RFP No. RFP2074

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION

REQUEST FOR PROPOSALS FOR FINANCIAL AUDIT SERVICES FOR THE SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION AND MEASURE D, A TRANSACTION AND USE TAX MEASURE

Tracy New
Director of Finance & Budget
Santa Cruz County Transportation Commission
1523 Pacific Avenue
Santa Cruz, CA 95060

May 29, 2020
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1. INTRODUCTION

General Information

a. The Santa Cruz County Regional Transportation Commission (RTC) is requesting proposals from qualified firms of certified public accountants to audit the Financial Statements of the RTC and Measure D, a local transaction and use tax, for the fiscal year ending June 30, 2020, 2021, and 2022.

b. These audits are to be performed in accordance with generally accepted auditing standards (GAAS), the standards set forth for financial audits by the Governmental Accounting Standards Board (GASB) and the American Institute of Certified Public Accountants (AICPA), the Government Accountability Office’s (GAO) Government Auditing Standards. Also, with the provisions of the federal Single Audit Act of 1984 (with amendment in 1996) and requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

c. Engagement Term

The RTC intends to enter into a three-year initial contract period, beginning with the fiscal year ending June 30, 2020, with the option by RTC to renew for two (2) additional one (1) year terms, and a total contract term of no more than five (5) years.

2. BACKGROUND

a. The Santa Cruz County Regional Transportation Commission (RTC) is an autonomous regional transportation planning agency headquartered in downtown Santa Cruz. Created by the State of California in 1972 to carry out transportation responsibilities that cross city-county boundaries in Santa Cruz County. The RTC is currently governed by a twelve-member Commission composed of all five members of the Santa Cruz County Board of Supervisors, one member of the Watsonville, Santa Cruz, Scotts Valley and Capitola City Councils and three members appointed by the Santa Cruz Metropolitan Transit District. The Caltrans District 5 Director serves as an ex-officio member of the Commission. The RTC's fiscal year begins on July 1 and ends on June 30.

b. The RTC administers Measure D, a ½-cent transaction and use tax that provides funding for local streets and road maintenance, bicycle and pedestrian projects, safety projects, and transit and paratransit service, and other essential transportation projects and programs throughout the county.
More detailed information on the government and its finances can be found in the Adopted Budget Fiscal Year 2020/21, the RTC’s Financial Statements, Fiscal Year ended June 30, 2018 and the Measure D Financial Statements, Fiscal Year ended June 30, 2019.

3. **SCOPE OF SERVICE/ PROJECT**

   a. Scope of Work to be Performed

   The Santa Cruz County Regional Transportation Commission desires the auditor to express an opinion on the fair presentation of the RTC’s and Measure D basic financial statements in conformity with generally accepted accounting principles.

   The Santa Cruz County Regional Transportation Commission also desires the auditor to express an opinion on the fair presentation of its combining and individual fund financial statements and schedules in conformity with generally accepted accounting principles.

   The auditor shall also be responsible for performing certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards.

   b. Auditing Standards to be Followed

   To meet the requirements of this request for proposal, audits are to be performed in accordance with generally accepted auditing standards (GAAS), the standards set forth for financial audits by the Governmental Accounting Standards Board (GASB) and the American Institute of Certified Public Accountants (AICPA), the Government Accountability Office’s (GAO) Government Auditing Standards. Also, with the provisions of the federal Single Audit Act of 1984 (with amendment in 1996) and requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

   c. Reports to be Issued

   Following the completion of the audit of the fiscal year’s financial statements, the auditor shall issue:

   1. A report on the fair presentation of the financial statements in
conformity with generally accepted accounting principles, including an opinion on the fair presentation of the supplementary schedule of expenditures of federal awards in relation to the audited financial statements.

2. A report on compliance and internal control over financial reporting based on an audit of the financial statements. The report should identify areas where opportunities exist to enhance and improve internal controls.

3. A report on compliance and internal control over compliance applicable to each major federal program.

In the required report(s) on compliance and internal controls, the auditor shall communicate any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statements.

Reportable conditions that are also material weaknesses shall be identified as such in the report. Nonreportable conditions discovered by the auditors shall be reported in a separate letter to management, which shall be referred to in the report(s) on compliance and internal controls.

The reports on compliance and internal controls shall include all instances of noncompliance.

Irregularities and illegal acts. The auditor shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties:

- Commission
- Executive Director


All working papers and reports must be retained, at the auditor's expense, for a minimum of seven years, unless the firm is notified in writing by the Santa Cruz County Regional Transportation Commission of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees:

- Santa Cruz County Regional Transportation Commission
- All cognizant agencies of federal assistance
• Parties designated by the federal or state governments or by the Santa Cruz County Regional Transportation Commission as part of an audit quality review process
• Auditors of entities of which the Santa Cruz County Regional Transportation Commission is a subrecipient of grant funds.

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

4. SCHEDULE OF EVENTS

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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</thead>
<tbody>
<tr>
<td>Proposal Release</td>
<td>May 29, 2020</td>
</tr>
<tr>
<td>Question deadline/cut-off</td>
<td>June 16, 2020 at 3:00 p.m.</td>
</tr>
<tr>
<td>Response to questions posted</td>
<td>June 18, 2020</td>
</tr>
<tr>
<td>Proposal due date</td>
<td>June 29, 2020 at 3:00 p.m.</td>
</tr>
<tr>
<td>Proposer selection</td>
<td>July 15, 2020*</td>
</tr>
</tbody>
</table>

*Tentative dates subject to change at RTC’s discretion.

a. Audit Timeline

1. Annual Audit Timeline for fiscal year 2019/20

<table>
<thead>
<tr>
<th>Month</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 2020</td>
<td>Entrance Conference</td>
</tr>
<tr>
<td>September - October 2020</td>
<td>Interim Audit Fieldwork</td>
</tr>
<tr>
<td>November - December 2020</td>
<td>Final Audit Fieldwork</td>
</tr>
<tr>
<td>Mid-November (draft); December 2020 - January 2021 (issued)</td>
<td>Single Audit Report</td>
</tr>
<tr>
<td>January 2021</td>
<td>Exit Conference</td>
</tr>
</tbody>
</table>

5. INSTRUCTIONS TO PROPOSERS

Please prepare your proposal in accordance with the following requirements.

a. Proposal. In response to the RFP, each proposer shall electronically submit the proposal and bids to tnew@sccrtc.org. A copy of the resumes must be included in an appendix to the proposal.

b. Cover Letter. The proposal must be submitted with a cover letter describing the proposer’s interest and commitment to the proposed project.
The letter must state that the proposal is valid for a 90-day period and include the name, title, address and telephone number of the individual to whom correspondence and other contacts should be directed during the selection process. The person authorized by the proposer to negotiate a contract with the RTC must sign the cover letter.

Address the cover letter as follows:

Santa Cruz County Regional Transportation Commission
Tracy New, Director of Finance and Budget
1523 Pacific Avenue
Santa Cruz, CA 95060

c. Approach and Management Plan. This section shall provide the proposer’s proposed approach and management plan for providing the services.

d. License to Practice in the State of California. An affirmative statement should be included that the firm and all assigned key professional staff are properly registered/licensed to practice in the State of California.

e. Firm Qualifications and Experience

• This section shall provide the qualifications and experience of the key team member(s) that will work on the project. Emphasize the specific qualifications and experience from projects similar to this project for the key team members. Key team members are expected to be committed for the duration of the project. Replacement of key team members will not be permitted without prior consultation with and approval of the RTC.

• The proposer should state the size of the firm, the size of the its governmental audit staff, the location of the office from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement on a full time basis and the number and nature of the staff to be so employed on a part time basis.

• The firm is also required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements.

• The firm shall also provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, the firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.
f. Partner, Supervisory and Staff Qualifications and Experience

- Identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement. Provide information on the government auditing experience of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit.

- Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the Santa Cruz County Regional Transportation Commission. However, in either case, the Santa Cruz County Regional Transportation Commission retains the right to approve or reject replacements.

- Other audit personnel may be changed at the discretion of the proposer, provided replacements have substantially the same or better qualifications or experience.

g. Similar Engagements with Other Government Entities. For the firm's office that will be assigned responsibility for the audit, list the most significant engagements (maximum - 5) performed in the last five years that are similar to the engagement described in this request for proposal. These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact. The RTC reserves the right to contact these agencies for references.

h. Work Plan and Schedule. This section shall include a description of how you will conduct each task of the project, identification of deliverables for each task and a schedule. The work plan should be in sufficient detail to demonstrate a clear understanding of the project. The project is expected to commence no later than September 2020 and all public meetings, draft and final documents fully completed by January 2021.

i. Additional Relevant Information. This section invites additional relevant information that may be helpful in the selection process.

j. Budget

- Total All-Inclusive Maximum Price
The proposal should contain all pricing information relative to performing the audit engagement for the RTC and Measure D as described in this request for proposal. The cost for the audits of the RTC and Measure D should be listed separately.

The following information should be included:

- The total estimated hours and total all-inclusive maximum price (not to exceed amount) to complete the examination, and to prepare and submit a final report on the examination and a management letter plus the necessary financial and compliance audits required by the OMB Circular A-133, and the Single Audit Act Amendments of 1996.
- Include the name and title of the individual responsible for control.
- Rates by Partner, Specialist, Supervisory and Staff Level Hours Anticipated for Each

The proposal should include a schedule of professional fees and expenses that supports the total all-inclusive maximum price.

k. Manner of Payment

For the contracted service fee, progress payments will be made on the basis of work completed during the course of the engagement. Interim billing shall cover a period of not less than a calendar month.

l. Submittal of Proposal. In response to the RFP, each proposer shall submit the proposal and bids electronically to tnew@sccrtc.org no later than 3:00 p.m. on June 29, 2020 for a proposal to be considered. For further information, please contact the Director of Finance and Budget, Tracy New, at tnew@sccrtc.org (831) 460-3217.

6. EVALUATION OF PROPOSALS

a. Evaluation Committee. RTC staff shall examine and evaluate all proposals for ascertaining their completeness and responsiveness to the provisions of this RFP. The Commission may at its discretion schedule interviews as part of the evaluation process. Evaluation of the proposals shall be within the sole judgment and discretion of the RTC. At the discretion of the Santa Cruz County Regional Transportation Commission or the Evaluation Committee, firms submitting proposals may be requested to make oral presentations as part of the evaluation process. During the evaluation process, the Evaluation Committee reserves the right, where it may serve the Santa Cruz County Regional Transportation Commission's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or
b. Categories. Proposals will be evaluated using three sets of criteria. Firms meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. A technical score less than 70 will be eliminated from further consideration.

c. After the technical score for each firm has been established, the proposed contract service fee (price) will be reviewed and additional points will be added to the technical score based on the proposed fee. The maximum score for price will be assigned to the firm offering the lowest total all-inclusive maximum price. Appropriate fractional scores will be assigned to other proposers. The following represents the principal selection criteria which will be considered during the evaluation process.
### Mandatory Elements-
**Must be met or firm may be disqualified from further evaluation**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>The audit firm is independent and licensed to practice in the State of California.</td>
<td>Required</td>
</tr>
<tr>
<td>The firm has no conflict of interest with regards to any other work performed by the firm for the Santa Cruz County Regional Transportation Commission.</td>
<td>Required</td>
</tr>
<tr>
<td>The firm adheres to the instructions in the request for proposal on preparing and submitting the proposal.</td>
<td>Required</td>
</tr>
<tr>
<td>The firm submits a copy of its last external quality control review report and the firm has a record of quality audit work.</td>
<td>Required</td>
</tr>
</tbody>
</table>

### Technical Quality: (Maximum Points – 100)

<table>
<thead>
<tr>
<th>Points</th>
<th>Expertise, Experience and Performance:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Responsiveness of the proposal in clearly stating an understanding of the work to be performed.</td>
</tr>
<tr>
<td></td>
<td>Auditing similar entities</td>
</tr>
<tr>
<td></td>
<td>Auditing of the similar type under consideration</td>
</tr>
<tr>
<td></td>
<td><strong>Total for this section</strong></td>
</tr>
</tbody>
</table>

### The quality of the firm’s professional personnel to be assigned to the engagement and the quality of the firm’s management support personnel to be available for technical consultation:

<table>
<thead>
<tr>
<th>Points</th>
<th>The quality of the firm’s professional personnel to be assigned to the engagement and the quality of the firm’s management support personnel to be available for technical consultation:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Qualifications of supervisory personnel, consultants, and of the audit team doing field work</td>
</tr>
<tr>
<td></td>
<td>Qualifications of supervisory personnel, consultants and of the firm’s management support personnel to be available for technical review and consultation</td>
</tr>
<tr>
<td></td>
<td>Size and their organizational ability to handle the audit work in a timely manner</td>
</tr>
<tr>
<td></td>
<td><strong>Total for this section</strong></td>
</tr>
</tbody>
</table>

### Audit Approach, Adequacy of proposed staffing plan for various segments of the engagement:

<table>
<thead>
<tr>
<th>Points</th>
<th>Audit Approach, Adequacy of proposed staffing plan for various segments of the engagement:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Comprehensiveness of audit work plan</td>
</tr>
<tr>
<td></td>
<td><strong>Total for this section</strong></td>
</tr>
</tbody>
</table>

### Price Criteria (25 points) 25

### Total Evaluation Points 100
d. Interviews. Proposers may need to attend an interview. The RTC reserves the right, to determine the number of proposers to be interviewed. The County will re-rank proposals upon the evaluation of the oral interview and the firm’s ability to further demonstrate its qualifications and experience, based upon the same criteria contained within this solicitation. The determination as to the need for interviews, the location, order and schedule of the interviews is at the sole discretion of the RTC. The evaluation interview panel may include representatives from the RTC, Commission and other agencies, but the specific composition of the panel will not be revealed prior to the interviews. The proposer must bear all costs incurred to attend.

e. Best Value: The RTC will select the proposal that presents the best value and is most advantageous to the RTC and the public. Accordingly, the RTC may not necessarily award the proposer with the lowest price proposal if doing so would not be in the overall best interest of the RTC.

7. **AWARD NOTICE AND ACCEPTANCE PERIOD**

The apparent best evaluated proposer should be prepared to enter into a contract with the RTC which shall be substantially the same as the *Contract* included in Exhibit I to this RFP. Notwithstanding, the RTC reserves the right to add terms and conditions, deemed to be in the best interest of the RTC, during final contract negotiations.

8. **TERMS AND CONDITIONS**

a. RFP Amendment, Cancellation and Right of Rejection.

   i. The RTC reserves the unilateral right to amend this RFP in writing at any time by posting the amendment on the County’s website. Proposers are responsible to view the website periodically for any amendments to the RFP. Proposers shall respond to the final written RFP and any exhibits, attachments, and amendments. The RTC also reserves the right, in its sole discretion, to reject any and all proposals or to cancel or reissue the RFP.

   ii. The RTC reserves the right to waive variances in proposals provided such action is in the best interest of the RTC. Where the RTC waives minor variances in proposals, such waiver does not modify the RFP requirements or excuse the applicant from full compliance with the RFP. Notwithstanding any minor variance, the County may hold any proposal to strict compliance with the RFP.
EXHIBIT 1 – Sample Contract Fiscal Audit

Contract No.____________

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made and entered into this _______day of (Month), 20 by and between the SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, hereinafter called COMMISSION, and (Company name), hereinafter called CONSULTANT for Fiscal Audit Services. The parties agree as follows:

1. DUTIES.

A. CONSULTANT agrees to exercise special skill to accomplish the following results: Audit of the Financial Statements of the RTC and Measure D, a local transaction and use tax, as specified in Exhibit A: Scope of Services, which by this reference is incorporated herein.

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

<table>
<thead>
<tr>
<th>Name</th>
<th>Firm</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal in Charge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Manager</td>
<td></td>
<td></td>
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</tbody>
</table>

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

D. CONSULTANT’S PROGRESS REPORTS AND/OR MEETINGS

1. CONSULTANT shall perform the services in accordance with the Project Schedule attached hereto (Exhibit B) and incorporated by reference. The CONSULTANT shall submit written progress reports with each invoice. The report should be sufficiently detailed for the Contract Manager to determine if the CONSULTANT is performing to expectations or is on schedule; to provide communication of interim findings; and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

2. The CONSULTANT’s Project Manager shall meet with the COMMISSION’s Contract Manager, as needed, to discuss progress on the contract.
2. **COMPENSATION.** In consideration for CONSULTANT accomplishing work to be performed under this contract (as described in Exhibit A: Scope of Services and Exhibit B: Project Schedule), COMMISSION shall compensate CONSULTANT in accordance with the approved Fee Schedule, dated *(INSERT DATE)*, attached hereto (Exhibit C) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence. COMMISSION agrees to pay CONSULTANT as follows:

1. Total payment is not to exceed: $_____ for time and materials at the rates and conditions set forth in Exhibit B: Fee Schedule, which by this reference is incorporated herein.

A. In no event, will the CONSULTANT be reimbursed for overhead costs at a rate that exceeds the overhead rate set forth in the Fee Schedule.

B. Transportation and subsistence expenses claimed for reimbursement shall not exceed the rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules or to employees under current U.S. General Service Administration rules.

C. Reimbursable expenses will be billed and processed for payment upon approval of the Contract Manager.

D. Progress payments will be made no less than monthly in arrears based on satisfactory services provided and actual allowable incurred costs. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Scope of Services, the COMMISSION may delay payment and/or terminate this Agreement in accordance with the provisions of Section 4 of this Agreement.

E. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this Agreement.

F. CONSULTANT shall not exceed milestone cost estimates as shown in Exhibit C, except with the prior written approval of the Contract Manager.

G. This contract is valid and enforceable only, if sufficient funds are made available to COMMISSION for the purpose of this contract. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

H. The CONSULTANT will be reimbursed after receipt by the COMMISSION’s Contract Manager of itemized invoices. Invoices shall be submitted no later than 45 calendar days after the performance of work for which the CONSULTANT is billing. Invoices shall be mailed to the COMMISSION’s Contract Manager at the following address:
The invoices must include the following information:

1. Labor (staff name, hours charged, hourly billing rate, current charges and cumulative charges) performed during the billing period by task;
2. Itemized expenses incurred during the billing period;
3. Total invoice/payment requested, specifically noting the amount of retention, if any;
4. Total amount previously paid under this Agreement;
5. Report of expenditures by CONSULTANT and subconsultants for each task and subtask or milestone and estimated percentage completion by such divisions of work;
6. CONSULTANT's final invoice must be submitted within 60-calendar days after acceptance of the CONSULTANT's work by the Contract Manager.

**All contracts:**

A. Transportation and subsistence expenses shall not exceed the rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules or to employees under current U.S. General Service Administration rules.

B. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

C. All subcontracts in excess of $25,000 shall contain the above provisions.

3. **RETENTION OF FUNDS.**

A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this Article.

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

4. **TERM.**

   A. This Agreement shall go into effect on *(INSERT DATE)*; contingent upon prior approval by the COMMISSION, and the CONSULTANT shall commence work after notification to proceed by the COMMISSION’S Contract Manager. The Agreement shall end on *(INSERT DATE)* unless earlier terminated or extended by contract amendment.

   B. The CONSULTANT is advised that this Agreement is not binding and enforceable until it is approved by the COMMISSION's board and fully executed.

4. **TERMINATION.**

   A. COMMISSION reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.

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

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

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

   A. Any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of the CONSULTANT. The CONSULTANT will reimburse COMMISSION for any expenditure, including reasonable attorney fees, incurred by COMMISSION in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of the CONSULTANT; and
B. Any and all Federal, State and Local taxes, charges, fees, penalties, or contributions required to be paid with respect to CONSULTANT and CONSULTANT’S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

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

A. Types of Insurance and Minimum Limits

1. Workers’ Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the CONSULTANT has no employees and certifies to this fact by initialing here __________.

2. Automobile Liability Insurance for each of CONSULTANT’S vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by CONSULTANT’S employees), leased or hired vehicles, in the minimum amount of $1,000,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by the CONSULTANT is not a material part of performance of this Agreement and CONSULTANT and COMMISSION both certify to this fact by initialing here _____ / _____.

3. Comprehensive or Commercial General Liability Insurance coverage at least as broad as ISO form CG 00 01, with a minimum limit of one million dollars ($1,000,000) per occurrence, and $2,000,000 in the aggregate, including coverage for: (a) products and completed operations, (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

4. Professional Liability Insurance in the minimum amount of one million dollars ($1,000,000) ________ combined single limit, if, and only if, this Subparagraph is initialed by CONSULTANT and COMMISSION __ / ___.

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

B. Other Insurance Provisions

1. If any insurance coverage required in this Agreement is provided on a “Claims Made” rather than “Occurrence” form, CONSULTANT agrees that the retroactive date thereof shall be no later than the effective date of this Agreement, and that it shall maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter “post agreement coverage”) and any extensions thereof. CONSULTANT may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable. The COMMISSION will not be responsible for any premiums or assessments on the policy.

2. All policies of Commercial General Liability Insurance and Railroad Protective Liability Insurance, if required, shall be endorsed to cover the Santa Cruz County Regional Transportation Commission, its officials, employees, agents and volunteers, and Santa Cruz and Monterey Bay (SC&MB) Railroad, and its officials, employees, agents and volunteers, if any work will be undertaken in the rail right-of-way or within fifty (50) feet from the track, as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of, the CONSULTANT, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01, covering ongoing operations and products and completed operations.

3. All required insurance policies shall be endorsed to contain the following clause:

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

Santa Cruz County Regional Transportation Commission
Attn: Yesenia Parra
1523 Pacific Avenue
Santa Cruz, CA 95060
Should CONSULTANT fail to obtain such an endorsement to any policy required hereunder, CONSULTANT shall be responsible to provide at least thirty (30) days’ notice (10 days for non-payment of premium) of cancellation of such policy to the COMMISSION as a material term of this Agreement.

4. CONSULTANT agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COMMISSION on or before the effective date of this Agreement with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT’s obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:

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

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

6. If any insurance policy of CONSULTANT required by this document includes language conditioning the insurer’s legal obligation to defend or indemnify COMMISSION on the performance of any act(s) by the named insured, then said insurance policy, by endorsement, shall also name the COMMISSION as a named insured. Notwithstanding the foregoing, both the CONSULTANT and its insurers agree that by naming the COMMISSION as a named insured, the COMMISSION may at its sole direction, but is not obligated to, perform any act required by the named insured under said insurance policies.

7. CONSULTANT shall do all things required to be performed by it pursuant to its insurance policies including but not limited to paying
within five (5) work days, all deductibles and self-insured retentions (SIR) required to be paid under any insurance policy that may provide defense or indemnity coverage to COMMISSION or any additional insured.

8. CONSULTANT hereby grants to COMMISSION a waiver of any right of subrogation which any insurer of said CONSULTANT may acquire against the COMMISSION by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COMMISSION has received a waiver of subrogation endorsement from the insurer.

9. CONSULTANT shall cause the foregoing provisions to be inserted in all subcontracts for any work covered under this Agreement, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

9. FEDERAL, STATE AND LOCAL LAWS.

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

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

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

A. The CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow discrimination or harassment against any employee, applicant for employment, or subconsultant in any manner prohibited by Federal, State and local laws, including but not limited to race, color, sex, gender, religious creed, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), marital status, sexual orientation, age (over 40), veteran status, denial of family and medical care leave and denial of pregnancy disability leave, or any other non-merit factor unrelated to job duties.
B. Consultant and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 8113 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

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

E. Consultant and its subconsultants shall permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by STATE to investigate compliance with this Article.

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

11. **HARASSMENT.** The COMMISSION maintains a strict policy prohibiting unlawful harassment, including sexual harassment, in any form, including verbal, physical and visual harassment by any employee, supervisor, manager, officer or Board member, or agent of the employer.
Vendors, contractors, and consultants shall not engage in conduct that has an effect of unreasonably interfering with a COMMISSION employee's work performance or creates an intimidating, hostile or offensive work environment.

12. **CONFLICT OF INTEREST.**

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

B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

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

13. **LICENSES.** If a license of any kind is required of CONSULTANT, its employees, agents, or subcontractors by Federal or State law, CONSULTANT warrants that such license has been obtained, is valid and in good standing, that CONSULTANT shall keep it in effect at all times during the terms of this Agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

14. **INDEPENDENT CONSULTANT STATUS.** CONSULTANT and COMMISSION have reviewed and considered the principal test and secondary factors herein and agree that CONSULTANT is an independent CONSULTANT and not an employee of COMMISSION. CONSULTANT is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONSULTANT is not entitled to any employee benefits. COMMISSION agrees that CONSULTANT shall have the right to control the manner and means of accomplishing the result contracted for herein.

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

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

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

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

15. RETENTION OF RECORDS/AUDIT.

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

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

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

16. **INSPECTION OF WORK.** The CONSULTANT and any subconsultant shall permit the COMMISSION or the STATE, to review and inspect the project activities and files at all reasonable times during the term of this Agreement including review and inspection on a daily basis.

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

18. **WORK PRODUCTS/OWNERSHIP OF DATA.** All material, data, information, and written, graphic or other work produced under this Agreement is subject to the unqualified and unconditional right of the COMMISSION to use, reproduce, publish, display, and make derivative use of all such work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so.

A. Upon completion of all work under this contract, ownership and title to all custom letters, reports, documents, plans, specifications, and estimates and other products produced as part of this Agreement (herein "deliverables") will automatically be vested in the COMMISSION; and no further agreement will be necessary to transfer ownership to the COMMISSION. The CONSULTANT shall furnish the COMMISSION all necessary copies of data needed to complete the review and approval process.

B. 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).

C. The COMMISSION may permit copyrighting reports or other contract products, subject to its rights in Section D below. If copyrights are permitted, the agreement shall provide that the FHWA/FTA and Department 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.

D. If any of the work is subject to copyright, trademark, service mark, or patent, CONSULTANT now grants to the COMMISSION a perpetual, royalty-free, nonexclusive and irrevocable license to use, reproduce, publish, use in the creation of derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense.

E. Any subcontract in excess of $25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.
19. **CONFIDENTIALITY OF DATA.**

A. All financial, statistical, personal, technical, or other data and information relative to COMMISSION’s operations, which are designated confidential by COMMISSION and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by COMMISSION relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or COMMISSION’s actions on the same, except to COMMISSION’s staff, CONSULTANT’s own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by COMMISSION, and receipt of COMMISSION’S written permission.

E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

A. to proceed has been provided by the COMMISSION’s Contract Manager.

20. **AUDIT REVIEW PROCEDURES.**

A. Any dispute concerning a question of fact arising under an interim or post-completion audit of this Agreement that is not disposed of by agreement, shall be reviewed by the COMMISSION’S Contract Manager.

B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the COMMISSION’S Executive Director of unresolved audit issues. The request for review will be submitted in writing. The Executive Director’s determination regarding such dispute shall be final unless the Executive Director determines, in its sole discretion, that the dispute shall be determined by the Board of COMMISSION.

C. Neither the pendency of a dispute nor its consideration by the COMMISSION will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this contract.
21. **SUBCONTRACTING.**

A. Nothing contained in this contract or otherwise, shall create any contractual relation between COMMISSION and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to COMMISSION for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT’s obligation to pay its subconsultant(s) is an independent obligation from COMMISSION’S obligation to make payments to the CONSULTANT.

B. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without prior written authorization by the COMMISSION’S Contract Manager, except that, which is expressly identified in the approved Fee Schedule.

C. CONSULTANT shall pay its subconsultants within seven (7 calendar days from receipt of each payment made to CONSULTANT by COMMISSION.

D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

E. Any substitution of subconsultants must be approved in writing by the COMMISSION’s Contract Manager prior to the start of work by the subconsultant.

F. The CONSULTANT hereby agrees that neither CONSULTANT, nor any firm affiliated with the CONSULTANT, will bid on or enter into any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one which is subject to the control of the same persons through joint-ownership, or otherwise.

G. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this Agreement shall be eligible to bid on or enter into any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

H. Any subcontract in excess of $25,000 entered into as a result of this contract, shall contain all the provisions required by this Agreement to be applicable to those subconsultants.
22. **REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION.** The CONSULTANT warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any COMMISSION employee. For breach or violation of this warranty, COMMISSION shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

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

24. **COMPLETE AGREEMENT.**

A. **AGREEMENT:** The two parties to this Agreement, who are the before named CONSULTANT and the before named COMMISSION, hereby agree that this Agreement constitutes the entire Agreement which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this Agreement as evidenced by the signatures below.

B. **COMMISSION DESIGNEE:** The Executive Director of COMMISSION, or his or her designee, shall have the authority to act for and exercise any of the rights of COMMISSION as set forth in this Agreement subsequent to, and in accordance with the authorization granted by the COMMISSION.

C. **COMPLETE AGREEMENT, INCLUDING ATTACHMENTS.** This Agreement includes all exhibits, attachments, and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the Agreement between COMMISSION and CONSULTANT, and supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other terms or conditions. The COMMISSION’s
waiver of CONSULTANT’s performance of any term(s) or condition(s) of this Agreement shall not be construed as a waiver for any future performance of such term(s) or conditions.

Attachments are:
- Exhibit A: Scope of Services
- Exhibit B: Project Schedule
- Exhibit C: Fee Schedule
- Certificate of workers compensation insurance
- Certificate of liability insurance (should include min. $1M auto, $1M comprehensive or gen liability per occurrence and $2M in aggregate)
- Certificate of professional liability insurance (min $1M)
- W-9 Taxpayer Identification Number and Certification

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

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

1. CONSULTANT REGIONAL

By: ____________________________
   SIGNED
   PRINTED
   DATE: ________________________

2. SANTA CRUZ COUNTY TRANSPORTATION COMMISSION

By: ____________________________
   SIGNED
   PRINTED
   DATE: ________________________

Company Name:__________________________
Address:______________________________
Telephone:___________________________
Email:_______________________________

3. APPROVED AS TO INSURANCE: ____________________________
   FORM: ______________________________________

   RTC Administrative Services Officer
   DATE: ____________________________

4. APPROVED AS TO ____________________________
   COMMISSION Counsel
   DATE: ____________________________