



# **TRANSPORTATION AUTHORITY OF MARIN**

## **REQUEST FOR QUALIFICATIONS & PROPOSALS**

**Date Issued: June 19, 2017**

**Environmental Assessment & Plans, Specification and Estimate Services**

**For the**

**Marin-Sonoma Narrows (MSN) A4 and B1 Phase 2  
Highway 101 HOV Widening Project in  
In Marin County**

**PROPOSALS DUE: July 17, 2017 by 4:00p.m.**

**Transportation Authority of Marin  
900 5th Avenue, Suite 100  
San Rafael, CA 94901**

# TRANSPORTATION AUTHORITY OF MARIN

## REQUEST FOR QUALIFICATIONS & PROPOSALS

### TABLE OF CONTENTS

Section 1	Introduction
Section 2	Background and Project Description
Section 3	Scope of Services
Section 4	RFQ/RFP Submittal Requirements
Section 5	Method/ Criteria for Selection
Section 6	Selection Process Dates
Section 7	Pre-Award Audit
Section 8	Disadvantaged Business Enterprise (DBE) Policy
Section 9	General Terms and Conditions
Attachments	A: Caltrans LAPM Exhibit 10-I, "Notice to Proposers DBE Information" B: Caltrans LAPM Exhibit 10-O1, "Local Agency Consultant DBE Commitment" C: Caltrans LAPM Exhibit 10-O2, "Local Agency DBE Information" D: Caltrans LAPM Exhibit 15-H, "DBE Information – Good Faith Efforts" E: Caltrans LAPM Form 10-K F: Sample Contract

**REQUEST FOR QUALIFICATIONS & PROPOSALS  
ENVIRONMENTAL ASSESSMENT & ENGINEERING DESIGN SERVICES**

**SECTION 1 - INTRODUCTION / DESCRIPTION OF PROJECT**

The Transportation Authority of Marin (TAM) is the Congestion Management Agency (CMA), for Marin County, a Joint Powers Agency established between the County and its cities to address Marin's unique transportation issues and to fulfill the legislative requirements of Propositions 111 and 116, approved in June 1990. TAM also administers funds raised by the County's Measure A transportation sales tax and the voter approved Measure B - Vehicle Registration Fee. The TAM Board includes representatives from each city and town in Marin County, plus the five members of the Board of Supervisors.

Over time TAM has had to take on additional responsibilities in the delivery of priority projects and, as part of this effort, had taken the lead in the preparation of the Plans, Specifications and Estimate (PS&E) for various portions of the Marin-Sonoma Narrows (MSN) HOV Widening Project that are located within Marin County. TAM now requests qualifications and proposals from qualified consultants to provide Environmental Assessment and Engineering Design (plans, specifications and estimate) services for the MSN Contracts B1-Phase 2 and A4, and coordinate with Caltrans to achieve project approval.

The selected consultant will be responsible for all elements and tasks necessary to complete the desired scope for both contract-segments.

Proposals must be submitted by **4 p.m., July 17, 2017**. The following sections describe the elements that TAM believes should be included in the requested services, the process that is to be used, the deliverables that are expected from the contract, and the information that is to be included in the proposals. *However, the consultant is encouraged to submit a proposal that will suggest tasks that more efficiently and effectively meet the needs of the project.*

**SECTION 2 – BACKGROUND AND PROJECT DESCRIPTION**

**Background**

US 101 was constructed in 1917 as a two-lane highway, utilizing Redwood Boulevard through the City of Novato and Petaluma Boulevard through the City of Petaluma. It functioned in this capacity until 1929, when the placement of a new San Antonio Creek Bridge allowed expansion to a four-lane divided highway. In the mid to late 1940s, the newest San Antonio Creek Bridge was constructed, allowing an upgrade to the four-lane expressway that we still see today between Novato and Petaluma. That route configuration remained until the growth of local traffic forced modifications that moved through-traffic out of downtown Novato and Petaluma. This was accomplished with the freeway construction during the mid-1950's in Petaluma and the early

1970's in Novato. A variety of rehabilitations, operational improvements and safety improvements have brought us to the route that we see today, including a number of MSN contract-segments that have been already completed.

### **Project Description**

The MSN HOV Widening Project proposes to add High Occupancy Vehicle (HOV) Facilities to US 101 from the junction of SR37 in the City of Novato to just north of the Corona Road Overcrossing in the City of Petaluma, a distance of approximately 16.0 miles. The project limits have been divided into three segments corresponding to the type of existing facility. Segments A & C consists of existing freeway in the cities of Novato and Petaluma, respectively. Segment B is the existing expressway between the two cities. Segment A and a portion of Segment B are located within Marin County. The Project was environmentally cleared in 2009. The Final Environmental Impact Statement/Environmental Impact Report (FEIS/EIR) can be found on the Caltrans website.

Segment B, locally referred to as "The Narrows," consists of upgrades to the existing facility from an expressway, with at-grade intersections and driveway access, to a freeway, with interchanges and frontage roads to provide access to intersecting roadways and adjacent parcels. The project will also improve the safety of the route by increasing visibility (sight distance), improving drainage to address recurring flooding and providing wider shoulders for emergencies.

*Below are five project contracts that have been either completed or in construction in Marin County:*

#### Segment A1, 2 and 3: US 101 HOV Lanes from SR37 to Atherton Avenue

This project consisted of HOV lanes constructed in the median of Highway 101. Major components of these sub-projects included Southbound (SB) HOV from Rowland Blvd to Hwy 37, Northbound (NB) HOV from Hwy 37 to North of Atherton (approx. PM 23.4), bridge widening (median) over Novato Creek, Franklin OH (partial), Olive UC (partial), full median improvements where both SB & NB HOV lanes are added - concrete median barrier & drainage systems, TOS Elements, ramp widening and ramp metering systems, and soundwalls.

#### Segment B1 Phase 1: US 101 San Antonio Interchange and Frontage Roads

This project consisted of improved access control in the San Antonio Road area. Major components of this sub-project included new overcrossing and on/off ramps, frontage roads to close access points, widen and extend San Antonio Road, and interim Class 1 bike path from Redwood Blvd (Seg. A) to the San Antonio Interchange.

#### Segment B3: US 101 Flood Mitigation and Curve Correction

This contract will construct U.S. Route 101 on a new alignment in the vicinity of San Antonio Creek, including frontage roads and pedestrian/bicycle facility. Contract B3 PS&E was

completed in August 2014. The roadway construction work began in April 2016, and is anticipated to be completed in late 2018.

*Below are the two project contracts that require environmental assessment & engineering design within Marin County and are the subjects of this RFQ/RFP:*

Segment A4: US 101 HOV Lanes

This contract will construct a southbound HOV lane from approximately one mile north of Atherton Ave. to De Long Avenue. The project also represents the remainder of scope needed to complete all work in Segment A. Three highway bridge overcrossings are within the project limits.

Segment B1 Phase 2: US 101 HOV Lanes

This project will construct a southbound HOV lane from approximately 0.6 mile south of the Marin/Sonoma County line to 0.3 mile north of North Novato Overhead, and a northbound HOV lane from 1.6 miles north of North Novato Overhead to 0.6 mile south of the Marin/Sonoma County line. This contract will correct the roadway vertical profile and relocate utilities.

**SECTION 3 – SCOPE OF SERVICES**

TAM intends to retain one qualified and committed professional engineering firm/team to provide services required for environmental assessment and engineering design for the two MSN contract-segments below.

No.	Sub-Project Description	Estimated Construction Cost
1	Segment A4: US 101 HOV Lanes	\$55,000,000
2	Segment B1 Phase 2: US 101 HOV Lanes	combined

Full funding has not been secured for these two segments.

The selected consultant team will work closely with TAM, Caltrans and the affected local jurisdictions. The consultant will review the original concepts and preliminary designs as envisioned in the approved Final Environmental Impact Report and Statement (FEIR/S) and provide the following professional and technical engineering services to gain Caltrans approval:

**Task 1** – Provide all the necessary project coordination, administration, management and interfacing with TAM, Caltrans and other internal/external stakeholders to achieve project objective. The Consultant will be working directly under the supervision of TAM. This task would also include public outreach planning and management.

**Task 2** – Review original concepts and preliminary designs as envisioned in the approved Final Environmental Impact Report and Statement (FEIR/S). Review and become familiar with the applicable sections of the MSN HOV Widening Project EIR/EIS. Copies of this report may be reviewed at the TAM office or viewed online at the Caltrans website.

**Task 3** – Develop two to three engineering alternatives, including initial cost estimates, for the roadway alignment and/or bridge type within the Area of Potential Effect (APE) footprint to the original project concepts and preliminary designs with the key objectives of minimizing costs, project complexities, and construction timelines. The intent is to explore all reasonable and justifiable design exceptions to maximize the objectives. Present to Caltrans for the purpose of selecting a preferred alternative.

Complete necessary surveys, reports, studies and base mapping required to establish design criteria and parameters as-needed. It is the consultant's responsibility to identify all applicable codes and design standards in consultation with TAM and Caltrans, and the County of Marin.

**Task 4** – Based on Caltrans preferred alternative alignment and bridge type selection for further development, advance the preliminary engineering and appurtenant designs (approximately 30%) to a level sufficient to assess impacts to right-of-way, utility relocation, and potential environmental impacts identified for environmental revalidation or supplemental reporting. Prepare appropriate cost estimates for possible future task order phases.

The required engineering design services will include, but not be limited to roadway, drainage, foundation investigations, structural, lighting, pavement features, signals, signing, striping, stage construction, landscaping, surveys, right-of-way and utility engineering, preparation of permit applications, obtaining permits, and such other incidental features required to complete the PS&E phase.

**Task 5** – Assess, identify, and conduct the necessary environmental review and approval for the project, which could include a supplemental assessment or environmental revalidation.

**Task 6 (Optional)** – The efforts will lead to production of 100% Plans, Specifications & Estimate (PS&E) packages for construction of the project. This task includes, but is not limited to, additional topographic surveying, road plans, geotechnical investigation, hydraulic analyses, structural engineering, traffic handling, utilities coordination, right-of-way and utility engineering, landscape design, project management, environmental documents, resource agency permitting, and extensive public outreach. It should be understood that the Consultant will take the PS&E through the Caltrans "Ready-To-List" process. Consultant will then subsequently assist through the bid period and award. Consultant must be fully familiar with the guidelines and requirements of Caltrans, the County of Marin, the City of Novato and any other relevant agencies.

**Task 7 (Optional)** – Provide design support services during the construction for the life of the Project. This task includes, but is not limited to, general support, meeting attendance, Request for Information response, site visits, shop drawing and submittal review, and change order preparation.

This contract has a 12% DBE Goal.

### **Preliminary Project Schedule**

The TAM is committed to completing this scope expeditiously. Presented in the table below are preliminary schedules for the two contract-segments.

<u>STEPS</u>	<u>Completion Date</u>
Select Consultant/TAM Board Approval	September 2017
Task 1	On-going
Task 2	December 2017
Task 3	March 2018
Task 4	August 2018
Task 5	August 2018
Task 6	TBD
Task 7	TBD

### **SECTION 4 – RFQ/RFP SUBMITTAL REQUIREMENTS**

1. *Proposal:* Submit five (5) hard copies and one PDF file of your proposal. The qualification and proposal (excluding resumes and the transmittal letter) shall not exceed a total of 25 single-sided, 8.5” x 11” pages. Resumes and other supplemental information should be included in an appendix.
2. *Transmittal Letter:* The proposal shall be transmitted with a cover letter describing the firm’s/team’s interest and commitment to the proposed project. The letter shall state that the proposal shall be valid for a 90-day period and should include the name, title, address, email, and telephone number of the individual to whom correspondence and other contacts should be directed during the contractor selection process. The person authorized by the firm/team to negotiate a contract with TAM shall sign the cover letter. Also see Section 9.
3. *Qualifications and Experience:* The proposal shall provide the qualifications and experience of the consultant(s). Please emphasize the specific qualifications and experience in providing the requested services. Key Team Members are expected to be committed for the duration of the project. Replacement of Key Team Members will not be permitted without prior consultation with and approval of TAM
4. *Project Understanding:* Describe your understanding of the scope of work and your approach to meeting the task objectives outlined in this RFQ/RFP. Discuss how the services would be performed and what deliverables would be submitted.
5. *Management Plan and Schedule:* This section shall provide an example of the firm’s/team’s management plan for a similar project providing similar services, including the number of staff proposed as available to perform during the timeframe identified in this RFQ/RFP. For the proposal, develop a proposed schedule, identifying major project milestones and the anticipated duration for each activity. Specific hours or other cost information is not to be included here.

6. *Additional Relevant Information:* Provide additional relevant information that may be helpful in the selection process (not to exceed the equivalent of 15 single-sided pages).
7. *References:* Please provide a minimum of three references (including contact names and current phone numbers) that indicate the ability of your firm to successfully deliver this project.
8. *Project Budget:* In a separately sealed envelope, please provide a project budget, showing the budget for each task, as outlined in this RFQ/RFP. Include work plans and expected billing rates for staff. Provide a listing of your latest hourly rates by job class. Although to be determined later, this project may likely be a Cost Plus Fixed Fee contract. Selected consultant with expected billings over \$25,000 shall supply the most recent certified Indirect Cost Audit or calculations. The fixed fee is not to be submitted as a percent of any cost information.
9. *Completed DBE Forms:* All Caltrans LAPM forms to be furnished should be placed in the separately sealed envelope mentioned above in Item No. 8, which includes Caltrans Local Assistance Procedures Manual (LAPM) Exhibit 10-O1 and Caltrans Local Assistance Procedures Manual (LAPM) Exhibit 15-H. Note: Exhibit 15-H (Good Faith Effort) is only required if DBE Goal for this contract established by TAM is not satisfied in the proposal. LAPM Exhibit 10-O2 will be required at contract award.
10. *Professional Services Contract:* Indicate your willingness to accept the terms and conditions in attached sample contract, including your ability to comply with TAM's insurance requirements, or list those to which you take exception, and, as appropriate, provide proposed alternate wording. Note that it is not TAM's intent to make substantial changes to attached sample contract.

### **Submittal Procedure**

The qualification/proposal shall be submitted in accordance with the following requirements:

1. The submittal shall be transmitted with a cover letter as described above.
2. The submittal shall be addressed to:  
  
Nicholas Nguyen  
Transportation Authority of Marin  
900 5<sup>th</sup> Avenue, Suite 100  
San Rafael, CA 94901
3. The submittal shall be dispatched in order to be received at the above address no later than 4:00 p.m. on Monday, July 17, 2017. Late proposals will not be accepted.
4. Questions pertaining to this RFQ/RFP, the Scope of Services, or the proposal should be directed in writing via email to:

Nicholas Nguyen  
nnguyen@tam.ca.gov

TAM will be unable to provide individual responses to all questions submitted and will not respond to questions posed by any means other than e-mail. Responses to technical questions may



Transportation Authority of Marin  
Request for Qualifications and Proposals  
June 19, 2017

take up to two working days and all responses (with questions) will be posted on TAM's website: [www.tam.ca.gov](http://www.tam.ca.gov) under the RFP/RFQ section.

**SECTION 5 – METHOD/CRITERIA FOR SELECTION**

The following criteria will be used to evaluate qualifications/proposals and to select a consultant team to conduct the work:

1. Qualifications and experience of the firm(s), the designated project manager and key staff in similar undertakings;
2. Approach to the project and work scope - including cost effectiveness and the concerns of TAM regarding obtaining effective and efficient multi-agency multi-discipline project management and design services;
3. Demonstrated experience with regulatory agency(ies) permitting procedures;
4. Demonstrated experience with working with Caltrans procedures and/or other standard industry procedures for roadway or structural design;
5. Demonstrated public outreach experience.

A panel will evaluate all submittals and develop a ranking of the most qualified consultants. The panel may include representatives from TAM, Caltrans, Sonoma County Transportation Authority and other agencies. Members of the panel will not be revealed prior to interviews, if held.

If interviews are held, the highest ranking firms/teams will be invited. The Project Manager and key team members should attend the interview. In lieu of interviews, TAM may request supplemental information and/or clarifications to the proposal.

**SECTION 6 – SELECTION PROCESS DATES**

The following is the anticipated schedule for selection (subject to change):

June 19	RFP released
July 5	Optional Pre-submittal Meeting at TAM office at 1:30 PM
July 10	Last day for submittal of questions
July 17	RFP due
Week of July 17	Proposal evaluation
Week of July 24	Interviews, if held
August	Finalize contract
Late September	Award

**SECTION 7 - PRE-AWARD AUDIT**

Expected billings for this contract are expected to be under the \$1,000,000 federal threshold for a pre-award audit. TAM is requesting that the consultant prepare and attach the Caltrans LAPM Exhibit 10-K along with its submittal.

**SECTION 8 - DISADVANTAGED BUSINESS ENTERPRISES (DBE) POLICY**

As TAM will utilize federal financial assistance to fund this procurement from the U.S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans) this procurement is subject to Caltrans regulations in accordance with Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance programs". TAM has agreed to implement the Caltrans DBE program Plan as it pertains to local agencies. Caltrans is in the process of transition their DBE Program to reflect the recent suspension of the waiver granted to Caltrans that identified a certain subset of DBEs as "Underutilized" DBEs or UDBEs.

As a result, this contract entails a percentage participation goal for DBEs. DBEs and other small businesses are strongly encouraged to participate in the performance of contracts financed in whole or in part with federal funds. The consultant should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

**Nondiscrimination:** The Authority will never exclude any person from participation in, deny any person the benefit of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR, Part 26 on the basis of race, color, sex, or national origin. The Authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the Caltrans DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

**Contract Goal:** For this contract TAM has established a DBE goal of 12%. This DBE goal is a requirement; if the DBE goal is not met, the proposer must document adequate good faith efforts to involve DBEs. For additional information, please see the Notice to Bidders/Proposers and Caltrans Exhibit 15-H: DBE Information -Good Faith Efforts, provided as separate. Documentation for the good faith efforts does not count toward the twenty-five (25)-page limit.

**DBE Regulations:** Bidders shall be fully informed with respect to the requirements of the DBE regulations. The DBE regulations in their entirety are incorporated herein by reference. Please note:

1. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP) by the proposal due date;
2. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner with a prime or subconsultant, vendor of materials or supplies, or as a trucking company;

The following Exhibits from the Caltrans Local Assistance Procedures Manual (LAPM) are hereby incorporated by reference:

Exhibit 10-I "Notice to Proposers" Disadvantaged Business Enterprise Information  
Exhibit 15-H "UDBE Information -Good Faith Efforts"

Note: References to the recently discontinued UDBE program should be changed to DBE.

## **SECTION 9 - GENERAL TERMS AND CONDITIONS**

**1. Conflicts of Interest.** The proposer shall disclose any currently known or potential conflicts of interest with TAM, the State Department of Transportation, the Metropolitan Transportation Commission, the County of Marin, and the Federal Highway Administration. The proposer's signature affixed to and dated on the cover letter shall constitute a certification, under penalty of perjury under the laws of the State of California, that the proposer declares that the proposer is not currently, and will not during the performance of any services for TAM participate in any other work involving a third party with interests currently in conflict or likely to be in conflict with TAM's interests without TAM's approval.

**2. Amendments to RFP.** TAM reserves the right to amend or cancel this RFP by addendum before the final submittal due date. Revisions to the RFP shall be posted on the TAM web page at least one full business day prior to the deadline for submittal of responses. It is the responsibility of each proposer to check the Web site for any revisions related to this RFP. The proposer shall each confirm in the transmittal letter of its response the receipt of all addenda issued to this RFP.

**3. Non-commitment of TAM.** This RFP does not commit TAM to award a contract, to pay any costs incurred in the preparation of a response to this request, or to procure or contract for services.

**4. Confidentiality.** Before award of the contract, all responses to this RFP will be designated confidential to the extent permitted by the California Public Records Act. After award of the contract (or if not awarded, after rejection of all responses) all responses will be regarded as public records and will be subject to review by the public. Any language purporting to render all or portions of the responses confidential will be regarded as non-effective and will be disregarded.

Transportation Authority of Marin  
Request for Qualifications and Proposals  
June 19, 2017

ATTACHMENTS

- A: Caltrans LAPM Exhibit 10-I, "Notice to Proposers DBE Information"
- B: Caltrans LAPM Exhibit 10-O1, "Local Agency Consultant DBE Commitment"
- C: Caltrans LAPM Exhibit 10-O2, "Local Agency DBE Information"
- D: Caltrans LAPM Exhibit 15-H, "DBE Information – Good Faith Efforts"
- E: Caltrans LAPM Form 10-K
- F: Sample Contract

# **ATTACHMENTS**

**EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION**

The Agency has established a DBE goal for this Contract of \_\_\_\_\_%

OR

The Agency has not established a goal for this Contract. However, proposers are encouraged to obtain DBE participation for this contract.

**1. TERMS AS USED IN THIS DOCUMENT**

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

**2. AUTHORITY AND RESPONSIBILITY**

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

**3. SUBMISSION OF DBE INFORMATION**

If there is a DBE goal on the contract, Exhibit 10-01 *Consultant Proposal DBE Commitment* must be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-02 *Consultant Contract DBE Information* must be included with the Request for Proposal. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

**4. DBE PARTICIPATION GENERAL INFORMATION**

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

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

- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  - 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
  - 2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
  - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

## 5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity Web site at: <http://www.dot.ca.gov/hq/bep/>.
  - 1. Click on the link in the left menu titled *Disadvantaged Business Enterprise*;
  - 2. Click on Search for a DBE Firm link;
  - 3. Click on *Access to the DBE Query Form* located on the first line in the center of the page.

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

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

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the

purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.



**EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT**

1. Local Agency: \_\_\_\_\_ 2. Contract DBE Goal: \_\_\_\_\_  
 3. Project Description: \_\_\_\_\_  
 4. Project Location: \_\_\_\_\_  
 5. Consultant's Name: \_\_\_\_\_ 6. Prime Certified DBE:

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
<b>Local Agency to Complete this Section</b>		<b>11. TOTAL CLAIMED DBE PARTICIPATION</b>	<b>%</b>
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____  Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.	IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.  _____ 12. Preparer's Signature                      13. Date  _____ 14. Preparer's Name                              15. Phone  _____ 16. Preparer's Title		
_____ 20. Local Agency Representative's Signature                      21. Date			
_____ 22. Local Agency Representative's Name                              23. Phone			
_____ 24. Local Agency Representative's Title			

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

**INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT****CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
- 4. Project Location** - Enter the project location as it appears on the project advertisement.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 8. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 10. DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 11. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 12. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 13. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 14. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 15. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

**LOCAL AGENCY SECTION**

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
- 20. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 21. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 22. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 23. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 24. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

**EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT**

1. Local Agency: \_\_\_\_\_ 2. Contract DBE Goal: \_\_\_\_\_  
 3. Project Description: \_\_\_\_\_  
 4. Project Location: \_\_\_\_\_  
 5. Consultant's Name: \_\_\_\_\_ 6. Prime Certified DBE:  7. Total Contract Award Amount: \_\_\_\_\_  
 8. Total Dollar Amount for **ALL** Subconsultants: \_\_\_\_\_ 9. Total Number of **ALL** Subconsultants: \_\_\_\_\_

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
<b>Local Agency to Complete this Section</b>			\$
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____	<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>		%
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.  _____ 23. Local Agency Representative's Signature      24. Date  _____ 25. Local Agency Representative's Name      26. Phone  _____ 27. Local Agency Representative's Title			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.  _____ 15. Preparer's Signature      16. Date  _____ 17. Preparer's Name      18. Phone  _____ 19. Preparer's Title

**DISTRIBUTION:** 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

**INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT**CONSULTANT SECTION

1. **Local Agency** - Enter the name of the local or regional agency that is funding the contract.
2. **Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
4. **Project Location** - Enter the project location as it appears on the project advertisement.
5. **Consultant's Name** - Enter the consultant's firm name.
6. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
7. **Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
8. **Total Dollar Amount for ALL Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
9. **Total number of ALL subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
10. **Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
11. **DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
12. **DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
13. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
14. **Total Claimed DBE Participation - \$:** Enter the total dollar amounts entered in the "DBE Dollar Amount" column. **%:** Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
15. **Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
16. **Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
17. **Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
18. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
19. **Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

20. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
21. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
22. **Contract Execution Date** - Enter the date the contract was executed.
23. **Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
24. **Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
25. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
26. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
27. **Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

EXHIBIT 15-H DBE INFORMATION —GOOD FAITH EFFORTS

DBE INFORMATION - GOOD FAITH EFFORTS

Federal-aid Project No. \_\_\_\_\_ Bid Opening Date \_\_\_\_\_

The \_\_\_\_\_ (City/County of) \_\_\_\_\_ established a Disadvantaged Business Enterprise (DBE) goal of \_\_\_\_\_ % for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the "Local Agency Bidder DBE Commitment" form indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the "Local Agency Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions:

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates

C. The items of work which the bidder made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Names, addresses and phone numbers of firms selected for the work above:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

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G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results
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H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

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**NOTE:** USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

**EXHIBIT 10-K CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL  
MANAGEMENT SYSTEM**

*(Note: If requesting to utilize the Safe Harbor Indirect Cost Rate submit Attachment 1 of  
DLA-OB 13-07 - Safe Harbor Indirect Cost Rate for Consultant Contracts found at  
[http://www.dot.ca.gov/hq/LocalPrograms/DLA\\_OB/DLA\\_OB.htm](http://www.dot.ca.gov/hq/LocalPrograms/DLA_OB/DLA_OB.htm) in lieu of this form.)*

**Certification of Final Indirect Costs:**

Consultant Firm Name: \_\_\_\_\_

Indirect Cost Rate: \_\_\_\_\_ \* for fiscal period \_\_\_\_\_ (mm/dd/yyyy to mm/dd/yyyy)

\*Fiscal period covered for Indirect Cost Rate developed (not the contract period).

Local Government: \_\_\_\_\_

Contract Number: \_\_\_\_\_ Project Number: \_\_\_\_\_

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

1. All costs included in this proposal to establish final Indirect Cost Rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR, Part 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization, and Indirect Cost Rates have been disclosed as of the date of proposal preparation noted above.

**Certification of Financial Management System:**

I, the undersigned, certify to the best of my knowledge and belief that our Financial Management System meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR of Title 49, CFR, Part 18.20 to the extent applicable to Consultant.

**Certification of Dollar Amount for all A&E Contracts:**

I, the undersigned, certify that the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to this firm within the last three (3) calendar years for all State DOT and Local Agencies is \$ \_\_\_\_\_ and the number of states in which the firm does business is \_\_\_\_\_.

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are reasonable, allowable and allocable to the contract in accordance with the cost principles of the FAR of Title 48, CFR, Part 31. Allowable direct costs to a Government contract shall be:



1. Compliant with Generally Accepted Accounting Principles (GAAP) and standards promulgated by the Cost Accounting Standards Board (when applicable).
2. Compliant with the terms of the contract and is incurred specifically for the contract.
3. Not prohibited by 23 CFR, Chapter 1, Part 172 – Administration of Engineering and Design Related Service Contracts to the extent requirements are applicable to Consultant.

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files.

**Subconsultants (if applicable)**

Proposed Contract Amount (or amount not to exceed if on-call contract): \$ \_\_\_\_\_

**Prime Consultants (if applicable)**

Proposed **Total** Contract Amount (or amount not to exceed if on-call contract): \$ \_\_\_\_\_

Prime, list all subconsultants and proposed subcontract dollar amounts (attach additional page if necessary):

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

**Consultant Certifying (Print Name and Title):**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Consultant Certification Signature \*\*: \_\_\_\_\_

Date of Certification (mm/dd/yyyy): \_\_\_\_\_

**Consultant Contact Information:**

Email: \_\_\_\_\_

Phone number: \_\_\_\_\_

**\*\*An individual executive or financial officer of the consultant’s organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the Indirect Cost Rate proposal submitted in conjunction with the contract.**

*Note: Per 23 U.S.C. 112(b)(2)(B), Subconsultants must comply with the FAR Cost Principles contained in 48 CFR, Part 31. 23 CFR Part 172.3 Definitions state: Consultant means the individual or firm providing engineering and design related services as a party to the contract. Therefore, subconsultants as parties of a contract must complete a certification and send originals to A&I and keep copies in Local Agency Project Files.*

**Distribution:** 1) Original to Caltrans Audits and Investigations  
2) Retained in Local Agency Project Files

## ATTACHMENT F

Contract Log # \_\_\_\_\_ \*\*\*\*SAMPLE CONTRACT\*\*\*\*

**CONTRACT BETWEEN  
TRANSPORTATION AUTHORITY OF MARIN  
AND  
\_\_\_\_\_ CONSULTANTS**

**THE ABOVE-REFERENCED CONTRACT** (this "**Contract**") is made and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the "**Effective Date**") by and between the TRANSPORTATION AUTHORITY OF MARIN a Joint Powers Agency (hereinafter referred to as "**TAM**"), and \_\_\_\_\_, a California Corporation (hereinafter referred to as "**Consultant**"). TAM and Consultant are sometimes hereinafter referred to collectively as the "**Parties**" or individually as a "**Party**."

### RECITALS:

**WHEREAS**, TAM manages a variety of transportation projects and programs in Marin County, California; and

**WHEREAS**, TAM and Consultant desire to enter into an independent contractor relationship whereby Consultant shall perform for TAM certain services as set forth in **Exhibit A** attached hereto and hereby incorporated herein (collectively, the "**Services**," which shall include, without limitation, all services, materials and other work product provided by Consultant hereunder), subject to the terms and conditions of this Contract;

**NOW, THEREFORE**, for and in consideration of the foregoing and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **1. SERVICES**

**Scope of Work.** Consultant agrees to provide the Services in a timely and professional manner, in accordance with the terms and conditions of this Contract. Subject to Sections 11 and 13, should Consultant retain the assistance of any other person or entity to perform the Services, Consultant agrees and warrants that each such assistant shall execute an agreement containing substantially identical terms as this Contract with regard to the obligations imposed on Consultant under this Contract. Consultant agrees that the scope of the Services may be modified by TAM at any time and for any reason. Significant changes to **Exhibit A** Services may result in price adjustment as shown in **Exhibit B** upon mutual agreement of Parties. Consultant shall use its best professional skill and effort in performing the Services, which shall meet or exceed industry standards and Consultant shall complete each project, including any modifications by TAM thereto, on a timely basis.

**Business Conflicts.** Subject to Consultant's compliance with the terms and conditions of this Contract, including without limitation Sections 19 and 20 below, Consultant may provide services for other parties, provided that the services provided by Consultant to third parties does not conflict with, and are not detrimental to, the interest of TAM. To ensure that Consultant does not provide services to third parties in a manner that conflicts with, or is detrimental to, the interests of TAM, Consultant shall fully and promptly disclose all possible conflicts to TAM.

#### **2. ACCESS TO LANDS AND DATA**

TAM will work with the Consultant to gain access to and enter upon public and private lands as required to perform the Services. TAM shall make available all pertinent data and records for review by Consultant as required to perform the Services.

### **3. FEES AND PAYMENT SCHEDULE**

The method of payment for this contract will be based on a **Cost Plus Fixed Fee**. Consultant will invoice TAM per the schedule shown in **Exhibit B**. The schedule of payments includes all consultant costs and fees including direct and indirect.

If Consultant fails to submit the required deliverable items according to the schedule set forth in the Scope of Services and Schedule, which is attached hereto as "**Exhibit A**," TAM shall have the right to delay payment and/or terminate this Contract accordance with the provisions of Section 21, "Termination/ Force Majeure" of this Contract.

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

Consultant will be reimbursed, as promptly as fiscal procedures will permit upon receipt by TAM's Contract Manager of itemized invoices in triplicate. Invoices shall be submitted no later than 45-calendar days after the performance of work for which the Consultant is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Consultant Cost Proposal and shall reference this contract number and project title. The final invoice should be submitted within 60-calendar days after completion of the Consultant's work. Invoices shall be mailed to TAM's Contract Manager at the address specified in Section 36 of this Contract.

The total amount payable by TAM shall not exceed the amount stipulated in Section 5 of this Contract.

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

No retainage will be withheld by the TAM from progress payments due the Consultant. Retainage by the Consultant or subconsultants is prohibited, and no retainage will be held by the Consultant from progress payments due subconsultants. Any violation of this provision shall subject the violating Consultant or subconsultant to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the Consultant or deficient subcontract performance, or noncompliance by a subconsultant. This provision applies to both Disadvantaged Business Enterprise (DBE) and non-DBE consultants or subconsultants. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to the Consultant by the TAM.

Consultant shall provide TAM with his/her/its Federal Tax I.D. number prior to submitting the first invoice.

### **4. COST PRINCIPLES**

Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to TAM.

**5. MAXIMUM COST TO TAM**

Project as shown in Exhibit A shall be performed for a Cost Plus Fixed Fee amount of \_\_\_\_\_ (\$\_\_\_\_\_). Payment to be per Exhibit B.

**6. TERM OF CONTRACT**

This Contract shall commence on the Effective Date on page 1, and shall terminate \_\_\_\_\_ (\_\_\_\_) months from that date (the "Term").

**7. INSURANCE**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to TAM. The general liability policy shall be endorsed naming the TRANSPORTATION AUTHORITY OF MARIN as an additional insured. Each certificate of insurance must be current on the Effective Date and if scheduled to lapse prior to the end of the Term, must be automatically updated before final payment may be made to Consultant. Each certificate of insurance and required endorsement shall be furnished to TAM prior to Consultant's commencement of the Services. Should any of the required insurance policies in this contract be cancelled for any reason or non-renewed, it is the consultant's duty (the Named Insured on the policy) to notify TAM immediately upon receipt of the notice of cancellation or non-renewal from the insurance company or immediately upon consultant's decision to cancel or non-renew the insurance. Said policies shall remain in force through the Term and shall be payable on a per occurrence basis only, except those required by Sections 7.4.a. and 7.4.b. which may be provided on a claims-made basis consistent with the criteria noted therein.

Failure to provide and maintain the insurance required by this Contract shall constitute a material breach of the Contract. In addition to any other available remedies, TAM may suspend payment to Consultant for any Services provided during any time that insurance was not in effect and until such time as Consultant provides adequate evidence that Consultant has obtained the required coverage.

A request for a waiver of any of the following insurance requirements must be set forth on **Exhibit C** attached hereto. A request for a waiver of the insurance requirements must specify whether Consultant is requesting reduced amounts of coverage or requesting to have a particular type of coverage waived entirely.

**7.1 GENERAL LIABILITY**

Consultant shall maintain a commercial general liability insurance policy in an amount of no less than One Million Dollars (\$1,000,000.00) per occurrence. TAM shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page.

**Insurance Reduction or Waiver of Coverage Requested (Exhibit C)**

**7.2 AUTO LIABILITY**

Where the services to be provided under this Contract involve or require the use of any type of vehicle by Consultant in order to perform said services, Consultant shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of One Million Dollars (\$1,000,000.00) per occurrence.

**Insurance Reduction or Waiver of Coverage Requested (Exhibit C)**

**7.3 WORKERS' COMPENSATION**

Consultant acknowledges that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work under this Contract. If Consultant has

employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to self-insure shall be provided to TAM prior to commencement of the Services.

**Insurance Reduction or Waiver of Coverage Requested (Exhibit C)**

**7.4 OTHER INSURANCE**

Consultant may be required to carry additional insurance based upon the nature of the work to be performed (the Services). For each additional required insurance, a corresponding certificate of insurance must be provided. Claims made policies must have a retroactive date either prior to the Effective Date or the beginning of the work in the Contract. Claims-made coverage must extend a minimum of twelve (12) months beyond completion of the work in the Contract or end of the Term, whichever is later. If coverage is cancelled or non-renewed, and not replaced with another claim made policy with a retroactive date prior to the Effective Date, Consultant must purchase extended reporting coverage for a minimum of twelve (12) months beyond completion of the work in the Contract. Consultant shall maintain a policy limit of not less than Two Million Dollars (\$2,000,000) per incident, with a deductible or self-insured retention not to exceed \*Twenty Five Thousand Dollars (\$25,000) unless approved by TAM in writing.

7.4.a. Professional Liability Insurance.....  **(check box if required)**

\*Deductibles greater than Twenty Five Thousand Dollars (\$25,000) require Insurance Reduction/Waiver form **(Exhibit C)** to be completed.

7.4.b. Maritime Insurance.....  **(check box if required)**

Consultant's general liability and/or professional liability insurance may be provided, in part, by self-insurance as long as Consultant provides either (1) evidence to TAM that Consultant has segregated amounts in a special insurance reserve fund meeting the contract's insurance requirements and restricted specifically to this project or (2) Consultant's general insurance reserves are adequate to provide the necessary coverage and TAM may conclusively reply thereon, or (3) if Consultant has a deductible of One Hundred Thousand Dollars (\$100,000) or more, TAM shall have the same benefits and protections as if Consultant carried insurance with a third party insurance company, satisfying the insurance requirements within this Contract.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII. Insurers not licensed in the State of California should have a current A.M. Best's rating of no less than A X.

If Consultant hires subcontractors, Consultant shall require its subcontractors to name Consultant and TAM as additional insured under its commercial general liability insurance policy and Consultant shall require all its subcontractors to furnish separate certificates and endorsements. All insurance for subcontractors shall be subject to all of the requirements stated herein.

**8. REPRESENTATIONS AND WARRANTIES / INDEMNIFICATION**

**8.1 Representations and Warranties.** Consultant hereby represents or covenants, as applicable, and warrants that it, and each of its directors officers, employees, members, managers, partners, permitted consultants, contractors, agents, successors, heirs, representatives, beneficiaries, administrators, executors, trustees, affiliates, permitted assigns and/or representatives (each and all, "Consultant" for the purposes of Section 9, 20 and 21): (i) is not a party to any agreement – and does not have any interest or obligation – that will limit, interfere, or otherwise conflict with any provision of this Contract, the performance of the Services or any of Consultant's obligations hereunder; (ii) shall not, during the Term and thereafter, make any commitment or obligation or engage in any activity that will limit, interfere or otherwise conflict with any provision of this Contract, the performance of the Services or any of Consultant's obligations hereunder, without obtaining TAM's express prior written approval; (iii) shall not infringe any and all right, title and

interest, including, but not limited to, any and all patent rights, mask work rights, copyrights, moral rights, trade secret rights, trademark rights, including any and all supplements, enhancements, modifications, translations and derivative works thereto, whether now known or hereafter devised, industrial property rights, all other intellectual property rights and property rights of any nature whatsoever, and any and all renewals of the foregoing (separately and collectively, "**Proprietary Rights**") of TAM or any party in performing the Services or discharging any of Consultant's obligations hereunder; (iv) shall, at TAM's request, during the Term and thereafter, execute and/or verify any proper oath, assignment, application, specification or other document or instrument that TAM, its agents or attorneys (each a "**TAM Party**"), deems desirable or necessary to evidence or carry out this Contract's terms and conditions and/or compliance therewith; (v) shall use its best efforts to ensure that in performing the Services or fulfilling its obligations hereunder, Consultant does not in any way adversely impact TAM's reputation or goodwill; (vi) shall avoid deceptive, misleading, or unethical business practices; and (vii) shall comply with all applicable laws and governmental regulations in performing the Services and fulfilling its obligations hereunder.

**8.2 Indemnity.** Pursuant to CA Civil Code Section 2782.8, Consultant agrees to indemnify, defend and hold TAM, its employees, officers and agents harmless from all liabilities arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of Consultant.

## **9. NONDISCRIMINATORY EMPLOYMENT**

Consultant and/or any permitted sub-consultant shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Consultant and/or any permitted sub-consultant understands and agrees that Consultant and/or any permitted sub-consultant is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

## **10. DRUG-FREE WORKPLACE POLICY**

Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on TAM's premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns will be deemed a material breach of this Contract.

## **11. SUBCONTRACTING**

Consultant shall not subcontract nor assign any portion of the work required by this Contract without prior express written approval of TAM except for any subcontract work identified and expressly authorized by TAM herein. If Consultant hires a sub-consultant under this Contract, Consultant shall require sub-consultant to provide and maintain insurance coverage identical to what is required of Consultant under this Contract and shall require sub-consultant to name Consultant as additional insured under each policy in accordance with this Contract. It shall be Consultant's responsibility to collect and maintain current evidence of insurance provided by its sub-consultant and shall forward to TAM evidence of same.

Nothing contained in this Contract or otherwise, shall create any contractual relation between TAM and any subconsultants, and no subconsultant shall relieve Consultant of his/her responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to TAM 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 subconsultants is an independent obligation from TAM's obligation to make payments to Consultant.

Any subcontract in excess of \$25,000, entered into as a result of this Contract, shall contain all the provisions stipulated in this Contract to be applicable to subconsultants.

Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to the Consultant by the TAM.

Any substitution of subconsultants must be approved in writing by TAM in advance of assigning work to a substitute subconsultant.

## **12. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION**

This Contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Proposers who obtain DBE participation on this Contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

If the Contract has an underutilized DBE (UDBE) goal, the Consultant must meet the UDBE goal by committing UDBE participation or document a good faith effort to meet the goal. If a UDBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another UDBE subconsultant, if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Native Americans, Asian-Pacific Americans, or Women.

DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. The Consultant, sub-recipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted contracts. Failure by Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate.

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

## **13. PERFORMANCE OF DBE CONSULTANT AND OTHER DBE SUBCONSULTANTS/SUPPLIERS**

A DBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing; and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

## **14. DBE RECORDS**

Consultant shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of

payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to TAM with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25% of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants is submitted to TAM.

#### **15. DBE CERTIFICATION AND DECERTIFICATION STATUS**

If a DBE subconsultant is decertified during the life of the Contract, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify the Consultant in writing with the date of certification. Any changes should be reported to TAM within 30 days.

#### **16. ASSIGNMENT**

The rights, responsibilities and duties under this Contract are personal to Consultant and may not be transferred or assigned without the express prior written consent of TAM. Consultant shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to TAM, as is evidenced in writing. Subject to the foregoing restrictions, this Contract shall be binding upon, and inure to the benefit of, the Parties and their respective, heirs, administrators, executors, trustees, successors and permitted assigns.

#### **17. LICENSING AND PERMITS**

Consultant shall, at its sole expense, maintain all required government and other regulatory licenses throughout the Term of this Contract. Consultant shall also, at its sole expense, obtain any and all permits which might be required to perform the Services.

#### **18. BOOKS OF RECORD AND AUDIT PROVISION**

Consultant shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be kept in accordance with generally accepted accounting practices. In addition, Consultant shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five (5) years from the end of the Term or earlier termination of this Contract. Consultant will permit TAM, the state, the State Auditor, FHWA, or any duly authorized representative of the federal government to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Consultant who participated in this Contract in any way. Consultant shall promptly refund to TAM any monies erroneously charged to TAM.

#### **19. CONFIDENTIALITY**

**19.1 Confidential Information.** Consultant agrees that during the Term of this Contract, and thereafter, Consultant shall keep TAM's Confidential Information (as hereinafter defined) confidential and shall not, directly or indirectly, on behalf of Consultant or any third party, use, divulge, publish or otherwise disclose or allow to be disclosed any aspect of Confidential Information, except as expressly provided herein solely for TAM's benefit. "**Confidential Information**" means any confidential, trade secret or other proprietary information (in whatever form or media, and whether or not marked as confidential) disclosed by



TAM to Consultant under this Contract (including, without limitation, any reproductions or copies thereof), except information that the Consultant clearly proves to TAM: (a) is public knowledge at the time of disclosure, (b) was known by the Consultant before disclosure by TAM, or becomes public knowledge or otherwise known to the Consultant after such disclosure, other than by breach of a confidentiality obligation, or (c) is independently developed by the Consultant by persons without access to Confidential Information of TAM. Confidential Information shall include, without limitation, the following categories of information: any and all nonpublic information relating to TAM, methodologies, data, databases, know-how, procedures, techniques, tutorials and processes of TAM, services rendered or deliverables furnished by TAM, financial and operational information, and other matters relating to the operations or projects of TAM including traffic data and traffic studies, information relating to actual or potential clients and/or client lists, client requirements, forecasts and projections, accounting, finance or tax information, pricing information, and the terms of this Contract.

**19.2 Protection and Disclosure of Confidential Information.** The Consultant shall exercise at least the same degree of care and protection with respect to the Confidential Information of TAM that it exercises with respect to its own Confidential Information, but in no event shall the Consultant exercise less than a reasonable standard of care, and in addition shall not directly or indirectly disclose, copy, distribute, republish or allow any third party to have access to any Confidential Information of TAM except to the extent expressly permitted in writing by TAM. Notwithstanding the above, the Consultant may disclose Confidential Information of TAM to the employees and agents of the Consultant who have a bona fide need to know and to third parties if so required by law (including court order or subpoena), provided that such disclosure is made in accordance with the terms of Section 20.3. Consultant acknowledges that breach of this Section will cause irreparable harm to TAM entitling TAM to injunctive relief, among other remedies.

**19.3 Notification Obligation.** If the Consultant becomes aware of any unauthorized use or disclosure of the Confidential Information, the Consultant shall promptly and fully notify TAM of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Consultant or any of its employees or agents are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the Consultant shall not disclose the Confidential Information without providing TAM at least twenty-four (24) hours prior written notice of any such request or requirement so that TAM may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Contract. Notwithstanding the foregoing, the Consultant shall exercise its best efforts to preserve the confidentiality of the Confidential Information including, without limitation, by cooperating with TAM to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information by such tribunal.

**19.4 Restricted Storage and Access.** Consultant shall access Confidential Information that is stored electronically only via TAM's computers, and shall access Confidential Information only while Consultant is at TAM's offices, unless otherwise expressly authorized by TAM in writing. If Consultant wishes to store Confidential Information electronically, Consultant may only store such Confidential Information on TAM's computers located at TAM's offices. Under no circumstances shall Consultant copy Confidential Information onto non-TAM computers or other equipment not owned by TAM without the express prior written consent of TAM. Consultant shall not remove any Confidential Information from TAM's offices without the express prior written consent of TAM. TAM reserves the right, in its sole discretion, to revoke any authorization or consent given hereunder.

**19.5 Mutual Cooperation.** Each Party shall notify and cooperate with the other Party in enforcing TAM's rights if such Party becomes aware of a threatened or actual violation of TAM's confidentiality requirements by a third party. Upon reasonable request by TAM, the Consultant shall provide copies of the confidentiality agreements entered into with its agents or independent contractors relating to this Contract.

**19.6 Return of Confidential Information.** Upon the termination or expiration and non-renewal of this Contract or upon the request of TAM, Consultant shall either promptly return the Confidential Information, and any and all reproductions and copies thereof, to TAM or destroy all such Confidential

Information, and Consultant shall sign an affidavit certifying to TAM under penalty of perjury that all such Confidential Information in Consultant's possession has been returned or destroyed.

## **20. WORKS FOR HIRE**

**20.1 Work Product.** Consultant acknowledges and agrees that the Proprietary Rights in and to any and all studies, deliverables, inventions, ideas, improvements, know-how, designs and discoveries, whether or not patentable and whether or not reduced to practice, patents, trademarks, trade secrets, original works of authorship (including, but not limited to, all algorithms, HTML, Java files and associated data, graphic materials, illustrations, creative writings, written information, photographs, product documentation, flow charts, databases, developments, processes, techniques, formulae, technology, drawings, marketing, advertising, product plans, reports, specifications, technical data, any computer program (source code and object code), research, schematics, prototypes, models and products) made, conceived and/or created by Consultant, whether solely or jointly with others that: (i) is developed in whole or in part on TAM's time or using TAM's computers, equipment, supplies, facilities or Confidential Information; (ii) results from, or is suggested by, any task or project assigned to Consultant under this Contract, the Services or the fulfillment of Consultant's obligations under this Contract; or (iii) relates in any manner to the actual or reasonably anticipated project, work, research and/or operations of TAM (separately and collectively, "**Work Product**"), is solely owned by, and belongs to, TAM. Consultant expressly acknowledges and agrees that all such works of authorship are "works made for hire" as defined in the U.S. Copyright Act and belong exclusively to TAM to the fullest extent permitted under applicable law. Consultant hereby waives and shall not assert any and all moral rights Consultant may have to such works of authorship, which may inure to Consultant under the laws of any nation.

**20.2 Assignment of Work Product.** If Work Product, or any part thereof, is for any reason deemed not to constitute works made for hire owned by TAM, or if Consultant should, by operation of law or otherwise, be deemed to retain any rights thereto, for good and valuable consideration, including without limitation the consideration recited herein, Consultant hereby grants, conveys, bargains, sells, assigns, transfers and delivers to TAM, its successors and assigns, any and all of Consultant's Proprietary Rights, in and to the Work Product. Consultant also expressly assigns to TAM all legal rights necessary for TAM to pursue any legal action against any third party arising out of or in connection with the Work Product assigned hereunder. Consultant shall cause Consultant's permitted successors and assigns to assign all Proprietary Rights in Work Product to TAM to the maximum extent permitted by law. Consultant covenants not to personally, or cause any third party to, infringe any of TAM's Proprietary Rights in or to the Work Product. Upon the request of TAM, its agents or attorneys (each a "**TAM Party**"), Consultant shall promptly execute further written assignments and any additional document a TAM Party, in its sole and absolute discretion, deems necessary to effect, record and/or perfect the transfer of rights, title and interest in and to the Work Product.

**20.3 Disclosure of Work Product.** Consultant agrees that in connection with any Work Product Consultant shall: (i) promptly disclose such Work Product in writing to TAM (which shall be received in confidence by TAM), to permit TAM to claim rights to which it may be entitled under this Contract, and (ii) if TAM requests, promptly execute any additional written assignment of title to TAM for any Work Product required to be assigned by this Section 20 and Consultant shall preserve any such Work Product as Confidential Information of TAM. If Consultant believes that Consultant is entitled to ownership, either in whole or in part, of any Work Product, Consultant shall immediately so notify TAM's Board in writing. Consultant shall preserve all Work Product as Confidential Information of TAM. Consultant expressly agrees and covenants to keep and maintain adequate and current written records of all Work Product. The records will be in the form of notes, sketches, drawings and any other format that may be specified by TAM and shall at all times be available to, and remain the sole property of, TAM.

**20.4 Termination of Proprietary Rights.** TAM and Consultant hereby acknowledge that certain Proprietary Rights in and to Work Product assigned to TAM hereunder may, under certain circumstances and after the assignment thereof to TAM, be terminated by Consultant in accordance with the provisions of the Copyright Act. The Parties further acknowledge that it is their intention that, if any such assignments are

terminated by Consultant, TAM shall have the exclusive rights of first and last refusal with respect thereto, which right of first and last refusal shall be exercised as follows:

Until the expiration of a period of sixty (60) days following TAM's receipt of a valid notice of termination with respect to any such Proprietary Rights, Consultant shall not negotiate with any third party with respect to the grant, sale, assignment, license, or other transfer of the Work Product thereof. During said sixty (60) day period, Consultant shall negotiate in good faith and exert best efforts to reach an agreement with TAM for TAM's acquisition of such Proprietary Rights and/or Work Product. If TAM and Consultant fail to reach agreement by the end of said sixty (60) day period, Consultant shall be free to negotiate with third parties for the grant, sale, assignment, license, or other transfer of such Proprietary Rights and/or Work Product, only for terms and conditions more favorable to Consultant than those last offered by TAM.

If Consultant receives such a bona fide offer from a third party, which offer Consultant wishes to accept, Consultant shall notify TAM of the terms therein in writing and TAM shall have ten (10) days from its receipt thereof to notify Consultant that it desires to acquire the Proprietary Rights and/or Work Product subject to the terms of such offer. If TAM so notifies Consultant, such copyrights shall automatically vest in TAM and Consultant shall enter into a written agreement with TAM reflecting such terms and conditions promptly after Consultant's receipt of such notice. If TAM does not so notify Consultant and Consultant does not accept such third party offer, the foregoing procedures shall apply to any further offers which Consultant receives and wishes to accept, including any offer containing identical terms and conditions rejected by Consultant, whether received by Consultant from the same or from a different third party.

**20.5 Patent, Trademark and Copyright Registrations.** Consultant agrees to assist any TAM Party, at TAM's expense, to secure TAM's rights in the Work Product and any Proprietary Rights relating thereto in any and all countries, including the disclosure to TAM of all pertinent information, written records and data with respect thereto, the execution of all applications, specifications, oaths, assignments and other instruments that a TAM Party, in its sole discretion, deems necessary to apply for and obtain such rights. Upon the request of a TAM Party, Consultant shall promptly execute any and all applications for U.S. or foreign patent, trademark or copyright registrations regarding Work Product and execute any additional documents and do all other lawfully permitted acts to further the prosecution and issuance letters of registration thereon. Consultant hereby irrevocably appoints each TAM Party as Consultant's attorney-in-fact for the purpose of executing such registration applications, assignments and additional documents in Consultant's name and stead and with the same legal force and effect as if executed by Consultant.

## **21. TERMINATION / FORCE MAJEURE**

- A. If Consultant fails to properly provide in any manner the Services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance hereunder, TAM may terminate this Contract by giving five (5) calendar days written notice to Consultant.
- B. Nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the nonperforming Party.
- C. Either Party may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent in accordance with Section 36.
- D. In the event of termination not due to the fault of Consultant, Consultant shall be paid for Services properly performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract including any and all amendments thereto.

- E. Upon receipt of termination notice, Consultant shall commence and perform, with diligence, all actions necessary on the part of Consultant to effect the termination of this Contract on the date specified by TAM and to minimize the liability of Consultant and TAM to third parties as a result of termination. All such actions shall be subject to the prior approval of TAM. Such actions shall include, without limitation:
- i. Halting the performance of the Services and other work under this Consultant on the date(s) and in the manner specified by TAM.
  - ii. Not placing any further orders or subcontracts for materials, services, equipment or other items.
  - iii. Terminating all existing orders and subcontracts.
  - iv. At TAM's direction, assigning to TAM any or all of Consultant's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, TAM shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
  - v. Subject to TAM's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
  - vi. Completing performance of any Services or work that TAM designates to be completed prior to the date of termination specified by TAM.
  - vii. Taking such action as may be necessary, or as TAM may direct, for the protection and preservation of any property related to this Contract which is in the possession of Consultant and in which TAM has or may acquire an interest.
- F. In no event shall TAM be liable for costs incurred by Consultant or any of its sub-consultants after the termination date specified by TAM, except for those costs associated in compliance with the immediately preceding subsection (E). Non-recoverable costs include, but are not limited to, anticipated profits on this Contract, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under subsection (E).
- G. TAM's payment obligation under this Section shall survive termination of this Contract.

## **22. RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION**

- A. Sections 19, 20, and each other provision of this Contract that may be reasonably construed to survive termination hereof, shall survive termination or expiration of this Contract for any reason.
- B. Subject to the immediately preceding subsection (A), upon termination of this Contract prior to the expiration of the Term specified in Section 6, this Contract shall terminate and be of no further force or effect. Consultant shall transfer title to TAM, and deliver in the manner, at the times, and to the extent, if any, directed by TAM, any work in progress, completed work, supplies, equipment, and other materials produced as part of, or acquired in connection with the performance of this Contract, and any completed or partially completed work which, if this Contract had been completed, would have been required to be furnished to TAM. This subsection shall survive termination of this Contract.

## **23. RELATIONSHIP BETWEEN THE PARTIES**

It is expressly understood that in the performances of the Services herein, Consultant, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of TAM. Consultant shall be solely responsible to pay all required taxes, including but not limited to, all payroll withholding taxes, social security, and worker's compensation arising from or relating to Services. Consultant or any agent or employee of Consultant is liable for the acts or omissions of itself, its employees and its agents. Nothing in this Contract shall be construed as creating an employment or agency relationship between TAM and Consultant or any agent or employee of Consultant.

Any terms in this Contract referring to direction from TAM shall be construed as providing for direction as to policy and the result of Consultant's work only, and not as to the means by which such a result is obtained. TAM does not retain the right to control the means or the method by which Consultant performs work under this Contract.

#### **24. PAYMENT OF TAXES AND OTHER EXPENSES**

Should TAM, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Consultant is an employee for purposes of collection of any employment taxes, the amounts payable under this Contract shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Consultant which can be applied against this liability). TAM shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Consultant for TAM, upon notification of such fact by TAM, Consultant shall promptly remit such amount due or arrange with TAM to have the amount due withheld from future payments to Consultant under this Contract (again, offsetting any amounts already paid by Consultant which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Contract, Consultant shall not be considered an employee of TAM. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Consultant is an employee for any other purpose, then Consultant agrees to a reduction in TAM's financial liability so that TAM's total expenses under this Contract are not greater than they would have been had the court, arbitrator, or administrative authority determined that Consultant was not an employee.

#### **25. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK**

The granting of any payment by TAM, or the receipt thereof by Consultant, shall in no way lessen the liability of Consultant to replace unsatisfactory work, equipment, or materials, and thereafter the unsatisfactory character of such work, equipment, components, or workmanship that do not conform to the requirements of this Contract may be rejected by TAM and in such case must be replaced by Consultant without delay.

#### **26. SUBMITTING FALSE CLAIMS AND MONETARY PENALTIES**

Pursuant to Government Code sections 12650 et seq., any Consultant, sub-consultant or consultant who submits a false claim shall be liable to TAM for three times the amount of damages that TAM sustains because of the false claim. A Consultant, sub-consultant or consultant who submits a false claim shall also be liable to TAM for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to TAM for a civil penalty for up to \$10,000 for each false claim. A Consultant, sub-consultant or consultant will be deemed to have submitted a false claim to TAM if the Consultant, sub-consultant or consultant: (a) knowingly presents or causes to be presented to an officer or employee of TAM, a false claim for payment or approval; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by TAM; (c) conspires to defraud TAM by getting a false claim allowed or paid by TAM; (d) has possession, custody, or control of public property or money used or to be used by TAM and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt; (e) is authorized to make or deliver a document certifying receipt of property used or to be used by TAM and knowingly makes or delivers a receipt that falsely represent the property used or to be used; (f) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to TAM; (g) is a beneficiary of an inadvertent submission of a false claim to TAM, subsequently discovers the falsity of the claim, and fails to disclose the false claim to TAM within a reasonable time after discovery of the false claim.

## **27. MODIFICATION OF CONTRACT**

This Contract may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed by duly authorized officers or representatives of both Parties and approved in the same manner as this Contract.

## **28. ENTIRE AGREEMENT**

This Contract sets forth the entire agreement between the Parties, and supersedes all other oral or written agreements, understandings and provisions between them, concerning the subject matter hereof. This Contract may be modified only as provided in Section 27.

## **29. SEVERABILITY**

Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Contract shall not be affected or impaired thereby, and (b) such invalid or unenforceable provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

## **30. JURISDICTION AND VENUE / LEGAL EXPENSES**

This Contract shall be construed in accordance with the laws of the State of California, without reference to its conflict of laws principles. The Parties agree that exclusive venue for any dispute arising hereunder shall be in a state court located in Marin County, California, or federal court located in San Francisco, California, and the Parties hereby consent to the exclusive jurisdiction of such courts. If TAM initiates legal action to enforce its rights under this Agreement, TAM shall be entitled, in addition to all other remedies available under law, to recover its legal expenses incurred in connection therewith, including without limitation reasonable attorney's and expert witness fees.

## **31. LIABILITY OF TAM**

TAM's payment of obligations under this Contract shall be limited to the payment of the compensation provided for in Sections 3 and 5 of this Contract. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, IN NO EVENT SHALL TAM BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, PUNITIVE, CONSEQUENTIAL INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS CONTRACT, EVEN IF TAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **32. COMPLIANCE WITH APPLICABLE LAWS**

Consultant shall comply with any and all Federal, State and local laws (including, but not limited to Covenant Against Contingent Fees, below) affecting services covered by this Contract. Copies of any of the above-referenced local laws and resolutions may be secured from TAM's contact person referenced in Section 36 (NOTICES) below.

## **33. COVENANT AGAINST CONTINGENCY FEES**

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant; to solicit or secure this Contract; and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Contract. For breach or violation of this warranty, the local agency shall have the right to annul this Contract without

liability, or at its discretion; to deduct from the Contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**34. ADMINISTRATIVE REMEDY FOR AGREEMENT INTERPRETATION / MISCELLANEOUS**

Should any question arise as to the meaning and intent of this Contract, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Executive Director of TAM, who shall decide the true meaning and intent of the Contract. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Headings used in this Contract are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Contract. This Contract shall be construed within its fair meaning and no inference shall be drawn against the drafting Party in interpreting this Contract. Whenever used in this Contract, the singular shall include the plural, the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, corporation, or other legal entity all as the context and meaning of this Contract may require.

**35. DEBARMENT AND SUSPENSION CERTIFICATION**

The Consultant's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud of official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the TAM.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom the exceptions apply, initiating agency, and dates of action.

**36. NOTICES**

All notices permitted or required under this Contract shall be in writing and shall be sent by registered or certified mail, or by FedEx or other similar overnight courier, to the Parties at their respective addresses below. A notice sent by registered or certified mail shall be deemed given five (5) business days after deposited in the mail, or one (1) business day after being sent by FedEx or similar over night courier for next day delivery. This Contract shall be managed and administered on TAM's behalf by the Contract Manager named below. All invoices shall be submitted and approved by this Contract Manager and all notices shall be given to TAM at the following location:

Contract Manager:	Nicholas Nguyen
Location:	900 5 <sup>th</sup> Avenue, Suite 100
	San Rafael, CA 94901
Contact:	415.226.0831
	nnguyen@tam.ca.gov

Notices shall be given to Consultant at the following address:

Consultant:	_____
Location:	_____
Contact:	_____

**37. ACKNOWLEDGEMENT OF EXHIBITS**

**CONSULTANT'S INITIALS**

- EXHIBIT A.**          **Scope of Services and Schedule** \_\_\_\_\_
- EXHIBIT B.**          **Consultant Cost Proposal** \_\_\_\_\_
- EXHIBIT C.**          **Insurance Reduction/Waiver** \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have executed this Contract on the Effective Date.

**TRANSPORTATION AUTHORITY OF MARIN:**

**CONSULTANT:**

By: \_\_\_\_\_  
Dianne Steinhauser, Executive Director

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Federal Employer ID Number or SSN