

**AGENDA:** June 6, 2019

**TO:** Santa Cruz County Regional Transportation Commission

**FROM:** Tracy New, Director of Finance and Budget

**RE:** Agreement for Financial Advisory Services

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**RECOMMENDATION**

Staff recommends authorizing the Executive Director to enter into ~~a two-year~~ agreement with KNN Public Finance, LLC for a term of three (3) years with three (3) additional one-year options to extend to provide financial advisory services to the Santa Cruz County Regional Transportation Commission.

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**BACKGROUND**

In November 2016 the residents of Santa Cruz County approved Measure D, a ½-cent transaction and use tax with a term of thirty years. The Santa Cruz County Regional Transportation Commission (RTC) is the designated administrator of Measure D. The RTC sets priorities and secures funding for capital improvement to transportation infrastructure including highways and local roads.

In accordance with Section 8 of Measure D Ordinance 2016-01, the RTC shall administer and oversee expenditure of Measure D revenue through an Implementation Plan. The purposes of the Implementation Plan are to define the scope, cost, and delivery schedule of each Expenditure Plan project or program, detail the revenue projections and possible financing tools needed to deliver the Expenditure Plan within the 30 years promised to voters, and describe the risks, critical issues and opportunities that the Authority should address to expeditiously deliver the Expenditure Plan.

The RTC is beginning the process of developing the Implementation Plan for Measure D revenues by identifying program objectives and goals supported by sound financial objectives. This process is expected to be completed during the fiscal year 2019-2020.

The RTC has a need for a financial advisory firm to work with staff to provide the following services to assist in the development of the Implementation Plan including a cash flow model and identify borrowing needs including:

- Provide as-needed financial advice regarding market conditions and trends, financial products, credit and credit analysis, third party alternative financing and special facility financing.
- Provide general assistance and advice to the Commission on plans and methods of financing its capital improvement plans.
- Present alternative strategies for managing the Commission’s current or future debt to achieve the best value for taxpayers.
- Assist with the preparation of presentations to the Commission; attend Commission meetings as needed.
- Attend meetings with Finance and Public Works departments and Commission Manager’s staff as needed.
- Provide other financial services as required.

The Firm may also be called upon to assist with the issuance of bonds or obtaining other debt financing by, but not limited to, the following:

- Assist Commission staff with new money issues, including but not limited to analyses and evaluations of underwriter proposals, financing structure, pricing, rating and insurance proposals, reserve fund (re)investment, assistance with preparation and review of related documents, and coordination of financing team, bond counsel and schedules.
- Assist with the preparation of a Request for Proposals and serve on an evaluation committee for selection of underwriting firms for the Commission’s potential new money issues.

**DISCUSSION**

In April 2019, the RTC issued a Request for Proposals (RFP) seeking the services of a qualified Financial Advisor to provide financial advisory services including but not limited to staff and board education, evaluation of bond markets, debt management, maintaining credit ratings, modeling funding for large construction projects, long-term strategic financial planning, and managing bond issuance for the RTC.

The RTC received four proposals from well qualified firms. Proposers were awarded points based on their qualifications, responses, recommended approach, and cost. The two highest scoring firms, KNN Public Finance and PFM Financial Advisors LLC, were interviewed. While both firms were qualified and presented well, staff recommends KNN Public Finance, LLC.

**FISCAL IMPACT**

The ~~proposed~~ agreement with ~~PFM Financial Advisors~~KNN Public Finance, LLC will not exceed \$~~73,940~~50,000 without prior approval from the RTC Board of Directors. There are sufficient resources in the Measure D implementation budget approved by the RTC- for professional services.

## SUMMARY

Staff recommends the RTC Board authorize the Executive Director to enter into an agreement not to exceed \$~~73,940~~50,000 with KNN Public Finance, LLC to provide financial advisory services. The contract period is proposed for a ~~two~~three (3) year term with ~~twethree (3) additional~~ one-year options which may be exercised at the RTC's discretion.

### Attachments:

1. Draft KNN Public Finance, LLC ~~Financial Advisory Services Financial Advisory Services Agreement. Final contract subject to legal review prior to execution.~~
2. Resolution authorizing the Executive Director to enter into a contract with KNN Public Finance, LLC.



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

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of June 2019 by and between the SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, hereinafter called COMMISSION, and KNN Public Finance, LLC, hereinafter called CONSULTANT for Financial Advisory Services. The parties agree as follows:

**1. DUTIES.**

- A. CONSULTANT agrees to exercise special skill to accomplish the following results: financial advisory services, 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.

Firm Name: KNN Public Finance, LLC

<u>Name</u>	<u>Function</u>
David Leifer, Senior Managing Director	Project Manager
Melissa Shick, Director	Day-to-Day Execution
Nedko Nedev, Vice President	Quantitative Analysis and Execution Support
<u>Larry Lom, Assistant Vice President</u>	<u>Quantitative Analysis and Execution Support</u>
Dan Cox, Vice President	Quantitative and Pricing Analysis

- C. No person named in paragraph B of this Article or in the Fee Schedule (Exhibit ~~CB~~), 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 the COMMISSION Contract Manager. Such consent shall not be unreasonably withheld.
- D. CONSULTANT’S PROGRESS REPORTS AND/OR MEETINGS
  - 1. CONSULTANT shall perform the services in accordance with the Project Schedule attached hereto (Exhibit A) and incorporated by reference. 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 work to be performed under this contract (as described in Exhibit A: Scope of Services), COMMISSION shall compensate CONSULTANT in accordance with the approved Fee Schedule, dated April 29, 2019, attached hereto (Exhibit ~~BC~~) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence. COMMISSION agrees to pay CONSULTANT as follows:

- A. Total payment is not to exceed ~~\$7350,940000~~.00 for time and materials at the rates and conditions set forth in Exhibit ~~CB~~: 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 expenses claimed for reimbursement shall not exceed the rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules or to employees under current U.S. General Service Administration rules.
- D. Reimbursable expenses will be billed 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. 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. This contract is valid and enforceable only, if sufficient funds are made available to COMMISSION for the purpose of this contract. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- H. The CONSULTANT will be reimbursed after receipt by the COMMISSION's Contract Manager of itemized invoices. Invoices shall be submitted no later than 45 calendar 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 – Attn: Tracy New, Director of Finance and Budget  
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, specifically noting the amount of retention, if any;
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.

**3. TERM.**

- A. This Agreement shall go into effect on June 15, 2019; 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 term of the Agreement shall end be twohree (3) years with three (3) additional one-year term options to extend following the effective date unless earlier terminated or extended by contract amendment.

- B. The CONSULTANT is advised that this Agreement is not binding and enforceable until it is approved by the COMMISSION's board and fully executed.
- C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this contract, the terms of the contract shall be extended by contract amendment.

**4. TERMINATION.**

- A. COMMISSION reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.
- B. COMMISSION may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COMMISSION may proceed with the work in any manner deemed proper by COMMISSION. If COMMISSION terminates this contract with CONSULTANT, COMMISSION shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to COMMISSION exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

**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, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of the CONSULTANT. The CONSULTANT will reimburse COMMISSION for any expenditure, including reasonable attorney fees, incurred by COMMISSION in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of the CONSULTANT; and
- B. Any and all Federal, State and Local taxes, charges, fees, penalties, 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. Insurance is to be placed with insurers reasonably acceptable to COMMISSION.

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

- 1. Workers' Compensation in the minimum statutorily required coverage amounts.
- 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.
- 3. Comprehensive or Commercial General Liability Insurance coverage at least as broad as ISO form CG 00 01, with a minimum limit of one million dollars (\$1,000,000) per occurrence, and \$2,000,000 in the aggregate, including coverage for: (a) products and completed

operations, (b) bodily and 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 \_\_/\_\_\_\_.

If CONSULTANT normally carries insurance in an amount greater than the minimum amount required by the COMMISSION for this Agreement, that greater amount shall become the minimum required amount of insurance for purposes of this Agreement. Therefore, CONSULTANT hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this Agreement.

**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 that the retroactive date thereof shall be no later than the effective date of this Agreement, and that it shall 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 policies of Commercial General Liability Insurance shall be endorsed to cover the Santa Cruz County Regional Transportation Commission, its officials, employees, agents and volunteers, and its officials, employees, agents and volunteers. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01, covering ongoing operations and products and completed operations.
3. All required insurance policies shall be endorsed to contain the following clause:

"This insurance shall not be canceled until after thirty (30) days (10 days for nonpayment of premium) prior written notice has been given to:

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

Should CONSULTANT fail to obtain such an endorsement to any policy required hereunder, CONSULTANT shall be responsible to provide at least thirty (30) days' notice (10 days for non-payment of premium) of cancellation of such policy to the COMMISSION as a material term of this Agreement.

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 and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. All Certificates of Insurance and endorsements 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 hereby grants to COMMISSION a waiver of any right of subrogation which any insurer of said CONSULTANT may acquire against the COMMISSION by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COMMISSION has received a waiver of subrogation endorsement from the insurer.
9. CONSULTANT shall cause the foregoing provisions to be inserted in all subcontracts for any work covered under this Agreement, 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.**

- A. 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.
- B. Those laws, statutes, ordinances, rules, regulations and procedural requirements that are imposed on COMMISSION as a recipient of federal or state funds are imposed on CONSULTANT.

**8. NON-DISCRIMINATION AND COMPLIANCE PROVISIONS.** During and in relation to the performance of this Agreement, CONSULTANT agrees to the following:

- A. The CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow discrimination or harassment against any employee, applicant for employment, or subconsultant

in any manner prohibited by Federal, State and local laws, including but not limited to race, color, sex, gender, religious creed, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), marital status, sexual orientation, age (over 40), veteran status, denial of family and medical care leave and denial of pregnancy disability leave, or any other non-merit factor unrelated to job duties.

- B. Consultant and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 8113 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
  - C. 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.
  - D. 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.
  - E. Consultant and its subconsultants shall permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by STATE to investigate compliance with this Article.
  - F. 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, contractors, 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. CONFLICT OF INTEREST.**

- A. CONSULTANT shall disclose any financial, business, or other relationship with COMMISSION that may have an impact upon the outcome of this contract, or any ensuing COMMISSION construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing COMMISSION construction project, which will follow.
- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

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

11. **LICENSES.** If a license of any kind is required of CONSULTANT, its employees, agents, or subcontractors 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.

12. **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.

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

B. **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.

C. 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.

D. 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.

13. **RETENTION OF RECORDS/AUDIT.**

A. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and COMMISSION shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for four years from the date of final payment under the contract. The state, State Auditor, COMMISSION, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and it's certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof

shall be furnished if requested. If any action has occurred relative to the records, the records must be retained until completion of the action and resolution of all issues that arise from it.

- B. Subcontracts in excess of \$25,000 shall contain this provision.
- C. Contractor and subcontractors shall establish and maintain, an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Requests for Reimbursement which segregate and accumulate the costs of work elements by line item (i.e direct labor, other direct costs, subrecipients/subcontractor, etc) and enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

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/OWNERSHIP OF DATA.** 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.

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

16. **CONFIDENTIALITY OF DATA.**

- A. All financial, statistical, personal, technical, or other data and information relative to COMMISSION's operations, which are designated confidential by COMMISSION and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by COMMISSION relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or COMMISSION's actions on the same, except to COMMISSION's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by COMMISSION, and receipt of COMMISSION'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

**17. 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. The Executive Director's determination regarding such dispute shall be final unless the Executive Director determines, in its sole discretion, that the dispute shall be determined by the Board of COMMISSION.
- 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.

**18. SUBCONTRACTING.**

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between COMMISSION and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to COMMISSION for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from COMMISSION'S obligation to make payments to the CONSULTANT.
- B. 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.
- C. CONSULTANT shall pay its subconsultants within seven (7) calendar days from receipt of each payment made to CONSULTANT by COMMISSION.
- D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- E. Any substitution of subconsultants must be approved in writing by the COMMISSION's Contract Manager prior to the start of work by the subconsultant.
- F. 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.

**19. 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.

**20. BROKERAGE OR OTHER FEES.** CONSULTANT warrants that s/he has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this agreement, and that s/he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this agreement. For breach or violation of this warranty, the COMMISSION shall have the right to annul this agreement without

liability, or at its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.”

21. **NOTIFICATION**. All notices hereunder and communications regarding interpretation of the terms of this Agreement and changes thereto, shall be effected by the mailing thereof addressed as follows:

CONSULTANT: KNN Public Finance, LLC  
David Leifer, Project Manager  
1300 Clay Street, Suite 1000  
Oakland, CA 94612

COMMISSION: Santa Cruz County Regional Transportation Commission (SCCRTC)  
Guy Preston, Executive Director  
1523 Pacific Ave  
Santa Cruz, CA 95060

22. **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 be 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 and Project Schedule
  - Exhibit C: Regulatory Disclosures
  - Certificate of workers compensation insurance
  - Certificate of liability insurance (should include min. \$1M auto, \$1M comprehensive or gen liability per occurrence and \$2M in aggregate)
  - Certificate of professional liability insurance (min \$1M)
  - W-9 Taxpayer Identification Number and Certification

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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. KNN PUBLIC FINANCE, LLC**

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

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

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

\_\_\_\_\_  
PRINTED

\_\_\_\_\_  
PRINTED

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

KNN Public Finance, LLC  
1300 Clay Street, Suite 1000  
Oakland, CA 94612  
Telephone: (510) 839-8200  
Fax: (510) 208-8282  
Email: dleifer@knninc.com

**3. APPROVED AS TO INSURANCE:**

**4. APPROVED AS TO FORM:**

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

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

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**DISTRIBUTION:**

- *RTC Director of Finance and Budget*
- *CONSULTANT*

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EXHIBIT A : SCOPE OF SERVICES AND PROJECT SCHEDULE  
Scope of Services

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Task #1: Goal Setting

- Assist SCCRTC with the development of financial goals and policies for the implementation of Measure D.

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Task #2: Strategic Planning

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- Prepare a timetable setting forth the actions necessary to accomplish the delivery objectives for updates to the Measure D Strategic Plan.
- Assist in development of Measure D cash flow model and financing plan alternatives for ongoing updates to the Strategic Plan.
- Conduct and evaluate sales tax revenue forecasting and sensitivities.
- Establish optimal mix of pay-go and borrowing needs.
- Review financial alternatives and scenarios available to SCCRTC and make recommendations on specific strategies to meet financial and policy principles within the Strategic Plan.
- Establish goals and protocols including size and timing of recommended debt issuances and appropriate debt issuance instruments.
- Evaluate and assist in the ongoing refinement to the Strategic Plan's financial and cash flow principles, goals and protocols; assist in the identification of financing alternatives and recommend adjustments where appropriate.
- Assist in drafting financial sections of Strategic Plan updates, as may be desired.
- Board and stakeholder outreach to build consensus.
- Development of Measure D implementation, financial, and debt policies.

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Task #3: On-Going Advisory Services

Assist in other tasks and services as may be deemed desirable by SCCRTC, including:

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- Assist in capital planning.
- Advise on debt capacity.
- Develop revenue estimates for SCCRTC personnel and Board Members.
- Refine Measure D cash flow model and develop or refine plan of financing.
- Analyze alternative financing structures and make recommendations.
- Provide knowledge of markets and expertise on available resources.
- Provide educational public finance workshops to SCCRTC staff and Board Members.
- Provide written and oral reports for SCCRTC staff and Board Members, as directed.
- Assist in developing debt or other policies.
- Evaluate proposals and ideas provided to SCCRTC by underwriters or other market participants.
- Provide other "On-Call" municipal advisory related services, as necessary.

Task #4: Bond Transaction Services

- Lead transaction management efforts.
- Prepare a financing schedule and coordinate activities of financing team members and representatives of SCCRTC.

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- Evaluate method of sale approach—negotiated versus competitive.
- Assist with the procurement of the financing team—underwriters (if negotiated sale), bond counsel, disclosure counsel, etc.
- Review fees proposed by underwriter(s) to ensure consistency with market comparables and make recommendations about composition of underwriting syndicate (if utilized) as well as syndicate policies to ensure the proper incentives are structured to result in the lowest cost of funds for SCCRTC.
- Analyze bond structures that be most attractive to bond market participants and will result in the best bond pricing for SCCRTC.
- Prepare debt service analysis for the proposed Bonds including analyses under alternative market and structure scenarios.
- Consider impacts of the current bond offering on possible future bond offerings.
- Assist in review of all financing and legal documents.
- Assist in ensuring full and complete disclosure in SCCRTC's Preliminary Official Statement.
- Develop rating agency strategy and approach. Prepare rating agency presentation and accompany SCCRTC staff to rating agency meetings.
- Evaluate potential cost effectiveness of credit enhancement and a surety reserve policy, if applicable.
- Monitor tax exempt market conditions; make recommendations regarding timing of the pricing.
- Assist with investor outreach to aid pre sale marketing of the Bonds.
- If competitive sale, manage sale process, including the development and drafting the notice of sale, outreach and communication with potential bidders, and administering pricing mechanics.
- If negotiated sale, analyze bond structures in a manner that is independent from the underwriter, if a negotiated sale.
- If negotiated sale, provide pricing oversight to ensure a transparent process and the best result for SCCRTC, including the following activities:
  - analysis of relevant/recent pricing comparables;
  - outreach to non-manager underwriter desks to ensure proposed pricing is consistent with market environment;
  - negotiation with the senior underwriter to ensure final pricing yields are consistent with demand for the Bonds.
- Assist SCCRTC and the financing team in arranging for the execution of financing documents and in the closing of the financing.
- Prepare a post sale closing memorandum.
- Assist in the development of SCCRTC's debt policy to ensure compliance with SB 1029 (Chapter 307, Statutes of 2016) prior to issuance and ongoing reporting duties.
- Provide advice about post-issuance compliance requirements (i.e., arbitrage rebate, continuing disclosure, reporting under SB 1029, etc.).

Project Schedule:

Tasks 1 and 2 are to be completed by December 31, 2019.

Task 3 is ongoing and to be performed as requested.

~~Task 4 to be performed as requested.~~

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EXHIBIT ~~CB~~: FEE SCHEDULE per proposal dated April 29, 2019

<u>Name</u>	<u>Function</u>	<u>Hourly Rate</u>
David Leifer, Senior Managing Director	Project Manager	\$345.00
Melissa Shick, Director	Day-to-Day Execution	\$325.00
Nedko Nedev, Vice President	Quantitative Analysis and Execution Support	\$295.00
Dan Cox, Vice President	Quantitative and Pricing Analysis	<u>\$295.00</u>
<u>Larry Lom, Assistant Vice President</u>	<u>Quantitative Analysis and Execution Support</u>	<u>\$275.00</u>

## **EXHIBIT C: REGULATORY DISCLOSURES**

### **MSRB Rules G-42 – Disclosure of Conflicts of Interest and Legal or Disciplinary Events**

Pursuant to Municipal Securities Rulemaking Board (“MSRB”) Rule G-42, on Duties on Non-Solicitor Municipal Advisors, Municipal Advisors are required to make certain written disclosures to clients which include, amongst other things, Conflicts of Interest and any Legal or Disciplinary Events of KNN Public Finance, LLC (“KNN Public Finance”) and its associated persons.

#### **Conflicts of Interest**

KNN Public Finance serves a wide variety of other clients that may from time to time have interests that could have a direct or indirect impact on the interests of COMMISSION. For example, KNN Public Finance serves as municipal advisor to other municipal advisory clients and, in such cases, depending on the client, owes either a fiduciary duty or a duty of care to such other clients just as it does to COMMISSION under this engagement. These other clients may, from time to time and depending on the specific circumstances, have competing interests. In acting in the interests of its various clients, KNN Public Finance could potentially face a conflict of interest arising from these competing client interests. KNN Public Finance fulfills its regulatory duty and mitigates such conflicts through dealing honestly and with the utmost good faith with COMMISSION.

Compensation. KNN Public Finance represents that in connection with the issuance of municipal securities, KNN Public Finance may receive compensation from an Issuer or Obligated Person for services rendered, which compensation is contingent upon the successful closing of a transaction and/or is based on the size of a transaction. Consistent with the requirements of MSRB Rule G-42, KNN Public Finance hereby discloses that such contingent and/or transactional compensation may present a potential conflict of interest regarding KNN Public Finance’s ability to provide unbiased advice to enter into such transaction. This conflict of interest will not impair KNN Public Finance’s ability to render unbiased and competent advice or to fulfill its fiduciary duty to the COMMISSION.

If KNN Public Finance becomes aware of any additional potential or actual conflict of interest after this disclosure, KNN Public Finance will disclose the detailed information in writing to the Issuer in a timely manner.

#### **Legal or Disciplinary Events**

KNN Public Finance has never been subject to any legal, disciplinary or regulatory actions nor was it ever subject to any legal, disciplinary or regulatory actions previously, when it was a division of Zions First National Bank or Zions Public Finance, Inc.

A regulatory action disclosure has been made on Form MA-I for one of KNN’s municipal advisory personnel relating to a 1998 U.S. Securities and Exchange Commission (“SEC”) order that was filed while the municipal advisor was employed with a prior firm, (not KNN Public Finance). The details of which are available in Item 9; C(1), C(2), C(4), C(5) and the corresponding regulatory action DRP section on Form MA and Item 6C; (1), (2), (4), (5) and the corresponding regulatory action DRP section on Form MA-I. Issuers may electronically access KNN Public Finance’s most recent Form MA and each most

recent Form MA-I filed with the Commission at the following website:  
[www.sec.gov/edgar/searchedgar/companysearch.html](http://www.sec.gov/edgar/searchedgar/companysearch.html).

The SEC permits certain items of information required on Form MA and Form MA-I to be provided by reference to such required information already filed on a regulatory system (e.g., FINRA CRD). The above noted regulatory action has been referenced on both Form MA and MA-I due to the information already filed on FINRA's CRD system and is publicly accessible through BrokerCheck at <http://brokercheck.finra.org>. For purposes of accessing such BrokerCheck information, the Municipal Advisor's CRD number is 4457537.

There has been no change to any legal or disciplinary event that has been disclosed on KNN Public Finance's original SEC registration Form MA filed on February 8, 2016 or Form MA-I's filed on January 22, 2016.

#### **MSRB Rule G-10 – Additional Disclosures**

Pursuant to Municipal Securities Rulemaking Board Rule G-10, on Investor and Municipal Advisory Client Education and Protection, Municipal Advisors are required to provide certain written information to their municipal entity and obligated person clients which include the following:

- a) KNN Public Finance, LLC is currently registered as a Municipal Advisor with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board.
- b) Within the Municipal Securities Rulemaking Board ("MSRB") website at [www.msrb.org](http://www.msrb.org), The COMMISSION may obtain the Municipal Advisory client brochure that is posted on the MSRB website. The brochure describes the protections that may be provided by the MSRB Rules along with how to file a complaint with financial regulatory authorities.

**RESOLUTION NO.**

Adopted by the Santa Cruz County Regional Transportation Commission  
on the date of June 6, 2019  
on the motion of Commissioner  
duly seconded by Commissioner

**A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A CONTRACT WITH KNN PUBLIC FINANCE, LLC FOR FINANCIAL ADVISORY SERVICES TO ASSIST WITH THE IMPLEMENTATION PLAN FOR THE SANTA CRUZ COUNTY TRANSPORTATION IMPROVEMENT PLAN MEASURE**

WHEREAS, in November 2016 the residents of Santa Cruz County approved Measure D, a ½ cent transaction and use tax known as the "Santa Cruz County Transportation Improvement Plan Measure"; and

WHEREAS, the Santa Cruz County Regional Transportation Commission (RTC) allocates, administers and oversees the Expenditure Plan of all Measure revenues which are not directly allocated by formula through an Implementation Plan; and

WHEREAS, the Implementation Plan's purpose is to define the scope, cost, and delivery schedule including revenue projections and financing to determine cost effective methods to accelerate project delivery; and

WHEREAS, the RTC has a need for the services of a financial advisory firm to provide assistance and advice to identify the most cost-effective financing sources including capital financial planning, long-range financial planning, and debt policy; and

WHEREAS, the RTC's approved FY18/19 budget for the administration and implementation of Measure D includes funds for consultant services;

THEREFORE, BE IT RESOLVED BY THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION THAT:

1. The Executive Director is authorized to enter into an agreement with KNN Public Finance, LLC for an amount not to exceed ~~\$73,940~~ \$50,000;
2. The Executive Director is authorized to negotiate and execute amendments to the agreement provided that the amendments are consistent with the RTC's approved budget.

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSTAIN: COMMISSIONERS

ABSENT: COMMISSIONERS

ATTEST:

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Ed Bottorff, Chair

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Guy Preston, Secretary

Distribution: RTC Fiscal, RTC and Consultant

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