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## REQUEST FOR PROPOSALS

for

Redwood Coast Transit On-Call Project Management Support Services

Prepared for: Redwood Coast Transit Authority

Prepared by: Joseph Rye, Executive Director  
900 Northcrest Drive, #134  
Crescent City, California 95531

Posted on: March 29, 2024

## REQUEST FOR PROPOSALS (RFP) TO PROVIDE ON-CALL PROJECT MANAGEMENT SUPPORT SERVICES

### A. BACKGROUND

#### The Region

The region served by the Redwood Coast Transit Authority includes most populated areas within the boundaries of Del Norte County, plus portions of Northern Humboldt County along US 101. Del Norte County is California's northernmost coastal county, with a land area of approximately 1,070 square miles. The County is bounded by Curry County, Oregon, to the north, mountainous Siskiyou County to the east, Humboldt County to the south, and by the Pacific Ocean to the west. Crescent City, the county seat, is located roughly halfway between Portland, Oregon (330 miles north) and San Francisco, California (350 miles south). Regionally, Crescent City is located approximately 85 miles north of Eureka, Humboldt County, about 26 miles south of Brookings, Oregon and 83 miles west of Grants Pass, Oregon, and Interstate 5.

Four federally recognized Tribes are in the Del Norte region: Elk Valley Rancheria, Tolowa Dee-ni' Nation, Resighini Rancheria, and the Yurok Tribe. They are partners and leaders in advancing regional transportation, and Elk Valley Rancheria is a partner in this project.

The principal north-south route through Del Norte County is US Highway 101, which provides access to coastal towns and cities to the north and south. Crescent City is located on US Highway 101. Del Norte County has two main routes providing access to inland communities: State Route, or SR 197/US Highway 199 to Hiouchi and Gasquet, and Route 169 to Klamath Glen. SR 197/US Highway 199 connects US Highway 101 to Interstate 5 in Oregon.

The county's diverse geography includes inland mountain ranges of coniferous forests, low coastal mountain ranges with temperate forests and the Redwood State and National Parks, and rugged coastlines with gray sand beaches on the Pacific coast. The climate of Del Norte County is consistently mild along the coast, becoming more variable inland. In Crescent City and along the coastal fringe, there is minimal temperature fluctuation. Coastal daytime temperatures average 45-55 degrees during the winter months. Temperatures increase to 55-65 degrees during mid-summer and early fall months, with higher temperatures when coastal fog disperses. Inland, temperature differences are more marked. Del Norte County/Crescent City area's annual rainfall generally ranges between 70 - 80 inches, with the heaviest rainfall occurring from November through March.

**Population**

The California Department of Finance estimated the Del Norte County population (non-incarcerated) at 25,474 in 2022. This includes a population of 21,158 within the unincorporated area of the County and 4,316 within the City of Crescent City. The projected population for 2035 is 31,328. An Economic and Demographic Profile is posted on the DNLTTC website under the heading Important Planning Documents: <http://www.dnltc.org/planning>. Populations served by RCTA along US 101 in Northern Humboldt include Orick, Trinidad, McKinleyville, Arcata and Eureka.

**Organization and Management**

The Redwood Coast Transit Authority (RCTA) is the primary public transit agency in the Del Norte County region. The RCTA is governed by a five-member Board of Directors consisting of two members of the Del Norte County Board of Supervisors, one public member appointed by the Board of Supervisors, and two council members from the City of Crescent City.

RCTA delivers its services with a lean and unique staffing structure. There are no employees of RCTA. The Board of Directors hires a consultant or consulting team to manage the agency as the Executive Director, as well as a contract law firm to provide legal services and to take the lead on the periodic procurement of the Executive Director team. The Executive Director team has been the partnership of Joe Rye (TMTP Consulting) and Dan Herron (with other part time team members) since 2016. The TMTP team provides all administration services, including procurement, planning, grants, and marketing and oversight of the private contractor(s) who provide daily operations. Transdev is the current operations and maintenance contractor, having acquired First Transit and its existing contracts in 2023. The current five-year contract with Transdev runs through 2026 and includes all maintenance and operations services, except fuel, vehicles, and administration. RCTA owns its own vehicles and Maintenance and Operations Facility on Williams Drive in Crescent City, on land leased from the Fairgrounds.

To support the development and delivery of two major TIRCP-funded (non-federal) capital projects: the M&O Facility Electric Bus Charging Infrastructure Project and the imminent Downtown Transit Center project, RCTA seeks to engage the services of an outside consultant to assist with On-Call Project Management Support Services.

**B. SCOPE OF SERVICES**

The work is funded by a TIRCP (Transit Intercity Rail Capital Program) grant obtained by RCTA via a regional application with Humboldt Transit Authority.

Consultant shall assist RCTA in managing all phases of the upcoming Electric Bus Charging Station and Downtown Transit Center projects.

This is an Agreement to provide On-Call Project Management Support Services. The CONSULTANT agrees to provide these services to the AGENCY in accordance with the terms and conditions of this Agreement. In the performance of its work, the CONSULTANT represents that it (1) has and will exercise the degree of [professional] care, skill, efficiency, and judgment of consultants with special expertise in providing construction management services; (2) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (3) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

Scope of work may include, but is not limited to, the following types of tasks:

- A. Provide, as needed, consultant expertise to support various functions of capital project management. Typical assignments will include but will not be limited to project controls, document control, records management, cost estimating, project management, and administration support. Program and project management may include providing support on developing project work plans, cost estimates, schedules, cash flow analysis, accruals, reporting, cost control, invoicing, funding, and project risk analysis.

B.

- C. Manage projects to ensure projects are delivered on schedule, on budget, and safely. Lead a project team from project initiation to project completion. Project team may consist of project engineer, project controls, contract officer, and administrators. Support different project delivery methods such as design/bid/build, design/build, and CMGC. Report project status to management, funding agencies, and other external stakeholders.
  
- D. Assist in the development and/or refinement, implementation, and maintenance of a system to track and manage the use of all capital program and project budgets and grant funds. This will include the production of periodic reports for board presentations, funding agencies, and internal management.
  
- E. Develop and/or refine, implement, and maintain systems for budget and invoice tracking for work directives, including maintaining existing work directives and creating procurement documents (RFP/RFQs), purchase orders, and or requisitions for new work directives.
  
- F. The Consultant shall develop project schedule management and recovery plans. The consultant shall monitor all costs associated with the AGENCY'S capital projects. This includes but not limited to Consultant engineering support costs, construction capital costs, and program indirect costs. The project accounting system shall enable analyzing and reporting of program and project cost and schedule performance, forecasting of total costs to assist with resource planning and estimating, capital cost control, cash flow projections, analysis, and reporting. Periodic reporting shall include monthly reports to RCTA management.
  
- G. Provide assistance with the development of capital projects by producing formal procurement documents, including design and construction management RFP/RFQs and Agency support during procurements to ensure project progress. Provide independent cost estimates of project cost and schedule as needed to support solicitations.

#### Project Descriptions

##### Williams Drive Bus Charging Infrastructure

The Williams Drive Bus Charging Stations (TIRCP Project CP116C) will design and construct modifications to RCTA's existing Williams Drive Maintenance & Operations Facility to introduce electric bus charging to the facility. EV charging infrastructure to charge up to 20 vehicles overnight and 1-2 fast charging stations will be integrated into the existing site with minimal impacts to the existing building. RCTA has done preliminary site planning and load requirement calculations (see Exhibit B) and has engaged the local electric utility in the project using this preliminary concept plan and load calculations. In addition to adding the required equipment for the EV charging itself, RCTA is interested in adding solar topped bus parking canopies, pads for emergency power generator(s), and upgrades to existing employee and bus parking areas, drainage, fencing and paving of parking areas. The final design must accommodate bus circulation and provide for adequate parking and lighting. This project will be the first of the two projects designed and delivered, with the Project Approvals and Environmental Documentation phase funded and beginning in the spring of 2024. The CEQA document will be completed in 2024 to allow for the procurement of a design consultant to develop the design and bid documents in FY 2024-25, aiming for construction in Fiscal Year 2025-26.

### Downtown Transit Center

The Downtown Transit Center (TIRCP Project CP116) project will be a year or two behind the Williams Drive Bus Charging project. RCTA currently operates a timed-pulse transit system based along an eastward-facing stretch of curb on Front Street between K Street and US 101. Passenger input over recent years has indicated dissatisfaction with the current transit hub. RCTA began working with the City of Crescent City to evaluate several potential sites for an off-street or partially off-street transit center site. In Fiscal Year 2022-23 RCTA and the City agreed on a concept to locate the new Downtown Transit Center a half block away from the current site, on the northwest corner of Front Street and K Street in Downtown Crescent City. City is preparing a land lease for the property and continues to improve the streetscape along all of Front Street in preparation for the RCTA investment. RCTA has a concept plan for the facility (see Exhibit C attached) that was the basis for the Council approval and provides a starting point for the design. The vision includes a staffed building with ticket sales, restrooms, driver break room, a meeting area, and ample outdoor areas for passengers to wait for buses, as well as real-time bus locations displays and other modern passenger amenities. The facility must be designed with hazards in mind, such as tsunamis and the current homeless challenges. The facility will be designed to handle current and possible future RCTA transfer activity, as well as bays for regional and private tour buses that are vital to the region's tourist economy.

This project will be the second of the two projects designed and delivered, with the Project Approvals and Environmental Documentation phase funded for Fiscal Year 2024-25 and expected to begin late in FY 2024-25. The CEQA document will be completed in late 2025 to allow for the procurement of a design consultant to develop the design and bid documents in 2026, aiming for construction in Fiscal Year 2026-27 or 2027-28.

## **PROPOSAL SUBMITTAL REQUIREMENTS**

### Company Overview

1. Firm name and business address, including phone number, email address, and website.
2. Type of ownership and parent company if applicable.
3. The name of the proposed project manager for this project.

### Key Personnel and Job Planning

4. Resumes of key personnel to be assigned to the project. Include length of service with the firm, professional education and years of experience.
5. If any part of the project cannot or is not planned to be performed in-house, describe the portion that would be subcontracted along with a profile of said subcontractor.
6. If you have multiple company offices, please identify the location where the majority of the work will be performed.

### Relevant Experience and Capabilities

7. Please provide a list of three (3) relevant projects, including the year completed, project duration, cost, and client contact information.

### Statement of Interest and Methodology

8. A narrative describing the firm's interest, unique abilities, and value-added benefits your firm will bring to this project. (Please limit to three pages.)

Cost Proposal

9. The cost proposal shall be broken down into labor, subcontractor fees (if any), and expenses. The Project Management Support role will work collaboratively with the RCTA Executive Director to manage the two major capital projects, cumulatively valued at \$7.8M so providing an accurate project budget is difficult at this point in time. Project management support services will be negotiated on a Work Directive proposal request basis, where RCTA will provide a scope of work to consultant and consultant shall provide a technical and cost proposal that will be negotiated with RCTA Executive Director. WD estimated total cost amounts will be negotiated based on estimated labor hours and previously approved Position Title and/or Labor Categories and other rates set forth in Consultant's Cost Proposal to this RFP and as set forth in each WD Technical and Cost Proposal.

The total value of both major projects in the scope of this Project Management Support Services RFP is approximately \$7.9M. While it is impossible to project the exact value of this Project Management Support Service contract, the PMI (Project Management Institute) standard project management percentage range of 7% as a high-end value estimate for this engagement would place the value around \$546,000. However, this figure includes construction management, which is NOT included in this agreement. The Work Directives anticipated from this RFP will include procurement documents, managing procurements, bid support, design support, management of a third-party construction management firm, and closeout phase tasks for both the Electric Bus Charging Infrastructure and the Downtown Transit Center, which may be completed as soon as December 31, 2027, or as late as 2029. The proposed cost and schedule shall detail the funding needed, including all taxes, mark-ups, overhead, and profit.

Schedule of Work

10. RCTA aspires to begin as soon as possible, and work shall extend through the closeout phase of the Downtown Transit Center project, expected to be December 31, 2027. While not desired, if more time is needed due to unforeseen delays, a time extension will be considered. Timely performance for this work is essential, especially to begin the project in 2024.

**C. PROPOSAL EVALUATION**

RCTA will coordinate a review panel including the RCTA Executive Director, other RCTA administrative staff, and a staff from another local jurisdiction familiar with building and/or transportation issues. This advisory committee will evaluate the proposals that meet the stated requirements and will make a recommendation to the full RCTA Board of Directors. Evaluation will be based on the responsiveness and comprehensiveness of the RFP response, qualifications of individuals or firm, experience/performance, and proposal contents/methodology. Cost of work will be considered in the evaluation of the proposal in terms of overall value. Proposals will be evaluated based on the following point values:

Responsiveness and Comprehensiveness:	20 points
Qualifications of Individuals or Firm:	20 points
Experience/Performance:	25 points
Proposal Contents/Methodology:	20 points
<u>Value</u>	<u>15 points</u>
Total Available:	100 points

**D. INSTRUCTION FOR SUBMITTING A PROPOSAL**

All proposals must include the following:

1. Proposals must not exceed 45 pages;
2. An electronic copy of the proposal in unlocked PDF format.

Please direct all questions and deliver proposals via email to:

Joseph Rye, Executive Director  
Redwood Coast Transit Authority  
900 Northcrest Drive, #134  
Crescent City, California 95531  
Cell: (707) 235-3078.  
E-mail: [tmtconsulting@gmail.com](mailto:tmtconsulting@gmail.com)

The schedule of activities related to this contract is as follows:

March 29, 2024	RFP Issued
April 8, 2024	Optional Pre-Bid Informational Zoom 1-3pm
<b>April 19, 2024</b>	<b>Proposals are due (electronically) to RCTA by 5pm.</b>
April 26, 2024	Interviews, if necessary (zoom)
April 29, 2024	Anticipated Contract Award
April 30, 2024	Project Start Date
April 30, 2029	Estimated Project Completion

## **E. TERMS AND CONDITIONS**

The Redwood Coast Transit Authority (RCTA) is not obligated to accept any of the proposals submitted or to enter into an agreement with any of the proposers. At its discretion, the RCTA may elect to award all or any portion of the project scope of work as defined in the RFP. RCTA reserves the right to reject any or all responses, waive any technical requirement, and select the firm that, in the RCTA's judgment, best meets the requirements of this project.

## **F. PROTEST PROCEDURES**

The contract protest process and procedures to be utilized by RCTA in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award is located at <http://www.redwoodcoasttransit.org/about-rcta/procurement/>

## **G. STANDARD CONSULTING AGREEMENT**

The selected firm shall be retained under the RTPAs standard professional services agreement. A sample of this agreement is available at <http://www.redwoodcoasttransit.org/about-rcta/procurement/>

The contract shall provide payment for services performed up to a not-to-exceed amount, billed quarterly during the duration of the project. The final Scope of Services and Schedule (Exhibit A to the Standard Consulting Agreement) will be negotiated by the Consultant and the Redwood Coast Transit Authority.

Please direct all communications and deliver proposals to:

Joseph Rye, Executive Director  
Redwood Coast Transit Authority  
900 Northcrest Drive, #134  
Crescent City, California 95531  
Mobile: (707) 235-3078  
E-mail: [tmtconsulting@gmail.com](mailto:tmtconsulting@gmail.com) - preferred

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This AGREEMENT for Project Management Support Services (Agreement) is entered into by and between the Redwood Coast Transit Authority (RCTA) located at 140 Williams Drive, Crescent City, CA 95531 and [REDACTED] (CONSULTANT, a [STATE] Corporation located at [REDACTED] [INSERT ADDRESS] ("the Parties").

## 1. SCOPE OF SERVICES

This is an Agreement to provide Project Management Support Services. The CONSULTANT agrees to provide these services to RCTA in accordance with the terms and conditions of this Agreement. In the performance of its work, the CONSULTANT represents that it (1) has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing project management; (2) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (3) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

The scope of the CONSULTANT's services will consist of the services set forth in the Request for Proposals dated March 29, 2024, which is attached hereto and incorporated herein as Exhibit A, as supplemented by the CONSULTANT's written proposal dated [REDACTED], attached hereto and incorporated herein as Exhibit B.

## 2. AGREEMENT DOCUMENTS

This Agreement consists of the following documents:

- (1) This Agreement, including Attachment A Insurance Requirements;
- (2) Exhibit A, Request for Proposals;
- (3) Work Directives/Task Orders, if applicable
- (4) Exhibit B, CONSULTANT's Proposal including negotiated costs/labor rates.
- (5) Exhibit C, Work Directive

In the event of conflict between or among the terms of the Agreement documents, the order of precedence will be the order of documents listed above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence.

## 3. TERM OF AGREEMENT April 30, 2024 – April 30, 2029

The term of this Agreement will be for a 5-year term commencing upon April 30, 2024, (Effective Date) and ending on April 30, 2029. The CONSULTANT will furnish RCTA with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the solicitation documents.

RCTA reserves the right, in its sole discretion, to exercise up to 2 one-year option term(s) to extend the Agreement, pursuant to the terms of this Agreement. If RCTA determines to exercise the option term(s), RCTA will give the CONSULTANT at least 30 days' written notice of its determination.

It is understood that the term of the Agreement and any option term(s) granted thereto as specified herein are subject to RCTA's right to terminate the Agreement in accordance with Section 23 of this Agreement.

**4. CONSULTANT'S REPRESENTATIVE**

At all times during the term of this Agreement [INSERT NAME OF CONSULTANT'S REP] will serve as the primary staff person of the CONSULTANT to undertake, render, and oversee all of the services under this Agreement. Upon written notice by the CONSULTANT and approval by RCTA, which will not be unreasonably withheld, the CONSULTANT may substitute this person with another person, who will possess similar qualifications and experience for this position.

**5. COMPENSATION [CUSTOMIZE AS NEEDED – PAYMENT SCHEDULES SHOULD BE INSERTED INTO THIS SECTION - IF PAYMENT SCHEDULE IS TOO LARGE TO INSERT INTO THIS SECTION, IT MAY BE INCLUDED AS AN ATTACHMENT TO THIS AGREEMENT.]**

[USE THIS CLAUSE FOR NOT-TO-EXCEED/LUMP SUM COMPENSATION]

The CONSULTANT agrees to perform all of the [base] services included in Section 1 for a total not-to-exceed amount of \_\_\_\_\_ (\$ \_\_\_\_\_), in accordance with Exhibits A and B. The total amount will include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs and all other costs and expenses incurred by the CONSULTANT. The hourly rate by personnel category will be as set forth in Exhibit B [and/or below if inserting payment schedule] [or Attachment if attaching the payment schedule to this Agreement]. RCTA will pay the CONSULTANT in accordance with Section 6.

[INCLUDE FOR OPTIONAL SERVICES] [CUSTOMIZE]

In the event that RCTA exercises its right to extend this Agreement, the CONSULTANT agrees to perform all of the [optional] services for a total not-to-exceed amount of \_\_\_\_\_ (\$ \_\_\_\_\_), in accordance with Exhibits A and B. The total amount will include all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs and all other costs and expenses incurred by the CONSULTANT. The hourly rate by personnel category will be as set forth in Exhibit B [and/or below if inserting payment schedule] [or Attachment if attaching the payment schedule to this Agreement]. RCTA will pay the CONSULTANT in accordance with Section 6.

[FOR CLOUD SOFTWARE CONTRACTS, REPLACE SECTION 5, COMPENSATION, WITH THE LANGUAGE BELOW AND CUSTOMIZE AS NEEDED – IF POSSIBLE, PAYMENT SCHEDULES SHOULD BE INSERTED INTO THIS SECTION, SO THERE WILL BE NO NEED TO REFER TO AN ATTACHMENT- IF PAYMENT SCHEDULE IS TOO LARGE TO INSERT INTO THIS SECTION, THE SCHEDULE MAY BE INCLUDED AS AN ATTACHMENT TO THIS AGREEMENT TO AVOID SEARCHING THROUGH RFP FOR THE PAYMENT SCHEDULE]

The CONSULTANT agrees to perform all of the services included in Section 1 for a total all-inclusive not-to-exceed amount of \_\_\_\_\_ (\$ \_\_\_\_\_) in accordance with Exhibits A and B. The total all-inclusive amount will include

all labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs, licensing, minimum 90-day warranty period commencing upon RCTA's issuance of Final Acceptance, hosting, support, maintenance, transition requirements and all other costs and expenses incurred by the CONSULTANT. RCTA will pay the CONSULTANT in accordance with Section 6.

**[USE THIS CLAUSE FOR HOURLY LABOR RATES COMPENSATION]**

The CONSULTANT agrees to perform all of the services included in Section 1. Compensation for satisfactory performance of the services included in Section 1 will be paid at the hourly labor rates plus mark-up/profit percentage ("mark-up") as stated in this Section **[IF INSERTING HOURLY RATES DIRECTLY INTO THIS SECTION]** and in **Exhibit B**.

The agreed-upon hourly labor rates plus the CONSULTANT's mark-up will include all direct labor, taxes, overhead, insurance, employee benefits, and other costs and expenses incurred by the CONSULTANT necessary for the performance of all the services called for under this Agreement.

The hourly labor rates and mark-up portion of the hourly labor rates will remain firm during the entire **[ ]**-year term of this Agreement. RCTA will pay the CONSULTANT in accordance with Section 6.

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, the CONSULTANT may, upon written request, adjust prospectively its labor rates. Increases in future labor rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to RCTA, or up to a maximum of **3.5** percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon written approval by RCTA, the negotiated changes shall remain in effect for the subsequent Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any CPI-U increase for that year.

**[USE THIS CLAUSE FOR WORK DIRECTIVE COMPENSATION]**

The CONSULTANT agrees to perform the services to be specified in each Work Directive. Compensation for satisfactory performance of services performed under Work Directives will be as stated in each Work Directive and, unless specifically stated otherwise in the Work Directive, will be in accordance with the hourly labor rates set forth in **Exhibit B**.

It is expressly understood and agreed that in no event will the CONSULTANT be compensated in an amount greater than the amount specified in any individual Work Directive for the services performed under such Work Directive. Any change order must be in writing and approved by RCTA's Project Manager and the Executive Director.

There is no guaranteed amount of compensation to the CONSULTANT under this Agreement. However, the maximum compensation that RCTA has authorized to be expended for this Agreement will not exceed \$ **[ ]** **(write out the number)**. RCTA will pay the CONSULTANT in accordance with Section 6.

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, the CONSULTANT may, upon written request, adjust prospectively its labor rates. Increases in future labor rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to RCTA, or up to a maximum of 3.5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon written approval by RCTA, the negotiated changes shall remain in effect for the subsequent Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any CPI-U increase for that year.

**[USE THIS CLAUSE FOR COST PLUS FIXED FEE COMPENSATION]**

The CONSULTANT agrees to perform all of the services included in Section 1. Compensation for satisfactory performance of the services included in Section 1 will be on a cost-plus-a-fixed fee basis. RCTA will reimburse the 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 services. The CONSULTANT will not be reimbursed for actual costs that exceed the labor rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in Exhibit B, unless additional reimbursement is provided for, by a fully executed amendment to this Agreement. In no event, will the CONSULTANT be reimbursed for overhead costs at a rate that exceeds RCTA-approved overhead rate set forth in Exhibit B. In addition to the allowable incurred costs, RCTA will pay the CONSULTANT a fixed fee of \$(\_\_\_\_\_). The fixed fee is non-adjustable for the term of the Agreement, except in the event of a significant change in the scope of work and such adjustment is made by a fully executed amendment to this Agreement. RCTA will pay the CONSULTANT in accordance with Section 6.

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, the CONSULTANT may, upon written request, adjust prospectively its labor rates. Increases in future labor rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to RCTA, or up to a maximum of 3.5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon written approval by RCTA, the negotiated changes shall remain in effect for the subsequent Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any CPI-U increase for that year.

**[USE THIS CLAUSE FOR TIME AND MATERIALS (NOT TO EXCEED) COMPENSATION]**

The CONSULTANT agrees to perform all of the services included in Section 1. As full compensation for satisfactory performance of the services included in Section 1, RCTA will pay the CONSULTANT, based upon time and materials, an amount not-to-exceed the sum of \$\_\_\_\_\_ (write out the number). This not-to-exceed amount is an authorization ceiling and does not construe a guarantee or commitment on behalf of RCTA. Compensation for the CONSULTANT's time will be according to the hourly labor rates set forth in Exhibit B. RCTA will pay the CONSULTANT in accordance with Section 6.

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, the CONSULTANT may, upon written request, adjust prospectively its labor rates. Increases in future labor rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to RCTA, or up to a maximum of 3.5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon written approval by RCTA, the negotiated changes shall remain in effect for the subsequent Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any CPI-U increase for that year.

**[USE THIS CLAUSE FOR A&E-TYPE CONTRACTS]**

5.1. GENERAL

Compensation for each project performed under the Agreement will be **Cost-Plus-Fixed-Fee with a ceiling** (CPFF).

Project pricing will be allowable only to the extent that estimated costs and costs incurred are compliant with Federal cost principals contained in Title 48, Code of Federal Regulations, Part 31. Any costs for which payment has been made to the CONSULTANT, which are determined by subsequent audit to be unallowable under these Federal cost principals, are subject to repayment by the CONSULTANT to RCTA.

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, the CONSULTANT may, upon written request, adjust prospectively the labor rates. Increases in future negotiated Direct Labor Rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA area available to RCTA, or up to a maximum of 3.5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either the (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the CONSULTANT's request, whichever event is later. Upon approval by RCTA, the negotiated changes shall remain in effect for the subsequent Agreement year. If the CONSULTANT does not submit a request at least 60 days before the start of the succeeding Agreement year, the CONSULTANT waives any CPI-U increase for that year.

The CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. In addition, the CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are identified in the Cost Proposal. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

When milestone cost estimates are included in the approved Cost Proposal, the CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from RCTA's Project Manager before exceeding such estimate. Progress payments for each project will be made monthly in arrears based on services provided and actual costs incurred.

The CONSULTANT shall not commence performance of work or services until this Agreement has been approved by RCTA, and notification to proceed has been issued by

RCTA's Executive Director. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.

Fixed Fees shall be negotiated prior to the signing of the Agreement and shall apply throughout the life of the Agreement.

## 5.2. COST OF WORK

The cost of work shall be calculated as the sum of the direct labor times a multiplier for payroll burden, employee benefits, and overhead costs, plus other direct costs as set forth in this Section.

## 5.3. DIRECT LABOR

### 5.3.1. GENERAL

Direct Labor Rates shall be as set forth in **Exhibit B** to this Agreement and shall stay in effect for the first year of the Agreement. The hourly rates (direct labor costs) are subject to salary administration as set forth in Title 48 Code of Federal Regulations Part 31.

Charges by the CONSULTANT, and subconsultants, for an employee's time shall in no instance exceed the actual amount paid to such employee for time directly spent on services performed under this Agreement by such employee.

For new personnel to be approved after contract award, the CONSULTANT, and subconsultants, shall submit a written request to the Executive Director and provide the person's name, job title, current actual rates, and resume, for RCTA's review and approval.

New personnel must be approved by RCTA prior to the new personnel commencing work under a project. Work performed by personnel not previously approved in writing by RCTA shall be at the CONSULTANT's own risk.

Increases in hourly rates may not exceed the percentage change of the Consumer Price Index (CPI-U) for the San Francisco/Oakland/Hayward, CA Area (Core Based Statistical Area (CBSA)) area, or **3.5%**, whichever is lower.

### 5.3.2. Straight Time

Straight time payroll is to be the equivalent annual salary/wage divided by 2080 hours per annum for employees approved to perform services under this Agreement.

### 5.3.3. Overtime

RCTA will reimburse the CONSULTANT, and subconsultants, the straight time portion and premium time portion (if payable to the employee in accordance with the CONSULTANT's employment policies) of its employee's actual overtime pay during performance of services under this Agreement, provided that RCTA has approved the overtime, in writing, prior to the incurring of said overtime. Overtime charges must reflect overhead rates reduced by non-applicable employee benefits.

#### 5.4. CONSULTANT AND SUBCONSULTANTS MULTIPLIERS

##### 5.4.1. General

The CONSULTANT, and subconsultants, multipliers may be inclusive of the markups for payroll burden, employee benefits and office overhead for each office location as defined below. The multiplier is fixed for the first year of the Agreement.

The agreed-upon multipliers shall be used for the CONSULTANT's and subconsultants' home office and RCTA-Furnished Field Office, as appropriate to the assigned location of individuals working on the project. The multipliers will be applied to direct labor costs only as defined above. Initial CONSULTANT multipliers are as set forth in **Exhibit B**.

##### 5.4.2. Payroll Burden

The CONSULTANT and RCTA agree that the following will be considered as Payroll Burdens and as such will be paid to the CONSULTANT, and subconsultants, as compensation for said costs, as set forth below. "Payroll Burden" is defined as:

The cost of all a) employment taxes, b) CONSULTANT's, and subconsultant's, portion of social and retirement charges, and c) contributions imposed by law, or labor contract contributions (if applicable), or regulations, with respect to or measured by CONSULTANT's, and subconsultant's, payroll, including but not limited to, the CONSULTANT's, and subconsultant's, cost of owner-required insurance.

##### 5.4.3. Employee Benefits

"Employee Benefits" for the CONSULTANT's and subconsultant's employees is defined as the cost of all contractual and voluntary employee benefits, including but not limited to, holidays, vacations, sick leave, jury duty leave, group medical, life insurance, salary continuance insurance, bonus schemes (including Director's drawings of dividends), employee stock ownership plan, savings plan, retirement plan, relocation benefits, and all other employee benefit plans.

##### 5.4.4. Indirect Costs (Office Overhead)

The CONSULTANT, and subconsultants, shall be compensated through an agreed-upon multiplier for overhead, which includes those administrative, clerical, word processing, accounting, and other support staff utilized in performing services under this Agreement, which are not explicitly included in the Consultant's Proposal or approved by RCTA.

These rates will remain fixed for the initial year of the Agreement. These rates will be reviewed annually on the anniversary of the effective date of the Agreement for the CONSULTANT and its subconsultants and may be adjusted upon RCTA's approval.



5.4.4.1. The CONSULTANT's and subconsultant's Home Office Overhead rate shall apply to personnel assigned in the CONSULTANT's and subconsultant's Home Office in support of the performance of services under this Agreement. Home Office Indirect Cost Rates (overhead) included in the CONSULTANT's Proposal, including those of their subconsultants, must be substantiated by the most recent (within 12 months) audited reports available, which clearly show the calculations. All such reports shall comply with Federal Acquisition Regulations (FAR) reporting requirements. If audited reports are not available for subconsultants, the CONSULTANT will provide alternate information (i.e. other comparable public agency contract rates) to RCTA to review for acceptance. RCTA will have the final decision as to what is acceptable.

5.4.4.2. RCTA-Furnished Field Office Overhead rate shall apply to the CONSULTANT's, and subconsultant's, personnel assigned to an RCTA-Furnished Field Office on a full-time basis, for a period of at least 120 calendar days. As these rates cannot be pre-determined by audit, RCTA reserves the right to negotiate this rate for each firm.

## 5.5. Maximum Fixed Fees (Profit)

### 5.5.1. General

Maximum Fixed Fee percentages shall apply throughout the life of the Agreement. The CONSULTANT's fixed fee amount for each project may be negotiated on an individual project basis. Said fixed fee amount shall not be altered unless there is a significant alteration in the scope, complexity or character of the work to be performed under a project.

The maximum fees, as a percentage of fully burdened Direct Labor Cost, allowable by RCTA shall not exceed:

**Engineering Consultant Design Services** – [redacted] Percent ([redacted]%)\* for the Consultant's home office (Home) and [redacted] Percent ([redacted]%) for RCTA's field office (Field).

Maintenance Activities - [redacted] Percent ([redacted]%)

Consultant Support Services – [redacted] Percent ([redacted]%) \*

*\*Fees for Consultant Support projects are only paid for actual time worked (Level of Effort)*

Subconsultants markup – Zero Percent (0%)

## 5.6. OTHER DIRECT COSTS (ODCs)

### 5.6.1. General

Other Direct Costs, including subconsultant's projects, shall be proposed at cost with a Zero Percent (0%) markup.

### 5.6.2. Allowable ODCs

Examples of allowable ODCs include, but are not limited to: mileage, parking, tolls, mail costs, film, photo developing, facsimiles, printing/copying, plan reproduction, blueprint services, and subconsultants directly associated with the project. Expenditures for each

allowable ODC in excess of \$500.00 per month, and not included above, shall require advance approval by RCTA. Supporting documentation is required for reimbursement of all ODCs.

#### 5.6.3. Subconsultants

With regard to subconsultants, RCTA will pay the cost of work as defined in Section 5.2 through Section 5.6.4 with Zero Percent (0%) markup. The CONSULTANT may be compensated for initial, or one-time, charges incurred in establishing a project or for pre-approved administration charges.

#### 5.6.4. Limitations on Direct Costs - The Following Are Limitations:

(1) Vehicles - If applicable and approved by RCTA, rental vehicles and associated support costs are limited to a total maximum of \$500 per month, per vehicle. The standard Internal Revenue Service mileage rates shall apply for use of a personal vehicle.

(2) Travel Expenses - All travel and relocation related plans must be approved in writing by RCTA prior to the commencement of the travel. If written approval is received for relocations, travel, temporary accommodations and or assistance, FAR 31.205-46(a) Sections 1 and 2 and Federal Travel Regulation (41 CFR 301-304) for Alameda County, California, will apply. Lodging and per diem rates shall not exceed the U.S. General Services Administration (GSA) rate at the time of travel for the specific project site. Costs incurred for travel, subsistence, and relocation of personnel engaged in the performance of services under this Agreement, if approved in advance by RCTA, will include the following:

- Relocation expenses, travel, temporary accommodations, and/or subsistence related to mobilization travel to the CONSULTANT's dedicated project office or to RCTA-Furnished Field Office for the CONSULTANT's and subconsultant's personnel permanently assigned to the project. Such expenses shall be reduced by any amount received from others by the CONSULTANT or subconsultant for demobilization from the prior project assignment.

- Travel, accommodations, and subsistence (directly related to the Scope of Services) for business trips to the project Site, to RCTA's consultants and suppliers, or to other locations approved by RCTA. Such travel may originate at the CONSULTANT's or subconsultant's home office or branch office, or at the CONSULTANT's dedicated field office, or at RCTA's central or field offices.

#### 5.6.5. Unallowable ODCs

The following ODCs are not allowable unless they are authorized by prior written approval of RCTA's authorized representative:

- Costs associated with registration for training, seminars, and technical association meetings.
- Costs associated with employee incentive compensation including cash bonuses, suggestion awards, safety awards, and other forms of incentive compensation.
- Costs associated with leasing, maintaining, insuring, and operating dedicated project vehicles.

- Computer hardware and software support, software licenses, or cellular phone usage.
- Safety equipment such as steel-toed boots, safety vests, and hard hats.
- Insurance
- Cellular phones
- Cost of any normal equipment, tools, or vehicles (unless approved) hired, leased or purchased for the performance of services, provided that the depreciated value of such items purchased by the CONSULTANT shall be credited to RCTA at the completion of the work performed under this Agreement.
- Shipping
- Drafting supplies
- Surveying supplies
- Models and renderings

All other ODCs that are not identified in 5.6.2 are considered unallowable ODCs and must be authorized by prior written approval of RCTA's authorized representative.

#### 5.7. Maximum Compensation Amount

A maximum not-to-exceed amount established for each project.

Further, it is expressly understood and agreed that in no event shall the CONSULTANT be compensated in an amount greater than the amount specified in any individual project for the services performed under such project without issuance of a written amendment to such project by RCTA's Executive Director.

If at any time, the CONSULTANT has reason to believe that the total compensation payable for the performance of services under this Agreement will exceed the maximum not-to-exceed amount as set for in the project, the CONSULTANT shall notify RCTA immediately in writing to that effect, indicating the estimated additional amount necessary to complete the services in the project. Any cost incurred by the CONSULTANT in excess of the not-to-exceed amount established for the project shall be at the CONSULTANT's own risk.

#### 5.8. Flow Down

The CONSULTANT shall include the requirements regarding audits, compensation and reimbursement for costs and fees in its subconsultant's agreements, provided such subconsultants have been approved by RCTA.

### 6. MANNER OF PAYMENT

The CONSULTANT must submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period, the work directive #, and RCTA's Executive Director's name. RCTA will endeavor to pay approved invoices/billing statements within 30 calendar days of receipt. RCTA reserves the right to withhold payment to the CONSULTANT if RCTA determines that the quantity or quality of the work performed is

unacceptable. RCTA will provide written notice to the CONSULTANT within 10 calendar days of RCTA's decision not to pay and the reasons for non-payment. If the CONSULTANT disagrees with RCTA's decision not to pay and the reasons for non-payment, it must provide written notice detailing the reasons why it disputes RCTA's decision to RCTA within 30 calendar days of RCTA's notice. If the CONSULTANT does not provide written notice in accordance with this section, it waives all rights to challenge RCTA's decision. Final payment will be withheld until the CONSULTANT performs all required Agreement expiration or termination obligations.

Invoices shall be made in writing and delivered or mailed to RCTA as follows:

Accounts Payable  
Redwood Coast Transit Authority  
900 Northcrest Drive, #134  
Crescent City, CA 95531

The CONSULTANT represents that the CONSULTANT's taxpayer identification number (TIN) is [REDACTED] as evidenced by a completed Federal Form W-9.

**7. NOTICES**

Except for invoices submitted pursuant to Section 6, all notices or other communications relating to the day-to-day activities of the provided services will be exchanged between RCTA's Executive Director or designee, and the CONSULTANT's [REDACTED].

Notices informing the CONSULTANT of RCTA's decision to exercise Agreement options (that were exercisable in RCTA's sole discretion) will be exchanged between RCTA's Executive Director or designee, and the CONSULTANT's [REDACTED] via electronic mail to: [REDACTED].

All other notices and communications deemed by either party to be necessary or desirable to be given to the other party will be in writing and may be given by personal delivery to a representative of the Parties, by mailing the same postage prepaid, or by email, addressed as follows:

If to RCTA: Executive Director  
Redwood Coast Transit Authority  
900 Northcrest Drive, #134  
Crescent City, CA 95531  
Email: tmtpc consulting@gmail.com

If to the CONSULTANT: [REDACTED]  
Attn: [REDACTED]  
[REDACTED]  
Email: [REDACTED]

The address to which mailings may be made may be changed from time to time by notice mailed or emailed as described above. Any notice given by mail will be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

## **8. OWNERSHIP OF WORK**

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by the CONSULTANT will be and are the property of RCTA. RCTA will be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the CONSULTANT or in the hands of any subconsultant upon completion or termination of the work will be immediately delivered to RCTA. If any materials are lost, damaged, or destroyed before final delivery to RCTA, the CONSULTANT will replace them at its own expense and the CONSULTANT assumes all risks of loss, damage, or destruction of or to such materials. The CONSULTANT may retain a copy of all material produced under this Agreement for its use in its general business activities.

Any and all rights, title, and interest (including without limitation copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to RCTA. The CONSULTANT agrees to execute any additional documents that may be necessary to evidence such assignment.

The CONSULTANT represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual property or proprietary right of any third party.

## **9. CONFIDENTIALITY**

Any RCTA materials that the CONSULTANT has access or materials prepared by the CONSULTANT during the course of this Agreement (“confidential information”) will be held in confidence by the CONSULTANT, which will exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the CONSULTANT as necessary to accomplish the rendition of services set forth in Section 1 of this Agreement.

The CONSULTANT, its employees, subcontractors, subconsultants and agents, will not release any reports, information, or other materials prepared in connection with this Agreement, whether deemed confidential or not, without the approval of RCTA’s Executive Director or designee.

## **10. USE OF SUBCONSULTANTS**

The CONSULTANT must not subcontract any services to be performed by it under this Agreement without the prior written approval of RCTA, except for service firms engaged in drawing, reprographics, typing, and printing.

Any subconsultants must be engaged under written contract with the CONSULTANT with provisions allowing the CONSULTANT to comply with all requirements of this Agreement, including without limitation the “Ownership of Work” provisions in Section 8. The CONSULTANT will be solely responsible for reimbursing any subconsultants and RCTA will have no obligation to them.

## 11. CHANGES

RCTA may at any time, by written order, make changes within the scope of work and services described in this Agreement. If such changes cause an increase or decrease in the budgeted cost of or the time required for performance of the agreed-upon work, an equitable adjustment as mutually agreed will be made in the limit on compensation as set forth in Section 5 or in the time of required performance as set forth in Section 3, or both. In the event that the CONSULTANT encounters any unanticipated conditions or contingencies that may affect the scope of work or services and result in an adjustment in the amount of compensation specified herein, or identifies any RCTA conduct (including actions, inaction, and written or oral communications other than a formal contract modification) that the CONSULTANT regards as a change to the contract terms and conditions, the CONSULTANT will so advise RCTA immediately upon notice of such condition or contingency. The written notice will explain the circumstances giving rise to the unforeseen condition or contingency and will set forth the proposed adjustment in compensation. This notice will be given to RCTA prior to the time that the CONSULTANT performs work or services related to the proposed adjustment in compensation. The pertinent changes will be expressed in a written supplement to this Agreement issued by the Executive Director prior to implementation of such changes. Failure to provide written notice and receive RCTA approval for extra work prior to performing extra work may, at RCTA's sole discretion, result in non-payment of the invoices reflecting such work.

## 12. RESPONSIBILITY: INDEMNIFICATION

The CONSULTANT will indemnify, keep and save harmless RCTA and its directors, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:

**A.** Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONSULTANT caused by a negligent act or omission or wilful misconduct of the CONSULTANT or its employees, subcontractors, subconsultants or agents; and

**B.** Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

The CONSULTANT further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defense as they are incurred. If any judgment is rendered against RCTA or any of the other individuals enumerated above in any such action, the CONSULTANT will, at its expense, satisfy and discharge the same. This indemnification will survive termination or expiration of the Agreement.

## 13. INSURANCE

Refer to Attachment **B** appended hereto, for the Insurance Requirements.

## 14. CONSULTANT'S STATUS

Neither the CONSULTANT nor any party contracting with the CONSULTANT will be deemed to be an agent or employee of RCTA. The CONSULTANT is and will be an

independent consultant and the legal relationship of any person performing services for the CONSULTANT will be one solely between that person and the CONSULTANT.

**15. ASSIGNMENT**

The CONSULTANT must not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of RCTA.

**16. LITIGATION SUPPORT**

The CONSULTANT must be willing to provide litigation support related to the performance of this Agreement, including serving as an expert witness if required by RCTA. In the event that litigation relating to the performance of this Agreement arises, the CONSULTANT will ensure that at least one individual has the appropriate expertise to act as an expert witness and will make that individual or individuals available to consult on issues related to litigation. The CONSULTANT may additionally be required to form expert opinions, draft expert witness reports, and provide expert witness testimony for depositions and other legal proceedings, including mediation, arbitration, and trials.

**17. RCTA WARRANTIES**

RCTA makes no warranties, representations, or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

**18. RCTA REPRESENTATIVE**

Except when approval or other action is required to be given or taken by the Board of Directors of RCTA, RCTA's Executive Director, or such person or persons the Executive Director may designate in writing from time to time, will represent and act for RCTA.

**19. WARRANTY OF SERVICES**

The CONSULTANT warrants that its project management services will be performed in accordance with the professional standards of practices of comparable consulting firms at the time the services are rendered. In addition, the CONSULTANT will provide such specific warranties as may be set forth in Work Directives as agreed upon by the Parties.

**20. CLAIMS OR DISPUTES**

The CONSULTANT will be solely responsible for providing timely written notice to RCTA of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is RCTA's intent to investigate and attempt to resolve any CONSULTANT claims before the CONSULTANT has performed any disputed work. Therefore, the CONSULTANT's failure to provide timely notice will constitute a waiver of the CONSULTANT's claims for additional compensation and/or time.

The CONSULTANT will not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by RCTA, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given RCTA due written notice of a potential claim. The potential claim will set forth the reasons

for which the CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

If based on an act or failure to act by RCTA, such notice will be given to RCTA prior to the time that the CONSULTANT has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice will be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

If there is a dispute over any claim, the CONSULTANT will continue to work during the dispute resolution process in a diligent and timely manner as directed by RCTA and will be governed by all applicable provisions of the Agreement. The CONSULTANT will maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached that resolves the CONSULTANT claim, the Parties will execute an Agreement modification to document the resolution of the claim. If the Parties cannot reach an agreement with respect to the CONSULTANT claim, they may choose to pursue a dispute resolution process or termination of the Agreement.

## **21. REMEDIES**

In the event the CONSULTANT fails to comply with the requirements of this Agreement in any way, RCTA reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

## **22. TEMPORARY SUSPENSION OF WORK**

RCTA, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as RCTA may deem necessary. The suspension may be due to the failure on the part of the CONSULTANT to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of the CONSULTANT. The CONSULTANT will comply immediately with the written order of RCTA to suspend the work wholly or in part. The suspended work will be resumed when the CONSULTANT is provided with written direction from RCTA to resume the work.

If the suspension is due to the CONSULTANT's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the CONSULTANT, all costs will be at CONSULTANT's expense and no schedule extensions will be provided by RCTA.

In the event of a suspension of the work, the CONSULTANT will not be relieved of the CONSULTANT's responsibilities under this Agreement, except the obligations to perform the work that RCTA has specifically directed the CONSULTANT to suspend under this section.

If the suspension is not the responsibility of the CONSULTANT, suspension of all or any portion of the work under this Section may entitle the CONSULTANT to compensation and/or schedule extensions subject to the Agreement requirements.



## **23. TERMINATION**

**A. Termination for Convenience.** RCTA may terminate this Agreement for convenience at any time by giving sixty days written notice to the CONSULTANT. Upon receipt of such notice, the CONSULTANT may not commit itself to any further expenditure of time or resources, except for costs reasonably necessary to effect the termination. If RCTA terminates the Agreement for convenience, RCTA agrees to pay the CONSULTANT, in accordance with the provisions of Sections 5 and 6, all sums actually due and owing from RCTA upon the effective date of termination, plus any costs reasonably necessary to effect the termination. The CONSULTANT is not entitled to any payments for lost profit on work to be performed after the date of termination, including, without limitation, work not yet performed, and milestones not yet achieved. All finished or unfinished documents and any material procured for or produced pursuant to this Agreement as of the date of termination are the property of RCTA upon the effective date of the termination for convenience. The CONSULTANT and its subcontractors must cooperate in good faith in any transition to other vendors or consultants as RCTA deems necessary. Failure to so cooperate is a breach of the Agreement and grounds for the termination for convenience to be treated as a termination for default.

**B. Termination for Default.** If the CONSULTANT fails to perform any of the provisions of this Agreement, RCTA may find the CONSULTANT to be in default. After delivery of a written notice of default, RCTA may terminate the Agreement for default if the CONSULTANT 1) does not cure such breach within 7 calendar days; or 2) if the nature of the breach is such that it will reasonably require more than 7 days to commence curing, as determined in RCTA's discretion, provide a plan to cure such breach which is acceptable to RCTA within 7 calendar days. If the CONSULTANT cures the default within the cure period but subsequently defaults again, RCTA may immediately terminate the Agreement without further notice or right to cure. In the event of the filing a petition for bankruptcy by or against the CONSULTANT or for appointment of a receiver for CONSULTANT's property, RCTA may terminate this Agreement immediately without a cure period.

Upon receipt of a notice of termination for default, the CONSULTANT may not commit itself to any further expenditure of time or resources. RCTA agrees to remit final payment to the CONSULTANT in an amount to cover only those sums actually due and owing from RCTA for work performed in full accordance with the terms of the Agreement as of the effective date of termination. RCTA is not in any manner liable for the CONSULTANT's actual or projected lost profits had the CONSULTANT completed the services required by this Agreement, including, without limitation, services not yet performed, expenses not yet incurred, and milestones not yet achieved. All finished or unfinished documents, and any equipment or materials procured for or produced pursuant to this Agreement become the property of RCTA upon the effective date of the termination for default.

**C.** The rights and remedies of RCTA provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **24. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS**

All CONSULTANT and subcontractor/subconsultant costs incurred in the performance of this Agreement will be subject to audit. The CONSULTANT and its subcontractors/subconsultants will permit RCTA, the State Comptroller, and their authorized representatives, the California Department of Transportation (Caltrans), or any of their

authorized representatives] to inspect, examine, take excerpts from, transcribe, and copy the CONSULTANT's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by the CONSULTANT pursuant to this Agreement. The CONSULTANT will also provide such assistance as may be required in the course of such audit. The CONSULTANT will retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

If, as a result of the audit, it is determined by RCTA's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the CONSULTANT agrees to reimburse RCTA for those costs within sixty (60) days of written notification by RCTA.

## **25. NON-DISCRIMINATION ASSURANCE - TITLE VI OF THE CIVIL RIGHTS ACT**

The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the CONSULTANT agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The CONSULTANT shall obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Agreement. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as RCTA deems appropriate.

## **26. EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

In connection with the performance of this Agreement, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The CONSULTANT shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause. The CONSULTANT further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The CONSULTANT will, in all solicitations or advancements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT's legal duty to furnish information.

The CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by RCTA's Executive Director, advising the labor union or workers' representative of the CONSULTANT's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The CONSULTANT will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The CONSULTANT will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by RCTA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the CONSULTANT's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The CONSULTANT will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

## **27. DISADVANTAGED BUSINESS ENTERPRISES (DBE) POLICY**

RCTA is committed to and has adopted a Disadvantaged Business Enterprise (DBE) Policy to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to construction, procurement, and professional services activities. To this end, RCTA has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE Program. In connection with the performance of this Agreement, the CONSULTANT will cooperate in meeting these commitments and objectives.

Pursuant to 49 CFR §26.13, and as a material term of this Agreement, the CONSULTANT hereby makes the following assurance and agrees to include this assurance in any agreements it makes with subconsultants in the performance of this contract:

“The CONSULTANT or subcontractor/subconsultant must not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT must carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the CONSULTANT or subcontractor/subconsultant 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 RCTA deems appropriate.”

RCTA implements its DBE Policy in accordance with DOT regulations and no contract-specific DBE participation goal has been established for this Agreement. However, CONSULTANT must cooperate with RCTA in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of contracts and must use its best efforts to ensure that barriers to DBE’s participation do not exist.

This project is not federally funded, therefore no DBE goal is established.

## **28. CONFLICT OF INTEREST**

**A. General.** Depending on the nature of the work performed, a CONSULTANT of RCTA may be subject to the same conflict of interest prohibitions established by the California Department of Transportation and/or California law that govern RCTA’s employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.). During the proposal process or the term of the Agreement, the CONSULTANT and its employees may be required to disclose financial interests.

The CONSULTANT warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §1090 et seq. or §87100 et seq. during the performance of services under this Agreement. The CONSULTANT further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, CONSULTANT may be required to publicly disclose financial interests under RCTA’s Conflict of Interest Code. Upon receipt, the

CONSULTANT agrees to promptly submit a Statement of Economic Interest on the form provided by RCTA.

No person previously in the position of director, officer, employee or agent of RCTA during his or her tenure or for one (1) year after that tenure will have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement, nor may any such person act as an agent or attorney for, or otherwise represent the CONSULTANT by making any formal or informal appearance, or any oral or written communication, before RCTA, or any officer or employee of RCTA, for a period of one (1) year after leaving office or employment with RCTA if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or contract.

**B. Organizational Conflicts of Interest.** The CONSULTANT will take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to RCTA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

The CONSULTANT will not engage the services of any subconsultant or independent consultant on any work related to this Agreement if the subconsultant or independent consultant, or any employee of the subconsultant or independent consultant, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement the CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, the CONSULTANT immediately will provide RCTA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest.

If at any time during the term of this Agreement, RCTA becomes aware of an organizational conflict of interest in connection with the CONSULTANT's performance of the work hereunder, RCTA will similarly notify the CONSULTANT.

In the event a conflict is presented, whether disclosed by the CONSULTANT or discovered by RCTA, RCTA will consider the conflict presented and any alternatives proposed and meet with the CONSULTANT to determine an appropriate course of action. RCTA's determination as to the manner in which to address the conflict will be final.

During the term of this Agreement, the CONSULTANT must maintain lists of its employees, and the subconsultants and independent consultants used and their employees. The CONSULTANT must provide this information to RCTA upon request. However, submittal of such lists does not relieve the CONSULTANT of its obligation to assure that no organizational conflicts of interest exist. The CONSULTANT will retain this record for five (5) years after RCTA makes final payment under this Agreement. Such lists may be published as part of RCTA's future solicitations.

The CONSULTANT will maintain written policies prohibiting organizational conflicts of interest and will ensure that its employees are fully familiar with these policies. The CONSULTANT will monitor and enforce these policies and will require any subconsultants and affiliates to maintain, monitor, and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the CONSULTANT to damages incurred by RCTA in addressing organizational conflicts that arise out of work performed by the CONSULTANT, or to termination of this Agreement for breach.

## **29. CALIFORNIA PUBLIC RECORD ACT REQUESTS (CPRA)**

The CONSULTANT consents to the release of this Agreement, the redacted version of its proposal, and the release of any portion of its proposal not included in its confidentiality index, and waives all claims against RCTA, its directors, officers, employees, and agents, for the disclosure of such information. If the CONSULTANT did not include a confidentiality index in its proposal, RCTA will have no obligation to withhold any information from disclosure and may release the information sought without liability to RCTA.

Upon receipt of a request pursuant to the CPRA seeking this Agreement, proposal material relating to this RFP, RCTA may provide the Agreement, redacted version of the proposal, or may withhold material designated in the confidentiality index that is exempt from disclosure. If RCTA determines that information in the confidentiality index is not exempt from disclosure, RCTA will give reasonable notice to the Proposer prior to releasing any material listed in the confidentiality index.

The CONSULTANT agrees to indemnify, defend, and hold harmless RCTA, its directors, officers, employees, and agents, from any and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the proposer information), and pay any and all cost and expenses, including attorneys' fees, related to the withholding of the information included in the confidentiality index or in the redacted version of the proposal or in this Agreement. If CONSULTANT fails to accept a tender of a defense, RCTA reserves the right to resolve all claims at its sole discretion, without limiting any rights stated herein.

## **30. ADDITIONAL REQUIREMENTS. NOT APPLICABLE**

### **31. ATTORNEYS' FEES**

If any legal proceeding should be instituted by either of the Parties to enforce the terms of this Agreement or to determine the rights of the Parties under this Agreement, the prevailing party in said proceeding will recover reasonable attorneys' fees, in addition to all court costs.

### **32. WAIVER**

Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the Parties of a breach or covenant of this Agreement will not be construed to be a waiver of any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

**33. SEVERABILITY**

If any provision of this Agreement is deemed invalid or unenforceable, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement will remain in full force and effect.

**34. NO THIRD PARTY BENEFICIARIES**

This Agreement is not for the benefit of any person or entity other than the Parties.

**35. APPLICABLE LAW**

This Agreement, its interpretation, and all work performed under it will be governed by the laws of the State of California. The CONSULTANT must comply with all Federal, State, and Local Laws, rules, and regulations applicable to the Agreement and to the work to be done hereunder, including all rules and regulations of RCTA.

**36. RIGHTS AND REMEDIES OF THE RCTA**

The rights and remedies of RCTA provided herein will not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

**37. BINDING ON SUCCESSORS**

All of the terms, provisions, and conditions of this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors, assigns, and legal representatives.

**38. ENTIRE AGREEMENT; MODIFICATION**

This Agreement, including any attachments, constitutes the complete Agreement between the Parties and supersedes any prior written or oral communications. This Agreement may be modified or amended only by written instrument signed by both the CONSULTANT and RCTA. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the Effective Date.

**REDWOOD COAST TRANSIT AUTHORITY:**

**CONSULTANT:** (See footnote below)\*

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Print: \_\_\_\_\_

Title: Executive Director

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

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

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Attorney for RCTA

\* Note: If Consultant is a Corporation, this Agreement must be executed by two officers of the corporation, consisting of one officer from each of the two separate categories:

- (1) the President, Vice President, or Chair of the Board; and
- (2) the Secretary, Assistant Secretary, Treasurer or Chief Financial Officer.

In the alternative, this Agreement may be executed by a single Officer or a person other than an Officer provided demonstrating that such individual is authorized to bind the Corporation (e.g. – a copy of a certified resolution from the Corporation’s bylaws).

If the Consultant is a limited liability company (LLC), the Agreement must be executed by an officer or member who has the full and proper authorization to bind the LLC. The Officer or member must provide evidence satisfactory to the RCTA indicating the individual’s authority to bind the LLC, such as a certified copy of a resolution authorizing the individual to execute written contracts or a copy of the LLC operating agreement.