



# **TRANSPORTATION AUTHORITY OF MARIN**

## **REQUEST FOR QUALIFICATIONS & PROPOSALS**

**Date Issued: June 12, 2018**

**Congestion Management Plan and Traffic System Monitoring**

**PROPOSALS DUE: Friday, July 13, 2018 by 4:00 p.m.**

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

# TRANSPORTATION AUTHORITY OF MARIN

## REQUEST FOR QUALIFICATIONS & PROPOSALS

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## **REQUEST FOR QUALIFICATIONS & PROPOSAL CONGESTION MANAGEMENT PLAN AND TRANSPORTATION SYSTEM MONITORING**

### **SECTION 1 - INTRODUCTION / DESCRIPTION OF PROGRAM**

The Transportation Authority of Marin (TAM) requests qualifications and proposals from qualified consultants to provide transportation system performance monitoring and prepare the Congestion Management Plan for Marin County. The selected consultant will be responsible for collecting data and reporting on the current status of the Marin County-wide transportation network, including the development of the 2019 Congestion Management Program (CMP) Update; so the desired scope of work shall be consistent with this future CMP Update.

Proposals must be submitted by **4 p.m., Friday, July 13th, 2018**. The following sections describe the elements that TAM requires as part of the transportation system monitoring and congestion management plan report preparation.

#### **Background**

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 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.

As the CMA, TAM is required to prepare a CMP and update it every two years. The CMP is viewed as part of an overall strategy to reduce congestion and improve air quality and mobility within the County. TAM adopted the most recent Marin CMP update in September 2015. The CMP legislation requires that TAM, as the CMA for Marin, monitor Level of Service (LOS) standards on the designated CMP network at least every other year. *Future guidance may change these metrics to include other multi-modal standards for evaluation of the transportation system.*

TAM has chosen to monitor the status of additional components beyond the CMP network LOS monitoring that may affect the County's overall transportation system. These components reflect Marin's unique needs and demands on its transportation system, such as bicyclist/pedestrian activity, weekend commutes, and an assessment of AM & PM peak hour travel.

Typical System Performance measures included in the CMP which are evaluated in the monitoring report are:

- 1 Roadway Level of service;
- 2 Aggregate Peak Hour Travel Time;
- 3 Person Throughput including Bicycle and Pedestrian Usage; and
- 4 Transit services provided in Marin.

## **SECTION 2 – THE CMP DESIGNATED NETWORK**

The following routes are designated as the State Highway portion of the Marin CMP roadway network:

1. Interstate 580 – from U.S. 101 to Contra Costa County line;
2. U.S. 101 – from San Francisco County Line to Sonoma County Line;
3. State Route 1 – from U.S. 101 to Sonoma County line;
4. State Route 37 – from U.S. 101 to Sonoma County line; and
5. State Route 131 – from U.S. 101 to Main Street in Tiburon.

The following routes are designated as the principal arterial portion of the Marin CMP roadway network:

1. Bridgeway/Richardson Street/Second Street/Alexander Avenue in Sausalito – from U.S. 101 to U.S. 101;
2. Fourth Street in San Rafael – from Ross Valley Drive to Marquard Avenue;
3. Second Street in San Rafael – from Marquard Avenue to U.S. 101;
4. Third Street in San Rafael – from US 1-1 to Marquard Avenue;
5. Red Hill Avenue in San Anselmo – from Sir Francis Drake Boulevard to Ross Valley Drive;
6. Sir Francis Drake Boulevard in Larkspur and unincorporated Marin County – from U.S. 101 to Interstate 580;
7. Sir Francis Drake Boulevard in Larkspur, Kentfield, Ross, San Anselmo, and Fairfax – from State Route 1 to U.S. 101;
8. Bel Marin Keys Boulevard – from U.S.101 southbound ramps to Arroyo San Jose;
9. Novato Boulevard in Novato –from Sutro Avenue/San Marin Drive to Diablo Avenue;
10. South Novato Boulevard in Novato – from Novato Boulevard to U.S. 101; and
11. Rowland Boulevard in Novato – from South Novato Boulevard to U.S. 101;

These roadways are further broken down into the segments shown in Table 1.

## **SECTION 3 – SCOPE OF SERVICES**

### **Overview of Transportation Network Monitoring and Data Collection Requested**

In preparation for the 2019 Update to the CMP, TAM wishes to monitor the performance of the Marin County-wide transportation network. Specifically, this work will include collecting travel data in the early Fall of 2016, at locations specified in Tables 2. *Optional* additional locations outside of our CMP network have will be identified for data collection purposes at up to 20 locations.

Weekday counts should be collected at least for one of three weekdays – Tuesday, Wednesday or Thursday. Specific counts locations and data requested are shown in Table 2 below. TAM requests that all counting information be provided for a 24-hour period or similar period to determine AADT, verify peak hours, and to compare weekend peak hours and volumes in a consistent manner. TAM also requests that counts should be provided for traditional peak

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periods between 7:00 and 9 AM, or between 4:00 and 6:30 PM to provide historical comparisons. Count data available from Caltrans' Performance Measurement System (PeMS) is acceptable to use for state highways, however alternative sources of information are preferred for counts.

**Table 1: CMP Roadway Segmentation Description**

Segment Number	Facility Type	Location Name	From	To	Grandfathered In CMP Process
1	Principal Arterial	Shoreline Highway (SR 1)	Flamingo Road	Sonoma	No
2	Basic Freeway	US 101	Atherton Avenue	Sonoma County Line	Yes
3	Principal Arterial	Novato Boulevard	San Marin Drive	Wilson Avenue	No
4	Principal Arterial	South Novato Boulevard	US 101	Novato Boulevard	No
5	Basic Freeway	SR 37	US 101	Atherton Avenue	No
6	Principal Arterial	Bel Marin Keys	US 101	Commercial Boulevard	Yes
7	Basic Freeway	US 101	N. San Pedro Road	SR 37	Yes
8	Basic Freeway	US 101	Mission Avenue	N. San Pedro Road	Yes
9	Principal Arterial	Sir Francis Drake Boulevard	San Anselmo Avenue	Red Hill Avenue	Yes
10	Principal Arterial	Red Hill Avenue	Sir Francis Drake Boulevard	Hilldale Drive	No
11	Basic Freeway	US 101	I-580	Mission Avenue	Yes
12	Principal Arterial	Sir Francis Drake Boulevard	College Avenue	Wolfe Grade	Yes
13	Basic Freeway	US 101	Sir Francis Drake Blvd.	I-580	Yes
14	Basic Freeway	I-580	Sir Francis Drake Boulevard	Bellam Boulevard	Yes
15	Basic Freeway	I-580	Sir Francis Drake Boulevard	Richmond/San Rafael Bridge	No
16	Principal Arterial	E. Sir Francis Drake Boulevard	US 101	Larkspur Landing Center	Yes
17	Basic Freeway	US 101	Shoreline (SR 1)	Tiburon Highway Boulevard (SR 131)	Yes
18	Principal Arterial	Tiburon Boulevard (SR 131)	US 101	Strawberry Drive	No
19	Principal Arterial	Shoreline Highway (SR 1)	Northern Avenue	Almonte Boulevard	Yes
20	Principal Arterial	Bridgeway Boulevard	US 101	US 101	No
21	Basic Freeway	US 101	San Francisco County Line	Shoreline Highway (SR 1)	No
22	Principal Arterial	Sir Francis Drake Boulevard	Butterfield Road	Shoreline Highway (SR 1)	Yes
23	Principal Arterial	Sir Francis Drake Boulevard	College Avenue	Toussin Avenue	Yes
24	Principal Arterial	Novato Boulevard	Wilson Boulevard	Diablo Avenue	No

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25	Principal Arterial	State Route 1	US 101	Tennessee Valley	N.A.
26	Principal Arterial	2nd Street	Marquard Street	US 101	N.A.
27	Principal Arterial	3rd Street	US 101	Marquard Street	N.A.

Weekday travel times (delay studies) should be collected over at least three weekdays, Tuesday, Wednesday, or Thursday – for all day hourly periods, with peak hours verified. Travel Times should be provided for traditional peak periods between 7:30 and 9 AM, or between 4:30 and 6:30 PM to provide historical comparisons. Measurements are to include segment counts/travel times. The number of total weekday AM and PM peak samples for each segment should be based on obtaining a statistically significant estimate of travel time; it should be undertaken to a 90 % statistical confidence (estimated to be 6-10 counts for non-congested segments and more for congested segments). AM & PM peak hour travel times need to be established and operating speeds measured in ¼ mile increments of the segments; travel time should be determined within 10<sup>th</sup> of a minute or smaller. Travel time information derived from PeMS data or commercial GPS records are acceptable to use.

Counts should provide separate data from HOV lanes, when HOV lanes are active. Vehicle occupancy data is required for all active HOV counts.

The travel time survey data may use Inrix, PeMS as available (or acceptable GPS alternative) and the count data may use traffic signal detection data from local signals collected in cooperation with the responsible jurisdiction. The consultant shall also provide a table of the observed travel speeds and the lane volumes they reflect.

Separate bicycle and pedestrian counts are required for locations listed in Table 4. Weekday counts are to occur on one day from Tuesday through Thursday from 6am to 8pm. weekend counts should also occur between 6am to 8pm. All bicycle and pedestrian counts are to occur in early Fall before the onset of inclement weather. These counts will need to separate children from adults.

**Table 4. Pedestrian and Bicycle Count Locations**

ID	Location
1	LOS RANCHITOS RD AND PUERTO SUELLO SUMMIT
2	CAL PARK HILL PATHWAY AND ANDERSON
3	MILL VALLEY-SAUSALITO PATH AND BLITHEDALE AVENUE
4	MILL VALLEY-SAUSALITO PATH AND TENNESSEE VALLEY PATH
5	BRIDGEWAY BLVD AND PRINCESS ST
6	TIBURON BIKE PATH AND TIBURON BIKE PATH
7	MAIN ST AND TIBURON BLVD/PARADISE DR
8	S KNOLL RD AND TIBURON BLVD
9	TOWER DR AND E BLITHEDALE AVE
10	SIR FRANCIS DRAKE FLYOVER
11A	SAN ANSELMO AVE AND TURNSTEAD AVE

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11B	SAN ANSELMO AVE AND TURNSTEAD AVE
12	BOLINAS RD AND BROADWAY BLVD
13	MAGNOLIA AVE & WARD ST
14	LARKSPUR-CORTE MADERA PATH
15	CORTE MADERA CREEK PATH
16	CAMINO ALTO & E BLITHEDALE AVE
17	ALAMEDA DEL PRADO AND PACHECO HILL PATH
18	LARKSPUR PLAZA DR / ROSE LN AND DOHERTY DR
19	ROSE LN AND DOHERTY DR
20	S NOVATO BLVD AND ROWLAND BLVD
21	ANDERSEN DR AND BELLAM BLVD
22	NICASIO VALLEY RD & DRIVEWAY
23	ENFRENTE BIKE PATH AND NOVATO BLVD
24	ALMONTE BLVD / SHORELINE HWY AND SHORELINE HWY
25	E. FRANCISCO BLVD AND BAY ST
26	ANDERSEN DR AND DU BOIS ST
27	MERRYDALE DR & NONE-SCREENLINE
28	US 101 NB OFF RAMP AND BIKE PATH AT SFD BLVD

The consultant is encouraged to employ electronic data collection techniques. Methods that will provide additional data over the requirements of the RFP will be evaluated favorably. Automated acquisition of vehicle occupancy data and bicycle counts is encouraged if technology is proven to be reliable and cost effective over the long-term.

The consultant will provide raw data documentation of collections and final reporting of data in the TAM approved format as described in Task 3. **All counts and travel time data must be provided in hourly formats in electronic tables and GIS format to TAM for use in upcoming studies.**

As necessary, the consultant will be responsible for securing all permits required, such as encroachment permits (from Caltrans or local agencies) for the data collection devices in the responsible agency's right-of-way, as necessary.

### Deliverables

The scope of services consists of four basic tasks:

- Task 1 – Prepare Monitoring Plan
- Task 2 – Monitor and Analyze the County-wide network
- Task 3 – Prepare the Monitoring Report.
- Task 4 – Prepare Congestion Management Plan
- Task 5 – Meetings and Administration

## **Task 1 Prepare Monitoring Plan**

- 1.1 *Determine Methodologies.* Use Caltrans' *Congestion Monitoring Guide*, MTC Congestion Management Plan Guidance, and other sources to determine the methodologies to be used to monitor the Marin County-wide transportation network. For purposes of compiling this report's data the consultant should plan to make maximum use, where feasible, of Caltrans' Performance Measurement System (PeMS), of vehicle detectors for Highways 101 and 37 and, as optimum, data from FastTrak/511 and other available electronic data. New technologies are encouraged.

Review Previous CMP Documents and Methodologies for Possible Improvements. The consultant will review TAM's 2007, 2010, 2012, 2014 and 2016 *CMP Monitoring Reports*, as well as the 2017 CMP Update, to identify any cost-effective improvements in methodology that could be made or approaches taken from previous monitoring reports and related analyses to better inform the CMP on transportation performance measures. It is also expected that the consultant will review the "Nonmotorized Transportation Pilot Program Bicycle and Pedestrian Counts 2013 Update." Copies of these reports are Available on the TAM Website at: <https://www.tam.ca.gov/congestion-management-program/>

Results of the monitoring will be used to prepare tables for the Monitoring Report.

- 1.2 *Prepare Draft Monitoring Plan.* In this subtask, the consultant will prepare a draft plan for collecting the auto travel data as identified in Tables 2 and 3. The draft monitoring plan will outline: 1) the methods to be employed to monitor the County-wide Transportation Network including a discussion of the statistical validity of the proposed data gathering; 2) the designated routes in the County-wide Transportation Network on which those methods will be employed; and 3) the proposed schedule for monitoring and calculating the data.

**Deliverable:** Draft Monitoring Plan

- 1.3 *Prepare Final Monitoring Plan.* Based on comments made and direction received from TAM staff, the consultant will prepare a final monitoring plan.

**Deliverable:** Final Monitoring Plan

## **Task 2 Monitor and Analyze the Countywide Transportation Network**

- 2.1 *Collect Data.* Consistent with the final monitoring plan, the consultant will collect data necessary to analyze the current status of the County-wide Transportation Network.
- 2.2 *Analyze the Status of the County-wide Transportation Network.* Using the information collected in subtask 2.1, the consultant will calculate measures used in determining the CMP LOS and other appropriate standards to analyze the current status of each designated location. The analysis will be consistent with methodologies identified in the final monitoring plan.



- 2.3 *Recalculate the Status of the CMP Segments.* If, as a result of the calculation in subtask 2.2, the consultant identifies segments from which data has been compiled through counts, that operate at a LOS that exceeds the adopted CMP LOS standard, the consultant will monitor, and calculate the LOS at those segments two more times. If two of the three calculations exceed the adopted CMP LOS standard, the consultant will prepare a memorandum reporting that finding.

**Deliverable:** Segment count, travel time, and all other requested data provided in electronic tables.

### **Task 3 Prepare Monitoring Report**

- 3.1 *Prepare Draft Monitoring Report.* The consultant will prepare a draft report on the status of the County-wide Transportation Network detailing the results of Task 2. The report should at minimum follow the format identified below and include all information and tables referenced in Task 1.1. The draft report will contain the following sections at a minimum:

- *Introduction.* Outline the content of the report.
- *Purpose of Monitoring Program.* Describe the purpose of the report and the context for preparing the study.
- *Description of Monitoring Program.* Describe the methodologies used to collect data and to analyze the study results. Include a figure showing locations where the data has been collected. Identify times/days of monitoring and other circumstantial information, as relevant.
- *Monitoring Results.* Prepare tables similar to all those prepared for reports reviewed in Task 1.1.

Outline the current status of each location in the County-wide Transportation Network and identify any problem areas. Include a table summarizing the results and a separate table comparing the current status to historic data. Verify that occupancy data has been included for all HOV segments.

Explain methodologies used for each performance measure. Presentation of monitoring results and other data should be accompanied by clearly written and thorough analysis of the results.

Provide in the Monitoring Plan a clear explanation of “old and new” methodologies to measure travel time through segments, based on changes in the last several years regarding standard methods for measuring LOS. Where LOS data is compared to previous years, identify any anomalies and provide explanation or possible reasons why, with changes in methodology, the LOS levels have shifted substantially.

Provide other narratives as necessary.

- *Actions.* Divide the study locations into different levels according to their current status and recommend appropriate actions to maintain or improve each level. Include actions that are already being taken by different agencies to address problems.
- *Appendix.* Include raw data collection documents.

3.2 *Prepare Final Monitoring Reports.* The consultant will meet with TAM staff to review the draft monitoring report. Based on comments received, the consultant will revise the draft and submit the final report. Data collection for the 2019 CMP is scheduled for October / November 2018. The final performance monitoring report is anticipated to be available no later than early February 2019.

**Deliverable:** Final Monitoring Report

#### **Task 4 Development of the 2019 CMP Update Document**

The intent of the 2019 CMP Update is to revise the 2017 CMP document using 2018 data collected in the monitoring report. To the extent possible, the 2019 CMP Update will attempt to strengthen the multimodal, public input and other features of the 2017 CMP.

CMPs are designed to address existing and future transportation problems in urban areas of California. As part of the CMP, performance measures identify current and future multimodal system performance for the movement of goods and people, and a travel model is employed to estimate future transportation needs. Once future needs are determined, a Capital Improvement Program (CIP) is designed to promote the goals of the CMP. Since Measure A revenues will also fund transportation improvement projects/programs, as directed by the Measure A Strategic Plan, the CMP and Measure A will work in tandem to address needed transportation improvements in Marin County.

The 2019 CMP Update will be developed in accordance with MTC's guidance for Consistency of Congestion Management Programs with the Regional Transportation Plan (RTP). Note that MTC adopted the current RTP, *Plan Bay Area 2040 in July 2017*.

- 4.1 *Executive Summary or Highlights from the CMP.* The Executive Summary or "Highlights from the CMP" section will provide an overview of the CMP document.
- 4.2 *Designated Roadway System.* The CMP network of transportation facilities is designated so that it can be monitored biennially to determine service levels. The CMP legislation requires that all state highways and principal arterial roadways be included in the network.
- 4.3 *Designed Roadway System and Level of Service.*

Adopt LOS standards for all CMP network roadways. LOS E is the minimum countywide standard for Highway 101, Interstate 580, and SR 37. LOS D is the minimum countywide standard for all other CMP network roadways. The highway level of service assessment will be updated using results from the 2012 CMP Monitoring Report.

- 4.4 *System Performance.* Eight performance measures are reported in the CMP:
1. Highway Level of Service
  2. Peak-Hour Travel Time
  3. Person Throughput
  4. Vehicle Miles Traveled (VMT) on Congested Highways
  5. Jobs/Housing Balance
  6. Transit Headways
  7. Transit Coordination
  8. Pedestrian and Bicycle Investment
- 4.5 *Travel Demand Management.* California Government Code section 65089(b)(3) requires a travel demand management (TDM) element of a CMP to promote alternative transportation methods to reduce traffic congestion.
- 4.6 *Land Use Analysis.* California Government Code section 65089(b)(4) requires that the CMP contain a program to analyze the impacts of land use decisions made by local jurisdictions on the regional transportation system (including highways and transit).
- 4.7 *Travel Forecast Model.* California Government Code section 65089(c) requires that every CMA, in consultation with the regional transportation planning agency (MTC), cities, and the county, develop a uniform database on traffic impacts for use in a countywide transportation computer model. The Marin County Travel Model is routinely updated as part of the consistency determination process with MTC.
- 4.8 *Capital Improvement Program (CIP).* The CIP is the cornerstone of the CMP Update. Inclusion in the CMP's CIP is a prerequisite for highway projects to receive Federal funds. In addition, TAM seeks effective coordination of transportation funds for all modes. The TAM Board of Commissioners has also declared that an important planning objective to be incorporated into the updating process will be to provide greater opportunity for policy and public input to CIP projects and their prioritization. The consultant will proceed with the CIP development as follows:
- Review existing funding and programming documents including 1) MTC's Transportation Improvement Program, 2) the Measure A Strategic Plan, 3) MTC Plan Bay Area Project List and 4) the Marin Transit Short Range Transit Plan.
  - Meet with TAM staff to discuss CIP prioritization criteria and develop recommendations for the TAM Board.
  - Present CIP prioritization criteria recommendations to the TAM Board.
  - Compile projects submitted by local jurisdictions and Caltrans. (Note: TAM staff will distribute project lists to the local jurisdictions and Caltrans and coordinate any requested changes or updates to those project lists.)
  - Develop a financially-constrained CIP that reflects currently programmed funds, including fund source and amount.
  - Develop a financially unconstrained list, consistent with approved prioritization criteria, and present to the TAM Board for consideration and discussion.
- 4.9 California Government Code section 65089(b)(5) requires that a CMP contain a seven-year Capital Improvement Program (CIP) to maintain or improve the adopted traffic LOS

and to mitigate regional transportation impacts identified through the land-use analysis program.

- 4.10 *Monitoring, Deficiency Plans, and Conformance.* California Government Code sections 65089.3, 65089.4, and 65089.5 govern the performance process. These sections require that, based on the information obtained through monitoring, the CMA must at least biennially determine whether or not the county and its cities and towns conform to the requirements of the CMP.
- 4.11 *Appendices.* The consultant will provide technical documentation in appendices, as appropriate.
- 4.12 *Prepare Draft Congestion Management Plan.* The consultant will meet with TAM staff to review the draft monitoring report. Based on comments received, the consultant will revise the draft and submit the final report.

### **DELIVERABLES**

The consultant will provide an electronic copy of the 2019 CMP document and Appendices to TAM as the Draft CMP. The consultant will respond to comments from TAM, create the final CMP, and submit 5 hard copies of the final document to TAM. The consultant will provide submittals in both editable (e.g., .doc) and pdf formats.

### **Task 5 Meetings and Administration**

- 5.1 *Meeting Attendance.* This subtask covers participation in meetings and presentations by project personnel.
- 5.2 *Project Administration.* This subtask includes project management, preparing meeting notes, and general correspondence and administrative support that does not fit under a specific task above.

**Deliverable:** Documentation of meetings and key findings.

- 5.3 *Presentation.* The consultant shall present the results of the monitoring report and congestion management plan to the TAM executive committee at regular TAM executive committee meetings (2<sup>nd</sup> Monday of the month from 2-5 PM) and the TAM Board at a regular TAM night meetings (4<sup>th</sup> Thursday of every month at 7 p.m.) and respond to questions, incorporating changes.

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

- 1. *Qualifications Package:* Submit five (5) hard copies and one PDF file of your qualifications package. Cost Proposals should be submitted in a separate sealed envelope or package (hard copy only). The qualifications package (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. Failure to separate cost information from the qualifications package will result in disqualification.

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.
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 traffic counting and CMP monitoring 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, including use of relevant available data. Discuss how the services would be performed and what deliverables would be submitted.
5. *Management Plan and Schedule:* This section shall provide the firm's/team's proposed management plan for providing the services, including the number of staff proposed as available to perform the monitoring and the ability to perform the monitoring work during the timeframe identified in this 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 in the proposals, but should be included as part of the project budget in a separately sealed envelope per item 8 below.
6. *Additional Relevant Information:* Provide additional relevant information that may be helpful in the selection process (not to exceed the equivalent of 2 single-sided pages).
7. *References:* Please provide three references (including contact names and current phone numbers) that indicate the ability of your firm to successfully manage a traffic monitoring program.
8. *Cost Proposals:* In a separately sealed envelope, please provide a project budget, showing the budget for each task, as outlined in this RFP. For Task 2, break out the costs by type of data collection method (counts, travel time, existing data). Include work plans and expected billing rates for staff. Provide a listing of your latest hourly rates by job class. It is intended for this project to be a fixed price contract. Please include Caltrans Local Assistance Procedures Manual (LAPM) Exhibit 10-O1 in this separately sealed envelope.
9. *Completed DBE Forms:* Caltrans Local Assistance Procedures Manual (LAPM) Exhibit 10-O1 (included with the project budget) 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. Exhibit 10-O2 is not required in proposals but will be required for 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:

Derek McGill  
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 Friday, July 13, 2018. Late proposals will not be accepted.
4. A non-mandatory pre-proposal meeting will be held Monday June 25th at 11 AM at the TAM office, address listed above.
5. Questions pertaining to this RFQ/RFP, the Scope of Services, or the proposal should be directed in writing via email to:

Derek McGill  
dmcgill@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. All questions are due by July 2nd, 2018. Responses to technical questions may 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/CRITERA 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 innovative approaches to ensure quality monitoring data for CMP analyses;

3. Availability and ability to assume proposed work in a timely manner to meet the project schedule;
4. References from comparable past work;

A panel will evaluate all submittals and develop a ranking of the most qualified consultants. The panel may include representatives from TAM, Marin County 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:

June 12	RFP released
June 25	Pre- Proposal meeting (attendance not Mandatory)
July 2	Last Day for submittal of questions
July 13	RFP due
Week of July 16	Interviews (if held) and Proposal Evaluations
End of July	Submittal of LAPM Exhibit 10-O2, LAPM Exhibit 10-K and signed contract

### **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 0%. 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.

ATTACHMENTS

- A: Caltrans LAPM Exhibit 10-I, "Notice to Proposers DBE Information"
- B: Caltrans LAPM Exhibit 10-K, "Consultant Certification of Contract Costs and Financial Management System"
- C: Caltrans LAPM Exhibit 10-O1, "Local Agency Consultant DBE Commitment"
- D: Caltrans LAPM Exhibit 10-O2, "Local Agency DBE Information"
- E: Sample Contract

Contract Log # \_\_\_\_\_

**CONTRACT BETWEEN  
TRANSPORTATION AUTHORITY OF MARIN  
AND**

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**THE ABOVE-REFERENCED CONTRACT** (this “**Contract**”) is made and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”) by and between the TRANSPORTATION AUTHORITY OF MARIN a Joint Powers Agency (hereinafter referred to as “**TAM**”), and \_\_\_\_\_ Consulting, a \_\_\_\_\_ (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 12, 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. 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 as defined by the project schedule.

**Business Conflicts.** Subject to Consultant’s compliance with the terms and conditions of this Contract, including without limitation Sections 20 and 21 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 Consultant to gain access on 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. TAM shall provide Consultant with general bid and contract forms and special provisions formats as necessary.

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

TAM will reimburse CONSULTANT based on a percentage of work completed. Invoicing shall be based on the rate schedule which is attached hereto as **Exhibit A**. The Firm Fixed Price shall include all direct costs and overhead such as, but not limited to, transportation, communications, subsistence and materials, and any subcontracted items of work.

The Firm Fixed Price shall not be exceeded, unless authorized by contract amendment. Progress payments will be made monthly based on percent of work completed per task. TAM's Contract Manager will be the final evaluator of percent of work complete for payment purposes. Progress payments will only be processed upon receipt of an invoice and progress report submitted to TAM. CONSULTANT is not to report hours worked or billing rates on any invoice or progress report. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in the Statement of Work, TAM shall have the right to delay payment and/or terminate this Agreement in accordance with the provisions of Section 21 Termination. 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 an invoice. Invoices and progress reports shall be submitted no later than 45-calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone. Invoices shall reference this contract number and project title. Final invoice must contain the remaining amount due of the Firm Fixed Price. The final invoice should be submitted within 60-calendar days after completion of CONSULTANT's work. Invoices shall be mailed to TAM Contract Manager. Consultant shall provide TAM with Consultant's Federal Tax I.D. number prior to submitting the first invoice. TAM shall pay Consultant all proper invoice charges within thirty (30) days of TAM's receipt of an invoice that complies with **Exhibit A**. Consultant's final invoice must be submitted within thirty (30) days of completion of the Services.

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

### **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**

In no event will the Fees for the Services to be provided herein exceed the maximum sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) total, including direct non-salary expenses.

### **6. TERM OF CONTRACT**

This Contract shall commence on the Effective Date and shall terminate \_\_\_\_\_ (\_\_\_\_) months from that date (the "Term") or unless the Services and work product have been completed and accepted prior to this period.

## **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 along with a waiver of subrogation. 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 B** 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 B)**

### **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 B)**

### **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 B)**

**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.

**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 8, 19 and 20): (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.

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 a DBE goal, the Consultant must meet the DBE goal by committing DBE participation or document a good faith effort to meet the goal. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.

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 19.3. 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, 22, 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:	Derek McGill
Location:	Transportation Authority of Marin 900 5 <sup>th</sup> Avenue, Suite 100 San Rafael, CA 94901
Contact:	415.226.0825 dmcgill@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, Schedule, Fees**

**EXHIBIT B.**            **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

SAMPLE