**AGREEMENT**

**BETWEEN**

**CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY**

**AND**

**SHAW/ YODER/ ANTWIH, INC.**

This Agreement entered this **\_\_\_** day of **\_\_\_\_\_\_\_\_\_\_\_ 2019**, by and between the CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY, a joint powers agency whose members include the County of San Mateo and the twenty incorporated cities and towns within San Mateo County, hereinafter called “C/CAG,” and SHAW/ YODER/ ANTWIH, INC., hereinafter called “Consultant.”

 **WHEREAS,** C/CAG, is the Congestion Management Agency for San Mateo County; and

**WHEREAS**, C/CAG desires to retain Contractor to provide legislative advocacy for C/CAG; and

**WHEREAS**, C/CAG is authorized as a Joint Powers Agency to enter into an agreement for such services; and

**WHEREAS**, C/CAG has determined that consultant services are needed to provide legislative advocacy services for the C/CAG staff, the C/CAG Legislative Committee, and the C/CAG Board; and

 **WHEREAS**, the Consultant has submitted to C/CAG the “Proposal for Legislative Advocacy Services for the City/ County Association of Governments of San Mateo County” attached hereto as part of Exhibit B, which describes the desired legislative advocacy services; and

**WHEREAS**, C/CAG has determined, through a competitive review process, that the Consultant has the requisite qualifications to provide the services described in Exhibit B (“Services”); and

**WHEREAS,** the total amount available to Consultant under this Agreement is not to exceed $146,250; and

**WHEREAS**,by adoption of Resolution 19-02, by the C/CAG Board of Directors has approved this Agreement to provide the Services for the 2019 and 2020 legislative session and has further authorized the C/CAG Executive Director to negotiate final terms, subject to legal counsel review prior to execution by the C/CAG Chair.

**NOW, THEREFORE, IT IS HEREBY AGREED** by the Parties as follows:

1. **Services to be provided by Consultant.** Consultant shall provide the Services consistent with Exhibit B as well as services described in the attached “Proposal for Legislative Advocacy Services for the City/ County Association of Governments of San Mateo County”, herein incorporated by reference and issued under this Agreement. Specific tasks that may be performed under this Agreement are limited to Consultant’s areas of expertise in with advocacy.
2. **Payments.** In consideration of the Services rendered with all terms, conditions, and specifications as set forth herein, in Exhibit A and Exhibit B, C/CAG shall pay the Consultant pursuant to this section. The total amount of such payment shall not exceed one hundred forty-six thousand two hundred fifty dollars ($146,250) at $6,500 per month for Services provided during the Contract Term set forth below. Payments shall be made to Consultant monthly based on an invoice submitted by Consultant that has been reviewed and approved by the project manager in accordance with Exhibit A and Exhibit B. C/CAG shall have the right to receive, upon request, documentation substantiating charges billed to C/CAG.
3. **Relationship of the Parties**. It is understood that Consultant is an Independent Consultant, and this Agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Consultant.
4. **Non-Assignability**. Consultant shall not assign this Agreement or any portion thereof to a third party, or subcontract with a third party, without the prior written consent of the C/CAG Executive Director. Any such assignment or subcontract without the C/CAG Executive Director’s prior written consent shall give C/CAG the right to automatically and immediately terminate this Agreement without penalty or advance notice.
5. **Contract Term/Termination.** This Agreement shall be in effect as of February 15, 2019 and shall terminate on December 31, 2020; provided, however, the C/CAG Chairperson may terminate this Agreement at any time for any reason by providing 30 days’ notice to Consultant. Termination will be effective on the date specified in the notice. In the event of termination under this paragraph, Consultant shall be paid for all services provided to the date of termination, subject to availability of funding. Such payment shall be that prorated portion of the full payment determined by comparing the work actually completed to the work required by the Agreement.
6. **Hold Harmless/ Indemnity.**

* 1. *General*. Consultant shall indemnify and save harmless C/CAG and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Consultant under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following: (A) injuries to or death of any person, including Consultant or its employees/officers/agents; (B) damage to any property of any kind whatsoever and to whomsoever belonging; (C) any sanctions, penalties, or claims of damages resulting from Consultant’s failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of C/CAG and/or its officers, agents, employees, or servants. However, Consultant’s duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which C/CAG has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct. The duty of Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

The duty to indemnify and save harmless as set forth herein shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

* 1. *Intellectual Property*. Consultant hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as “IP Rights”) except as otherwise noted by this Agreement.

Consultant warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall defend, indemnify, and hold harmless C/CAG from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party’s IP Rights provided any such right is enforceable in the United States. Consultant’s duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) C/CAG notifies Consultant promptly in writing of any notice of any such third-party claim; (b) C/CAG cooperates with Consultant, at Consultant’s expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Consultant retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Consultant shall not have the right to settle any criminal action, suit, or proceeding without C/CAG’s prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on C/CAG, impair any right of C/CAG, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of C/CAG without C/CAG’s prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Consultant’s opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes C/CAG’s reasonable use of the services under this Agreement to be seriously endangered or disrupted, Consultant shall, at Consultant’s option and expense, either: (i) procure for C/CAG the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Consultant will have no obligation or liability to C/CAG under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for C/CAG (other than modification performed by, or at the direction of, Consultant) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by C/CAG in a manner prohibited by this Agreement.

The duty of Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

1. **Insurance.**
	1. *General Requirements*. Consultant or its subconsultants performing the services on behalf of Consultant shall not commence work under this Agreement until all insurance required under this section has been obtained. Consultant shall use diligence to obtain such insurance. Consultant shall furnish C/CAG with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending Consultant’s coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days’ notice must be given, in writing, to C/CAG of any pending change in the limits of liability or of non-renewal, cancellation, or modification of the policy.
	2. *Workers’ Compensation and Employer Liability Insurance*. Consultant shall have in effect, during the entire life of this Agreement, Workers’ Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Consultant certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.
	3. *Liability Insurance*. Consultant shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect Consultant, its employees, officers and agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage that may arise from Consultant’s operations under this Agreement, whether such operations be by Consultant or by any sub-consultant or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than $1,000,000 unless another amount is specified below and shows approval by C/CAG Staff.
	4. *Insurance Limits; Insured Entities; Breach*. Required insurance shall include:

 Required Approval by

 Amount C/CAG Staff

 if under

 $ 1,000,000

 1. Comprehensive General Liability $ 1,000,000 \_\_\_\_\_\_\_\_\_\_\_

 2. Workers’ Compensation $ Statutory \_\_\_\_\_\_\_\_\_\_\_

 3. Professional Liability $1,000,000

 C/CAG and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to C/CAG, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if C/CAG, or its officers, agents, employees, and servants have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the C/CAG Chairperson, at his/her option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

1. **Compliance with All Laws**. Consultant shall at all times comply with all applicable federal, state, San Mateo County, and municipal laws, ordinances, and regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, San Mateo County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement. Consultant will timely and accurately complete, sign, and submit all necessary documentation of compliance.
2. **Non-discrimination**. Consultant and any subconsultants performing the services on behalf of Consultant shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran’s status, or in any manner prohibited by federal, state or local laws.
3. **Substitutions**. If particular persons or classifications are identified in Exhibit B as working on this Agreement, Consultant will not assign others to work in their place without the prior written consent of the C/CAG Executive Director. Any substitution shall be with a person or classification of commensurate experience and knowledge unless otherwise authorized by the C/CAG Executive Director.
4. **Sole Property of C/CAG**. Work products of Consultant which are delivered under this Agreement or which are developed, produced and paid for under this Agreement, shall be and become the property of C/CAG. Consultant shall not be liable for C/CAG’s use, modification or re-use of products without Consultant’s participation or for purpose other than those specifically intendent pursuant to this Agreement.
5. **Record Retention; Right to Monitor and Audit**.
	1. Consultant shall maintain all required records relating to services provided under this Agreement for three (3) years after C/CAG makes final payment and all other pending matters are closed, and Consultant shall be subject to the examination and/or audit by C/CAG, a Federal grantor agency, and the State of California.
	2. Consultant shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by C/CAG.
	3. Consultant agrees upon reasonable notice to provide to C/CAG, to any Federal or State department having monitoring or review authority, to C/CAG’s authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.
6. **Permits/Licenses**. If any license, permit, or approval is required to perform the work or services required by this Agreement, Consultant bears the responsibility to obtain said license, permit, or approval from the relevant agency at Consultant’s own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.
7. **Merger Clause; Amendments**. This Agreement, including Exhibits A and B attached hereto and incorporated herein by reference, constitutes the sole agreement of the parties hereto with regard to the matters covered in this Agreement, and correctly states the rights, duties and obligations of each party as of the document’s date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this Agreement are not binding. All subsequent amendments shall be in writing and signed by the C/CAG Chair. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit A or B attached hereto, the terms, conditions or specifications set forth herein shall prevail.
8. **Governing Law**. This Agreement shall be governed by the laws of the State of California, without regard to its choice of law rules, and any suit or action initiated by either party shall be brought in the County of San Mateo, California.
9. **Notices**. All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and addressed as follows:

City/County Association of Governments of San Mateo County

555 County Center, 5th Floor

Redwood City, CA 94063

Attention: Jean Higaki

Notices required to be given to the Consultant shall be addressed as follows:

Shaw/ Yoder/ Antwih, Inc.

1415 L Street, Suite 1000

Sacramento, CA 95814

Attention: Andrew Antwih

IN WITNESS WHEREOF, the parties hereto have affixed their hands on the day and year first above written.

### **Shaw/ Yoder/ Antwih, Inc. (Consultant)**

By

###  Date

**City/County Association of Governments of San Mateo County (C/CAG)**

By

 Maryann Moise Derwin Date

 C/CAG Chair

C/CAG Legal Counsel

By \_\_\_\_\_\_\_\_\_

 Matthew J. Sanders, C/CAG Counsel

Exhibit A

CONSULTANT BILLING RATES

**Cost of Services**

The Consultant will provide the services outlined in Exhibit B Scope of Work to C/CAG as well as services described in the attached “Proposal for Legislative Advocacy Services for the City/ County Association of Governments of San Mateo County” at $6,500 per month for a total of $146,250 for twenty-two and a half months for the 2019 and 2020 legislative session.

The Agreement will be for the 2019 and 2020 Legislative session with an option to extend the contract for the 2021 and 2022 Legislative session, under the same terms, subject to approval by the C/CAG Board at the time of extension.

For the 2021 and 2022 Legislative session, upon approval by the C/CAG Board, Consultant will provide the services outlined in Exhibit B Scope of Work to C/CAG as well as services described in the attached “Proposal for Legislative Advocacy Services for the City/ County Association of Governments of San Mateo County” to C/CAG at an annual rate of $78,000 per year, billed at $6,500 per month for two years not to exceed $156,000.

C/CAG reserves the right to modify the scope of work at the time of extension. In the event that work beyond the existing scope is added it is understood that the cost of added work may be negotiated at that time.

Exhibit B

SCOPE OF WORK

**Background**

The City/County Association of Governments of San Mateo County (C/CAG) was created by a Joint Powers Agreement (JPA) in the fall of 1990 to address diverse issues that transcend political boundaries within San Mateo County. The C/CAG Board consists of one Councilmember from each participating City and one member of the Board of Supervisors. In addition, there are two non-voting ex-officio members: a member of the San Mateo County Transit District Board and a member of the San Mateo County Transportation Authority. Currently, C/CAG serves San Mateo County in the following areas:

Congestion Management Program

In 1990, because of laws passed by the California Legislature, every urbanized county in California was required to designate a Congestion Management Agency (CMA). C/CAG was established as the CMA for San Mateo County. The CMA is responsible for preparing, implementing, and biennially updating a Congestion Management Program (CMP). The primary purposes of a CMP are to: provide alternative transportation strategies; identify safe bicycle and pedestrian travel options; support shuttle services; encourage travel behavioral changes; develop procedures to alleviate or control anticipated increases in roadway congestion; ensure that government together with business, private, and environmental interests develop and implement comprehensive strategies to address future congestion problems.

C/CAG’s role has expanded into the areas of express lane implementation, technology-based ridesharing incentive programs, and facilitating the links being made between transportation and housing. It is anticipated that legislation may be needed to address ownership the operation issues associated with the implementation of a managed lane in San Mateo county. C/CAG also implements rideshare incentive programs in conjunction with emerging rideshare applications. Legislation and policies developed at the regional level that link transportation funding with local housing production is resulting in the need to follow housing production legislation.

As the CMA for San Mateo County, C/CAG is also responsible for allocating available federal, state, regional, and local transportation funds to local jurisdictions. Some of the transportation funds administered by C/CAG include: SB 83 (Measure M) - $10 Vehicle Registration Fees, Bay Area Air Quality Management District (BAAQMD) Transportation Fund for Clean Air (TFCA), Transportation Development Act (TDA), State Transportation Improvement Program (STIP), and Federal Transportation Act funds.

Storm Water Management (NPDES)

C/CAG is responsible for providing technical support and compliance assistance for federal and state stormwater management requirements. All municipalities in San Mateo County are co-permittees under the Municipal Regional Stormwater Permit issued by the San Francisco Bay Regional Water Quality Control Board. C/CAG has established the San Mateo Countywide Water Pollution Prevention Program as the primary means of assisting its member agencies with meeting these requirements. Funding for this program is generated through property tax assessments and vehicle registration fees. Increases in program revenue are subject to Proposition 218 requirements.

C/CAG is currently engaged in a joint process with the County of San Mateo to explore creating a new entity to address integrated water issues, including regional stormwater management, flood control, and sea level rise. This new entity could include a new legislatively created special district, modifiying an existing special district like the County Flood Control District, or modifying an existing agency like C/CAG, all of which may require support in pursuing legislative action.

Airport Land Use

C/CAG is the designated Airport Land Use Commission for San Mateo County. State law requires the Commission to prepare, adopt, and implement a comprehensive Airport Land Use Compatibility Plan for each public use airport in the County. The C/CAG Airport Land Use Committee (ALUC) makes recommendations to the Commission (C/CAG), related to the administration and implementation of the Airport Land Use Plan (e.g. consistency reviews of proposed local agency land use policy actions, Plan amendments, etc.).

Energy Efficiency and Climate Action

C/CAG implements programs related to energy efficiency and climate action through several activities. C/CAG has established a local government partnership with Pacific Gas and Electric Company called the San Mateo County Energy Watch (SMCEW), which provides access to public goods funds under the auspices of the CPUC. The program provides access to energy efficiency audits, installation rebate incentives, and project implementation coordination to municipalities, special districts, businesses, schools, and residents in San Mateo County. C/CAG strives to leverage funds through grant opportunities to provide technical assistance for development and adoption of climate plans for the cities in San Mateo County.

 **Scope of Services**

The purpose of this contract is to retain a part-time consultant to 1) monitor and review pending legislation, policies, and regulations, and 2) advocate C/CAG’s interests with the California Legislature and its members and other parties as appropriate. The bills tracked by the consultant and the C/CAG Legislative Committee may include any subject matter that is of concern to C/CAG member agencies (20 cities and County). During the active legislative session, the consultant will be directed to bring attention to specific bills that affect C/CAG and its related programs as well as focus on bills identified by C/CAG and its Legislative Committee as being high priority. Some of the typical activities that could be performed by the consultant may include:

1. General
	1. Assist in the development of strategies for advancing actions at the State level that are beneficial to C/CAG and its member agencies.
	2. Represent and advocate on behalf of C/CAG in its dealings with relevant State agencies and related interest groups including but not limited to 1) California Legislature, 2) Governor’s Office, 3) Individual Legislators and their staff members.
2. Facilitate Communication
	1. Develop and maintain contact with members of the Legislature and state agencies to facilitate regular communication with and about C/CAG.
	2. Meet with State representatives on a regular basis to provide briefings on issues of interest or concern to C/CAG.
	3. Solicit input from State representatives on issues of concern to C/CAG and report it to C/CAG on a regular basis.
	4. Arrange appointments with Legislators and other State representatives to meet with C/CAG representatives.
	5. Coordinate with legislative advocates for other public agencies such as the League of California Cities, other bay area Congestion Management Agencies, San Mateo County Transportation Authority, California State Association of Counties, Metropolitan Transportation Commission, etc.
3. Monitor and Evaluate
	1. Identify and evaluate the potential impact of proposed legislation, policies, and regulations on C/CAG and its member agencies.
	2. Bring to C/CAG’s attention, bills that affect C/CAG or it’s programs.
	3. Work with State representatives to identify and amend bills and other proposed legislative or regulatory language to address C/CAG concerns.
	4. Advocate C/CAG’s position to appropriate State legislative, executive, and administrative committees, board, and commissions.
4. Initiate and Advocate
	1. Advise C/CAG on opportunities to pursue C/CAG objectives through the Legislature and various State agencies.
	2. Assist in drafting legislation on behalf of C/CAG.
	3. Formulate and manage strategies to achieve passage of C/CAG’s legislative initiatives (if any).
	4. Make presentations to and testify on behalf of C/CAG before legislative and administrative bodies.
5. Report and Respond
	1. Provide regular reports summarizing the activities under the contract with C/CAG.
	2. Appear before the C/CAG Board and/or Legislative Committee to provide an overview and summary of current and future activities or to report on a particular item of concern to C/CAG.
	3. Respond to C/CAG’s requests for information about pending State legislation, regulations, or policies.