



CONTRA COSTA TRANSPORTATION AUTHORITY
MEASURE C/MEASURE J PROGRAM

CONSULTANT AGREEMENT NO. XXX

CONSULTANT: Firm Name

SCOPE OF SERVICES: Consultant Support for text here

EFFECTIVE DATE: Date

AGREEMENT

THIS CONSULTANT AGREEMENT (“Agreement”), entered into as of the [Date], is between the CONTRA COSTA TRANSPORTATION AUTHORITY, a local transportation authority created and administered pursuant to Division 19 of the California Public Utilities Code, (“AUTHORITY”), having its principal office at 2999 Oak Road, Suite 100, Walnut Creek, California 94597, and [Firm Name], a California Corporation, having its principal place of business at [Address] (“CONSULTANT”), which parties hereby agree that the services specified herein shall be performed by CONSULTANT in accordance with the provisions of the Agreement which consists of the following:

Agreement

Exhibit A, General Conditions

Exhibit B, Scope of Services

Exhibit C, Milestone Schedule

Exhibit D, Compensation, Invoicing and Payment

Exhibit E, Work as to Which Consultant Retains Ownership

Exhibits A, B, C, D, and E are by this reference incorporated herein as if fully set forth and made a part hereof.

- I. **SERVICES TO BE PERFORMED:** Subject to the terms and conditions hereof, CONSULTANT shall furnish all technical and professional services including all materials, tools, supplies, equipment, transportation, management and

supervision, and shall perform all operations necessary and required to satisfactorily perform the services as set forth in Exhibit B, Scope of Services.

II. TERM OF THE AGREEMENT: Subject to the limitation of the Total Maximum Value of the Agreement, and consistent with Exhibit C, Milestone Schedule, unless terminated earlier pursuant to Section 13 of the General Conditions, the term of the Agreement shall be from [Date] through the date of receipt by the AUTHORITY of a fully executed Release and Certificate of Final Payment (Attachment 1 to Exhibit D hereto).

III. COMPENSATION: As full consideration for the satisfactory performance and completion by CONSULTANT of this Agreement, AUTHORITY shall pay to CONSULTANT compensation as set forth in Exhibit D, Compensation, Invoicing and Payment. Total compensation for the Agreement shall not exceed the following:

Base Work	[Amount]	Maximum
Extra Work	\$0	Maximum
Total Agreement Value	[Amount]	Maximum

Extra Work must be authorized in accordance with Section 18.4 of Exhibit A, General Conditions. No additional compensation will be paid without a written amendment to the Agreement.

In witness whereof, the parties hereto have executed this Agreement as of the day and year above written.

CONSULTANT

By:

[Name]

[Title]

CONTRA COSTA TRANSPORTATION AUTHORITY

David E. Hudson

Chair

Attest:

By:

Tarienne Grover

Clerk of the Board

Approved as to Form:

By:

Malathy Subramanian

Legal Counsel



CONTRA COSTA TRANSPORTATION AUTHORITY
AGREEMENT NO. [XXX]
[FIRM NAME]

Exhibit A

GENERAL CONDITIONS

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CONTRA COSTA TRANSPORTATION AUTHORITY
AGREEMENT NO. [XXX]
[FIRM NAME]

EXHIBIT A

GENERAL CONDITIONS

For the work and services set forth in Exhibit B, AUTHORITY is responsible for the selection of CONSULTANT, and the administration of the Agreement. CONSULTANT's personnel performing services related to this phase of the Project shall perform such services as directed by AUTHORITY.

1. ENTIRE AGREEMENT

The Agreement, including the Exhibits hereto, constitutes the entire agreement between AUTHORITY and CONSULTANT relating to the subject matter hereof and supersedes any previous agreements or understandings.

2. DEFINITIONS

- 2.1 "AUTHORITY" means Contra Costa Transportation Authority and all of its authorized representatives acting in their professional and technical capacities.
- 2.2 "CALTRANS" means the State of California Department of Transportation and all of its authorized representatives acting in their professional and technical capacities.
- 2.3 "CONSULTANT" means [Firm], his, hers or its employees, authorized representatives, successors, and permitted assigns.
- 2.4 "FHWA" means the U.S. Department of Transportation, Federal Highway Administration and all of its authorized representatives acting in their professional and technical capacities

- 2.5 "Measure C" means the Ordinance and Expenditure Plan adopted by AUTHORITY and approved by the voters of Contra Costa County in November 1988.
- 2.6 "Measure "J" means the Ordinance and Expenditure Plan adopted by the AUTHORITY and approved by the voters of Contra Costa County in November 2004.
- 2.7 "Project" means that project or program in connection with which the Services are to be performed as described in Exhibit B, Scope of Services.
- 2.8 "Services" means all the professional, technical, and administrative services and responsibilities to be performed by CONSULTANT as specified, stated, indicated or implied in this Agreement.
- 2.9 "US DOT" means the United States Department of Transportation and all of its authorized representatives acting in their professional and technical capacity.

3. INDEPENDENT CONTRACTOR

CONSULTANT shall act as an independent contractor and not as the agent or employee of AUTHORITY in performing this Agreement.

4. LAWS AND REGULATIONS

- 4.1 CONSULTANT and its employees, agents and subcontractors performing the Services hereunder shall at all times comply with all applicable laws, ordinances, statutes and regulations in effect at the time Services under this Agreement are performed.
- 4.2 CONSULTANT shall indemnify and hold harmless AUTHORITY from and against any and all claims or expenses caused or occasioned directly or indirectly by its failure to so comply.

5. AUDITS, REPORTS, AND RETENTION OF RECORDS

- 5.1 CONSULTANT shall submit progress reports monthly. The report should be sufficiently detailed for AUTHORITY's Authorized Representative 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. CONSULTANT's Authorized Representative shall meet with AUTHORITY's Authorized Representative, as needed, to discuss progress on the Project.

- 5.2 For the purposes of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7; CONSULTANT, subcontractors, and AUTHORITY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including, but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the period of the Agreement and for three (3) years from the date of final payment under the Agreement. The state, the State Auditor, AUTHORITY, FHWA, or any duly authorized representative of the federal government shall have access to any books, records, and documents of CONSULTANT that are pertinent to the Agreement for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

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

- 5.3 AUTHORITY shall have the right to request a compliance audit in accordance with CCTA Resolution No. 93-02-A, as revised.

6. ASSIGNMENT AND SUBCONTRACTS

- 6.1 CONSULTANT shall not assign this Agreement or subcontract any part of the Services without the prior written consent of AUTHORITY.
- 6.2 An assignment or subcontractor shall neither obligate AUTHORITY beyond the obligations and liabilities laid down in this Agreement nor relieve CONSULTANT from any obligation or liability under this Agreement.

- 6.3 CONSULTANT shall include in all subcontracts under this Agreement all relevant provisions of the Agreement which are necessary to fulfill CONSULTANT's obligations hereunder.
- 6.4 If so requested by AUTHORITY, copies of all reimbursable subcontracts shall be provided to AUTHORITY.

7. AUTHORIZED REPRESENTATIVES AND NOTICES

- 7.1 AUTHORITY and CONSULTANT shall each designate, in writing, an Authorized Representative who has authority to act on its behalf with respect to this Agreement.
- 7.2 Written notification to the other party shall be provided, in advance, of changes in name or address of such Authorized Representatives.
- 7.3 Notices provided for under this Agreement shall be in writing, and shall be served on the Authorized Representative of the receiving party, either personally at the party's offices, or by registered mail to its office address.
- 7.4 AUTHORITY hereby designates as its Authorized Representative the [Title], whose name and address are as follows:

[Name of Authorized Representative]
Contra Costa Transportation Authority
2999 Oak Road, Suite 100
Walnut Creek, CA 94597

- 7.5 CONSULTANT hereby designates as its Authorized Representative the Principal, whose name and address are as follows:

[Name of Authorized Representative]
[Firm]
[Address 1]
[City, State, ZipCode]

8. INDEMNITY

CONSULTANT shall indemnify and hold AUTHORITY free and harmless from any and all claims, demands, causes of actions, costs, expenses, liabilities, losses,

damages or injuries, in law or equity, to property or persons, to the extent arising out of any negligent acts, recklessness or willful misconduct of CONSULTANT in connection with the performance of the Services under this Agreement. CONSULTANT will reimburse AUTHORITY for any and all legal expenses and costs including attorney's fees incurred by AUTHORITY in connection therewith or in enforcing the indemnity herein provided. This section shall survive termination of this Agreement.

9. INSURANCE

9.1 CONSULTANT shall maintain the following insurance in force during the entire term of this Agreement, and in the case of Commercial General Liability Insurance and Professional Liability Insurance for at least five years after the conclusion of all services provided by CONSULTANT pursuant to this Agreement:

9.1.1 **Workers' Compensation Insurance** covering CONSULTANT's employees in accordance with statutory requirements of all jurisdiction(s) in which any and all Services are being performed, and Employer's Liability Insurance in the amount of \$1,000,000 per occurrence for injuries incurred in providing services under this Agreement.

9.1.2 **Comprehensive or Commercial General Liability Insurance** including contractual liability, premises and operations, personal injury, completed operations, and independent contractors liability, with limits of not less than \$3,000,000 each occurrence for bodily injury and not less than \$2,000,000 each occurrence for property damage.

A combined single limit policy is acceptable provided the combined single limit is not less than \$3,000,000. The policy shall contain an aggregate limit not less than \$6,000,000. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy with terms at least as broad as the primary policy.

This policy shall conform to or include the following:

9.1.2.1 A provision or endorsement naming AUTHORITY, its officials, employees, and successors in interest as additional insureds with respect to the liability arising out of the performance of the Services by CONSULTANT under this Agreement, including completed operations coverage.

- 9.1.2.2 Provisions that the insurance is primary insurance with respect to AUTHORITY, its officials, employees, and successors in interest. Any insurance or self-insurance maintained by AUTHORITY, its officials, employees, or successors in interest shall be excess of CONSULTANT's insurance and shall not contribute with it.
- 9.1.2.3 A waiver of subrogation clause.
- 9.1.2.4 Provisions or endorsements stating that the coverage contains no special limitations on the scope of protection afforded to AUTHORITY, its officials, employees, or successors in interest.
- 9.1.2.5 Provisions or endorsements stating that insurance shall apply separately to each insured against whom claim is made or suit is brought, subject to the limits of the insurer's liability.
- 9.1.2.6 Coverage for use of watercraft, where appropriate.
- 9.1.3 **Automobile Liability Insurance** covering owned, non-owned, uninsured motorists, leased and hired vehicles with limits not less than \$1,000,000 each person and \$1,000,000 each occurrence for bodily injury, and \$1,000,000 each occurrence for property damage. A combined single limit of not less than \$2,000,000 will meet this requirement. AUTHORITY shall be added by CONSULTANT as an additional insured on this policy. CONSULTANT'S insurance policy shall be primary insurance with respect to the AUTHORITY and its employees, agents, officers and directors and any insurance maintained by AUTHORITY shall be excess of CONSULTANT'S insurance.
- 9.1.4 **Professional Liability Insurance** (covering errors and omissions), with limits not less than \$2,000,000 per claim and a deductible not to exceed \$100,000, and a retroactive date no later than the beginning date of this Agreement as shown on Page 1 of this Agreement.

Subconsultants providing professional services under this Agreement shall be added to CONSULTANT's policy as additional insureds, or shall provide evidence of their own professional liability insurance which is acceptable to AUTHORITY's Executive Director. Subconsultants may increase the deductible, subject to written approval by AUTHORITY.

- 9.2 All policies shall be issued by insurance companies which are licensed carriers in the State of California and maintain a Secure A.M. Best's rating of "A-" or higher unless otherwise approved by AUTHORITY.
- 9.3 Prior to commencing Services under this Agreement, CONSULTANT shall furnish to AUTHORITY a copy of each policy of insurance required by this Agreement. Such policies shall provide that not less than thirty (30) calendar days advance notice in writing will be given to AUTHORITY prior to cancellation, termination, or material alteration of said policies of insurance, except 10 calendar days in the event of non-payment of premium.
- 9.4 The requirements contained herein as to types and limits of insurance to be maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under this Agreement.

10. NONDISCRIMINATION AND AFFIRMATIVE ACTION

- 10.1 In connection with the execution of this Agreement, CONSULTANT shall not discriminate against any employee, or applicant for employment because of gender, race, religion, national origin, color, ancestry, age, marital status, medical condition, pregnancy, or physical disability.
- 10.2 CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (California Government Code, Section 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated herein by reference and made a part hereof as if set forth in full.
- 10.3 CONSULTANT shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement.
- 10.4 CONSULTANT shall comply with Title VI of the federal Civil Rights Act of 1964, as amended. Accordingly, 49 CFR Part 21 and 23 CFR 710.405(b)

shall apply to the extent that federal financial assistance is provided for the Project.

- 10.5 CONSULTANT shall include the provisions of this Section 10 in all agreements with subconsultants performing Services required under this Agreement.
- 10.6 CONSULTANT'S signature, affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has and will continue to comply with the provisions of this Section 10 throughout the term of this Agreement and any extensions hereof.

11. NONWAIVER

Failure of AUTHORITY to insist upon strict performance of any terms or conditions of this Agreement, or failure or delay in exercising any rights or remedies provided herein or by law, or failure to properly notify CONSULTANT in the event of breach, or the acceptance of or payment for any Services hereunder shall not release CONSULTANT from the terms, conditions, representations or obligations of this Agreement applicable to it, and shall not be deemed a waiver of any right of AUTHORITY to insist upon strict performance hereof or upon any of its rights or remedies as to any prior or subsequent default hereunder.

12. TERMINATION AND SUSPENSION

- 12.1 AUTHORITY may, upon ten (10) days written notice to CONSULTANT, terminate this Agreement or suspend performance hereunder, in whole or in part at any time, either for AUTHORITY's convenience or for the default or breach of CONSULTANT.
- 12.2 In the event of termination, all data, plans, specifications, reports, estimates, summaries, and such other information and materials as may have been prepared, developed or accumulated by CONSULTANT and its assigned employees in performing this Agreement which are the property of AUTHORITY shall, in the manner and to the extent determined by AUTHORITY, be delivered to AUTHORITY.

12.3 If the termination or suspension is for the convenience of AUTHORITY, an equitable adjustment in compensation may be made by agreement between AUTHORITY and CONSULTANT, but no amount shall be paid for anticipated profit or unperformed Services.

13. SURVIVAL

The rights and obligations of the parties which by their nature survive termination or completion of the Services covered by this Agreement, including but not limited to those set forth in Sections entitled (i) PERFORMANCE OF THE SERVICES AND COMPENSATION; (ii) AUDITS, REPORTS AND RETENTION OF RECORDS; (iii) INDEMNITY; (iv) TERMINATION AND SUSPENSION, (v) CONFIDENTIALITY AND PUBLICATION, (vi) OWNERSHIP OF DRAWINGS AND DATA, and (vii) DISPUTES shall remain in full force and effect after termination or completion.

14. PERFORMANCE OF THE SERVICES AND COMPENSATION

14.1 CONSULTANT represents that it has the necessary experience, and is properly qualified, registered, licensed, equipped, organized and financed to perform the Services under this Agreement.

14.2 CONSULTANT shall perform the Services under this Agreement with that degree of skill and judgment normally exercised by professional firms performing services of a similar nature. CONSULTANT shall at its own expense promptly re-perform any services which fail to meet the above standard, provided that such re-performance shall not relieve CONSULTANT from any liability or obligation hereunder.

14.3 For satisfactory performance of the Services, AUTHORITY will compensate CONSULTANT in the manner and at the times specified in Exhibit D, Compensation, Invoicing and Payment.

15. FORCE MAJEURE

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such an obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party.

16. SEVERABILITY

In the event that any of the provisions or applications thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, AUTHORITY and CONSULTANT shall negotiate an equitable adjustment in the provisions of the Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions or portions or applications thereof, shall not be affected thereby.

17. CHANGES AND EXTRA WORK

- 17.1 When changes in the Services are required by AUTHORITY or requested by CONSULTANT, CONSULTANT shall promptly estimate their effect on the cost of the Services, and on its schedule, and so notify AUTHORITY.
- 17.2 No change shall be implemented by CONSULTANT unless it is approved by AUTHORITY in writing and CONSULTANT has received notification from AUTHORITY to proceed. Unless otherwise agreed to in writing, all provisions of this Agreement shall apply to all changes in the Services.
- 17.3 If AUTHORITY determines that a change materially affects the total value or time of performance of this Agreement, CONSULTANT and AUTHORITY will mutually agree in writing to an equitable adjustment.
- 17.4 AUTHORITY may request Extra Work to be performed by CONSULTANT. Extra Work is defined as work which was not authorized in the original Agreement, and is, subsequent to the execution of this Agreement by all parties hereto, determined by AUTHORITY to be necessary for the Project. Upon receipt of an Extra Work authorization from AUTHORITY's Authorized Representative, CONSULTANT shall continue performance of the Services as revised by the authorization. Adjustments to CONSULTANT's compensation due to authorized Extra Work shall be made only within the Total Maximum Value of the Agreement.
- 17.5 If AUTHORITY determines that revisions to the Scope of Services, Milestone Schedule, Compensation, or other parts of the Agreement are necessary, they shall be mutually agreed upon and incorporated herein through the execution of written amendments to this Agreement.

18. CONFIDENTIALITY AND PUBLICITY

- 18.1 CONSULTANT shall not disclose to third parties, or disclose or use for any purpose other than performance of the Services, without the written consent of AUTHORITY, any information provided to CONSULTANT by AUTHORITY in connection with performance of this Agreement, or any information developed or obtained by CONSULTANT in the performance of this Agreement unless (1) the information is known to CONSULTANT prior to obtaining same from AUTHORITY or performing Services under this Agreement; (2) the information is, at the time of disclosure by CONSULTANT, then in the public domain; or (3) the information is obtained by or from a third party who did not receive same, directly or indirectly, from CALTRANS or AUTHORITY, and who has no obligation of confidentiality with respect thereto.
- 18.2 CONSULTANT shall not use AUTHORITY or Measure C or Measure J name, logo or insignia, photographs of the Program, or any other publicity pertaining to the Program in any medium without the express written consent of AUTHORITY, which consent shall not be unreasonably withheld.
- 18.3 CONSULTANT shall not make public announcements, or issue publicity or press releases related to its Services under this Agreement without prior approval from AUTHORITY.
- 18.4 Notwithstanding the foregoing, CONSULTANT shall have the right to make an appropriate response without the approval of AUTHORITY, but having due regard for its interests, in the event the news media publishes information regarding services provided hereunder which negatively affect CONSULTANT's professional, financial or legal interests.

19. OWNERSHIP OF DRAWINGS AND DATA

- 19.1 Upon completion of all work under this Agreement, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in AUTHORITY; and no further agreement will be necessary to transfer ownership to AUTHORITY. CONSULTANT shall furnish AUTHORITY all necessary copies of data needed to complete the review and approval process.

- 19.2 CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with, the modification, or misuse by AUTHORITY of the machine-readable information and data provided by CONSULTANT under this Agreement; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with, any use by AUTHORITY of the Project documentation on other projects; for additions to this Project, or for the completion of this Project by others, except only such use as may be authorized in writing by CONSULTANT.
- 19.3 AUTHORITY may permit copyrighting reports or other Agreement products. If copyrights are permitted; the Agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use; and to authorize others to use, the work for government purposes.
- 19.4 Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Section.

20. PROHIBITED INTEREST

- 20.1 **Disclosure.** CONSULTANT shall disclose any financial, business, or other relationship with AUTHORITY that may have an impact upon the outcome of this Agreement, or any ensuring AUTHORITY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement.
- 20.2 **Solicitation.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, AUTHORITY shall have the right to rescind the Agreement without liability.
- 20.3 **Conflict of Interest.** CONSULTANT hereby certifies that it does not now have, nor shall it acquire, any financial or business interest that would conflict with the performance of services under this Agreement. CONSULTANT agrees that, for the term of the Agreement, no member, officer or employee of a public body within Contra Costa, or member or

delegate to the Congress of the United States, during the individual's tenure and for one (1) year thereafter, shall have any direct interest in the Agreement, or in any direct or material benefit arising therefrom.

- 20.4 **Conflict of Employment.** CONSULTANT shall not retain, compensate or employ personnel who are concurrently employees of AUTHORITY during the performance of this Agreement. CONSULTANT shall not hire personnel to work on any aspect of this Agreement who have been employed by AUTHORITY at any time during the one (1) year period preceding the date of this Agreement if such personnel have participated in securing this or other Agreements between CONSULTANT and AUTHORITY.
- 20.5 Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Section.

21. SOFTWARE

- 21.1 As between AUTHORITY and CONSULTANT, except as set forth below in this Section 22, all right, title, and interest, including copyright interests and any other intellectual property, in and to the software and any other programs, systems, data, or materials produced or provided by CONSULTANT, alone or in combination with AUTHORITY and/or its employees, under this Agreement shall be the property of AUTHORITY. CONSULTANT agrees that, except as otherwise provided in Sections 22.2 or 22.3 hereof, any contribution by CONSULTANT or its employees to the creation of such works shall, upon their creation, be owned exclusively by AUTHORITY. To the extent that any such works may not be considered works made for hire for AUTHORITY under applicable law, CONSULTANT agrees to assign and, upon creation, automatically assigns to AUTHORITY the ownership of such works, including copyright interests and any other intellectual property therein, without the necessity of any further consideration.
- 21.2 Notwithstanding Section 22.1, CONSULTANT hereby reserves and retains ownership of the works identified in Exhibit E attached hereto, which CONSULTANT created before entering into this Agreement. With respect to such works, and without further charge, AUTHORITY shall have a nonexclusive license to use such works in machine-readable form throughout AUTHORITY'S organization. Pursuant to such license, AUTHORITY may also modify and make additional copies of such works

for internal use and installation by AUTHORITY. CONSULTANT shall also make available the source code version of such works, as requested by AUTHORITY, for support, updating, special applications and maintenance purposes, provided that the use and handling of source code shall be subject to strict confidentiality procedures. AUTHORITY is cautioned against making unreviewed changes to such works that could disrupt or impair the functioning of the software.

- 21.3 It is mutually acknowledged that, during the normal course of its dealings with AUTHORITY and the software under this Agreement, CONSULTANT and its personnel and agents may become acquainted with ideas, concepts, know-how, methods, techniques, processes, skills, and adaptations pertaining to the software, including those that AUTHORITY considers to be proprietary or secret. Notwithstanding anything in this Agreement to the contrary, and regardless of any termination of this Agreement, CONSULTANT shall be entitled to use, disclose, and otherwise employ any ideas, concepts, know-how, methods, techniques, processes, and skills, and adaptations, including generalized features of the sequence, structure, and organization of any works of authorship, in conducting its business (including providing services or creating programming or materials for other customers), and AUTHORITY shall not assert against CONSULTANT or its personnel any prohibition or restraint from so doing.
- 21.4 AUTHORITY's interest in and obligation with respect to any programming, materials, or data to be obtained from third-party vendors, regardless of whether obtained with the assistance of CONSULTANT, shall be determined in accordance with the agreements and policies of such vendors.

22. FUNDING REQUIREMENTS

- 22.1 It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- 22.2 This Agreement is valid and enforceable only, if sufficient funds are made available to AUTHORITY for the purpose of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations,

conditions, or any statute enacted by the Congress, State Legislature or AUTHORITY's governing board that may affect the provisions, terms, or funding of this Agreement in any manner.

- 22.3 It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds.
- 22.4 AUTHORITY has the option to void the Agreement under Section 13 hereof, or by mutual agreement to amend the Agreement to reflect any reduction of funds.

23. DISPUTES

- 23.1 Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of AUTHORITY's Authorized Representative and its designated personnel, who may consider written or verbal information submitted by CONSULTANT.
- 23.2 Not later than thirty (30) days after completion of all work under the Agreement, CONSULTANT may request review by AUTHORITY's governing board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- 23.3 If any claim or dispute, other than audit, is not resolved pursuant to Sections 25.1 or 25.2 above, the AUTHORITY and CONSULTANT shall agree to a method of non-binding, alternative dispute resolution, including, but limited to, mediation or non-judicial arbitration to handle the issue. The parties shall have ten (10) business days from the date of written notice from one party to the other party to submit the matter to mediation or non-binding arbitration to seek to resolve the dispute. Such mediator or arbitrator shall have thirty (30) days from the date of his or her appointment to resolve the matter to the satisfaction of the parties. If the mediator or arbitrator is unable to bring the parties to an agreement within such thirty (30)-day period, the matter shall be submitted to binding arbitration.
- 23.4 The existence of a dispute shall not excuse CONSULTANT or the AUTHORITY from continued full and timely performance as required by this Agreement.

24. SUBCONTRACTING AND PROMPT PAYMENT

- 24.1 Nothing contained in this Agreement or otherwise, shall create any contractual relationship between AUTHORITY and any subcontractors, and no subcontract shall relieve CONSULTANT of his/her/its responsibilities and obligations hereunder. CONSULTANT agrees to be fully responsible to AUTHORITY for the acts and omissions of its subcontractors 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 subcontractors is an independent obligation from AUTHORITY's obligation to make payments to CONSULTANT.
- 24.2 CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by AUTHORITY's Authorized Representative.
- 24.3 Any substitution of subcontractors must be approved in writing by AUTHORITY's Authorized Representative in advance of assigning work to a substitute subcontractor.
- 24.4 CONSULTANT shall pay its subcontractors within thirty (30) calendar days from receipt of each payment made to CONSULTANT by AUTHORITY.
- 24.5 No retainage will be withheld by AUTHORITY from progress payments due CONSULTANT. Retainage by CONSULTANT or subcontractors is prohibited, and no retainage will be held by CONSULTANT from progress due subcontractors. Any violation of this provision shall subject the violating CONSULTANT or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subcontractors in the event of a dispute involving late payment or nonpayment by CONSULTANT or deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to DBE and non-DBE CONSULTANT and subcontractors.

24.6 Any subcontract entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.

25. INSPECTION OF WORK

CONSULTANT and any subcontractor shall permit AUTHORITY to review and inspect the Project activities and files at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

26. STATEMENT OF COMPLIANCE

CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

27. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONSULTANT warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any AUTHORITY employee. For breach or violation of this warranty, AUTHORITY shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

28. PROHIBITION OF EXPENDING AUTHORITY, STATE OR FEDERAL FUNDS FOR LOBBYING

28.1 CONSULTANT certifies to the best of his, her or its knowledge and belief that:

- A. No state, federal or AUTHORITY appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempt to influence an officer or

employee of any state or federal 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 Legislature or Congress; in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

- B. If any funds other than federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or any employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

28.2 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 31 USC 1352 (Section 319, Public Law 101-121). 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.

28.3 CONSULTANT also agrees by signing this Agreement that he, she or it shall require the language of this certification to be included in all lower-tier subcontracts which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

29 IRAN CONTRACTING ACT CERTIFICATION

29.1 As required by California Public Contract Code Section 2204, regarding CONSULTANT's status pursuant to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*), CONSULTANT's signature affixed herein, and dated, shall constitute a certification subject to penalty for perjury that:

- A. CONSULTANT is not identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; AND
 - B. CONSULTANT is not a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.
- 29.2 In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Agreement amount, termination of the Agreement and/or ineligibility to bid on contracts for three years.



CONTRA COSTA
**transportation
authority**

CONTRA COSTA TRANSPORTATION AUTHORITY
AGREEMENT NO. [XXX]
{FIRM NAME}

EXHIBIT B

SCOPE OF SERVICES

[Text Here]



CONTRA COSTA TRANSPORTATION AUTHORITY
AGREEMENT NO. [XXX]
[FIRM NAME]

EXHIBIT C

MILESTONE SCHEDULE

CONSULTANT shall perform and complete the Services in connection with the attached/following Milestone Schedule:

Activity	Timeframe
Project Startup	[Date]
Administrative Draft Report	[Date]
Draft Report	[Date]
Final Report	[Date]



CONTRA COSTA TRANSPORTATION AUTHORITY
AGREEMENT NO. [XXX]
[FIRM NAME]

EXHIBIT D

COMPENSATION, INVOICING AND PAYMENT

For the satisfactory performance and completion of the Services under this Agreement, AUTHORITY will pay CONSULTANT compensation as set forth herein.

1. ELEMENTS OF COMPENSATION

Compensation for the Services will be comprised of the following elements: 1.1 DIRECT LABOR COSTS, 1.2 FEE, and 1.3 ADDITIONAL DIRECT COSTS.

1.1 DIRECT LABOR COSTS

Direct Labor Costs shall be paid in an amount equal to the product of the Direct Salary Costs and the Multiplier which are defined as follows:

1.1.1 Direct Salary Costs

Direct Salary Costs are the base salaries and wages actually paid to CONSULTANT's personnel directly engaged in performance of the Services under the Agreement. (The range of hourly rates paid to CONSULTANT's personnel appears in Section 2 below.)

1.1.2 Multiplier

The Multiplier to be applied to the Direct Salary Costs to determine Direct Labor Costs is 3.00, and is the sum of the following components:

1.1.2.1 Direct Salary Cost [X.0]

1.1.2.2 Payroll Additives [0.XXX]

The decimal ratio of Payroll Additives to Direct Salary Costs. Payroll Additives include all employee benefits, allowances for vacation, sick leave, and holidays, and company portion of employee insurance and social and retirement benefits, all federal and state payroll taxes, premiums for insurance which are measured by payroll costs, and other contributions and benefits imposed by applicable laws and regulations.

1.1.2.3 Overhead Costs [X.XXX]

The decimal ratio of allowable Overhead Costs to CONSULTANT firm's total direct salary costs. Allowable Overhead Costs include general, administrative and overhead costs of maintaining and operating established offices, consistent with established firm policies, and as defined in the Federal Acquisitions Regulations, Part 31.2.

Total Multiplier (sum of 1.1.2.1, 1.1.2.2, and 1.1.2.3) [X.XXX]

1.2 FEE

A fee of [X.XX] percent shall be applied to the Direct Labor Costs. This fee shall not be applied to Additional Direct Costs.

(as a multiplier: [X.XXX])

Note: Authority policy limits the total multiplier plus fee to 3.0. That is, the fully loaded unit cost per hour – base salaries paid to consultant's personnel, plus payroll additives and overhead, plus fee – shall not exceed three times the base salaries. The total multiplier for this project is $2.8062 \times 1.069 = 3.0$

1.3 ADDITIONAL DIRECT COSTS

Additional Direct Costs, including compensation to subconsultants, which are directly identifiable to the performance of the services of this Agreement shall be reimbursed either at a unit rate or at actual costs invoiced to CONSULTANT, whichever is specified below. A markup of 5.0 percent to cover handling shall be applied to the total Additional Direct Costs. Costs not identified herein will not be reimbursed but will be considered to be included in Direct Labor Costs or Fee.

Additional Direct Costs will be reimbursed as follows:

ITEM	REIMBURSEMENT RATE (1)
Mileage	
Other travel	
Outside reproduction/ services	
Postage/delivery	
Outside equipment and supplies	
Website support and hosting	
Subconsultants	
Outside miscellaneous expenses	

- (1) Limited to expenses not included in overhead
- (2) Out of state travel and individual trip expenses greater than \$200 in aggregate are subject to prior written approval

2. DIRECT SALARY RATES

Direct Salary Rates, which are the range of hourly rates to be used in determining Direct Salary Costs in Section 1.1.1 above, are given below and are subject to the following:

- 2.1 **Direct Salary Rates** shall be applicable to both straight time and overtime work, unless payment of a premium for overtime work is required by law, regulation or craft agreement, or is otherwise specified in this

Agreement. In such event, the premium portion of Direct Salary Costs will not be subject to the Multiplier defined in paragraph 1.1.2 above.

- 2.2 The range of Direct Salary Rates shown herein is for the calendar year 2013. The range may be adjusted annually to reflect CONSULTANT’s adjustments to individual compensation and for personnel subject to prevailing wage rates subject to the California Labor Code. CONSULTANT shall notify AUTHORITY in writing prior to a change in the range of rates included herein, and prior to each subsequent change.

	Position or Classification	Range of Hourly Rates
2.2.1	Principal	[\$Rate]
2.2.2	Project Engineer	[\$Rate]
2.2.3	Associate Engineer	[\$Rate]
2.2.4	Clerical/Admin	[\$Rate]

Subconsultants: [Firm Name]

	Position or Classification	Range of Hourly Rates
2.2.5	Principal in Charge	[\$Rate]
2.2.6	Project Manager	[\$Rate]
2.2.7	QA Manager	[\$Rate]
2.2.8	Senior Engineer	[\$Rate]
2.2.9	Administrative	[\$Rate]

Subconsultants: [Firm Name]		
Position or Classification		Range of Hourly Rates
2.2.10	Principal	[\$Rate]
2.2.11	Sr. Project Manager	[\$Rate]
2.2.12	Project Manager	[\$Rate]
2.2.13	Senior Associate	[\$Rate]
2.2.14	Associate	[\$Rate]
2.2.15	Coordinator	[\$Rate]
2.2.16	Senior Web Designer	[\$Rate]
2.2.17	Web/Graphic Designers	[\$Rate]

3. INVOICING

CONSULTANT shall submit invoices in accordance with the following requirements:

3.1 GENERAL REQUIREMENTS

3.1.1 CONSULTANT shall prepare invoices on a monthly basis for each complete calendar month. Invoices shall be submitted as soon as possible, but no later than sixty (60) calendar days after month's end.

3.1.2 Charges shall be billed in accordance with the terms and rates included herein.

3.1.3 Base Work and Extra Work shall be charged separately, and the charges for each Task listed in Exhibit B, Scope of Services, shall be listed separately. The charges for each individual assigned under this Agreement shall be listed separately.

3.1.4 Each invoice should bear the following identification:

3.1.4.1 AUTHORITY Agreement number.

3.1.4.2 AUTHORITY Purchase Order Number.

3.1.4.3 The sequential billing number under the Agreement (1, 2, 3, etc.).

3.1.4.4 CONSULTANT's internal invoice number.

3.1.4.5 Date of invoice.

3.1.4.6 Calendar period covered by invoice.

3.1.5 The invoice should bear the following certification signed by an officer of the firm:

"I hereby certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the employees listed."

Signed

Title

Date

Invoice No.

3.1.6 The invoice must be accompanied by the following:

3.1.6.1 A transmittal letter, stating the period covered and briefly highlighting overall project status and any significant scope, schedule or budget issues.

3.1.6.2 Monthly Progress Report.

3.1.6.3 Budget Status Summary by task (a table indicating, for each task, amount budgeted, amount previously invoiced, current invoice amount, total invoiced to date, budget remaining, percent complete, and percent expended).

3.1.7 In compliance with Section 11 of Exhibit A of the Agreement (General Conditions), CONSULTANT must indicate the extent to which the Availability Advisory Percentage is being met by indicating in the invoice the payments made to any DBE firms by dollar amount and as a percentage of the total invoice provided to AUTHORITY hereunder.

4. PAYMENT

4.1 Payment will be made to CONSULTANT within four (4) weeks after receipt by AUTHORITY of a correct original invoice.

4.2 After receipt of the final payment for Services under this Agreement, CONSULTANT shall sign a Release and Certificate of Final Payment in the form set forth in Attachment 1 hereto.

4.3 The total amount payable by AUTHORITY shall not exceed Total Agreement Value shown under Section III of Agreement.

Table 1: Estimated Budget by Task

Task	Description	Budget
1	Text Here	\${Amount}
2	Text Here	\${Amount}
3	Text Here	\${Amount}
4	Text Here	\${Amount}
5	Text Here	\${Amount}
	Subtotal	\${Amount}
	Extra Work	0
	Total	\${Amount}



CONTRA COSTA TRANSPORTATION AUTHORITY
AGREEMENT NO. [XXX]
[FIRM NAME]

ATTACHMENT 1 TO EXHIBIT D RELEASE AND CERTIFICATE OF FINAL PAYMENT

With reference to Agreement No. ____ dated _____, 201_ (“Agreement”), and each and every amendment thereto, between _____ (“CONSULTANT”) and CONTRA COSTA TRANSPORTATION AUTHORITY (“AUTHORITY”) for providing Construction Support Services for Measure C or Measure J Programs in Contra Costa County, CONSULTANT hereby certifies and represents that it has made full payment to all persons and entities of all costs, charges and expenses incurred by it or on its behalf for labor, services, equipment and materials supplied to CONSULTANT by such persons and entities in connection with its performance of the work under said Agreement.

CONSULTANT further certifies that to its best knowledge and belief, each of its subconsultants and suppliers has made full payment of all costs, charges and expenses incurred by it or on its behalf of work labor, services, materials and equipment supplied and/or used by it in connection with CONSULTANT’s work under said Agreement.

In consideration of the receipt, which receipt is hereby acknowledged, of an aggregate amount of \$ _____ for all services performed pursuant to the Agreement, including the adjusting payment, CONSULTANT hereby unconditionally and fully releases and forever discharges AUTHORITY and its officers, employees, agents, premises and property from all claims, liens and obligations of every nature, presently known or unknown, arising out of or in connection with the performance of said Agreement and all amendments thereto. CONSULTANT expressly waives all rights or benefits which it now has, or in the future may have, under the terms of Section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor.

As additional consideration for all payments mentioned above, including the final adjusting payment, if any, CONSULTANT agrees to indemnify and hold harmless AUTHORITY from and against all costs, losses, damages, claims, causes of action, judgments and expense, including attorneys' fees, arising out of or in connection with claims against AUTHORITY which arise out of the performance of the work under the Agreement and which may be asserted by CONSULTANT or any of its suppliers, subconsultants of any tier, or any of their representatives, officers, agents or employees.

Nothing contained in this Release and Certificate of Final Payment shall have any effect upon, nor be construed in any way to relieve CONSULTANT of its obligations under the provisions of the above Agreement, as amended, which by their nature survive completion of the work including, without limitation, warranties, guaranties and indemnities.

Executed this _____ day of _____, 201_.

CONSULTANT

By

Name

Title

