



## NOTICE OF REQUEST FOR QUALIFICATIONS (RFQ) 24-01

### For On-Call Transportation Grant Writing and Grant Preparation Consultants with Supporting Outreach, Planning/Engineering and Analytical Related Services Bench

The West Contra Costa Transportation Advisory Committee (WCCTAC) is searching for qualified firms to provide on-call Transportation Grant Writing and Grant Preparation services. Grant applications may be for federal, state, and local funds to implement planning, design, or construction. In support of preparing competitive grant applications, WCCTAC recognizes that in support of the development of a competitive grant application some limited Outreach, Planning/Engineering and Analytical Related Services may also be needed. Through this RFQ, WCCTAC will select multiple qualified consultants for a Consultant Bench with which WCCTAC may contract with to provide transportation grant writing and grant preparation as well as supportive related services on an as-needed basis. The contract period will run for 36 months.

These activities may be funded by local, state and/or federal funding sources or a combination thereof. The proposer will be required to comply with applicable National Environmental Policy Act and/or California Environmental Quality Act guidelines, various federal congressional acts and executive orders and guidelines from applicable federal, state, and local laws and regulations. See accompanying RFQ specifications for a detailed description of the scope of services and other important information for submitting proposals for this project. The on-call contracts on their own do not authorize or obligate a consultant to initiate any project task/work.

#### Anticipated Schedule

RFQ Issue Date:	April 1, 2024
Written Questions Due by Date	April 15, 2024 by 3pm Pacific Standard Time
Submittal Due Date (1 PDF and 3 hard copies)	May 1, 2024 by 3pm Pacific Standard Time to: WCCTAC Offices <b>6333 Potrero Ave., Suite 100</b> <b>(enter via Kearney St. parking lot)</b> <b>El Cerrito, CA 94530</b>
Tentative Interview Date	Week of May 13, 2024 (scheduled if necessary)
Anticipated Contract Award Date	May 24, 2024

WCCTAC requires consultants to register to participate in this RFQ process. Your registration is the only means of receiving WCCTAC's notifications, addenda, and other important elements of this procurement process. Firms can register by going to [www.wcctac.org](http://www.wcctac.org), clicking on "Opportunities" then selecting "RFPs and RFQs" and completing the Google Form found under the heading "Registration Required."

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## WEST CONTRA COSTA TRANSPORTATION ADVISORY COMMITTEE

### REQUEST FOR QUALIFICATIONS (RFQ) 24-01

#### **For On-Call Transportation Grant Writing and Grant Preparation Consultants with Supporting Outreach, Planning/Engineering and Analytical Support Services Bench**

#### **I. INTRODUCTION AND BACKGROUND**

The West Contra Costa Transportation Advisory Committee (WCCTAC) is one of four Regional Transportation Planning Committees (RTPCs) in Contra Costa County and represents the West Contra Costa sub-area. The Committees were created in 1988 to guide transportation projects and programs included in the Measure C, ½ cent, transportation sales tax approved by Contra Costa voters. Measure C was succeeded by [Measure J](#) in 2004.

WCCTAC is a public agency, governed by a [Joint Exercise of Powers Agreement](#) between the following member agencies: the cities of El Cerrito, Hercules, Pinole, Richmond, San Pablo; Contra Costa County; and the transit operators, AC Transit, BART, and WestCAT. WCCTAC's operating revenues are derived from dues paid by member agencies as well as from numerous grants.

WCCTAC aims to improve the transportation system in West Contra Costa through the development, coordination and implementation of transportation plans, projects, programs, and policies for the West Contra Costa area. In addition to directing some funds from Measure J, WCCTAC administers the Sub-regional Transportation Mitigation Fee Program (STMP) which collects impact fees from development projects built in the West Contra County and applies them to transportation improvements.

WCCTAC also manages a Transportation Demand Management (TDM) Program using the '[511 Contra Costa](#)' brand which is aimed at vehicle trip reduction. Programs include: Outreach to assist employers with development of trip reduction programs, bicycle programs, carpool and transit incentive programs and other projects to encourage alternative to driving alone.

It is WCCTAC's intent to establish a list of qualified consultant firms for an On-Call Transportation Grant Writing and Grant Preparation Consultants with Supporting Outreach, Planning/Engineering and Analytical Support Services Bench (Bench). Contracts are anticipated to be awarded May 24, 2024, for a period not to exceed three (3) years with the option of two (2) one (1) year extensions. However, if selected, WCCTAC reserves the right to request substitutions of particular sub-proposers.

WCCTAC is looking for consultants with expertise and proven success in grant procurement, writing and developing submittal materials which may also necessitate knowledge of other categories of service (see Section II, Scope of Services) in support of developing a competitive grant application. Prospective proposers may choose to form a team with sub-proposers for the purpose of submitting a proposal.

Consultants may apply for any one or more of the services, as indicated in the Scope of Services. The successful consultants will be preapproved to provide certain services and be placed on the Bench from which WCCTAC may contract with on a per-project and as-needed basis. Detailed scope of work, budget, and schedule will be developed for specific task orders to be issued by WCCTAC for individual projects.

## **II. SCOPE OF SERVICES**

WCCTAC is establishing an On-Call Transportation Grant Writing and Grant Preparation Consultants with Supporting Outreach, Planning/Engineering and Analytical Support Services Bench consisting of a short list of qualified consultants to provide ongoing support for WCCTAC to achieve its vision, goals, and strategies in developing and implementing plans and policies for carrying out the preparation of evaluations, approaches, analyses, studies, programs, plans, and specific projects to address current and future transportation system network. The selected consultant(s) will assist with grant procurement, writing responses and narratives, preparing submittal materials, and managing development of complete grant application submittals. This work may include developing a scope of work and budget estimate for the project seeking grant funding. Consultants should have a successful track record of applying for and having applications selected for funding.

The following categories include many of the areas, elements, and focus that the selected On-Call Transportation Grant Writing and Grant Preparation Consultants with Associated Outreach, Planning/Engineering and Analytical Support Services consultants or team of consultants would provide services on. Selected proposers will be required to prepare comprehensive grant applications which may include some or any of the items listed below.

- Monitoring and identification of transportation funding opportunities;
- Grant application preparation including writing, graphics, maps, budgets, and schedules;
- Development of scopes of work and budgets needed to implement projects;
- Preparing easy to read and organized grant submittals that meet all application requirements;
- Outreach and communications support and expertise, e.g., written, graphic, survey and web page development, effective outreach methods, communications support and expertise with equity and business communities both for any advance work needed in preparation of a grant application and knowledge in developing outreach and communication efforts as part of a grant's scope of work;
- Transportation planning with expertise in active transportation, transit, and other modes;
- Complete streets, Safe Systems Approach, and systemic analysis,
- Minor conceptual or preliminary design development to illustrate needed improvements to bring projects to a competitive stage for grant submittal;
- Strategic planning/engineering, detailed design, and deployment in support of a grant application;
- Limited environmental review consultation – California Environmental Quality Act & National Environmental Policy Act including topics related to Vehicle Miles Traveled, Climate Change

Adaptation and Greenhouse Gas (GHG) emissions reduction, Sea Level Rise & Sustainability, and identification of permitting requirements;

- Data analysis and mapping; and
- Preparation of Project Study Reports (PSRs) or PSR equivalents

### **III. PROPOSAL INSTRUCTIONS**

#### **A. GENERAL INSTRUCTIONS**

Where two or more firms, persons or entities wish to submit one proposal in response to this RFQ, they should do so on a prime and subconsultant basis rather than as a joint venture. WCCTAC will contract with a single firm, person, or entity only, and not with a joint venture. A firm that is the prime consultant on a contract awarded under this process may also be a subconsultant firm on another contract. Subconsultants can be on more than one team.

#### **B. CONTACT INFORMATION**

Proposers are cautioned not to discuss this RFQ with any official, Board Member or employee of WCCTAC. Neither proposers, nor anyone representing the proposer, are to discuss this RFQ with any consultant or contractor engaged by WCCTAC for assistance in preparing a response to the RFQ. Violation of this prohibition may result in disqualification of the proposer.

#### **C. PRE-PROPOSAL CONFERENCE**

A Pre-Proposal Conference is not anticipated for this RFQ.

#### **D. RFQ REGISTRATION**

WCCTAC requires consultants to register in order to participate in this RFQ process. Registration is free and it is the only means of receiving WCCTAC's notifications, addenda, and other important elements of this procurement process. Firms can register by going to [www.wcctac.org](http://www.wcctac.org) clicking on "Opportunities" then selecting "RFPs and RFQs" and completing and submitting the Google Form found under the heading "Registration Required".

#### **E. WRITTEN QUESTIONS/CLARIFICATIONS**

After reviewing the RFQ, all questions and or clarifications to this RFQ must be submitted electronically via email to Leah Greenblat, Transportation Planning Manager at [LGREENBLAT@wcctac.org](mailto:LGREENBLAT@wcctac.org) with the subject line containing "RFQ Question" on or before the due date specified in the above Notice of RFQ. A late request or requests not submitted in this manner will not be considered. WCCTAC will respond to questions by posting responses online and notifying registered firms.

#### **F. ADDENDA**

WCCTAC reserves the right to revise the RFQ documents. Revisions, and notifications thereof, will be made by written addendum and made available to registered firms. WCCTAC will not be bound to any modifications to or deviations from the requirements set forth in this RFQ as a result of any oral discussions and/or instructions. Proposers must acknowledge receipt of any addenda in their proposal.

**G. CONTRACT TYPE**

The contract resulting from this RFQ, if awarded, will be for on-call services.

**H. CONFLICT OF INTEREST**

Any person or firm that has assisted WCCTAC in preparing any aspect of this RFQ or any support cost estimate associated with the Scope of Services related to this RFQ is prohibited from submitting a proposal in response to this RFQ. The determination of a conflict of interest, direct or incidental, shall be made by WCCTAC based upon substantial evidence.

A conflict of interest could include, but is not limited to:

1. No contracting agency employee who participates in the procurement, management, or administration of federal or state funded contracts or subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;
2. No person or entity performing services for a contracting agency in connection with a federal or state funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project; and
3. No person or entity performing services for a contracting agency in connection with a federal-aid highway funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project.

**I. PRE-CONTRACTUAL EXPENSES/CANCELLATION OF RFQ**

WCCTAC shall not be liable for any pre-contractual expenses incurred by the firm in preparation or submittal of their proposal. The proposer shall not include any such expenses as part of their price proposal. Prohibited pre-contractual expenses include any and all expenses incurred by the proposer prior to issuance of the Notice to Proceed by WCCTAC. WCCTAC additionally reserves the right to cancel this RFQ at any time prior to contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other marketing costs accrued by proposers associated with this RFQ.

**J. MATERIALS FURNISHED BY WCCTAC**

All software, data, reports, surveys, drawings, and other documents furnished to the consultant by WCCTAC for the consultant's use in the performance of work shall be made available only for use in performing the assignment and shall remain the sole property of WCCTAC. All such materials shall be returned to WCCTAC upon completion of work, termination of the contract, or other such time as WCCTAC may determine.

**K. AMENDMENTS TO PROPOSALS**

No amendment, addendum or modification to proposals will be accepted after the Submittal Due Date and Time as specified in the Notice of this RFQ.

**L. PROTESTS**

Any proposer may protest a contract award if the proposer believes that the award was inconsistent with WCCTAC's policies or this RFQ is not in compliance with law. A protest must be filed in writing with WCCTAC (email is not acceptable) within five (5) business days after date of notification of contract award. Any protest submitted after 5:00 p.m. of the fifth business day after notification of contract award will be rejected by WCCTAC as invalid and the proposer's failure to timely file a protest will waive the proposer's right to protest the contract award. The proposer's protest must include supporting documentation, legal authorities in support of the grounds for the protest and the name, address and telephone number of the person representing the proposer for purposes of the protest. Any matters not set forth in the protest shall be deemed waived. WCCTAC's Board of Directors will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. Action by WCCTAC's Board of Directors relative to the protest will be final and not subject to appeal or reconsideration. The procedure and time limits set forth in this Section are mandatory and are the proposer's sole and exclusive remedy in the event of protest. Failure to comply with these procedures will constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

**M. CONFIDENTIALITY OF PROPOSAL**

Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, proposals submitted in response to this RFQ shall be held confidential by WCCTAC and shall not be subject to disclosure under the California Public Records Act (Cal. Government Code section 6250 et seq.) until after either WCCTAC and the proposer have completed negotiations and entered into the Agreement or WCCTAC has rejected all proposals. All correspondence with WCCTAC, including responses to this RFQ will become the exclusive property of WCCTAC and will become public records under the California Public Records Act. Furthermore, WCCTAC will have no liability to the proposer or any other party as a result of any public disclosure of any proposal or the Agreement.

If a proposer desires to exclude a portion of its proposal from disclosure under the California Public Records Act, the proposer must mark it as such and state the specific provision in the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if a proposer submits trade secret information, the proposer must plainly mark the information as "Trade Secret" and refer to the appropriate section of the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, WCCTAC is not in a position to establish that the information that a proposer submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret" or "Proprietary,"

WCCTAC will provide proposers who submitted the information with reasonable notice for the proposer to seek protection from disclosure by a court of competent jurisdiction.

#### IV. PROPOSAL SUBMITTAL

Qualification, forms, and all materials related to this RFQ are to be submitted as one PDF on a flash drive along with three hard copies, on or before the due time and date specified in the above Notice of RFQ. *WCCTAC has limited staff resources to review proposals and requests brevity yet completeness for each proposal submittal.*

##### A. PROPOSAL CONTENT

Interested parties responding to this RFQ are expected to submit one Statement of Qualifications (SOQ). All SOQs should be clear, concise, and provide enough information to minimize questions and assumptions. SOQs should be limited to no more than 20 (8 ½" x 11") pages in no less than 11-point font excluding cover letter, table of contents, organizational chart, and the following items, which should be included as attachments: résumés (limited to one page each), cost proposal and required exhibits. Page sizes greater than the letter size of 8.5" x 11" will be counted as two pages. WCCTAC accepts no financial responsibility for any costs incurred in the preparation of SOQs. Upon receipt by WCCTAC, all accepted SOQs submitted in response to this RFQ will become property of WCCTAC.

Content that does not contain the required information will be deemed non-responsive and will not be considered.

If at any time during the RFQ process, a firm makes any changes to proposed key personnel or subconsultants, the firm must notify WCCTAC in writing of those proposed changes as soon as they are known. WCCTAC reserves the right to accept or reject such proposed changes or to revise the evaluation scoring to reflect the proposed staffing changes. All submittals must be formatted based on the sections below.

1. **Cover Letter.** Specific and required elements of this section includes the following:
  - Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size, and location of offices; and number of employees.
  - Identification of all proposed subconsultants including description of the work to be performed by the firm and each subconsultant proposed for the Project and an estimate of the percentage of work to be performed by each subconsultant.
  - Indicate the location of the office from which the work will be performed.
  - A list of all prime contracts (if any) awarded to the firm by WCCTAC for the last five (5) years. The list shall include a short description of the project, the award date, completion date, name of assigned Project Manager, and contract value.
  - If proposer has ever been terminated from a contract, describe the facts and



circumstances in detail.

- Acknowledgement of all addenda.
- A statement that the proposal is valid for 180 calendar days from the date of submission.
- A signed statement by an officer of the prime firm who can bind the firm to the Agreement and attest that all information in response to this RFQ is true and correct.

2. **Team Structure.** Provide an organizational chart that:

- Indicates the relationship of the prime consultant to any subconsultants areas of specialization, and names of the Project Manager and key team members.
- Clearly delineates communication and reporting relationships among the key personnel and staff, including subconsultants.
- Includes identification of all proposed subconsultants including description of the work to be performed by the firm and each subconsultant proposed, and an estimate of the percentage of work to be performed by each subconsultant.
- A signed letter or statement from the principal of each subconsultant indicating the specific portion of the project the subconsultant will be performing.

3. **Statement of Qualifications (SOQ).** This section of the proposal should establish the ability of the proposing firm to satisfactorily perform the required work by reasons of experience in performing work of the same or similar nature. Proposers should state the qualifications and experience of the proposed team, emphasizing the specific qualifications and experience acquired while providing services similar to those being sought by WCCTAC. Please include brief descriptions or case studies of similar project(s) for which the Proposer has provided services during the last five (5) years that includes client, project description and location, total value of services provided, key personnel involved, and sub-consultants employed (if any). This section should also include at least three references (name, email, and current phone number) from other projects within the last five (5) years similar to the project(s) being proposed upon.

4. **Resumes.** Provide resumes of key consultant team members that include education, experience, and applicable professional credentials of proposed project staff. Proposers are encouraged to limit the descriptions on the resume to relevant information and limit content to one page per team member.

5. **Contract Exceptions.** In submitting a proposal in response to this RFQ, the consultant is certifying that it takes no exceptions to this RFQ. Firms will be deemed to have accepted any and all terms and conditions not objected to or identified as an exception or deviation to this RFQ. Exceptions, if any, may be reason for rejection of a proposal. Failure to specify any particular exception in accordance with this Section shall preclude a proposer from taking exception or requesting revisions to any part of this RFQ following the proposal submission deadline.

6. **Cost Proposal.** The cost proposal will not count towards the 20 page limit and should be submitted as part of the whole proposal. Task orders under this contract will be on a labor-hour contract, which provides for payment of the successful Proposer's allowable incurred costs, to the extent prescribed in the Task order. The cost proposal must include a budget comprised of a matrix with columns for hourly rates, classification, and name for all personnel and/or subconsultants involved for the work described in Section II above. The cost proposal must be presented in the applicable format for the method of payment.

## **V. ACCEPTANCE OF PROPOSALS**

WCCTAC reserves the right to accept or reject any and all submittals to this RFQ, or any item or part thereof, or to waive any informalities or irregularities in a submittal. WCCTAC reserves the right to cancel this RFQ at any time without prior notice and WCCTAC makes no representation that any contract will be awarded to any firm responding to this RFQ. WCCTAC reserves the right to reject all submittals and to re-issue (or not re-issue) a new RFQ for the same or similar scope of work. WCCTAC reserves the right to adjust or postpone key dates specified in the above Notice of RFQ for its own convenience.

## **VI. EVALUATION CRITERIA AND METHOD OF AWARD**

The SOQ's will be evaluated by a selection committee including the Executive Director and the Transportation Planning Manager and scored (maximum of 100 points) using the following criteria:

1. Proposers Information and Understanding of Objectives (20 points)
  - a. Responsiveness to all items requested in the RFQ, such as completeness of submission, adherence to required page limits, overall organization, and clarity of SOQ; and
  - b. Understanding of the services to be provided.
2. Summary of Qualifications (60 points)
  - a. Capability of project team to perform the tasks proposed upon, specific relevant experience, qualifications, track record of success applying for and seeking grant funding, and expertise of each firm and sub-consultant firm.
3. References (20 points)
  - a. Client references as to past project performance.

The selection committee retains the right to independently verify and evaluate relevant experience and client references, including any sources not mentioned in the SOQ.

Submittals receiving an initial score of less than 70 points will not be considered further in the selection process. Respondents that have received a score of 70 points or higher may, at WCCTAC's sole discretion, be invited to an interview with the selection committee. WCCTAC reserves the right to not conduct oral interviews and determine the winning respondent based solely on the written SOQ. If oral interviews are

held, individuals who are identified as key personnel in the SOQ are required to be in attendance at the interview. Based on the results of the interview, the selection committee may adjust initial scores on the evaluation criteria identified above to arrive at the final evaluation score.

## **VII. NEGOTIATIONS AND AWARD**

WCCTAC intends to award contracts to qualified firms/teams. Consultants selected for a contract will remain eligible for consideration for task order negotiation on an as-needed basis for the three-year term. While WCCTAC intends to engage the selected firm/team(s) based on capabilities, experience, availability and conflict of interest, no selected firm/team is guaranteed a task order. This RFQ does not in any way limit WCCTAC's right to solicit contracts for similar or identical services if, in WCCTAC's sole and absolute discretion, it determines the on-call teams are inadequate to satisfy its needs.

Following the establishment of contracts with the selected firm/team(s), WCCTAC, at its sole and absolute discretion, will contact consultant firm/teams to negotiate task orders for specific projects and contracts. Depending on task order amount and funding source(s), consultant firm/teams may be invited to submit proposals and/or participate in oral interviews for specific scopes of work as part of the task order negotiation process. Teams are not required to include all subconsultants on every task order.

Interviews may consist of standard questions asked of each of the respondents, and specific questions regarding individual responses. WCCTAC reserves the right to interview any, all, or none of the on-call consultant teams to negotiate task orders. WCCTAC, in its sole discretion, has the right to approve or disapprove any staff person assigned to a task order before and throughout the contract term.

WCCTAC has limited office space available for this contract and, with the exception of progress and coordination meetings, all work shall take place at the consultant offices. Respondents should be prepared to mobilize within 48 hours following contract negotiations and contract award by the WCCTAC Board.

The selected proposer will be expected to execute an agreement with WCCTAC in the form attached as Exhibit A

## **VIII. NOTIFICATION OF AWARD**

Firms who submit a response to the RFQ shall be notified in writing when: the firm was not selected to receive further consideration in the RFQ process; the firm was selected for the interview process and after the RFP Evaluation Committee's recommendation to award has been determined.

**EXHIBIT A**  
**WCCTAC SAMPLE PROFESSIONAL SERVICES CONTRACT**

WCCTAC Sample Professional Services Contract

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE WEST CONTRA COSTA TRANSPORTATION ADVISORY COMMITTEE  
AND  
[NAME OF CONSULTANT]**

This Agreement for consulting services is made by and between the between the West Contra Costa Transportation Advisory Committee, a Joint Powers Agency existing under the laws of the State of California, (“WCCTAC”) and \_\_\_\_\_, a \_\_\_\_\_ (corporation / limited liability company / sole proprietor), with offices located at \_\_\_\_\_, (“Consultant”), (together referred to as the “Parties”) as of \_\_\_\_\_, 20\_\_ (the “Effective Date”).

**Section 1. Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to WCCTAC the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

**1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on \_\_\_\_\_, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect WCCTAC’s right to terminate the Agreement, as referenced in Section 8.

**1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.

**1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that WCCTAC, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from WCCTAC of such desire of WCCTAC, reassign such person or persons.

**1.4 Time is of the Essence.** Time is of the essence. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to timely finish the Scope of Work, to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant’s obligations hereunder.

**1.5 [OPTIONAL] Public Works Requirements.** Because the services described in Exhibit A include “work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work,” the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the Labor Code applicable to public works, to the extent set forth in Exhibit C. Consultant shall waive, indemnify, hold harmless, and defend WCCTAC concerning any liability arising out of Labor Code Section 1720 *et seq.*

**Section 2. COMPENSATION.** WCCTAC hereby agrees to pay Consultant a sum not to exceed [Spell out amount] \_\_\_\_\_, (\$ \_\_\_\_\_) notwithstanding any contrary indications that may be contained in Consultant’s proposal for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant’s proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. WCCTAC shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from WCCTAC to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to WCCTAC in the manner specified herein. Except as specifically authorized by WCCTAC in writing, Consultant shall not bill WCCTAC for duplicate services performed by more than one person.

Consultant and WCCTAC acknowledge and agree that compensation paid by WCCTAC to Consultant under this Agreement is based upon Consultant’s estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. WCCTAC therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At WCCTAC’s option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person

doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;

- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;

**2.2 Monthly Payment.** WCCTAC shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. WCCTAC shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

**2.3 Final Payment.** WCCTAC shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to WCCTAC of a final invoice, if all services required have been satisfactorily performed.

**2.4 Total Payment.** WCCTAC shall pay for the services to be rendered by Consultant pursuant to this Agreement. WCCTAC shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. WCCTAC shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

**2.5 Hourly Fees.** Unless the services provided are for a lump sum or flat fee, fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit B, the Agreement shall prevail.

**2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit C. Reimbursable expenses not listed in Exhibit C are not chargeable to WCCTAC. Reimbursable expenses shall not include a mark-up and are billed as a direct cost. In no event shall expenses be advanced by WCCTAC to the Consultant. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

**2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

**2.8 Payment upon Termination.** In the event that WCCTAC or Consultant terminates this Agreement pursuant to Section 8, WCCTAC shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of

the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

**2.9 Authorization to Perform Services.** Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. WCCTAC shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

WCCTAC shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant’s use while consulting with WCCTAC employees and reviewing records and the information in possession of WCCTAC. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of WCCTAC. In no event shall WCCTAC be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to WCCTAC of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to WCCTAC. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to WCCTAC. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

**4.1 Required Coverage.** Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

<u>COVERAGE</u>	<u>TYPE OF INSURANCE</u>	<u>MINIMUM LIMITS</u>
A	<b>Commercial General Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence; Bodily Injury and Property Damage \$2,000,00 in the aggregate; Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form



		CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis
B	<p><b>Commercial or Business Automobile Liability</b>  All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities</p>	<p>\$1,000,000 per occurrence;  Any Auto; Bodily Injury and Property Damage; Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.</p>
C	<p><b>Workers’ Compensation (WC) and Employers Liability (EL)</b>  Required for all contractors with employees</p>	<p>WC: Statutory Limits  EL: \$100,000 per accident for bodily injury or disease Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer shall waive all rights of subrogation against WCCTAC and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement</p>
D	<p><b>Professional Liability/Errors &amp; Omissions</b>  Includes endorsements of contractual liability</p>	<p>\$1,000,000 per occurrence  \$2,000,000 policy aggregate; Any deductible or self-insured retention shall not exceed \$150,000 per claim</p>

**4.2 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a. All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until three (3) years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement

b. All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers’ Compensation and Employers Liability, shall be endorsed to name as additional insured: West Contra Costa Transportation Advisory Committee, its Board of Directors, and all WCCTAC officers, agents, employees, volunteers and representatives.

c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects WCCTAC, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by WCCTAC, its officers, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it.

d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to WCCTAC.

e. **Certificates of Insurance:** Before commencing operations under this Agreement, Consultant shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to WCCTAC, evidencing that all required insurance coverage is in effect. WCCTAC reserves the rights to require Consultant to provide complete, certified copies of all required insurance policies.

f. **Subcontractors:** Consultant shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

g. **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

i. The retroactive date of the policy must be shown and must be before the date of the Agreement.

ii. Insurance must be maintained, and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

iii. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of three (3) years after completion of work under this Agreement.

iv. A copy of the claim reporting requirements must be submitted to WCCTAC for review prior to the commencement of any work under this Agreement.

#### **4.3 All Policies Requirements.**

a. **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A: VII. Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to WCCTAC. Acceptance of Consultant's insurance by WCCTAC shall not relieve or

decrease the liability of Consultant hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of Consultant. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Consultant.

b. **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of WCCTAC for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of WCCTAC, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects WCCTAC, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to WCCTAC guaranteeing payment of losses and related investigations, claim administration and defense expenses.

c. **Wasting Policies.** No policy required by this Section 4 shall include a “wasting” policy limit (i.e., limit that is eroded by the cost of defense).

d. **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.

**4.4 Remedies.** In addition to any other remedies WCCTAC may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, WCCTAC may, at its sole option exercise any of the following remedies, which are alternatives to other remedies WCCTAC may have and are not the exclusive remedy for Consultant’s breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

**Section 5. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES.**

Consultant shall indemnify, defend with counsel acceptable to WCCTAC, and hold harmless WCCTAC and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney’s fees and costs and fees of litigation) (collectively, “Liability”) of every nature arising out of or in connection with Consultant’s performance of the Services or its failure to comply with any of its

obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of WCCTAC.

Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by WCCTAC, unless this time has been extended by WCCTAC. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by WCCTAC, may be retained by WCCTAC until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of WCCTAC, Consultant shall indemnify, defend, and hold harmless WCCTAC for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of WCCTAC.

## **Section 6. STATUS OF CONSULTANT.**

**6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of WCCTAC. WCCTAC shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise WCCTAC shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other WCCTAC, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by WCCTAC, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of WCCTAC and entitlement to any contribution to be paid by WCCTAC for employer contributions and/or employee contributions for PERS benefits.

**6.2 Consultant Not an Agent.** Except as WCCTAC may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of WCCTAC in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind WCCTAC to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

**7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

**7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

**7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which WCCTAC is bound by the terms of such fiscal assistance program.

**7.4 Licenses and Permits.** Consultant represents and warrants to WCCTAC that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to WCCTAC that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from WCCTAC.

**7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

**8.1 Termination.** WCCTAC may cancel this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty

(30) days' written notice to WCCTAC and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; WCCTAC, however, may condition payment of such compensation upon Consultant delivering to WCCTAC any or all work product, including, but not limited to documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or WCCTAC in connection with this Agreement.

**8.2 Extension.** WCCTAC may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

**8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

**8.4 Assignment and Subcontracting.** WCCTAC and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to WCCTAC for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

**8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between WCCTAC and Consultant shall survive the termination of this Agreement.

**8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, WCCTAC's remedies shall include, but not be limited to, the following:

**8.6.1** Immediately terminate the Agreement;

**8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

**8.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

**8.6.4** Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that WCCTAC would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

**9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of WCCTAC. Consultant hereby agrees to deliver those documents to WCCTAC upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for WCCTAC and are not necessarily suitable for any future or other use. WCCTAC and Consultant agree that, until final approval by WCCTAC, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

**9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to WCCTAC under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of WCCTAC. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of WCCTAC or as part of any audit of WCCTAC, for a period of 3 years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

**10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

**10.2 Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, WCCTAC and Consultant agree to resolve the dispute in accordance with the following:

**10.2.1** Each party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority.

**10.2.2** If the dispute remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both Parties. Mediation will begin within thirty (30) days of the selection of this disinterested third party, and will end fifteen (15) days after commencement. The Parties shall equally bear the costs of any mediator, and shall bear their own attorney's fees for the mediation.

**10.2.3** The alternative dispute resolution process in this section is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code Section 900, *et. seq.*

**10.3 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.

**10.4 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**10.5 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

**10.6 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

**10.7 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

**10.8 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of WCCTAC or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any WCCTAC official in the work performed pursuant to this Agreement. No officer or employee of WCCTAC shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of WCCTAC. If Consultant was an employee, agent, appointee, or official of WCCTAC in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is



made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse WCCTAC for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

**10.9 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.10 Contract Administration.** This Agreement shall be administered by WCCTAC Executive Director, or his designee, identified as \_\_\_\_\_ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator.

**10.10 Notices.** Any written notice to Consultant shall be sent to:

[INSERT CONSULTANT CONTACT INFORMATION HERE]

Any written notice to WCCTAC shall be sent to:

John Nemeth,  
Executive Director  
WCCTAC

6333 Potrero Avenue, Suite 100  
El Cerrito, CA 94530

with a copy to

Benjamin T. Reyes II,  
General Counsel  
Meyers Nave

555 12<sup>th</sup> Street, Suite 1500  
Oakland, CA 94607

**10.11 Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.

Seal and Signature of Registered Professional with report/design responsibility.
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**10.12 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, [[and]C [, and D]] [ENSURE THAT THE CORRECT EXHIBITS ARE LISTED] represents the entire and integrated agreement between WCCTAC

and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

- Exhibit A      Scope of Services
- Exhibit B      Payment Schedule
- Exhibit C      Public Works Requirements [**DELETE IF NOT APPLICABLE**]
- Exhibit [C or D]      Expenses [**DELETE IF NOT APPLICABLE**]

**10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.

WCCTAC

CONSULTANT

\_\_\_\_\_  
JOHN NEMETH, EXECUTIVE DIRECTOR

\_\_\_\_\_  
[NAME / TITLE]

**APPROVED AS TO FORM:**

\_\_\_\_\_  
KRISTOPHER J. KOKOTAYLO, GENERAL COUNSEL

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

COMPENSATION SCHEDULE

## EXHIBIT C

### PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS

#### PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

##### HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to WCCTAC \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

##### WAGES:

- A. In accordance with California Labor Code Section 1773.2, WCCTAC has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file with WCCTAC and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous

record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay 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. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, 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 in performance of the services described in Exhibit A. 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:

1. The information contained in the payroll record is true and correct.
2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Consultant shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

EXHIBIT [C OR D]

REIMBURSABLE EXPENSES

2660944.1