



Request for Proposals

for

**On-Call Professional Services Related to
Countywide Travel Demand Forecast Modeling**

by the

Transportation Authority of Marin (TAM)

Responses due:

4:00 p.m., July 7th, 2026

900 Fifth Avenue, Suite 100

San Rafael, CA 94901

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I. INTRODUCTION

The Transportation Authority of Marin (TAM) is the Congestion Management Agency (CMA) for Marin County and the Transportation Sales Tax Authority established to administer funds raised by the County's Measure AA transportation sales tax approved by voters in 2018 and the voter approved Measure B Vehicle Registration Fee. The TAM Board includes representatives from each city and town in Marin County, plus the five members of the County Board of Supervisors. TAM is responsible for planning, programming, and coordinating Federal, State, and Regional funds for transportation projects within Marin County as well as administration of transportation projects within Marin County.

As the CMA for the county of Marin, TAM is responsible for developing and maintaining a uniform traffic database and supporting travel demand forecasting model. By state law, the model is required to be consistent with the regional model developed and maintained by the Metropolitan Transportation Commission (MTC) and with land use and demographic data published by the Association of Bay Area Governments (ABAG). Travel forecasting models serve as an important long-range planning tool that helps us evaluate future travel demand levels and provide quantifiable data for transportation investments and decision making.

II. BACKGROUND

TAM's primary travel demand forecasting tool, the Transportation Authority of Marin Travel Demand Model (TAMDM) was developed using Citilabs Cube software in 2019. TAMDM is a focused model of the Metropolitan Transportation Commission's Travel Model 2 (TM2). TM2 is a sophisticated activity-based modeling system that covers the entire nine-county San Francisco Bay Area. The model is a member of the Coordinated Travel – Regional Activity-based Modeling Platform (CT-RAMP) family of models, implemented in several large metropolitan areas including Atlanta, San Diego, Miami, and Chicago. The MTC version of CT-RAMP features a very detailed spatial system including an all-streets transportation network with 4,800 Transportation Analysis Zones (TAZs) and almost 40,000 Micro-Analysis Zones (MAZs) for precise measurements of walking and biking time.

Since the model has been developed, the primary uses of the model have been to conduct planning studies and project level analysis for transportation plans and projects in Marin County. These have included the development of local General Plans, traffic impact studies, selected link analyses and other analyses related to travel conditions assessment and infrastructure development in the County. With recent legislative changes to the transportation analysis of projects under the California Environmental Quality Act (CEQA), the model has also been used to develop vehicle miles traveled estimates for local jurisdictions' consideration in their discretionary land use review.

CMA legislation mandates the countywide model demonstrate consistency with the assumptions of MTC's regional model and land use and socioeconomic data to be consistent with the most current ABAG projections series. TAMDM is maintained by TAM through the use of on-call consultants and has documented consistency criteria associated with ABAG's Land Use and Demographic Projections.

For additional information around the use of the current model, TAM has made available the TAMDM development report and user guide on the documents and links tab of the following URL:

<https://www.tam.ca.gov/planning/travel-demand-model-traffic-monitoring/>

TAM's adopted model use policy allows for the use of TAMDM by all qualified consultants working on behalf of public agencies in Marin County.

III. REQUESTED SERVICES

TAM is seeking qualified consultants to provide services related to the areas of work below. Proposals may be submitted by individual consultants, individual consulting firms or consulting teams. All work will be done on a task order basis, and TAM staff have identified the following items as potential areas of work. This list is by no means comprehensive.

- Project Management – TAM anticipates consultant to provide overall project management services to support management and hosting of the model and all on-call work associated with this contract, including, task order management, budget development, scheduling, and invoicing will be required. Given the on-call nature of work, availability for responding to general questions on the model or modeling issues will be required.
- Travel Demand Forecasting – TAM anticipates some level of model runs will be necessary to support TAM and partner agency requests. This work will likely include select link analyses, complete model runs, or other uses of the model for other purposes as required by TAM. Marin Cities and Towns may seek model outputs for special projects or for planning or environmental studies. These requests would also come through TAM but as currently done, costs would be paid by the local jurisdiction.
- Model Maintenance and Updates – Ongoing modeling maintenance and updates are likely to be required as directed by TAM. This work is expected to include maintaining consistency with MTC/ABAG model consistency requirements including county land use updates and ABAG projections for Plan Bay Area 2060 or TAM's Countywide Transportation Plan (CTP). This work may require updating the current model base year (2022) to a more recent base year in coordination with MTC/ABAG and Marin jurisdictions for local interpretation of land uses in travel zones. Adjustments to the database, such as new development projects or changes to the road and transit networks, may also be required.
- Data Collection – Data collection required to support potential updated model validation to more recent base years or project analysis may be required. Typically, this data collection would include information from local land use plans, roadway, bike/pedestrian, or transit data would be considered as part of this task. The use of big data or creative approaches to data collection should be considered.
- VMT Technical Assistance – As local jurisdictions conduct discretionary land use reviews, the model consultants may be requested by local jurisdictions to support VMT analysis or provide guidance on use of VMT by lead agencies under CEQA.
- Model hosting and operations – Given the size and nature of activity-based models such as TAMDM, the consultant will be required to host the model on consultant hardware and operate the model using appropriate software.

While this list is no means exhaustive of potential task orders expected under this contract, the example tasks above should inform responses to this on-call contract. Duration of the work is expected to be three years, with two optional years and anticipated contract maximum is set at \$800,000 for the five-year period.

IV. REQUEST FOR PROPOSALS INSTRUCTIONS

The response to this RFP shall be submitted in accordance with the following requirements:

1. Submit five (5) hard copies and one PDF file of your qualifications. The qualification package (excluding resumes and the transmittal letter) shall not exceed a total of 25 double-sided, 8.5" x 11" pages. Any 11x17 pages should be limited in use and will count as two pages to the page limit. The qualification statement will be of sufficient quality to show your basic approach to the work. Resumes should be included in an appendix that will not count towards the page limit.
2. *Transmittal Letter:* The qualification statement 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 qualification statement 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 consultant selection process. The person authorized by the firm/team to negotiate a contract with TAM shall sign the cover letter.
3. *Non-Mandatory Pre-proposal Meeting:* A non-mandatory pre-proposal meeting will be held on Tuesday, June 16th at 1:00 p.m. on Zoom, using the following login information:

<https://us02web.zoom.us/j/82207171101?pwd=CwWa24ObNFkXjqGP33YOTMIYYjZHEI.1>

Meeting ID: 822 0717 1101

Passcode: 416161

Dial by your location

+1 669 900 6833 US (San Jose)

+1 408 638 0968 US (San Jose)

4. *Qualifications and Experience:* The qualification statement shall provide the qualifications and experience of the consultant(s). Please emphasize the specific qualifications and experience of key members of the team in providing the requested services. Identify the position or role key team members provided during the delivery process. The applicant must also demonstrate that it has the capability to operate activity based models, including staff experienced in model operation and use of Citilabs Cube software. Please indicate if your firm has 1) access to appropriate Citilabs Cube software, and 2) hardware necessary for operating the model. 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.
5. *Staffing Plan:* This section should include the names, availability, and a brief summary of the qualifications on the key personnel. The consultant shall describe the role of any subcontractors, with a description of the subcontractor's specific responsibilities. Discuss the firm/team's approach for undertaking services. Address your strategy for proactively providing services to TAM, as well as how you plan to respond to calls and/or specific requests from TAM. Demonstrate ability to perform tasks on schedule and capacity to respond to on-call task orders. The timeframe for this contract is expected to be up to 5 years.

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6. *Management Plan:* This section should describe the consultant's approach to management of the work. If the proposal is a team effort, the distribution of work among the team members should be indicated. Projects on which the team has worked together in the past should be identified. This section should discuss the consultant's organization for the project, how work assignments are structured, staffing and availability of staff to respond to an on-call contract, including anticipated minimum response times. Please identify the primary individual who will be the point of contact and who will be the backup individual.
7. *References:* The qualification statement should provide a minimum of three references (including contact names and current phone numbers) that indicate the ability of your firm to successfully deliver this project.
8. *Cost Proposal:* Please identify hourly rates, multiplier escalation rates and expected fee. The expected fee will be in effect for the life of the contract. Please provide a copy of the latest indirect cost rate (ICR) audit. Due to the majority of this RFP requesting on-call services, the payment structure upon negotiation with the potential consultant will be on a task-order basis. The work to be performed under this contract will be specified by Task Order by the TAM project manager. While need for use of the model may originate from Marin jurisdictions or transit operators, all work will be generated through TAM.
9. *Federal Funding:* It is foreseeable that this task order contract may incur a task order requiring the use of federal funds. Please acknowledge in this section, your willingness to submit to required federal audits and that you are prepared to certify that your accounting systems are in accordance with the latest ASSHTO Accounting Standards. All contractors and subcontractors will need to comply with federal funding requirements.
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, any conflict of interest, 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 the attached sample contract.
11. *Artificial Intelligence:* TAM has adopted an Artificial Intelligence (AI) policy that requires disclosure of the use of AI, as well as explicit language addressing data ownership, security, audit rights, and model limitations. All contractors and sub-contractors will need to comply with [this policy](#).

Submittal Procedure

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

1. The qualification/proposal packages shall be transmitted with a cover letter as described above.
2. The qualification/proposal packages shall be addressed to:

Derek McGill
Director of Planning
Transportation Authority of Marin
900 Fifth Avenue, Suite 100
San Rafael, CA 94901

3. The qualification/proposal packages shall be dispatched to be received at the above address no later than 4:00 p.m., Tuesday, July 7, 2026. Late qualification packages will not be accepted.
4. Questions pertaining to this RFQ/RFP or the Scope of Services should be directed in writing via email to Derek McGill, dmcgill@tam.ca.gov.

TAM will make every effort to provide individual responses to all written questions submitted and will not respond to questions posed by any means other than e-mail. 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, under the RFP/RFQ section.

V. METHOD/CRITERIA FOR SELECTION

The following criteria will be used to evaluate qualification packages and to select a consultant team:

1. Qualifications and availability of the firm(s), the designated project manager, and key staff.
2. Demonstrated experience working with activity-based models, including MTC's Travel Model One.
3. Overall approach to management of the work and demonstrated ability to meet the requirements of the RFP.
4. Demonstrated capability to perform work on schedule.
5. Responsiveness and quality of work plan.
6. Experience of key personnel assigned.
7. Fee information.
8. Staffing plan.

A panel will be convened to evaluate the qualification statements and develop a ranking of the most qualified consultants. The panel may include representatives from TAM staff and from other public agencies. Members of the panel will not be revealed prior to interviews.

Top ranked firms may be invited to be interviewed remotely by the panel. If interviews are required based on an initial evaluation, the most qualified teams are to be scheduled during the week of July 20th. The Project Manager and key team members are expected to attend the interview. Once the top firm has been determined, staff will start contract negotiations with that firm. If contract negotiations are not successful, the remaining firms may be asked to negotiate a contract. The TAM Board is required to approve the negotiated contract, although work may be initiated with a Notice to Proceed (NTP).

VI. SELECTION PROCESS DATES

June 9th	RFP released
June 16th	Non-Mandatory Pre-Proposal Meeting
June 23rd	Final day for Submittal of Questions
July 7th	Qualification/Proposal Packages Due
Week of July 20th	Interviews (tentative)
August 2026	Finalize Contract Negotiations
September 24th	TAM Board Award Contract

VII. 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 (DOT), the Metropolitan Transportation Commission, the County of Marin and its jurisdictions, 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/Q.** TAM reserves the right to amend or cancel this RFP/Q by addendum before the final submittal due date. Revisions to the RFP/Q 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 website for any revisions related to this RFP/Q. The proposers shall each confirm in the transmittal letter of its response the receipt of all addenda issued to this RFP/Q.
3. **Non-commitment of TAM.** This RFP/Q 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/Q 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.

VIII. CONTRACTUAL REQUIREMENTS

The selected consultant will be asked to agree to, and enter into, a contract with the Transportation Authority of Marin. A Sample Professional Services Contract is attached – Exhibit A.

Potential Audits. All consultants and sub-consultants shall be subject to any of the audits listed in Chapter 10 of Caltrans LAPM or in the AASHTO Accounting Guidelines before or after award. All successful consultants must complete Caltrans Independent Office of Audits and Investigations Certification of Indirect Costs and Financial Management System Form attached as Exhibit B. ICRs will be provided annually to TAM and can cover a period up to the previous 18 months. Depending on the final contract amount each successful consultant may also have to complete Caltrans LAPM Exhibits 10-A and 10-L. All projects are subject to a pre, concurrent or post award audit.

Disadvantaged Business Enterprises (DBE) Policy. TAM is committed to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which all qualified parties can compete fairly for contracts and subcontracts relating to TAM's procurement and professional services activities. In connection with the performance of this contract, the Contractor will cooperate with TAM in meeting these commitments.

Pursuant to 49 CFR §26.13, and as a material term of any Agreement with TAM, the Contractor hereby makes the following assurance and agrees to include this assurance in any Agreements it makes with subcontractors in the performance of this contract: "The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the Contractor or subcontractor 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 TAM deems appropriate."

TAM implements the DBE policy in accordance with DOT regulations, and contract specific DBE participation goals are pending Caltrans and federal agency direction on DBE participation and may be reinstated if required by federal or state guidelines. If reinstated by federal or state guidelines, DBE participation rates may be set on a task order basis during the course of this contract. However, Proposers shall cooperate with TAM in meeting its commitments and objectives about ensuring nondiscrimination in the award and administration of Authority Contracts and shall use its best efforts to ensure that barriers to DBE's participation do not exist. By submitting a Proposal, a Proposer is deemed to have made the foregoing assurance and to be bound by its terms. For DBE questions and assistance, contact Melanie Purcell, DBE Officer, at (415) 226-0828 or mpurcell@tam.ca.gov. Contractors shall provide DBE utilization information upon request.

EXHIBIT A - TAM STANDARD CONTRACT

**CONTRACT BETWEEN
TRANSPORTATION AUTHORITY OF MARIN
AND
_____ CONSULTANTS**

THE ABOVE-REFERENCED CONTRACT (this “**Contract**”) is made and entered into effective as of the _____ day of _____, 2019 (the “**Effective Date**”) by and between the TRANSPORTATION AUTHORITY OF MARIN a Joint Powers Agency (hereinafter referred to as “**TAM**”), and _____, a California Corporation (hereinafter referred to as “**Consultant**”). TAM and Consultant are sometimes hereinafter referred to collectively as the “**Parties**” or individually as a “**Party**.”

RECITALS:

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

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

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

1. SERVICES

Scope of Work. Consultant agrees to provide the Services in a timely and professional manner, in accordance with the terms and conditions of this Contract. Subject to Sections 11 and 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, so long as any addition to the scope of the Services be within the Consultant’s expertise and not otherwise conflict with Consultant’s Legal and ethical obligations. Consultant shall use its professional skill and effort in performing the Services, which shall meet industry standards and Consultant shall complete each project, including any modifications by TAM thereto, on a timely basis.

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

2. ACCESS TO LANDS AND DATA

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

Consultant as required to perform the Services. TAM shall provide Consultant with general bid and contract forms and special provisions formats as necessary.

3. FEES AND PAYMENT SCHEDULE

The method of payment for this contract will be based on labor rates. TAM will reimburse Consultant for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by the Consultant in performance of the work. Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved Consultant Cost Proposal, which is attached hereto as "**Exhibit B,**" unless additional reimbursement is provided for by contract amendment. In no event, will the Consultant be reimbursed for overhead costs at a rate that exceeds TAM's approved overhead rate set forth in the Consultant Cost Proposal. In the event, that TAM determines that a change to the work from that specified in Consultant Cost Proposal and Contract is required, the contract time and/or actual costs reimbursable by TAM shall be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Section 5 of this Contract shall not be exceeded, unless authorized by contract amendment.

Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Consultant Cost Proposal.

When milestone cost estimates are included in the approved Consultant Cost Proposal, the Consultant shall obtain prior written approval for a revised milestone cost estimate from TAM before exceeding such cost estimate.

Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. If Consultant fails to submit the required deliverable items according to the schedule set forth in the Scope of Services and Schedule, which is attached hereto as "**Exhibit A,**" TAM shall have the right to delay payment and/or terminate this Contract accordance with the provisions of Section 16, "Termination/ Force Majeure" of this Contract.

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

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

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

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

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

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

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

4. COST PRINCIPLES

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

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

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

5. MAXIMUM COST TO TAM

In no event will the Fees for the Services to be provided herein exceed the maximum sum of six-hundred thousand dollars (\$ 600,000.00) total, including direct non-salary expenses.

6. TERM OF CONTRACT

This Contract shall commence on the Effective Date and shall terminate Thirty-Six (36) months from that date (the "**Term**") with an option for two one-year contract extensions.

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

7.1 GENERAL LIABILITY

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

Insurance Reduction or Waiver of Coverage Requested (Exhibit C)

7.2 AUTO LIABILITY

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

Insurance Reduction or Waiver of Coverage Requested (Exhibit C)

7.3 WORKERS' COMPENSATION

Consultant acknowledges that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work under this Contract. If Consultant has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to self-insure shall be provided to TAM prior to commencement of the Services.

Insurance Reduction or Waiver of Coverage Requested (Exhibit C)

7.4 OTHER INSURANCE

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

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

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

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

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

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

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

8. REPRESENTATIONS AND WARRANTIES / INDEMNIFICATION

8.1 Representations and Warranties. Consultant hereby represents or covenants, as applicable, and warrants that it, and each of its directors officers, employees, members, managers, partners, permitted consultants, contractors, agents, successors, heirs, representatives, beneficiaries, administrators, executors, trustees, affiliates, permitted assigns and/or representatives (each and all, "Consultant" for the purposes of Section 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, if true, that TAM, its agents or attorneys (each a "**TAM Party**"), deems desirable or necessary to evidence or carry out this Contract's terms and conditions and/or compliance therewith; (v) shall use its best efforts to ensure that in performing the Services or fulfilling its obligations hereunder, Consultant does not in any way adversely impact TAM's reputation or goodwill; (vi) shall avoid deceptive, misleading, or unethical business practices; and (vii) shall comply with all applicable laws and governmental regulations in performing the Services and fulfilling its obligations hereunder.

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

9. NONDISCRIMINATORY EMPLOYMENT

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

10. DRUG-FREE WORKPLACE POLICY

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

11. SUBCONTRACTING

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

Nothing contained in this Contract or otherwise, shall create any contractual relation between TAM and any subconsultants, and no subconsultant shall relieve Consultant of his/her responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to TAM for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultants is an independent obligation from TAM's obligation to make payments to Consultant.

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

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

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

12. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

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

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

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

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

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

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

whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing; and other relevant factors.

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

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

14. DBE RECORDS

Consultant shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

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

15. DBE CERTIFICATION AND DECERTIFICATION STATUS

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

16. ASSIGNMENT

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

17. LICENSING AND PERMITS

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

18. BOOKS OF RECORD AND AUDIT PROVISION

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

19. CONFIDENTIALITY

19.1 Confidential Information. Consultant agrees that during the Term of this Contract, and thereafter, Consultant shall keep TAM's Confidential Information (as hereinafter defined) confidential and shall not, directly or indirectly, on behalf of Consultant or any third party, use divulge, publish or otherwise disclose or allow to be disclosed any aspect of Confidential Information, except as expressly provided herein solely for TAM's benefit. "**Confidential Information**" means any confidential, trade secret or other proprietary information (in whatever form or media, and whether or not marked as confidential) disclosed by TAM to Consultant under this Contract (including, without limitation, any reproductions or copies thereof), except information that the Consultant clearly proves to TAM: (a) is public knowledge at the time of disclosure, (b) was known by the Consultant before disclosure by TAM, or becomes public knowledge or otherwise known to the Consultant after such disclosure, other than by breach of a confidentiality obligation, or (c) is independently developed by the Consultant by persons without access to Confidential Information of TAM. Confidential Information shall include, without limitation, the following categories of information: any and all nonpublic information relating to TAM, methodologies, data, databases, know-how, procedures, techniques, tutorials and processes of TAM, services rendered or deliverables furnished by TAM, financial and operational information, and other matters relating to the operations or projects of TAM including traffic data and traffic studies, information relating to actual or potential clients and/or client lists, client requirements, forecasts and projections, accounting, finance or tax information, pricing information, and the terms of this Contract.

19.2 Protection and Disclosure of Confidential Information. The Consultant shall exercise at least the same degree of care and protection with respect to the Confidential Information of TAM that it exercises with respect to its own Confidential Information, but in no event shall the Consultant exercise less than a reasonable standard of care, and in addition shall not directly or indirectly disclose, copy, distribute, republish or allow any third party to have access to any Confidential Information of TAM except to the extent expressly permitted in writing by TAM. Notwithstanding the above, the Consultant may disclose Confidential Information of TAM to the employees and agents of the Consultant who have a bona fide need to know and to third parties if so required by law (including court order or subpoena), provided that such disclosure is made in accordance with the terms of Section 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 5, 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 35 (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: 900 5th Avenue, Suite 100
San Rafael, CA 94901
 Contact: 415-226-0825, dmccgill@tam.ca.gov

Notices shall be given to Consultant at the following address:

Consultant: _____
 Location: _____
 Contact: _____

37. ACKNOWLEDGEMENT OF EXHIBITS

CONSULTANT'S INITIALS

- EXHIBIT A.** **Scope of Services and Schedule** _____
- EXHIBIT B.** **Consultant Rates** _____
- EXHIBIT C.** **Insurance Reduction/Waiver** _____

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

TRANSPORTATION AUTHORITY OF MARIN:

CONSULTANT:

By: _____
 Anne Richman, Executive Director

By: _____
 Authorized Signature

 Name (Print)

 Title

 Company Name

 Federal Employer ID Number or SSN

EXHIBIT B - FORMS



Inspector General

California Department of Transportation

Certification of Indirect Costs and Financial Management System

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required)

Consultant's Full Legal Name: _____

Important: Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

Indirect Cost Rate (ICR):

Combined Rate: _____ Or

Home Office Rate: _____ and Field Office Rate (if applicable): _____

Facilities Capital Cost of Money (if applicable): _____

Fiscal Period:* _____

* Fiscal period is annual one year applicable accounting period that the ICR was developed (not the contract period). The ICR is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an ICR(s) for the fiscal period as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the ICR(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31).
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31.
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on the Financial Document Review Request form.

Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\); 48 CFR Part 31.201-2\(d\); 23 CFR, Chapter 1, Part 172.11\(a\)\(2\)](#); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirements.

Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

All A&E Contract Information:

- Total participation amount _____ on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is _____
- Years of consultant’s experience with 48 CFR Part 31 is _____
- Identify the type of audits listed below that the consultant has had performed (if applicable):

Cognizant ICR Audit	Local Govt ICR Audit	Caltrans ICR Audit
CPA ICR Audit	Federal Govt ICR Audit	

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the ICR Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name:** _____ Title**:

Signature: _____ Date: _____

Phone**:

Email**:

**An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: Both prime and subconsultants as parties of a contract must complete their own forms. Caltrans will not process local agency’s invoices until a complete form is accepted and approved by the Independent Office of Audits and Investigations.