which he or she is executing this document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. \_\_\_\_\_ to be executed on the date first written above.

**1. CONSULTANT**

**2. SANTA CRUZ COUNTY REGIONAL  
TRANSPORTATION COMMISSION**

By: \_\_\_\_\_  
SIGNED  
\_\_\_\_\_  
PRINTED

By: \_\_\_\_\_  
SIGNED  
\_\_\_\_\_  
PRINTED

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_  
Fax: (     ) \_\_\_\_\_  
Email: \_\_\_\_\_

**3. APPROVED AS TO INSURANCE:**

**4. APPROVED AS TO FORM:**

\_\_\_\_\_  
Administrative Services Officer

\_\_\_\_\_  
COMMISSION Counsel

**DISTRIBUTION:**

- *RTC Fiscal & Contract Manager*
- *CONSULTANT*

\\Rtcserv2\shared\CONTRACT\MASTERCO\Template\MasterContracts.doc