



***Santa Cruz County
Regional Transportation Commission***

--NOTICE--

**REQUEST FOR QUALIFICATIONS (RFQ) to Provide
On-call Services
for
CIVIL AND STRUCTURAL ENGINEERING**

Closing Date: Tuesday August 3, 2021

The Santa Cruz County Regional Transportation Commission (RTC) invites qualified and experienced professional consultants to submit a Statement of Qualifications for professional Engineering Services for the various needs along the rail and trail corridor. Future Task Orders include Engineering Services for the RTC's rail infrastructure repairs including bridges, track, erosion, grade crossings, retaining walls, drainages, preventative and capital maintenance, bridge inspections and analysis, and other tasks required for the preservation of the Santa Cruz Branch Rail Corridor Property.

Interested parties must electronically submit one (1) hard copy plus one (1) digital copy of the Statement of Qualifications for these services to the Santa Cruz County Regional Transportation Commission (SCCRTC) at 1523 Pacific Avenue, Santa Cruz, CA 95060-3911 by **12:00 noon on PST on Tuesday August 3, 2021.** Responses should be submitted in accordance with the instructions set forth in this RFQ.

This notice, along with its enclosures, comprises the Request for Qualifications (RFQ) for this professional service. The RTC reserves the right to amend the RFQ by addendum before the final proposal submittal date. The RFQ and any addenda are available at the RTC website: www.sccrtc.org/about/opportunities/rfp/. Interested parties can also contact Sarah Christensen at info@sccrtc.org for further information or to obtain a copy. Email inquiries relating to this RFQ should include "Engineering Services RFQ" in the subject header.



**Santa Cruz County Regional Transportation
Commission**

1523 Pacific Avenue, Santa Cruz, CA 95060

DATE: July 2, 2021

TO: Interested Consultants

FROM: Sarah Christensen, Engineering & Construction Manager

SUBJECT: RFQ for On-Call Civil and Structural Engineering Services

INVITATION

The Santa Cruz County Regional Transportation Commission (RTC) invites qualified and experienced professional consultants to submit a Statement of Qualifications for professional services to evaluate engineering concerns as they occur and prepare construction documents for repairs along the Santa Cruz Branch Rail Line including bridges, grade crossings, right of way surveys, storm damage, drainage, slope stabilization, retaining walls, and structure inspections.

You are invited to submit a Statement of Qualifications for the referenced services together with a Proposed Cost Outline including direct/indirect costs, equipment/materials, subcontractor costs, and an hourly rate schedule for named individual(s) to complete the project. Please note that this Request for Qualifications is for Engineering Services including civil engineering, structural engineering, and bridge inspections. The contract period for this RFQ is 36 months, with an option to extend an additional two years.

The Statement of Qualifications is due to the Santa Cruz County Regional Transportation Commission (SCCRTC) at 1523 Pacific Avenue, Santa Cruz, CA 95060-3911 **by 12:00 noon on Tuesday August 3, 2021**. Responses to the RFQ received after the date and time specified above will not be considered.

Inquiries relating to this Request for Qualifications shall be submitted to:

Sarah Christensen
Santa Cruz County Regional Transportation Commission
1523 Pacific Avenue, Santa Cruz, CA 95060
831-460-3200 ~ info@sccrtc.org

Email inquiries relating to this Request for Qualifications should include “Engineering Services RFQ” in the subject header.

BACKGROUND

The Santa Cruz County Regional Transportation Commission (RTC) purchased the Santa Cruz Branch Rail Line from Union Pacific Railroad in 2012. The RTC is a state-designated public agency with regional transportation planning and project implementation responsibilities that cross city-county boundaries. The 32-mile Santa Cruz Branch Rail Line is situated along the Monterey Bay on the central coast of California, southwest of Silicon Valley between Davenport and Watsonville.

This is an active rail line with freight and recreational rail service, however the line is currently out of service north of Milepost (MP) 3 in Watsonville. The RTC has an agreement with a shortline railroad operator, Saint Paul & Pacific Railroad (SPPR) for freight and recreational service on the branch line entered into in 2018. The agreement requires the RTC to remedy the deferred maintenance on the branch line by performing initial repairs prior to transferring the portions of the line to SPPR for operations and maintenance in phases.

Santa Cruz County passed Measure D in November of 2016, which included 9 % of the revenue for railroad infrastructure repairs and operations, and 17% for active transportation in the form of the Coastal Rail Trail and branch line corridor maintenance.

Scope of Services, Budget and Schedule

A scope of services detailing the potential on-all tasks associated with this consulting effort is included in this RFQ as *Attachment A*. The on-call contract is expected to begin in August of 2021. The contract will be an on-call master contract with task orders issued for each individual construction management need. Task orders may be actual cost-plus-fixed fee or lump sum. The term of this on-call contract will be 3 years, through 2024. The estimated value of the on-call contract is \$1.3M over the 3 years.

PROJECT DESCRIPTION

The Santa Cruz County Regional Transportation Commission (RTC) is seeking qualified professional consultants to provide civil and structural engineering

services on an as-needed basis for projects along the Santa Cruz Branch Rail corridor, which could be infrastructure repairs, preventative maintenance projects, and coastal rail trail projects. Project budgets will be determined on an as-needed basis as project locations and requirements are determined.

The corridor is currently an active freight line regulated by the Surface Transportation Board (STB) and Federal Railroad Administration (FRA). The long-term goal of the branch corridor is to implement the Coastal Rail Trail and electric passenger rail, however the timeline for electric rail transit is uncertain and remains a longer-term investment. The short term goal of the branch corridor is to preserve the right of way and infrastructure for future use through a preventative maintenance program and infrastructure repairs.

The 32-mile Santa Cruz Branch Rail line has 37 bridges, 100 public and private grade crossings, and approximately 92 drainage cross culverts. The infrastructure preservation needs of the branch line include bridge repairs or replacements, drainage improvements such as repairs or replacements to cross culverts, coastal erosion repair, slope stabilization, retaining walls, grade crossing improvements and repairs, storm-related repairs, and railbed repairs. Additionally, the RTC conducts periodic inspections of bridges, culverts, and retaining walls to identify needed repairs and to comply with Federal Railroad Administration (FRA) requirements.

In 2019 the RTC opted into the California Uniform Public Construction Cost Accounting Act (CUPCCA) which allows staff to procure contractors for the various needs for construction contract values of \$200,000 and under via an informal process. The RTC currently uses BidExpress to procure construction contracts greater than \$200,000 in value.

A copy of the RTC's standard A&E professional services agreement template is included in Attachment B. It is important that the consultant have the capability to work closely with RTC staff. The consultant must be prepared to undertake whatever liaison and meetings are required to satisfy this requirement.

SELECTION PROCESS

The RTC will establish a committee to review the qualifications. Based on the findings of the evaluation committee, this review may be followed by an oral interview between the review committee and the highest ranked firm(s). Based on the recommendations of the review committee, RTC staff will select one consultant to serve the future construction management services needs of the RTC. Upon selection, the on-call consultant contract will be recommended to the RTC Board for approval.

Specific project scopes of work and budgets will be issued on a Task Order basis for projects according to the current billing rates of the consultant. The RTC does not guarantee a specific dollar amount of projects will be contracted with the selected consultants. The RTC reserves the right to accept or reject any and all firms, to waive minor irregularities, and to request additional information at any stage of the evaluation.

The selection process shall be based upon the determination of the most qualified consultant(s). Factors to be considered in selecting the consultant(s) based on statement of qualifications are indicated below:

- Understanding of work to be done & local context – Up to 20 points
- Specialized experience with similar kinds of work – Up to 20 points
- Quality of staff for work to be done, including experience and qualifications of the Project Manager, the team, and the key staff with similar projects – Up to 25 points
- Technical ability in connection with the type of services required and tools available – Up to 25 points
- Past record of performance on contracts with RTC, other government agencies or public bodies, and with private industry, including such factors as control of costs, adherence to RTC requirements, invoicing practices, quality of work, and ability to meet schedules – Up to 10 points

Maximum: 100 points

The review of the statement of qualifications may be followed by an oral interview between the review committee and the highest ranked firm(s). The factors to be considered in selecting the consultant(s) based on oral interviews are indicated below:

- Understanding the Required Scope of Work (up to 30 points), objectives, and RTC's engineering service and inspection needs.
- Management Approach and Staffing Plan (up to 25 points) for performing the scope of services efficiently and effectively within a task order 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.

Maximum: 100 points

PRE-PROPOSAL MEETING:

A pre-proposal meeting will be held on Thursday, July 15, 2021 at 1:30pm via videoconference over ZOOM: <https://us02web.zoom.us/j/84175068242>. 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 www.sccrtc.org.*

QUESTION & ANSWERS, REQUESTS FOR CLARIFICATION OR EXCEPTIONS, ADDENDA

This RFQ and any addenda will be posted on the Santa Cruz County Regional Transportation Commission's website (www.sccrtc.org/consult). Questions and answers regarding the request for qualifications will also be posted on the website. All potential bidders are responsible for checking the website for any addenda to the bid documents. To receive email notifications of addenda to this RFQ, prospective proposers must submit an email request to the Project Manager (info@sccrtc.org) by noon on Friday July 23, 2021.

Any requests for clarification in this Request for Qualifications must be received by the RTC no later than **12 noon, Pacific Standard Time, on Friday July 23, 2021**, to guarantee response or consideration. Responses to questions concerning this Request for Qualifications posed by this deadline will be posted on the RTC's website (www.sccrtc.org/consult).

SUBMITTAL REQUIREMENTS/ FORMAT

All interested firms are required to submit one (1) hard copy plus one (1) digital copy of their Qualifications to perform the requested consulting services in PDF format. The Statement of Qualifications must include the names and qualifications of all personnel to be employed on the contract. The Statement of Qualifications should provide a short description of the firm's experience with projects that relate to the area of expertise. A list of references of past clients for projects related to the area of expertise should be included. The Statement of Qualifications should be no more than 16 pages, excluding resumes, cover letters, and attachments.

A. Project Team

The Statement of Qualifications shall clearly identify a Project Manager and include the names and qualifications of all personnel of the proposed team to be assigned to the contract and a chart representing the proposed organizational structure of the team. The Statement of Qualifications shall demonstrate that the key personnel have the time available to work on the

contract. Resumes may be included as an appendix which do not count toward the 16-page limit.

B. Demonstrated Knowledge

The Statement of Qualifications shall include the assigned project team's demonstrated knowledge of, expertise and experience with providing similar services and completing similar types of contracts.

For **all** submissions, specific expertise should be shown in:

- Managing/Administering the bidding process and construction activities.
- Experience with state and federally funded projects, including compliance and constraints.
- Experience with Caltrans and federal forms, contract administration, invoicing procedures, and audits.
- Experience with U.S. Army Corps of Engineers, California Department of Fish & Wildlife, Coastal Commission, Regional Water Quality Control Board, and other permit compliance.
- Experience with railroad operation and facilities including with regulatory agencies such as the Federal Railroad Administration (FRA) and California Public Utilities Commission (CPUC)
- Experience with railroad engineering, construction, and maintenance requirements and practices including those of the American Railway Engineering and Maintenance-of-Way Association (AREMA)
- Experience with multiuse trail engineering, construction, and maintenance requirements
- Experience with coordination of multiple agencies and jurisdictions (City, County, CPUC, Railroad, Utilities, etc.) and the public.
- Experience with maintaining project schedule and cost effectiveness.
- Experience with addressing local concerns and reaching community consensus.

C. 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. For a typical rail infrastructure repair construction management task order, 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.

D. References

The Statement of Qualifications shall include at least three (3) recent references from past clients for similar types of projects.

E. Current Fee Schedule

A completed [LAPM Exhibit 10-H2](#) and [LAPM Exhibit 10-K](#) shall be submitted in a separate sealed envelope along with the original proposal and copies, and will not be opened by the RTC until the technical review of the proposal has been completed. Do not state your fee/cost for services anywhere in the body of your Statement of Qualifications.

Response Due Date: All documents must be submitted to the Santa Cruz County Regional Transportation Commission at 1523 Pacific Avenue, Santa Cruz, CA 95060-3911 **by 12:00 noon on August 3, 2021.**

PROPOSED SCHEDULE

Friday July 2, 2021	Distribute RFQ
Thursday July 15, 2021, 1:30 PM	Pre-Proposal Meeting via Zoom: https://us02web.zoom.us/j/84175068242
Friday July 23, 2021	Requests for clarification/questions due
Tuesday August 3, 2021	Response to RFQ due from Consultants
Friday August 13, 2021	Interview Top Ranked Consultants
Friday August 20, 2021	Select Top Ranked Consultants for RTC Board Approval
Thursday September 2, 2021	Award Contract

MISCELLANEOUS

A. Modification or Withdrawal of Submittals

Any responses received prior to the date and time specified above for receipt may be withdrawn or modified by written request of the proposer. To be considered, however, the modified Statement of Qualifications must be received by the time and date specified above.

B. Property Rights

All documents, including specific RFQ responses, received within the prescribed deadline become the property of the RTC and all rights to the contents therein become those of the RTC.

C. Confidentiality

Before award of the contract, all submittals will be designated confidential to the extent permitted by the California Public Records Act. After selections are made, 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.

D. Amendments to Request for Qualifications

The RTC reserves the right to amend the Request for Qualifications by addendum before the final submittal date.

E. Non-Commitment of the RTC

This Request for Qualifications does not commit the RTC to award a contract, to pay any costs incurred in the preparation of a Statement of Qualifications for this request, or to procure or contract for services.

All products used or developed in the execution of any contract resulting from this Request for Qualifications will remain in the public domain at the completion of the contract.

F. Conflict of Interest

The prospective consultant shall disclose any financial, business or other relationship with the RTC or its board members that may have an impact upon the outcome of this contract. 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.

G. Nondiscrimination

The prospective consultant must certify compliance with nondiscrimination requirements of the RTC pertaining to the development, implementation and maintenance of a nondiscrimination program. The prospective consultant's signature affixed to and dated on the cover letters shall constitute a certification under penalty of perjury under the laws of the State of California that the proposer has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

H. Final Selection and Protests

The RFP process is considered concluded when notice is sent to all participating consultants indicating which consultants will be recommended for Board approval. The firm recommended is not a final selection and no contract is certain until approved by the RTC board.

Protestants shall submit a detailed written statement of protest to:
Santa Cruz County Regional Transportation Commission

1523 Pacific Avenue
Santa Cruz, CA 95060

no later than two (2) days prior to the Board meeting to enable proper consideration by the RTC board.

QUESTIONS

If you need assistance or have any questions, please contact Sarah Christensen, at (831) 460-3200 or info@scrtc.org.

Enclosed with this Request for Qualifications:

Attachment A	Detailed Scope of Services
Attachment B	RTC Standard Contract Template
Required Forms	Form 1 California Levine Act Statement Form 2 Exceptions to the Contract LAPM Exhibit 10-K Consultant Annual Certification of Indirect Costs and Financial Management System LAPM Exhibit 10-H2 Cost Proposal LAPM Exhibit 10-Q Disclosure of Lobbying Activities

ATTACHMENTS

ATTACHMENT A

Scope of On-Call Civil and Structural Engineering Services

The scope of work for this on-call services contract will vary as the need arises and will be at the discretion of the RTC. Services may include but are not limited to those described below.

GENERAL SCOPE OF WORK

Prospective bidders should assemble a complete team which at a minimum has expertise in, civil, structures, bridge inspection, rail, and environmental services. The team is required to be familiar with the requirements of AREMA, FRA, FHWA, Caltrans District 5 Local Assistance, Santa Cruz County, and local City requirements.

The professional services may include, but not be limited to, the following: land surveying, hydrologic and hydraulic analysis, landscape/grading design, railroad design, roadway design, drainage and flood control design, utility locating and conflict analysis or other similar engineering services, structural design and inspection, and environmental engineering. These services may result in the preparation of engineering reports, public presentations or the preparation of plans, specifications, and estimates suitable for the public bidding process.

The following is a list of the types of consulting services currently anticipated. Bidders must assemble a team which at a minimum has expertise in all of the items listed below:

- Drainage infrastructure analysis and design, including hydrology and hydraulic analysis.
- Land surveying.
- Geotechnical services.
- Grading and slope stabilization design.
- Bridge inspection, load rating, analysis and design.
- Structural analysis and design for retaining walls, box culverts, foundations, etc.
- Drainage culvert design and inspection.
- Trail design.
- Railroad at-grade crossings.
- Environmental services included but not limited to permitting and preparation of technical studies, as well as understanding of California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliance.

- Any necessary design associated with repair of the railroad ties, rails, ballast, and associated controlling equipment. Scope could potentially include accommodations for conversion of use (e.g., from freight to other use, including multiuse trail and/or future passenger rail).
- Track inspections.
- Erosion control and design of Best Management Practices.
- Floodplain analyses.
- Mapping existing utilities and evaluating new/existing utility conflicts.
- Right-of-Way mapping and engineering services.
- Preparation of engineering plans, specifications, and estimates (PS&E) in RTC approved format.
- Design support during construction including attendance at construction meetings, responses to requests for information, review of contract submittals, and design changes during construction.
- Federal Railroad Administration (FRA) compliant bridge and culvert inspections.
- Structural analysis of bridges for the purpose of converting to a different use (ie. Pedestrian/bicycle bridge, passenger rail).

Additional requirements are as follows:

1. The Consultant's Project Manager shall be available for meetings as needed to discuss issues related to task orders.
2. All work shall be performed and delivered in English Standard Units or as required by the RTC.
3. All survey work shall be performed on CCS/NAD 83 horizontal coordinates and use true NAVD 88 vertical controls.

Plans and Maps shall be submitted in the AutoCAD format in use by the RTC at the time of issuance of the task order, point files shall be submitted in ASCII format, and any estimates, schedules, or reports shall be submitted in Microsoft Office format.

All anticipated items of labor, material and equipment not specified in detail that are incidental to or necessary for providing engineering services shall be included in the LAPM Exhibit 10-H.

ATTACHMENT B

CONTRACT No. _____ ARCHITECTURAL & ENGINEERING SERVICES CONTRACT

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 (services/project name). The parties agree as follows:

1. DUTIES.

- A. CONSULTANT agrees to exercise special skill to accomplish the following results: (services/project name and location-if applicable), as specified in Exhibit A: Scope of Services, which by this reference is incorporated herein.
- B. CONSULTANT shall provide the personnel listed below to perform the above-specified services, which persons are hereby designated as key personnel under this Agreement.

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

- C. No person named in paragraph B of this Article or in the Fee Schedule /Cost Proposal (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.
- D. This contract includes the subcontractors and/or subconsultants listed in Exhibit C: Fee Schedule/Cost Proposal.
- E. Except as expressly authorized herein, CONSULTANT's obligations under this CONTRACT 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 CONTRACT 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
- F. CONSULTANT'S PROGRESS REPORTS AND/OR MEETINGS
 - 1) CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for COMMISSION'S CONTRACT Administrator or Project Coordinator 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.

2) The CONSULTANT's Project Manager shall meet with the COMMISSION's Contract Manager, as needed, to discuss progress on the projects.

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/Cost Proposal, dated DATE, attached hereto (Exhibit C) and incorporated by reference. The consideration to be paid to CONSULTANT as pervaded herein shall be for all CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided. If there is any conflict between the approved Fee Schedule/Cost Proposal and this CONTRACT, this CONTRACT shall take precedence.

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Fee Schedule/Cost Proposal (Exhibit C). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this CONTRACT. The CONSULTANT will be reimbursed within thirty (30) days upon receipt by COMMISSION's Contract Manager of itemized invoices in duplicate.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are identified in the Fee Schedule/Cost Proposal (Exhibit C) and in the executed Task Order.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- D. After a project to be performed under this CONTRACT is identified by COMMISSION, COMMISSION will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a COMMISSION Project Manager. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both COMMISSION and CONSULTANT.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's Fee Schedule/Cost Proposal (Exhibit C).

CONSULTANT shall be solely responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payment 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 CONTRACT.

- F. When milestone cost estimates are included in the approved Fee Schedule/Cost Proposal (Exhibit C), CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Manager before exceeding such estimate.
- G. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- H. CONSULTANT shall not commence performance of work or services until this CONTRACT has been approved by COMMISSION, and notification to proceed has been issued by COMMISSION'S Contract Manager. No payment will be made prior to approval or for any work performed prior to approval of this CONTRACT.
- I. A Task Order is of no force or effect until returned to COMMISSION and signed by an authorized representative of COMMISSION. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by COMMISSION.
- J. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this CONTRACT.
- K. The total amount payable by COMMISSION for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by CONTRACT amendment.
- L. If the consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- M. Task Orders may not be used to amend this CONTRACT and may not exceed the scope of work under this Agreement.
- N. The total amount payable by COMMISSION for all Task Orders resulting from this CONTRACT shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this CONTRACT through Task Orders.

3. PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT

The Santa Cruz County Regional Transportation Commission (RTC) shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the Santa Cruz County Regional Transportation Commission (RTC) fails to pay promptly, the RTC shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the RTC shall act in accordance with both of the following:

- a) Each payment request shall be reviewed by the RTC as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

- b) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt.
- c) A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

4. FUNDING REQUIREMENTS

- A. It is mutually understood between the CONSULTANT and COMMISSION that this CONTRACT 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 CONTRACT were executed after that determination was made.
- B. This CONTRACT is valid and enforceable only if sufficient funds are made available to COMMISSION for the purpose of this CONTRACT. In addition, this CONTRACT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, federal or state agency, or COMMISSION governing board that may affect the provisions, terms, or funding of this CONTRACT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this CONTRACT may be amended to reflect any reduction in funds.
- D. COMMISSION has the option to terminate the CONTRACT pursuant to Section 5: Termination, or by mutual agreement to amend the CONTRACT to reflect any reduction of funds.

3. RETENTION OF FUNDS.

- A. No retainage will be held by the Commission from progress payments due to CONSULTANT. CONSULTANTS and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the Commission's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to Page 14 of 32 September 2020 I Local Assistance Procedures Manual EXHBIT 10-R A&E Boilerplate Agreement Language limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

4. TERM.

- A. This CONTRACT shall go into effect on (DATE); contingent upon prior approval by the COMMISSION governing board, and the CONSULTANT shall commence work after notification to proceed by the COMMISSION'S Contract

Manager. The CONTRACT shall end on (DATE), unless earlier terminated or extended by CONTRACT amendment.

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

5. TERMINATION.

- A. This CONTRACT may be terminated by COMMISSION, for cause or without cause provided that COMMISSION gives not less than ten (10) calendar days written notice of its intent to terminate in the event of termination for cause provides and the reasons for termination stated in the notice.
- B. COMMISSION may temporarily suspend this CONTRACT, at no additional cost to COMMISSION provided that CONSULTANT is given written notice of temporary suspension. If COMMISSION gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this CONTRACT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this CONTRACT, CONSULTANT shall not be relieved of liability to the COMMISSION by termination of this CONTRACT for damages sustained by COMMISSION by virtue of any breach of this CONTRACT by CONSULTANT, and COMMISSION may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due to COMMISSION from CONSULTANT is determined.
- D. If COMMISSION terminates this CONTRACT with CONSULTANT, COMMISSION shall pay CONSULTANT the sum due to CONSULTANT under this CONTRACT for services satisfactorily performed 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.
- E. Upon termination, COMMISSION shall be entitled to all CONSULTANT's work produced under this CONTRACT, including, but not limited to, reports, investigations, appraisals, inventories, studies, analysis, drawing and data estimates performed to that date, whether or not complete.

6. INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.

CONSULTANT shall exonerate, indemnify, defend, and hold harmless the COMMISSION its governing body, officers, officials, agents, employees and volunteers from and against:

- A. Any and all claims, demands, costs, or liability arising from or connected with the services provided under this CONTRACT due to willful misconduct or

negligent acts, errors, or omissions of the CONSULTANT, its officers, subconsultants, employees, volunteers, or agents. The CONSULTANT will reimburse COMMISSION for any expenditure, including reasonable attorney's fees, incurred by COMMISSION in defending against claims ultimately determined to be due willful misconduct or to negligent acts, errors, or omissions of the CONSULTANT, its officers, subconsultants, employees, volunteers, or agents; an

- 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, subconsultants employees, volunteers, and agents engaged in the performance of this CONTRACT (including, without limitation, unemployment insurance, social security and payroll tax withholding).

7. **SAFETY.**

- A. The CONSULTANT shall comply with OSHA, Cal-OSHA, and all other regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. The CONSULTANT shall comply with safety instructions issued by the COMMISSION Safety Officer and other COMMISSION representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. If any work might be conducted on the rail line or within the rail line right-of-way: CONSULTANT personnel (officers, employees, volunteers, or agents) and any subcontractors must submit and comply with the "right-of-entry agreement" with COMMISSION and St. Paul & Pacific Railway, LLC (a subsidiary of Progressive Rail, Inc.) SC&MB, or its successor, as applicable, the terms and conditions of which are incorporated herein by this reference, and shall wear hard hats and safety vests at all times while working on the Santa Cruz Branch Rail Line or within the rail line right-of-way.

Pursuant to the authority contained in Section 591 of the Vehicle Code, COMMISSION has determined that such areas within the limits of the project are open to public traffic unless otherwise identified as private property. The CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles

8. **INSURANCE.** CONSULTANT, at its sole cost and expense, for the full term of this CONTRACT, 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 CONTRACT, 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 two million dollars (\$2,000,000) per occurrence, and \$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.
- 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 ____ / ____.
- 5) Railroad Protective Liability Insurance in the minimum amount of two million dollars (\$2,000,000) per occurrence and four million (\$4,000,000) aggregate, if any work is to be conducted within the rail line right-of-way or within fifty (50) feet of the track or Commercial General Liability Insurance coverage that does not exclude work on the rail road and with a minimum limit of two (\$2,000,000) million dollars per occurrence and four (\$4,000,000) million dollars in aggregate.

If CONSULTANT normally carries insurance in an amount greater than the minimum amount required by the COMMISSION for this CONTRACT, that greater amount shall become the minimum required amount of insurance for purposes of this CONTRACT. 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 CONTRACT.

B. Other Insurance Provisions

- 1) If any insurance coverage required in this CONTRACT 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 CONTRACT, and that it shall maintain the required coverage for a period of three (3) years after the expiration of this CONTRACT (hereinafter "POST CONTRACT COVERAGE") and any extensions thereof. CONSULTANT may maintain the required POST CONTRACT COVERAGE post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon POST CONTRACT COVERAGE being both available and reasonably affordable in relation to the coverage provided during the term of this CONTRACT. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy

premium during the term of this CONTRACT in order to purchase prior acts or tail coverage for POST CONTRACT 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 governing body, officials, employees, agents and volunteers, and St. Paul & Pacific Railway, LLC (a subsidiary of Progressive Rail, Inc.), or its successor,, 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 CONTRACT.

- 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 CONTRACT with Certificates of Insurance and endorsements for all required coverages. The Certificates of Insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible. The certificates shall require the carrier to take reasonable action to notify COMMISSION in writing of any material change, cancellation, termination or non-renewal of the coverage at least ten (10) days in advance of the effective date of any such material change, cancellation, termination or non-renewal. 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 notices 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 CONTRACT upon occurrence of such event.
- 6) If any insurance policy of CONSULTANT required by this CONTRACT 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. If CONSULTANT's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this CONTRACT so as to not prevent any of the parties to this CONTRACT from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability.
- 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 CONTRACT, 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 CONTRACT, 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.

- 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 Gove Code 12990 and 2 CCR 8103. CONSULTANT and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

During the performance of this CONTRACT, the CONSULTANT and its subconsultants shall not deny the CONTRACT benefits to any person on the basis of race, color, sex, gender, religious creed, national origin, ancestry, physical disability (including HIV and AIDS status), mental disability, medical condition (e.g., cancer), genetic information, marital status, gender, gender identity, gender expression, age, sexual orientation, military or veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Government. Code §12990 et seq.) and the applicable regulations promulgated thereunder (.2 CCR 11000et seq.), the provisions of Government Code section 11135 to 11139.5, and the regulations of standards adopted by the COMMISSION to implement such article.

- C. 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 CONTRACT.

- D. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.
 - E. The CONSULTANT, with regard to the work performed under this CONTRACT, 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, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
 - F. 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.
 - G. 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.
 - H. In the event of CONSULTANT's non-compliance with the non-discrimination clauses of this CONTRACT or with any of the said rules, regulations or orders the COMMISSION may cancel, terminate or suspend the CONTRACT in whole or in part. CONSULTANT may also be declared ineligible for further agreements with the COMMISSION.
 - I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the COMMISSION components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.
- 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. FEDERAL CERTIFICATIONS AND ASSURANCES.** Contracts subject to RTC- Caltrans MFT Only

A. CONSULTANT and all subcontractors shall comply, as applicable, with the FHWA "Transportation Planning Process Certification" requirements in accordance with 23 CFR 450.334 and the federal transportation act and its successors thereto. It may include but is not limited to:

1. 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart;
2. In nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506 (c) and (d)) and 40 CFR part 93;
3. Title VI of the Civil Rights Act of 1964 and the Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794;
4. Section 1101(b) of the SAFETEA-LU (Pub. L. 109-59) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;
5. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and 49 CFR parts 27, 37, and 38;
6. 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;
7. 23 CFR part 230, regarding the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;
8. The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
9. Section 324 of title 23 U.S.C. regarding the prohibition of discrimination based on gender; and
10. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.

B. CONSULTANT shall also comply with "Certifications and Assurances for FTA Assistance", including "Certifications and Assurances Required of Each Applicant" and the "Lobbying Certification" in compliance with 49 U.S.C. Chapter 53, published annually in the *Federal Register* and found online at http://www.fta.dot.gov/grants/12825_93.html.

The 2013 FTA Certifications includes the following areas under "Assurances Required of Each Applicant: "

1. Authority of Applicant and its Representatives
2. Standard Assurances
3. Intergovernmental Review Assurance
4. Suspension and Debarment Certification
5. U.S. OMB Assurances in SF-424B and SF-424D

13. PROHIBITION OF EXPENDING COMMISSION, STATE, OR FEDERAL FUNDS FOR LOBBYING.

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
1. No state, federal or COMMISSION appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the State Legislature or United States Congress, or any employee of a Member of the Legislature or Congress, in connection with the awarding this CONTRACT or with the extension, continuation, renewal, amendment, or modification of this CONTRACT.
 2. If any funds other than state or federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

14. CONFLICT OF INTEREST.

- A. During the term of this agreement, 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 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 CONTRACT. 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 CONTRACT. CONSULTANT further agrees to complete any statements of economic interest if required by either COMMISSION ordinance or State law.
- C. 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 CONTRACTD. 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.

- D. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on 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.
- E. 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 CONTRACT shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this CONTRACT.

15. 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 CONTRACT, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

16. DEBARMENT AND SUSPENSION CERTIFICATION.

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and 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 the COMMISSION. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

17. INDEPENDENT CONSULTANT STATUS.

A. 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 provided by the COMMISSION. COMMISSION agrees that CONSULTANT shall have the right to control the manner and means of accomplishing the result contracted for herein.

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

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

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

- C. 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, officers, employees, agents, or subconsultants shall not be entitled to any benefits payable to COMMISSION employees, including, but not limited to, healthcare, retirement, and leave benefits.
- D. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from COMMISSION'S obligation to make payments to the CONSULTANT.
- E. COMMISSION is not required to make any deductions or withholds from the compensation payable to CONSULTANT under the provisions of the CONTRACT 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, its governing body, officers, employees, and agents, harmless from any and all claims that may be made against COMMISSION based upon any contention by any third part that an employer-employee relationship exists by reason of this CONTRACT.
- G. Except as expressly authorized herein, CONSULTANT's obligations under this CONTRACT 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 CONTRACT 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.

18. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS.

- A. CONSULTANT agrees that the CONTRACT Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. 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 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 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.
- E. 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.

19. RETENTION OF RECORDS/AUDIT.

- A. For the purpose of determining compliance with Government Code section 8546.7, CONSULTANT, its subconsultants, and COMMISSION shall maintain and make available for inspection all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, 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 three years from the date of final

payment under the CONTRACT. 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. The state, State Auditor, and COMMISSION 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. The Federal Highway Administration (FHWA) or other authorized representative of the federal government shall also have access to the records described in this paragraph, if federal funds are used in this CONTRACT.

20. INSPECTION OF WORK. The CONSULTANT and any subconsultant shall permit the COMMISSION, the STATE, and the FHWA or FTA if federal participating funds are used in this CONTRACT, to review and inspect the project activities and files at all reasonable times during the term of this CONTRACT including review and inspection on a daily basis.

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

22. WORK PRODUCTS/OWNERSHIP OF DATA. All material, data, information, and written, graphic or other work produced under this CONTRACT 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. CONSULTANT shall have no property right therein whatsoever.

- A. Upon completion of all work under this CONTRACT, the COMMISSION shall be entitled to and the CONSULTANT shall deliver to the COMMISSION reports, investigations, appraisals, inventories, studies, analysis, drawing and data estimated performed to that date, whether completed or not, and other such materials as may have been prepared by CONSULTANT in performing this CONTRACT which is not CONSULTANT's privileged information, as defined by law or CONSULTANT's personnel information along with all other property belonging exclusively to the COMMISSION which is in the CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this CONTRACT must be approved in writing by the COMMISSION.
- B. Additionally, it is agreed that the Parties intend this to be an CONTRACT 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 CONTRACT. 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 CONTRACT as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. The COMMISSION may permit copyrighting reports or other contract products, subject to its rights in Section E below. If copyrights are permitted, the agreement shall provide that the COMMISSION 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.
- F. 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.

23. 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 government entity.
- 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. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity other than COMMISSION. 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 COMMISSION or except by court order. If CONSULTANT or any of its officers, employees, or subconsultants does voluntarily provide information in violation of this CONTRACT. CONSULTANT shall indemnify and reimburse COMMISSION for any damages caused by

CONSULTANT releasing the information, including, but not limited to, COMMISSION's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

- 24. NATIONAL LABOR RELATIONS BOARD CERTIFICATION.** In accordance with Public CONTRACT Code Section 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.
- 25. 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 CONTRACT record.
- 26. DRUG-FREE WORKPLACE.** CONSULTANT shall comply with the provisions of Government Code § 8350 *et seq.*, regarding Drug-Free Workplace Certification, and with the U.S. DOT regulations "Drug-Free Workplace Requirements Grants" in 49 CFR Part 29, Subpart F.
- 27. CHANGE IN TERMS.**
- A. This Agreement may be amended or modified only by mutual written agreement of the parties.
 - B. No alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the parties authorized to bind the parties; and nor oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
 - C. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the COMMISSION's Contract Manager.
- 28. DISPUTES.** This CONTRACT shall be construed under the laws of the State of California. Pending final resolution of a dispute hereunder, CONSULTANT shall proceed diligently with the performance of this CONTRACT and shall comply with COMMISSION's instructions.

Prior to either party commencing any legal action under this CONTRACT , the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after thirty (30) 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 disputes, concerning a question of fact arising under this CONTRACT that is not disposed of by agreement shall be decided by a committee consisting of the COMMISSION's Contract Manager and Executive Director, who may consider written or verbal information submitted by the CONSULTANT. The committee's determination regarding such dispute shall be final unless the committee determines, in its sole discretion, that the dispute shall be determined by the Board of COMMISSION.

- B. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by COMMISSION 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 the CONSULTANT from full and timely performance in accordance with the terms of this CONTRACT.

29. 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 CONTRACT.
- 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 CONTRACT in order to resolve the construction claims.

30. 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 and Executive Director
- 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 RTC 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.
- D. CONSULTANT and subconsultants' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a CONTRACT Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the CONTRACT, Fee Schedule/Cost Proposal (Exhibit C) and ICR and related workpapers, 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 Workpaper Review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The CONTRACT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by COMMISSION Contract Manager 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 CONTRACT 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, State, or local governments have access to CPA workpapers, will be considered a breach of CONTRACT terms and cause for termination of the CONTRACT and disallowance of prior reimbursed costs.

- E. CONSULTANT's Fee Schedule/Cost Proposal (Exhibit C) may be subject to a CPA ICRA Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigation (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Fee Schedule/Cost Proposal (Exhibit C) shall be adjusted by the CONSULTANT and approved by the COMMISSION Contract Manager to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Regular 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 CONTRACT terms and cause for termination of the CONTRACT and disallowance of prior reimbursed costs.

- 1) During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI 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 IOAI 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 IOAI.

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 IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three months of the effective date of the management letter. IOAI 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 paragraph E, or if IOAI 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 paragraph 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) IOAI 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) IOAI 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.

31. SUBCONTRACTING.

- A. The CONSULTANT is responsible for performing the work required under the CONTRACT in a manner acceptable to COMMISSION. The CONSULTANT's organization and all associated consultants and subconsultants must be identified in Article 1 of this CONTRACT or the Fee Schedule/Cost Proposal (Exhibit C). If the CONSULTANT wishes to use a subconsultant not specified in this CONTRACT or Exhibit C, prior written approval must be obtained from the local agency. The subcontract must contain all required provisions of this CONTRACT. All subawards must include adequate oversight, management, and administration of engineering and design related consultant services and be administered in accordance with State laws and procedures specified in 23 U.S.C.106(g)(4) and 2 CFR 200.331.
- B. 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.

- C. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this CONTRACT shall be subcontracted without prior written authorization by the COMMISSION'S Contract Manager, except that, which is expressly identified in the approved Fee Schedule/Cost Proposal (Exhibit C).
- D. CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

- E. 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 CONTRACT 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.

32. EQUIPMENT PURCHASE.

- A. Prior authorization in writing, by COMMISSION's Contract Manager shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$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 Fee Schedule/Cost Proposal (Exhibit C) and exceeding \$5,000 with prior authorization by COMMISSION's Contract Manager, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased as a result of this CONTRACT 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 \$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 CONTRACT, or if the CONTRACT 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 \$5,000 is credited to the project.

33. STATE PREVAILING WAGE RATES.

- A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work, as may be amended.
- B. No CONSULTANT or subconsultant may be awarded a contract 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 the contract, including any subsequent amendments.
- C. 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 Determination applicable to work under this CONTRACT are available and on file with the Department of Transportation' Regional/District Labor Compliance Officer. (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this CONTRACT 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.

D. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <https://www.dir.ca.gov/>.

E. 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 or other party given the right to inspect the payroll records under state law. 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, but shall be available upon request made through COMMISSION or the Department of Industrial Relations.. The CONSULTANT is required to forward any requests for certified payrolls

to the COMMISSION Contract Administrator by both email and U.S. mail no later than 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. 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.

F. 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 Manager.

G. 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 CONTRACT 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 CONTRACT.

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 of the subconsultant to 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 CONTRACT 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 CONTRACT 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.

H. 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 CONTRACT 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.

I. Employment of Apprentices

1. Where either the CONTRACT or the subcontract 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. CONSULTANTS 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 CONTRACT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

E. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

35. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION. The CONSULTANT warrants that this CONTRACT 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 CONTRACT 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.

36. BROKERAGE OR OTHER FEES. CONSULTANT warrants that no person or selling agency has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding, for a commission, percentage, brokerage or contingent, excepting bona fide employees or bona fide commercial or selling

agencies maintained by the CONSULTANT for the purpose of securing business. . 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.”

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

CONSULTANT:

_____ (CONSULTANT)
_____, Project Manager

_____ (EMAIL)_____

COMMISSION:

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

38. FORCE MAJEURE

Neither COMMISSION nor CONSULTANT will be liable for any breach or failure to perform under this CONTRACT or any other documents incorporated by reference herein if such breach or failure to perform is due to acts beyond the reasonable control of such party, which include by way of illustration, but not limitation, acts of God or public enemy, acts of federal, state, or local government, either in its sovereign or contractual capacity, fire, floods, epidemics and quarantines, civil disobedience, strikes, lock-outs, freight embargoes, or severe weather provided, however, that party which has been so affected will promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) therefore. The party claiming force majeure shall promptly notify the other party of the termination of the event and shall resume its performance under this CONTRACT immediately upon the cessation of such cause(s). During the period that the performance by one of the parties of its obligations under this CONTRACT has been suspended because of an event of force majeure, the other party may likewise suspend the performance of its obligations under this CONTRACT to the extent that the suspension is reasonable.

39. COMPLETE CONTRACT.

A. CONTRACT: The two parties to this CONTRACT, who are the before named CONSULTANT and the before named COMMISSION, hereby agree that this CONTRACT constitutes the entire CONTRACT 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 CONTRACT 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 CONTRACT subsequent to, and in accordance with the authorization granted by the COMMISSION.
- C. COMPLETE AGREEMENT, INCLUDING ATTACHMENTS. This CONTRACT 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 CONTRACT 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 CONTRACT 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 CONTRACT shall not be construed as a waiver for any future performance of such term(s) or conditions(s).

Attachments are:

- Exhibit A: Scope of Services
- Exhibit B: Fee Schedule/Cost Proposal (Exhibit 10-H)
- Exhibit C: Consultant Certification of Contract Costs and Financial Management System (Exhibit 10-K)

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

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

1. CONSULTANT

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

By: _____
 SIGNED _____
 PRINTED _____
 DATE: _____

By: _____
 SIGNED _____
 PRINTED _____
 DATE: _____

Company Name: _____
 Address: _____
 Telephone:() _____
 Fax: () _____
 Email: _____

3. APPROVED AS TO INSURANCE:

4. APPROVED AS TO FORM:

RTC Administrative Services Officer

COMMISSION Counsel

DATE: _____

DATE: _____

DISTRIBUTION:

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

FORMS

Form 1: California Levine Act Statement

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the twelve months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

As of May 2021, the Santa Cruz County Regional Transportation Commission’s members are:

Jacques Bertrand, City of Capitola
Sandy Brown, City of Santa Cruz
Greg Caput, County of Santa Cruz
Ryan Coonerty, County of Santa Cruz
Zach Friend, County of Santa Cruz
Aurelio Gonzalez, Santa Cruz METRO

Randy Johnson, City of Scotts Valley
Manu Koenig, County of Santa Cruz
Bruce McPherson, County of Santa Cruz
Eduardo Montesino, City of Watsonville
Kristen Petersen, Santa Cruz METRO
Mike Rotkin, Santa Cruz METRO

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any RTC commissioner in the 12 months preceding the date of the issuance of this request for qualifications?

YES NO

If yes, please identify the commissioner(s): _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any RTC commissioners in the three months following the award of the contract?
3. YES NO
4. If yes, please identify the commissioner:

Answering yes to either of the two questions above does not preclude RTC from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

Date

(signature of authorized official)

(type or write appropriate name, title)

Form 2: Exceptions to the Contract

This form shall include any exceptions the Respondent takes to the “RTC Standard Contract” included as *Attachment B* of this RFQ which includes compensation, invoicing, payment, indemnity, and insurance requirements. If proposer takes no exceptions, state “*Proposer takes no exceptions to the RFQ requirements.*”

Form 1: California Levine Act Statement

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the twelve months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

The Regional Transportation Commission’s Commissioners, as of May 2021, include:

Jacques Bertrand, City of Capitola
Kristen Petersen, City of Capitola
Sandy Brown, City of Santa Cruz
Greg Caput, County of Santa Cruz
Aurelio Gonzalez, City of Watsonville
Ryan Coonerty, County of Santa Cruz

Eduardo Montesino, City of Watsonville
Zach Friend, County of Santa Cruz
Randy Johnson, City of Scotts Valley
Manu Koenig, County of Santa Cruz
Bruce McPherson, County of Santa Cruz
Mike Rotkin, Santa Cruz Metro

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YES NO

If yes, please identify the commissioner: _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any RTC commissioners in the three months following the award of the contract?

YES NO

If yes, please identify the commissioner: _____

Answering yes to either of the two questions above does not preclude RTC from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

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(signature of authorized official)

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