Santa Cruz County Regional Transportation Commission

--NOTICE--
Request for Proposals (RFP)
for Professional Engineering Services

Highway 1 Auxiliary Lanes (State Park Drive to Freedom Boulevard) Project

The Santa Cruz County Regional Transportation Commission (RTC) invites interested parties to submit a proposal for professional engineering services for the Project Approval/Environmental Document phase of the Highway 1 State Park/Freedom Auxiliary Lanes and Bus on Shoulder Project which includes replacement of two railroad bridges and widening of the Highway 1 bridge over Aptos Creek and Spreckles Drive.

Issue Date: Monday, November 18, 2019
Closing Date: Thursday December 19, 2019 2:00PM

Interested parties must deliver five (5) double-sided paper copies, as well as one (1) electronic PDF version of the proposal and one (1) sealed cost proposal setting forth a proposed fee schedule by the closing date.

Proposals relating to this RFP shall be submitted to:
Santa Cruz County Regional Transportation Commission (RTC)
Subject: RFP 2048-11-19
Attention: Sarah Christensen
Mail: 1523 Pacific Avenue, Santa Cruz, CA 95060
Electronic: info@sccrtc.org
Phone: 831-460-3200

This notice, along with its enclosures, comprises the Request for Proposals (RFP) for this project. Responses should be submitted in accordance with the instructions set forth in this RFP. Email inquiries relating to this RFP should include “Highway 1 RFP 2048-11-19” in the subject header. The RTC reserves the right to amend the RFP by addendum before the final proposal submittal date. This RFP and addenda will be available at:
http://www.sccrtc.org/about/opportunities/rrf/.
DATE: November 18, 2019

TO: Interested Consultants

FROM: Guy Preston, Executive Director

SUBJECT: Request for Proposals (RFP) 2048-11-19 for Highway 1 State Park-Freedom Auxiliary Lanes & Bus on Shoulder Project

INVITATION
The Santa Cruz County Regional Transportation Commission (RTC) invites qualified and experienced consultants to submit a proposal for professional engineering services with a Fee Schedule that includes an estimate of costs per task including other direct costs (ODCs) to complete the project in a separate sealed envelope. Please submit five (5) paper copies and one (1) digital copy of your Proposal.

REQUEST FOR PROPOSALS
The RFP is available on the RTC website: www.sccrtc.org/about/opportunities/ rfp/ and at the RTC office.

RESPONSE DUE DATE
Proposals are due in the Santa Cruz County Regional Transportation Commission (SCCRTC) office by 2:00 PM on Thursday, December 19, 2019. Any proposals received after the date and time specified above will not be considered. RFP Responses shall be considered firm offers to enter into a contract, as described in this RFP for a period of ninety (90) days from the time of submittal.

PROCUREMENT SCHEDULE

<table>
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<tr>
<th>Date</th>
<th>Event</th>
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<tr>
<td>Monday Nov 18, 2019</td>
<td>Distribute RFP</td>
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<tr>
<td>Wednesday Dec 4, 2019 1:30 PM</td>
<td>Pre Proposal Meeting</td>
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<tr>
<td>Friday Dec 6, 2019 12:00 PM</td>
<td>Requests for clarification/questions due</td>
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<tr>
<td>Thursday Dec 19, 2019 2:00 PM</td>
<td>Proposals Due</td>
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<tr>
<td>Dec 20 through 30, 2019</td>
<td>Review and Rank Submittals</td>
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<td>Jan 9 through 10, 2020</td>
<td>Interview Short Listed Consultants</td>
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<td>Friday, Jan 10, 2020</td>
<td>Select Top Ranked Consultant</td>
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<td>February 6, 2020</td>
<td>Commission Awards Contract, NTP</td>
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CONTACT
Responses and inquiries relating to this RFP shall be submitted to:
Santa Cruz County Regional Transportation Commission
Attn: Sarah Christensen
1523 Pacific Avenue, Santa Cruz, CA 95060
831-460-3200 / Email: info@sccrtc.org

Email inquiries relating to this Request for Proposals should include “Highway 1 RFP 2048-11-19” in the subject header.
Request for Proposals: Highway 1 State Park-Freedom Auxiliary Lanes and Bus on Shoulder Project

Project Description

The Santa Cruz County Regional Transportation Commission (RTC) is seeking proposals from qualified and experienced professional engineering consultants for the Project Approval/Environmental Clearance (PA/ED) phase of the Highway 1 Auxiliary Lanes and Bus on Shoulder between the Bay State Park Drive and Freedom Boulevard interchanges which includes replacement of two railroad bridges and widening of the bridge over Aptos Creek and Spreckles Drive in accordance with the proposed Scope of Services (Attachment A).

The Highway 1 Auxiliary Lanes (State Park Drive to Freedom Boulevard) Project (Project) extends approximately 2.5 miles along State Route (SR) 1 in Santa Cruz County between the State Park Drive and Freedom Boulevard Interchanges in the unincorporated County of Santa Cruz. The project proposes to widen SR 1 by adding auxiliary lanes and bus on shoulder features in the northbound and southbound directions, replace the two railroad bridges over Highway 1, and widen the bridge over Aptos Creek and Spreckles Drive. Right of way acquisitions are anticipated, and utility relocations will be needed to accommodate the pavement widening and bridge work. Temporary Construction Easements are anticipated to be needed to construct retaining walls, soundwalls, and the bridges.

Background Information

The Santa Cruz County Regional Transportation Commission (RTC) is the state-designated regional transportation planning agency for Santa Cruz County, California, a coastal area bordering the San Francisco Bay Area with a population of approximately 270,000. The RTC is responsible for planning, developing and managing multi-modal transportation projects that include highway, bicycle, pedestrian, freight rail, passenger rail, and transportation demand management projects. The RTC is responsible for securing and administrating local, state, and federal funds to implement projects and programs consistent with approved transportation policies. Implementation of federally-mandated activities is done in coordination with the region’s Metropolitan Planning Organization (MPO) - the Association of Monterey Bay Area Governments (AMBAG) and the state department of transportation (Caltrans). The RTC is governed by a board of directors comprised of all 5 County Supervisors, a representative from each of the 4 cities in the county (Capitola, Santa Cruz, Scotts Valley, and Watsonville), and 3 representatives from the Santa Cruz Metropolitan Transit District. Additional information about the RTC is available at www.sccrtc.org.

The Highway 1 Corridor Investment Program includes a Tiered approach for projects; Tier I is a high-level, corridor-wide vision for the corridor and Tier II projects are specific, fundable projects that require more detailed environmental study. Caltrans is the lead agency for the combined Tier I/Tier II Environmental
Impact Report/Environmental Assessment (EIR/EA) which includes the Tier I HOV Lanes as the long-term vision for the corridor, and the Tier II Auxiliary Lanes between 41st Avenue and Soquel Drive which was completed in December of 2018 and available on the RTC website. The Tier I HOV lane concept will be built over time through a series of incremental projects (Tier II projects), starting with auxiliary lanes.

The first auxiliary lanes project within the program is in the final design phase and is located between the 41st Avenue and Soquel Avenue/Drive interchanges and includes the bicycle and pedestrian overcrossing at Chanticleer Avenue. This project is expected to be construction-ready in 2020, pending availability of funds for construction. The second auxiliary lanes project is currently in the PA/ED phase and proposed auxiliary lanes and bus on shoulders between the Bay/Porter and State Park interchanges. The RTC wishes to advance the third and final set of auxiliary lanes and bus on shoulder improvements to achieve project approval and environmental clearance in an expedited fashion by leveraging the work completed for the Tier I analysis.

Santa Cruz County passed Measure D in November of 2016, which included 25% of the revenue to fund the Highway 1 Corridor Investment Program. The RTC wishes to leverage this new local source of funds to advance projects to be competitive for state and federal grant funds. The delivery of the project PA/ED phase will be a joint effort between the RTC and Caltrans District 5, generally with the RTC as the lead and Caltrans District 5 providing oversight. A Cooperative Agreement for the PA/ED phase is currently being negotiated, which is expected to be executed prior to the award of this contract. The project PA/ED phase will be funded by Measure D.

**Minimum Qualifications**

The selected consultant can be a firm or firms who must demonstrate to RTC and the selection committee the following professional qualifications:

- The Respondent shall be a Civil Engineering firm(s) with highway and structure design experience. The firm should demonstrate the ability to deliver the project within a limited timeframe.
- The Respondent shall be familiar with preparing environmental documents and technical studies for projects with Caltrans as the lead for CEQA and NEPA.
- The Respondent shall be familiar with Caltrans requirements, policies, procedures, manuals and standards including compliance with the Federal Highway Administration (FHWA) requirements.

The RTC reserves the right to investigate the qualifications of all firms and persons under consideration, to include reference checks to confirm any part of the information furnished by a Consultant.

**General Information**
**RFP Definitions:**
Throughout this RFP, the following definitions will be used:
- “Contract” means a written agreement executed between the RTC and a selected respondent.
- “Consultant” or “Contractor” means the firm, team, or person qualified to provide services described in this RFP.
- “Respondent” means an individual, joint venture, or a company that submits, or intends to submit, a Proposal in response to this RFP.
- “RFP” or “Request for Proposals” means the process described in this document.
- “RFP Response” and “Proposal” mean all documents submitted by a respondent in reply to this RFP request.
- “RTC Contract Manager”, “RTC Project Manager”, or “Contract Administrator” means the lead RTC staff assigned to oversee work of the consultant selected to implement this project.
- “RTC website” means the website maintained by the Santa Cruz County Regional Transportation Commission (RTC) at www.sccrtc.org.

**Inquiries:** Inquiries will be accepted by phone, mail or email. All inquiries related to this RFP should be directed to:

Sarah Christensen, Project Manager  
1523 Pacific Avenue, Santa Cruz, CA 95060  
Phone: 831-460-3200 / Email: info@sccrtc.org

Information obtained from other sources is not official and should not be relied upon for completion of the RFP. Inquiries and answers may be documented and available on the RTC website to all potential respondents at the RTC’s option.

**Pre-Proposal Meeting:** A pre-proposal meeting will be held on Wednesday, December 4, 2019 at 1:30PM in the RTC’s Conference Room, 1523 Pacific Avenue, Santa Cruz, California. There will be opportunities for questions and answers, but time may be limited by scheduling constraints. Interested parties are encouraged to submit questions or requests for clarification by email in advance of the meeting to info@sccrtc.org. Responses to questions raised at the Pre-Proposal Meeting will be posted on the RTC website (see below).

**Questions, Requests for Clarification and Additional Information on the RFP:** The RFP and any subsequent information regarding this RFP, including changes made to this document and questions/responses on this RFP, will be posted on the RTC’s website: http://www.sccrtc.org/about/opportunities/rfp/. It is the sole responsibility of the respondent to check the website for addenda to the RFP documents. Any questions, requests for clarification or exceptions to RFP requirements must be received by RTC no later than 12:00PM on Friday, December 6, 2019 to guarantee response. Email questions or requests for clarification to: info@sccrtc.org. Responses to questions concerning this RFP posed before this deadline will be posted on the RTC website:
http://www.sccrtc.org/about/opportunities/rfp/
**Closing Date for RFP Responses:** By 2:00PM on December 19, 2019 the RTC must receive five (5) hard copies, one (1) cost proposal in a separate sealed envelope, and one (1) electronic copy to the mail address listed on the cover of this RFP. Proposal materials received after this time will not be considered. Please submit electronic files on a compact disk or flash drive with the hard copy of your proposal. Do not make any reference to cost of services in the hard or electronic copies of the proposal.

**Addenda to RFP:** The RTC reserves the right to amend this RFP at any time up until the due date. Any amendments to or interpretations of the RFP shall be described in written addenda posted on the RTC website. All addenda issued shall become part of the RFP.

If the RTC determines that the addenda may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed by the number of days that the RTC determines will allow Proposers sufficient time to revise their proposals. Any new due date shall be included in the addenda.

**Scope of Services, Budget and Schedule**

A scope of services detailing the tasks associated with this consulting effort is included in this RFP as Attachment A. Consultant submissions are expected to include a detailed scope of services as an attachment to the proposal in order to begin negotiations immediately following the consultant selection. The project is expected to begin in February of 2020. The contract payment terms will be actual cost-plus-fixed fee. Although this procurement is for the PA/ED phase of the project, the contract could be amended at a later date to include future phases (Plans, Specifications, and Engineers Estimate and Design Support During Construction).

**Proposal Format**

Respondents to this RFP must submit the appropriate number of copies of the Proposal in response to this RFP as described above and on the cover sheet. In keeping with RTC’s resource conservation policy, proposers are asked to print proposals double-sided and are encouraged to use recycled paper with no plastic inserts for all proposals and reports. Covers and binding are not required, however, if provided they should be of recyclable material.

In order to simplify the review process and to facilitate comparative analysis, the proposal shall be organized in the following manner. Proposal content and completeness are most important; however, effort should be made to produce a complete, competitive, and qualifying response that is also concise. The proposal content shall be limited to 16 pages, not including attachments of resumes, detailed scope of services, etc. The RTC, at its option, may require a Proposer to
provide additional information and/or clarify requested information. The screening of proposals will determine which Proposers will be invited to an interview, if necessary.

The following information must be included in the Proposal submitted in response to this RFP:

1. **Signed Transmittal Letter:** Proposals must include a maximum 2-page transmittal letter indicating the name of the organization submitting the proposal; whether the proposing entity is an individual, partnership, corporation, company, 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 Proposal; and the name of the individual authorized to negotiate the contract on behalf of the consulting entity. The transmittal letter should refer to this RFP by title and date, include statement of California licensing (if applicable), and be signed by a person authorized on behalf of the consulting firm to solicit business for the firm.

2. **Profile of the Firm:** This section shall include a brief description of the firm’s size as well as the local organizational structure. Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the Respondent or by its subcontractors where litigation is still pending or has occurred within the last five years or (b) any type of project where claims or settlements were paid by the Respondent or its insurers within the last five years.

3. **Firm Qualifications:** This section shall provide a brief description of the Respondent’s qualifications and previous experience on similar projects. Description of project experience shall include a summary of the work performed, total project capital cost, percentage of the work the firm was responsible for, period over which the work was completed, and the name, title, and phone number of the clients to be contacted for references. A minimum of 3 recent and relevant projects and client references shall be included for the Project Manager and each of the Key Personnel. At least one reference shall be provided for each recent and relevant project.

4. **Project Staffing:** This section shall discuss how the Respondent would staff this project. Respondent team members shall be identified by name, location, specific responsibilities, and estimated person-hours of participation. An organizational chart shall be included identifying “Key Personnel” who are members of the project team that may not be changed once the proposal is submitted without prior approval of the RTC. The organizational chart shall identify any Disadvantaged Business Enterprises (DBE) firms. The Project Manager and Key Personnel relevant experience will be an important factor considered by the Review Committee.

5. **Technical Approach/Work plan:** This section of the proposal shall establish the Respondent’s understanding of RTC’s objectives and work requirements and
Respondent’s ability to satisfy those objectives and requirements. The work plan should include estimated hours allocated to complete each subtask as specified in the Scope of Services included as Attachment A. Succinctly describe the proposed approach for addressing the required work, outlining the activities that would be undertaken in completing the various tasks and specifying who would perform them. This information should be provided as part of the main proposal (unsealed) showing only the estimated hours allocated to complete each subtask as specified in the Scope of Services, a schedule for completing the work, and the percentage of the work performed by DBE firms. A sample Work Plan is included as Attachment D. The Respondent may also suggest technical or procedural innovations that have been used successfully on other projects that may facilitate the completion of this project. Consideration of practical, outside the box thinking is encouraged.

6. **Cost Proposal:** Include a cost proposal that outlines the budget for each task and related deliverables as outlined in the Scope of Services in a separate sealed envelope. The cost proposal shall include all costs to the RTC, including all labor, profit (not to exceed 10%), administrative and overhead fees and other direct costs broken down by tasks/subtask. The cost proposal shall show costs of the prime consultant and all subconsultants, identifying which subconsultants are DBE. Mark-ups for subconsultants are not allowed.

7. **Required Forms:** Proposal must include the following completed forms:
   a. Form 1 California Levine Act Statement regarding conflict of interest.
   b. Form 2 Exceptions to the Agreement.
   c. LAPM Exhibit 10-01 Consultant Proposal DBE Commitment
   d. LAPM Exhibit 10-K Consultant Annual Certification of Indirect Costs and Financial Management System. Complete one Exhibit 10-K for the prime consultant and one Exhibit 10-K for each subconsultant.
   e. LAPM Exhibit 10-H1 Cost Proposal. Complete one Exhibit 10-H1 for the prime consultant and one Exhibit 10-H1 for each subconsultant. Include completed forms in a sealed envelope separate from the proposal. Do not make any reference to cost in the electronic or hard copies of the proposal.
   f. LAPM Exhibit 10-Q Disclosure of Lobbying Activities. Complete one Exhibit 10-Q for the prime consultant and one Exhibit 10-Q for each subconsultant.

**Method and Criteria for Selection**

**RFP Response Review and Selection:** An evaluation committee comprised of RTC staff and other individuals that the RTC deems appropriate will review each Proposal for completeness and content. The evaluation committee will analyze responses based on the needs described in this Request for Proposals (RFP) and the Scope of Services, including relevant experience of the consultant with federal- and state-funded projects. The evaluation committee will review and rank the Proposals and conduct interviews.
Responsive proposals will be evaluated as follows:

- **Project Understanding/Work Plan (up to 25 points)**
  Understanding of the RFP objectives, project needs, and percentages of hours allocated to the major tasks included in *Attachment A Scope of Services* that demonstrates the respondent’s overall understanding of the project requirements.

- **Project Manager’s Relevant Experience (up to 15 points)**
  Relevant experience includes experience working with Caltrans District 5, conducting project development for highway, local roadway, and bicycle/pedestrian facilities, managing the development of complex highway improvement projects involving multiple agencies, understanding of local context, and ability to manage the schedule and budget in a dynamic environment. Information regarding the Project Manager’s availability to take on this project shall be provided in the proposal.

- **Key Staff’s Relevant Experience (up to 15 points)**
  Relevant Experience includes experience working with Caltrans District 5, conducting project development for highway, local roadway, and bicycle/pedestrian facilities, experience working on complex highway improvement projects involving multiple agencies, and understanding of local context. Information regarding the firms and individual Key Staff’s availability to take on this project shall be provided in the proposal.

- **Expertise/Technical Approach to the Project (up to 30 points)**
  Specialized experience with similar kinds of work, including experience with local, state and federal procedures, capability to explore and develop innovative or advanced techniques and methods, past record of performance on contracts with RTC and other public agencies such as control of costs, quality of work, and ability to meet schedules.

- **Management Plan (up to 15 points)**
  Methods of project management including project communication, schedule and budget control, and quality assurance and quality control.

Any proposal that the evaluation committee determines does not include enough information to permit the evaluators to rate the proposal in any one of the listed evaluation criteria will be considered non-responsive and may not be further evaluated. A proposal that fails to include one or more items requested above under “Proposal Format” may be considered complete and generally responsive, if evaluation in every criterion area is possible.

For any proposal for which a sealed cost proposal is required, cost shall not be evaluated with the rest of the proposal; once proposals have been ranked under all other criteria, the cost proposal for the highest-ranked proposal shall be evaluated by the RTC, in its sole discretion, for fairness and reasonableness. If the cost is
determined to be fair and reasonable, the RTC may proceed as provided herein with the highest-ranked proposal; if not, the RTC may proceed to evaluate the cost proposal of the next-highest ranked proposer, and the same procedure shall be undertaken with the next-highest ranked proposer as the highest-ranked proposer.

**Interview Review and Selection:** Following review of Proposals, the evaluation committee may conduct interviews with respondents or develop a short list of consultants to interview in order to make a final selection leading to negotiations for a contract for provision of professional services. It is expected that key staff proposed to work on the project will attend interviews conducted as part of the selection process. Interviewees will be evaluated as follows:

- **Understanding the Required Scope of Work (up to 30 points),** objectives, and project needs.

- **Management Approach and Staffing Plan (up to 25 points)** for performing the scope of services efficiently and effectively within a contract budget, scope of services, and schedule of deliverables.

- **Qualifications of the Firm(s) (up to 25 points)** and key staff, experience with similar kinds of work, including local, state and federal procedures, capability to explore and develop innovative or advanced techniques and methods, past record of performance on contracts.

- **Effectiveness of the Interview (up to 20 points)** in overall interview discussions and presentation.

**Authority to Commit RTC:** Based on the findings of the evaluation committee, the RTC Contract Manager and the Executive Director of the RTC may recommend to the RTC board that one or more consultants be selected to perform the work.

The contract will be awarded to the firm that presents the Proposal that in the opinion of the RTC board is the most advantageous to the RTC, based on the evaluation criteria. Upon approval by the RTC board, the Executive Director will be authorized to enter into an agreement with the selected consultant. The RTC may accept or reject any and all proposals and waive any and all formalities and irregularities at any stage of the evaluation as it may deem to be in the best interest of the RTC.

**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 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 RFP on the grounds that it is arbitrary, biased, or unduly restrictive, or may object to the selection of a particular
consultant on the grounds that RTC procedures, the provisions of the RFP 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 4:00 pm on the fifth business day prior to the date proposals are due, for objections to RFP provisions; or
2. No later than 4:00 pm on the fifth business day after the date the proposer is notified that its Proposal was found to be non-responsive or did not meet the minimum qualifications; or
3. No later than 4:00 pm on the fifth business day after the date on which a proposer is notified that it was not recommended for selection, or that another proposer is recommended for selection 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.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail. 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.

**Consultant Selection Timetable**

The RTC intends to adhere to the following timeline, but it is subject to change at the discretion of the RTC. All times shown are in Pacific Time.

**Request for Proposals**
- RTC Issues Notice of RFP: Monday, November 19, 2019

**Consultant Proposals**
- Pre-Proposal Meeting: Wednesday, December 4, 2019 at 1:30PM, RTC’s Conference Room, 1523 Pacific Avenue, Santa Cruz, California
- Questions, Requests for Clarification or Questions Due: Friday December 6, 2019 at 12:00 PM – send questions to: info@sccrtc.org
- Responses to questions, addenda and any other clarification materials posted on the RTC website: by Wednesday December 11, 2019 at 12:00PM
- **Proposals Due: THURSDAY DECEMBER 19, 2019 AT 2:00PM**
- Interviews: January 9 through 10, 2020
Final ranking of consultants: By Friday, January 10, 2020

Performance Period: It is anticipated that the RTC will award a contract for a term of 3 years.

General Conditions

Respondent’s Proposal Preparation Expenses: Respondents are solely responsible for their own expenses in preparing and submitting a response to this RFP 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 RFP response, loss of anticipated profit, or for any other claim.

Ownership of RFP Responses: All documents, including specific RFP 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.), except that the RTC may withhold from disclosure clearly marked confidential trade secret information contained in any proposal, and proposer’s submission of information so marked shall constitute its agreement to defend and indemnify the RTC from any claim or liability for nondisclosure thereof. After award of the contract (or if not awarded, after rejection of all proposals), 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 proposal 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.

Non-Commitment of RTC: This RFP is not an agreement to purchase or contract for services. The RTC reserves the right to modify or cancel in whole or in part this RFP, to reject any and all proposals, to accept the proposal they consider most favorable to the RTC’s interests in their sole discretion, and to waive irregularities or informalities in any proposal or in the proposal procedures. The RTC reserves the right, in its sole discretion, not to enter into a contract as a result of this RFP. The RTC further reserves the right to reject all proposals and seek new proposals when the RTC considers such procedure to be in their best interests. All responses will be assessed in light of the needs described in this RFP, 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 Proposal is, in the sole judgment of the RTC board on the basis of the evaluation criteria herein, most advantageous to RTC.
Changes to Proposals Prior to Closing Date: Any proposals 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 proposal due date and time specified in this RFP. After that date, no additional wording or comments will be added to the response unless requested by the RTC for purposes of clarification.

Modification of RFP Terms: The RTC reserves the right to modify the terms of this RFP at any time, and may cancel this RFP or further review of responses at any time without entering into a contract. It is the sole responsibility of prospective and actual respondent to check for modifications of and additional information pertaining to the RFP on the RTC website: http://www.sccrtc.org/about/opportunities/rfp/.

Notification of Further RFP 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 RFP.

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 contract is enclosed as Attachment C.

Respondents shall be prepared to accept the terms and conditions of the contract provided herein as Attachment C, which include requirements for Compensation, Indemnity and Insurance. If a Proposer desires to take exception to the above, Proposer shall provide the following information using Form 2, identified as “Exceptions to the Contract.” The exceptions to the Contract shall include the following:

1. Proposer shall clearly identify each proposed change to the Agreement, including all relevant exhibits.

2. Proposer shall include the reasons as well as specific recommendations for alternative language.

The above factors will be taken into account in evaluating proposals. Proposals that take substantial exceptions to the Agreement or proposed compensation terms may be determined by the RTC, at its sole discretion, to be unacceptable and no longer considered for award. Only the exceptions stated in the Proposal will be considered when negotiating the Agreement.

The RTC may accept the proposal or negotiate the terms and conditions of the Agreement with the highest-ranked firm. If mutual agreeable terms are not reached, the RTC reserves the right to terminate negotiations and may open
negotiations 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. If a proposer wishes to recommend a change to any standard RTC contract provision, the provision and any proposed alternative language must be requested in writing prior to the closing date for receipt of requests for clarifications/exceptions listed above. If no such change or exception is requested in writing, the consultant will be deemed to accept RTC’s standard contract provisions. In addition, if the project will be funded by Federal funds, federal required contract provisions will be included in the RTC standard agreement.

**Conflict of Interest:** The prospective consultant shall demonstrate no conflicts of interest, and a commitment to avoid potential conflicts that might arise from work performed for others, past associations or pending relationships. Prospective consultants shall disclose any financial, business or other relationship with RTC that may have an impact upon the outcome of this contract or RTC construction projects. 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.

**Past and future contracts:** Firms that have participated in past studies or other activities associated with the current RFP are not precluded from submitting proposals for this study. The firm selected to conduct the work under this RFP will not be precluded from conducting work on future projects by the RTC.

**Local, State, and Federal Regulations:** Any contract awarded under this request for professional proposals is expected to be funded in part by the State Transportation Improvement Program. The consultant must be able to meet requirements for contracts using local, state and/or federal transportation funds, and local, state and federal grant language will be incorporated into the contract, as applicable. This includes, but may not be limited to, applicable provisions set forth in the Caltrans *Local Assistance Procedures Manual (LAPM)* and Caltrans Division of Transportation Planning: *Master Fund Transfer Agreement*.

The selected consultant(s) shall also have all state and local licenses required by applicable law for the performance of the services or any portion thereof.

**Non-discrimination and Disadvantaged Business Enterprise (DBE) Participation:** 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. The contractor, sub recipient or subcontractor 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.
As a recipient of federal financial assistance from the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA), the RTC is also committed to and has adopted a Disadvantaged Business Enterprise (DBE) Program for contracts in accordance with federal regulations. This solicitation is subject to Title 49, part 26, Code of Federal Regulations (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs."

The Caltrans’ DBE Program applies to this contract with a goal of 16%. Where subcontracting opportunities exist, consultants should utilize the Caltrans DBE Database to find certified DBEs to consider for their team: [http://www.dot.ca.gov/hq/bep/find_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm). For more information on the Caltrans Disadvantaged Business Enterprise Program visit [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep) which includes the Caltrans DBE Business Outreach Plan providing advice to contractors on involving DBEs.

In order to ascertain whether RTC and statewide overall DBE goals are being achieved, Caltrans tracks DBE participation on all Federal-aid contracts. The selected consultant will be required to complete DBE reporting forms. All respondents are required to complete Exhibit 10-01 “Consultant Proposal DBE Commitment” with their proposal. See [Attachment B](#) for additional information about DBEs. Failure by the consultant to carry out DBE requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Enclosed with this Request for Proposals:

Attachment A: Scope of Services
Attachment B: Notice to Proposers DBE Information
Attachment C: Sample RTC Standard Contract
Attachment D: Sample RTC Work Plan

Available on the RTC Website:
(http://www.sccrtc.org/about/opportunities/rfp/)

Project Information
Preliminary Layout Plans
Bus on Shoulder Concept of Operations

The Final Environmental Document and Technical Studies for the Tier 1 corridor are posted on the Highway 1 Corridor Investment Program Environmental Documents page https://sccrtc.org/projects/streets-highways/hwy1corridor/environmental-documents/

Required Forms
Form 1 California Levine Act Statement
Form 2 Exceptions to the Contract
LAPM Exhibit 10-O1 Consultant Proposal DBE Commitment
LAPM Exhibit 10-K Consultant Annual Certification of Indirect Costs and Financial Management System
LAPM Exhibit 10-H1 Cost Proposal
LAPM Exhibit 10-Q Disclosure of Lobbying Activities
Attachment A: Scope of Services

The RTC is seeking a consultant to provide professional engineering services for the PA/ED phase of the project. The project will be implemented by the RTC with Caltrans providing oversight. There will be extensive coordination with project stakeholders including Caltrans, the RTC, local jurisdictions, and utility owners. The consultant shall support the RTC, the County, and Caltrans with community outreach activities.

The RTC will perform Quality Assurance for the project. The consultant shall perform a Quality Control Review of all deliverables prior to each milestone submittal to Caltrans. Deliverables shall be submitted to the RTC with proof of quality control process in compliance with the project’s Quality Management Plan no less than 3 weeks in advance of the milestone submittal date to Caltrans. Deliverables reviewed by Caltrans will require a response to comment matrix to keep track of comments and responses.

The Tier I environmental document and technical studies are available on the RTC website. It is anticipated that the level of environmental documentation will be an EIR/EA, and will be a stand-alone environmental document rather than tiering off of the Tier I environmental document. A process to scope the approach to the various technical environmental studies is anticipated at the beginning of the project. This project is located in the coastal zone and will therefore require a coastal development permit.

The recently completed Concept of Operations for the Highway 1 Bus on Shoulder project is available on the RTC website. The Bus on Shoulder elements are included in the scope of this project. The improvements include minor shoulder widening at ramp gores and between ramps at interchanges, signing, and pavement markings. Traffic operational analysis specific to bus on shoulder operations is not anticipated.

The project requires replacement of two existing railroad bridges with longer-span bridges to accommodate the additional lanes on northbound and southbound Highway 1. The new bridges will need to accommodate future high capacity public transit and a multiuse trail. The RTC owns the Santa Cruz Branch Rail Line which is a 32-mile shortline railroad that runs through Santa Cruz County between the Pajaro Junction just over the Monterey County line and Davenport in north Santa Cruz County. The RTC purchased the railroad corridor from Union Pacific Railroad (UPRR) in 2012 and wishes to preserve the corridor for future high capacity public transit to connect Watsonville and Santa Cruz.

The RTC is implementing a multiuse trail adjacent to the railroad as included in the Monterey Bay Sanctuary Scenic Trail (MBSST) Master Plan completed in 2013. Many segments of the Coastal Rail Trail under development by the local jurisdictions. The new bridges over Highway 1 will need to be wide enough to accommodate both transit and a trail, to enhance multimodal transit through the County.
The RTC began an alternatives analysis in 2019 to evaluate public transit investment options that provide an integrated transit network for Santa Cruz County utilizing all or part of the length of the rail right-of-way between Pajaro Station and Shaffer Road as a dedicated transit facility, adjacent to the proposed rail trail. This analysis is scheduled to be complete in early 2021. Results from the alternatives analysis will need to be considered in the preliminary engineering and environmental clearance of the new bridges.

At the time that the draft plans for this segment of Highway 1 were developed, the railroad was owned by UPRR therefore substantial reconstruction of the mainline was assumed to be needed in order to correct the vertical clearance under the bridges while maintaining the existing vertical alignment of the railroad. Since the RTC now owns the bridges, staff wishes to re-evaluate whether the profile corrections can be reduced or eliminated by proposing a shallower deck bridge or by modifying the vertical profile of the future high capacity public transit.

It is recommended that respondents include a detailed Scope of Services, work plan, and CPM schedule in their proposal demonstrating the understanding of the project requirements in order to begin the negotiations immediately following selection.

**Task 1 Project Management**

The consultant shall be responsible for project management activities throughout the life of the contract and the scope of activities includes but is not limited to, project administration including preparation of monthly invoices and progress reports, project control including monthly Critical Path Method (CPM) schedule updates, submittal tracking log, risk register, preparation and distribution of meeting materials, attendance at meetings and coordination with Caltrans, local jurisdictions, regulatory agencies, and utility owners, and preparing and maintaining a Quality Management Plan. Consultant shall maintain the Project History File in accordance with the Caltrans Project Development Procedures Manual, Chapter 7. The consultant shall prepare presentation materials for up to 2 presentations about the project at regularly scheduled Commission meetings.

**Task 2 Data Collection**

The consultant shall request as-built plans and right of way records from Caltrans, local jurisdictions, and utility owners and perform field verifications of the existing conditions as needed. Aerial photogrammetric mapping for the project area will be required.

**Task 3 Preliminary Engineering**

The consultant shall develop the design alternative(s), prepare Geometric Drawings (GeDs), Design Standard Decision Document, DIB 78 Checklist, Right of Way Needs Maps (exhibits), Right of Way Data Sheet, Preliminary Utility Plans/Conflict Analysis, Utility Policy Certification, Life Cycle Cost Analysis (LCCA), Preliminary

**Task 4 Traffic Studies**

Consultant shall prepare the Traffic Methodology Memorandum, Existing Conditions Report, Traffic Forecasts, and Traffic Operations Analysis Report (TOAR) for the project. The scope of the traffic studies will be to update the FREQ freeway traffic operations model used for the 2017 traffic analysis to include existing, existing plus build, and horizon year build and no build conditions.

**Task 5 Environmental Technical Studies**

The consultant shall prepare scoping memos for all technical studies regarding the level of update necessary for each technical area. The consultant shall prepare Air Quality Studies, Noise Studies, Biological Studies, Initial Site Assessment, Cultural Resource Studies, Paleontology Studies, Visual Impact Assessment, Community Impact Assessment, Greenhouse Gas Analysis, and Energy Impacts Analysis. If any new projects arise since the preparation of the Tier I document, those projects and their impacts will need to be analyzed and disclosed in a Cumulative Impact Analysis and Growth Inducement Study.

**Task 6 Environmental Document**

The consultant shall prepare the project purpose and need statement, draft, and final CEQA/NEPA document in accordance with the Caltrans Standard Environmental Reference (SER), including public outreach support. Assume NEPA will be delegated to Caltrans and therefore FHWA reviews/approvals will not be needed. Respondents are expected to provide a detailed scope of work and approach for the proposed CEQA/NEPA documentation based on readily available information. Consultant shall prepare responses to public comment for RTC and Caltrans review and approval.

**Task 7 Project Report**

The consultant shall prepare the Draft and Final Project Report and all attachments, including cost estimates in the Caltrans 11-page format, TMP checklist, etc. The Project Report shall be prepared in accordance with the Caltrans Project Development Procedures Manual Appendix K.
Attachment B: Notice to Proposers DBE Information

The RTC has established a DBE goal for this Contract of **16%**

1. TERMS AS USED IN THIS DOCUMENT
   - The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
   - The term “Agreement” also means “Contract.”
   - The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY
   A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
   B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION
   If there is a DBE goal on the contract, Exhibit 10-O1 Consultant Proposal DBE Commitment must be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal; therefore, all DBE participation shall be collected and reported.
   Exhibit 10-O2 Consultant Contract DBE Information must be included with the Request for Proposal. Even if no DBE participation will be reported, the successful proposer must execute and return the form.
4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).

B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
   1. The proposer is a DBE and will meet the goal by performing work with its own forces.
   2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
   3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.

D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.

G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

5. RESOURCES

A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
B. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity Web site at:

http://www.dot.ca.gov/hq/bep/.

1. Click on the link titled Disadvantaged Business Enterprise;
2. Click on Search for a DBE Firm link;
3. Click on Access to the DBE Query Form located on the first line in the center of the page.

Searches can be performed by one or more criteria. Follow instructions on the screen.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers’ own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers’ representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
Attachment C: Sample RTC Contract

ARTICLE I INTRODUCTION

A. This AGREEMENT is between the following named consultant, hereinafter referred to as, CONSULTANT and the following named agency, hereinafter referred to as, COMMISSION:

The name of the “CONSULTANT” is as follows: ___________________.
Incorporated in the State of California
The Project Manager for the “CONSULTANT” will be ________________.

The name of the “COMMISSION” is as follows:
SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION (RTC)
The Contract Administrator and Project Manager for COMMISSION will be SARAH CHRISTENSEN, PE.

B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and Attachment 1. The CONSULTANT’s total fee and costs shall be as set forth in Article V and as more specifically described in the CONSULTANT’s Fee Estimate dated __________. The approved CONSULTANT’s Fee Estimate is attached hereto (Attachment 2) and incorporated by reference. If there is any conflict between the approved CONSULTANT’s Fee Estimate and this AGREEMENT, this AGREEMENT shall take precedence.

C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless COMMISSION, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses, and expenses, including without limitation, court costs and reasonable attorneys’ and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness, or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of COMMISSION, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.

D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT’s employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT’s assigned personnel shall not be entitled to any benefits payable to employees of COMMISSION.

E. COMMISSION is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is
not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the COMMISSION as to the designation of tasks to be performed and the results to be accomplished.

F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds COMMISSION harmless from any and all claims that may be made against COMMISSION based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the COMMISSION. However, claims for money due or which become due to CONSULTANT from COMMISSION under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the COMMISSION.

H. CONSULTANT shall be as fully responsible to the COMMISSION and shall indemnify, protect, defend, and hold harmless COMMISSION, its officers, officials, agents, employees and volunteers for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.

I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

J. The consideration to be paid to CONSULTANT as provided herein in Article V, shall be in compensation for all of CONSULTANT’s expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II CONSULTANT’S REPORTS OR MEETINGS

A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the COMMISSION’s Contract Administrator to determine if 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.

B. CONSULTANT’s Project Manager shall meet with COMMISSION’s Contract Administrator, as needed and as requested by the Contract Administrator, to discuss progress on the AGREEMENT.
ARTICLE III STATEMENT OF WORK

A. The approved CONSULTANT Services is attached hereto as Attachment 1 and incorporated by reference.

ARTICLE IV PERFORMANCE PERIOD

A. This AGREEMENT shall be effective as of _____________, contingent upon approval by COMMISSION, and CONSULTANT shall commence work after notification to proceed by COMMISSION’S Contract Administrator. The AGREEMENT shall terminate on _____________, unless extended by AGREEMENT amendment.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on COMMISSION until the AGREEMENT is approved by and fully executed by COMMISSION.

ARTICLE V ALLOWABLE FEES, COSTS AND PAYMENTS

A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT’s approved Cost Fee Estimate dated (___________________), attached hereto (Attachment 2) and incorporated by reference. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by COMMISSION’S Contract Administrator of itemized invoices in duplicate and acceptable to the Contract Administrator. CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.

B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are included in the approved Cost Fee Estimate and in the executed Task Order.

C. Reimbursement for transportation and subsistence costs shall not exceed State rates.

D. When milestone cost estimates are included in the approved Cost Fee Estimate, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

E. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by COMMISSION and notification to proceed has been issued by COMMISSION’S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
F. CONSULTANT will be reimbursed within thirty (30) days upon receipt by COMMISSION’S Contract Administrator of itemized invoices in duplicate and that are acceptable to the Contract Administrator. Separate invoices itemizing all costs are required for all work performed under this Agreement and under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Fee Estimate and shall reference this AGREEMENT number, project title and, if applicable, Task Order number. Credits due COMMISSION that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to COMMISSION’s Contract Administrator at the following address:

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION
SARAH CHRISTENSEN, P.E.
1523 PACIFIC AVENUE, SANTA CRUZ, CA 95060

ARTICLE VI TERMINATION

A. This AGREEMENT may be terminated, without cause, by COMMISSION, provided that COMMISSION gives not less than thirty (30) calendar days’ written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, COMMISSION shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings, and data estimates performed to that date, whether completed or not, and in accordance with Article XXIV, Ownership of Data.

B. COMMISSION may temporarily suspend this AGREEMENT, at no additional cost to COMMISSION, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If COMMISSION gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this section.

C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to COMMISSION for damages sustained by COMMISSION by virtue of any breach of this AGREEMENT by CONSULTANT, and COMMISSION may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due COMMISSION from CONSULTANT is determined.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in subsection C of this section. Upon termination, COMMISSION shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates
performed to that date, whether completed or not, and in accordance with Article XXIV, Ownership of Data.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.

B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to COMMISSION.

D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VIII RETENTION OF RECORDS/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and COMMISSION shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate work papers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT’s Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. COMMISSION, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT’s Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, work paper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by COMMISSION’s Chief Financial Officer.

B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by COMMISSION’s Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
C. Neither the pendency of a dispute nor its consideration by COMMISSION will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.

D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT’s responsibility to ensure federal, COMMISSION, or local government officials are allowed full access to the CPA’s work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by COMMISSION Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by COMMISSION at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, COMMISSION, or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

E. CONSULTANT’s Cost Fee Estimate may be subject to a CPA ICR Audit Work Paper Review and/or audit by Caltrans Audits and Investigation (A&I). Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Fee Estimate shall be adjusted by the CONSULTANT and approved by the COMMISSION Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During Caltrans A&I’s review of the ICR audit work papers created by the CONSULTANT’s independent CPA, Caltrans A&I will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, COMMISSION will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR \{e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines\} is received and approved by A&I.

Accepted rates will be as follows:

a. If the proposed rate is less than one hundred fifty percent (150%) – the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) – the accepted rate will be eighty-five percent (85%) of the proposed rate.

c. If the proposed rate is greater than two hundred percent (200%) – the accepted rate will be seventy-five percent (75%) of the proposed rate.

2. If Caltrans A&I is unable to issue a cognizant letter per section E.1. above, Caltrans A&I may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the CONSULTANT’s and/or the independent CPA’s revisions.

3. If the CONSULTANT fails to comply with the provisions of this section E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in section E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.

4. CONSULTANT may submit to COMMISSION final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of COMMISSION; and, (3) Caltrans A&I has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO COMMISSION no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between COMMISSION and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

A. Nothing contained in this AGREEMENT or otherwise shall create any contractual relation between the COMMISSION and any Subconsultants, and no sub-agreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the COMMISSION for the acts and omissions of its Subconsultants 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 the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the 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 shall be subcontracted without written authorization by the COMMISSION Contract Administrator, except that which is expressly identified in the CONSULTANT’s approved Cost Proposal.

C. Any sub-agreement entered into as a result of this AGREEMENT shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the COMMISSION.

E. Any substitution of Subconsultants must be approved in writing by the COMMISSION Contract Administrator in advance of assigning work to a substitute Subconsultant.

ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

A. Prior authorization in writing by COMMISSION’s Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars ($5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service, or consulting work not covered in CONSULTANT’s approved Cost Fee Estimate and exceeding five thousand dollars ($5,000), with prior authorization by COMMISSION’s Contract Administrator, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:

1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars ($5,000) or more. If the purchased equipment needs replacement and is sold or traded in, COMMISSION shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit COMMISSION in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COMMISSION procedures; and credit COMMISSION in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT’s expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by COMMISSION and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COMMISSION.

2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars ($5,000) is credited to the project.

ARTICLE XII STATE PREVAILING WAGE RATES

A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at COMMISSION construction sites, at COMMISSION facilities, and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve COMMISSION projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at http://www.dir.ca.gov.

D. Payroll Records

1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
   a. The information contained in the payroll record is true and correct.
   b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.

2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by COMMISSION representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
   a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
   b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of COMMISSION, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to COMMISSION, the Division of Labor Standards Enforcement, and the
Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.

c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the COMMISSION Contract Administrator by both email and regular mail on the business day following receipt of the request.

3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by COMMISSION shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.

5. The CONSULTANT shall inform COMMISSION of the location of the records enumerated under paragraph (1) above, including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.

6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to COMMISSION, forfeit one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by COMMISSION from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.

E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the COMMISSION Contract Administrator.

F. Penalty

1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the COMMISSION a penalty of not more than two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the
correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.

4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure. The prime CONSULTANT shall pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:

   a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.

   b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.

   c. Upon becoming aware of the Subconsultant’s failure to pay the specified prevailing rate of wages to the Subconsultant’s workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.

   d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant’s employees on the public works project and any amounts due pursuant to Labor Code §1813.

5. Pursuant to Labor Code §1775, COMMISSION shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.

6. If COMMISSION determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if COMMISSION did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by COMMISSION.

G. Hours of Labor
Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the COMMISSION, twenty-five dollars ($25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars ($30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

2. CONSULTANT and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at https://www.dir.ca.gov/das/, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants’ compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST

A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with COMMISSION that may have an impact upon the outcome of this AGREEMENT or any ensuing COMMISSION construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing COMMISSION construction project which will follow.

B. CONSULTANT certifies that it has disclosed to COMMISSION any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise COMMISSION of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either COMMISSION ordinance or State law.

C. The 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 AGREEMENT.
D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV 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 this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

ARTICLE XV NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

A. 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 Gov. Code §12990 and 2 CCR § 8103.

B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT’s benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated thereunder (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by COMMISSION to implement the Act. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a)-(f), set forth at 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.

D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the COMMISSION upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours’ notice, to such of
its books, records, accounts, and all other sources of information and its facilities as said Department or COMMISSION shall require to ascertain compliance with this clause.

E. 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.

F. CONSULTANT shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.

G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, or disability, be excluded from participation in, denied the benefits of or be subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices, and the selection and retention of Subconsultants.

ARTICLE XVI DEBARMENT AND SUSPENSION CERTIFICATION

A. The CONSULTANT’s signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
   1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
   2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
   3. Does not have a proposed debarment pending; and
   4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

B. Any exceptions to this certification must be disclosed to COMMISSION. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.
ARTICLE XVII INSURANCE

A. Prior to commencement of the work described herein, CONSULTANT shall furnish COMMISSION a Certificate of Insurance stating that there is presently in effect for CONSULTANT:

1. Commercial General liability insurance with a minimum limit of two million dollars ($2,000,000) per occurrence, and four million dollars ($4,000,000) 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.

2. Worker’s Compensation insurance in the minimum statutorily required coverage amount.

3. Professional Liability Insurance in the minimum amount of $1,000,000 combined single limit.

4. 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.

B. The Certificate of Insurance will provide:

1. That the insurance policies will not be cancelled without thirty (30) calendar days prior written notice to COMMISSION, except 10-day notice of cancellation for non-payment of premium.

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. That COMMISSION will not be responsible for any premiums or assessments on the policy.

C. CONSULTANT agrees that the insurance herein provided for shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least ten (10) calendar 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 AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of COMMISSION. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, COMMISSION may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

D. 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.

E. 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

F. If any insurance policy of CONSULTANT required by this AGREEMENT 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 or in the case of Workers Compensation or Professional Liability an additional insured. Notwithstanding the foregoing, both the CONSULTANT and its insurers agree that by naming the COMMISSION as a named or additional insured, the COMMISSION may, at its sole discretion, but is not obligated to perform any act required by the named insured under said insurance policies.

ARTICLE XVIII FUNDING REQUIREMENTS

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

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

C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
D. COMMISSION has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XIX CHANGE IN TERMS

A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.

B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by COMMISSION’s Contract Administrator.

C. There shall be no change in CONSULTANT’s Project Manager or members of the project team, as listed in this AGREEMENT without prior written approval by COMMISSION’s Contract Administrator.

ARTICLE XX CONTINGENT FEE

CONSULTANT warrants by execution of this AGREEMENT that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, COMMISSION has the right to annul this AGREEMENT without liability, pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXI DISPUTES

- Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

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 COMMISSION’s Contract Administrator and Executive Director, who may consider written or verbal information submitted by CONSULTANT.

B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
C. Neither the pendency of a dispute nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXII INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit COMMISSION, the State, and the FHWA (if federal participating funds are used in this AGREEMENT), to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXIII SAFETY

A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by COMMISSION Safety Officer and other COMMISSION representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Vehicle Code §591, COMMISSION has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. 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. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

ARTICLE XXIV OWNERSHIP OF DATA

A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of COMMISSION, and CONSULTANT shall have no property right there in whatsoever. Immediately upon termination, COMMISSION shall be entitled to, and CONSULTANT shall deliver to COMMISSION, reports, investigations, appraisals, inventories, studies, analyses, drawings, and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT’s privileged information, as defined by law, or CONSULTANT’s personnel information, along with all other property belonging exclusively to COMMISSION which is in CONSULTANT’s possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by COMMISSION.
B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of COMMISSION without restriction or limitation upon its use or dissemination by COMMISSION.

C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this AGREEMENT. Any reuse by COMMISSION for another project or project location shall be at COMMISSION’s sole risk.

D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).

E. COMMISSION may permit copyrighting reports or other agreement 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.

ARTICLE XXV CLAIMS FILED BY COMMISSION’S CONSTRUCTION CONTRACTOR

A. If claims are filed by COMMISSION’s construction contractor relating to work performed by CONSULTANT’s personnel, and additional information or assistance from CONSULTANT’s personnel is required in order to evaluate or defend against such claims, CONSULTANT agrees to make its personnel available for consultation with COMMISSION’S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. CONSULTANT’s personnel that COMMISSION considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from COMMISSION. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT’s personnel services under this AGREEMENT.

C. Services of CONSULTANT’s personnel in connection with COMMISSION’s construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVI 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 AGREEMENT, 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 AGREEMENT, 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 AGREEMENT or COMMISSION’s actions on the same, except to COMMISSION’s staff, CONSULTANT’s own personnel involved in the performance of this AGREEMENT, 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 AGREEMENT without prior review of the contents thereof by COMMISSION, and receipt of COMMISSION’S written permission.

E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than COMMISSION, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City’s attorney’s fees and disbursements, including without limitation experts’ fees and disbursements.

ARTICLE XXVII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT’s failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXVIII EVALUATION OF CONSULTANT

CONSULTANT’s performance will be evaluated by COMMISSION. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXIX RETENTION OF FUNDS

No retainage will be withheld by COMMISSION from progress payments due the CONSULTANT. Retainage by the CONSULTANT or subconsultants is prohibited, and no
retainage will be held by the CONSULTANT from progress due subconsultants. Any violation of this provision shall subject the violating CONSULTANT or subconsultants to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.

ARTICLE XXX 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:

________________________________________

________________________________________, Project Manager

COMMISSION:

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION

SARAH CHRISTENSEN, PE, Contract Administrator

1523 PACIFIC AVE.

SANTA CRUZ, CA 95060

ARTICLE XXXIII CONTRACT

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.
ARTICLE XXXIV SIGNATURES

4. SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION

__________________________  __________________________
Guy Preston                  Principal
Executive Director          
Date:                        Date: 

1. APPROVED AS TO FORM

__________________________  __________________________
Steven Mattas                 Yesenia Parra
RTC Legal Counsel            Administrative Services Officer
Date:                        Date: 

3. APPROVED AS TO INSURANCE

Attachments:
Attachment 1 –
Attachment 2 –
## Attachment D: Sample Work Plan

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