



REQUEST FOR PROPOSALS

San Mateo County Congestion Management Program 2021 Update

Issue Date: Monday, January 4, 2021

Closing Date/Time for Requests for Clarifications: January 11, 2021, 5:00 PM

RFP Due Date: Friday, January 29, 2021, 12:00 PM (Noon)

**Request for Proposals
San Mateo County
Congestion Management Program
2021 Monitoring**

The City/County Association of Governments (C/CAG) of San Mateo County, a Joint Powers Agency composed of the County of San Mateo and all twenty cities and towns within the County, invites your firm to submit its proposal and fee estimate for conducting monitoring services for the San Mateo County Congestion Management Program (CMP) for 2021.

Proposals must be received **no later than 12:00 PM noon on Friday, January 29, 2021**. Late proposals shall be rejected. One (1) electronic version of the proposal document shall be submitted to the Project Manager by the closing date and time for receipt of proposals. Questions and responses on the RFP must be sent to:

City/County Association of Governments of San Mateo County (C/CAG)
555 County Center, 5th Floor
Redwood City, CA 94063

Attention: Jeffrey Lacap
E-mail: jlacap@smcgov.org

The RFP documents for this project are available for download on the C/CAG website at <https://ccag.ca.gov/opportunities/>. Proposers are responsible for checking the website for any Addenda to this RFP. Responses should be submitted in accordance with the instructions set forth in the RFP.

Note regarding the Public Records Act:

Government Code Sections 6250 *et seq.*, the California Public Records Act, defines a public record as any writing containing information relating to the conduct of the public business. The Public Records Act provides that public records shall be disclosed upon written request and that any citizen has a right to inspect any public record unless the document is exempted from disclosure.

Be advised that any contract that eventually arises from this Request For Proposals is a public record in its entirety. Also, all information submitted in response to this Request For Proposals is itself a public record **without exception**. Submission of any materials in response to this Request For Proposals constitutes a waiver by the submitting party of any claim that the information is protected from disclosure. By submitting materials, (1) you are consenting to release of such materials by C/CAG if requested under the Public Records Act without further notice to you and (2) you agree to indemnify and hold harmless C/CAG for release of such information.

I. Submittal Requirements

Consultants must submit one (1) electronic copy of the proposal. Each page shall be 8.5" x 11" or 11" x 17". Each page shall be sequentially numbered, and a table of contents shall be provided. Each submittal shall be no more than 25 bound pages, excluding cover letter, title page, table of contents, resumes of key staff members, relevant experience and references.

General Conditions

1. This RFP does not commit C/CAG to award a contract or to pay any costs incurred by any Proposer in the preparation of a proposal in response to this RFP.
2. Only one proposal will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.
3. C/CAG reserves the right to accept or reject all proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all Proposers.
4. C/CAG reserves the right in its sole discretion not to enter into any contract as a result of this RFP.
5. If the selected Proposer fails to enter into a contract with C/CAG in a timely manner as determined by C/CAG, C/CAG reserves the right to reject the proposal and enter into a contract with the next highest scoring Proposer.

Each submittal must include the following information:

1. Cover Letter
Provide a cover letter describing the consultant's interest and commitment to the proposed project. The cover letter must include the name, title, address, phone number, and email address of the individual whom correspondence and other contacts should be directed during the selection process. The cover letter must be signed by an official authorized to solicit business and enter into contracts for the firm. Indicate whether there are any conflicts of interest, actual or apparent, that would limit the Proposer's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of this RFP and any Addendum to the RFP. Indicate that the proposal is a firm offer to enter into a contract to perform work related to this RFP for a period of 120 days from the due date for proposals.
2. Title Page
Proposals must include a title page that includes the RFP subject, the name of the Proposer's firm, local address, telephone number, name of contact person, contact person's email address, and the date.
3. Table of Contents
Proposals must include a table of contents that includes a clear identification of the material by section and page number.
4. Overview and Summary
Provide a summary of the qualifications and benefits of selecting company to perform

requested services. This section should clearly convey the Proposer's understanding of the nature of the work and the general approach to be taken and identify any specific considerations. It should include, but not be limited to, the following:

- a. A discussion of the project's purpose;
- b. A summary of proposed approach; and
- c. The assumptions made in selecting the approach.

5. Work Plan

Present your firm's understanding of the project and address how your firm will approach all the major elements of the proposed scope of work as included in Attachment A of this Request for Proposal.

6. Cost Proposal

Proposer shall provide a detailed cost proposal for the project. The cost estimate shall include personnel names, classifications, hourly rates, overhead rates, and any other cost items necessary to perform each of the tasks listed in the Scope of Work. A total cost shall then be summarized and presented.

7. Qualifications

Identify the qualifications of staff assigned to perform the work, whose expertise or experience addresses each of the specified needs. Identify the personnel, including subcontractor personnel. In an appendix, brief resumes of key staff shall be included.

8. Experience and References

Identify any past experience and history the firm has had performing similar Scope of Work, attached as Attachment A, within the past five (5) years. Provide a succinct description (one page maximum per project) of previous projects, indicating the project title, duration, budget, sponsoring agency and sponsor project manager, and roles played by individuals proposed for this project. Include the name of the agency for whom the work was performed, year performed, name of the contact person and their telephone number.

- Provide a summary of all contracts your firm (including subcontractors) has held with C/CAG in the past three years, including a brief description of the scope of work, the contract amount, and date of execution. Performance on any C/CAG contract within the past three years may be considered as reference information or when past performance is included as an evaluation factor as noted in Proposal Evaluation.
- Work Samples (minimum of 2) - Provide at least one sample of a written technical report or memo and one sample of material developed for a similar study effort. The samples must have been prepared by key members of the Proposer's team and should identify the authors. The samples will be considered in evaluating firm and staff expertise and experience, and written presentation effectiveness.

II. Period of Performance

C/CAG staff anticipates the project will commence on or about April 2021, and to be completed no later than December 31, 2021; this includes the adoption of the 2021 CMP by the C/CAG Board Final meetings and presentations to the C/CAG Committees and Board shall be made at the November and December 2021 meetings, respectively.

III. Evaluation Criteria/Selection Process

An initial assessment will be made to ensure that the submittal is compliant with the RFP requirements and contains the required forms and information. An incomplete submittal will be disqualified at the option of C/CAG. The selection panel will then assess the technical quality of each submittal based on the technical evaluation criteria below.

Program Understanding and Approach (40%)

- Understanding of the program goals and requirements;
- General approach to accomplish the program goals and objectives;
- Ability to meet or exceed requirements as detailed in this RFP;
- Organization of technical information and data; and
- Logic, clarity of work plans (scope of work) and proposed schedule.

Qualifications, Related Experience and References (40%)

- Experience in performing work of a closely similar nature;
- Experience working with public agencies and multiple stakeholders;
- Demonstrated success of proposed approach/methodology in past or current similar projects;
- Strength, stability, experience and technical competence and staff.
- Results from reference checks

Cost Effectiveness (15%)

- Reasonableness of hourly rates;
- Allocation of resources for each tasks and activities.

Presentation and Communication Skills (5%)

- Abilities to write and present both qualitative and quantitative information in a clear and illustrative manner;
- Oral communication skills will be evaluated if interviews are held.

Request for Best and Final Offer

Following discussions, if held, Proposers on the “short list” will be given the opportunity to revise their written proposals to address the concerns raised during discussions through issuance by C/CAG of a Request for Best and Final Offer (BAFO). Following receipt of the BAFOs, the evaluation panel will evaluate the BAFOs against the evaluation criteria.

C/CAG reserves the right to not convene oral interviews or discussions, and to make an award on the basis of initial proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. References may be contacted at any point in the evaluation process.

C/CAG reserves the right to consider consultant performance based on comments from submitted references. Experience and ability to perform work is a significant consideration. C/CAG may consider any other criteria it deems relevant, and the Selection Committee is free to make any recommendations it deems to be in the best interest of C/CAG. C/CAG reserves the right to reject all submittals, and not enter into any contract for the services described in the RFP. C/CAG also reserves the right to accept other than the submittals with the lowest costs and to negotiate with proposers on a fair and equal basis when the best interests of C/CAG are served by doing so. C/CAG is not liable for any costs incurred by a company before entering into a formal contract. Costs of developing the submittal or any other such expenses incurred by a company in responding to the RFP, are entirely the responsibility of the company, and shall not be reimbursed in any manner by C/CAG.

To withdraw a proposal, a company must submit a written request to C/CAG. After withdrawing a previously submitted proposal, a company may submit another proposal at any time up to the deadline for submitting proposals. C/CAG shall not accept any amendments, revisions, or alterations to proposals after the submittal deadline.

IV. Schedule for Review Process

Date	Description
January 4, 2021	Issue RFP
January 11, 2021 at 5PM	Closing Date/Time for Requests for Clarifications.
January 29, 2021 at 12 Noon	Response to RFP Due
February 2021	Consultant Selection Process. Consultant interviews may be held (if necessary). <i>Consultants selected for interview must be available during the week of February 8th.</i>
Late February/Early March 2021	Selected consultants will be notified
March 11, 2021	Contract developed between C/CAG and consultant. Contract sent to Board for approval.

Questions regarding the RFP can be directed to Jeff Lacap at jlacap@smcgov.org

Recommendation for Contract Award

The panel will recommend the selected Proposer to the C/CAG Executive Director, based on their evaluation of the written proposals or oral interviews or discussions or BAFOs and oral interviews or discussions (if held). The Executive Director will review the recommendation and, if they agree,

staff will forward the recommendation to the C/CAG Board of Directors which authorizes award.

Attachments:

Attachment A: Scope of Work

Attachment B: Sample Agreement

ATTACHMENT A: Scope of Work

SAN MATEO COUNTY CONGESTION MANAGEMENT PROGRAM 2021 UPDATE

BACKGROUND

The Congestion Management Program (CMP) is intended to include procedures to alleviate or control anticipated increases in roadway congestion and to ensure that “federal, state, and local agencies join with transit districts, business, private and environmental interests to develop and implement comprehensive strategies needed to develop appropriate responses to transportation needs. The CMP should describe the framework for the ongoing process and include elements of the roadway system, traffic level of service standards, performance elements, and a trip reduction and travel demand.

As the CMA for San Mateo County, C/CAG prepares a Congestion Management Program (CMP) every two years. The CMP is the primary document by which C/CAG monitors congestion on San Mateo County’s roadways and provides comprehensive alternatives and solutions to mitigate it.

SCOPE OF WORK

C/CAG is seeking a consultant that can perform all the necessary tasks to perform an update of the 2021 Congestion Management Program in accordance with guidelines and requirements. The report should be consistent with California State Statute, California Department of Transportation (Caltrans) guidance, and the most recent CMP guidance established by the Metropolitan Transportation Commission (MTC), as well as any future CMP guidance that may be issued during this update.

In addition to monitoring and analyzing the CMP Network and preparing the CMP document, C/CAG would like the consultant to develop criteria and prepare a new companion roadway network that will be monitored alongside the existing CMP Network.

Interested consultants should review the 2019 County Congestion Management Program to ensure the new document is consistent with past findings. Consultant tasks are summarized into the following five tasks:

Task 1: Companion Monitoring Network

1.1 Develop Draft Criteria for Companion Monitoring Network

The consultant will prepare a set of draft qualitative and existing quantitative criteria (including but limited to information from the State Highway System Congestion and Safety Performance Assessment for San Mateo County and the collision analysis included in the Existing Conditions Report from the San Mateo County Comprehensive Bicycle and Pedestrian Plan) to determine a

companion network of roadways of countywide significance. This companion network is for informational purposes only and is not subjected to the CMP statute.

1.2 Prepare Draft Companion Monitoring Network

After meeting with C/CAG staff to discuss the proposed criteria, the consultant will develop a list of locations to be included as part of the companion monitoring roadway network. The consultant will also present the criteria and proposed network to the C/CAG Congestion Management Program Technical Advisory Committees for comments and feedback. For budgeting purposes, C/CAG would like the Draft Companion Monitoring Network to include no more than fifteen (15) signalized intersections and no more than ten (10) roadway segments within the county.

1.3 Prepare Final Criteria and Companion Monitoring Network

Based on comments made and direction received from C/CAG staff, the consultant will prepare criteria and a companion monitoring network. The intersections and roadway segments from the newly created companion network be incorporated with developing the Monitoring Plan (Task 2), analyzed and monitored together with the CMP Network (Task 3), and the results will be included in the CMP Monitoring Report (Task 4).

Task 1 Deliverable: Final Criteria and Companion Monitoring Network Locations

Task 2: Prepare Monitoring Plan

2.1 Prepare Draft Monitoring Plan

The consultant will prepare a draft plan for collecting the auto travel data as identified in the San Mateo County CMP Network described below as well as the Companion Monitoring Network described in Task 1. The draft monitoring plan will outline: 1) the methods employed to monitor the County-wide transportation network; 2) the designated routes in the County-wide transportation network on which those methods will be employed; and 3) the proposed schedule for monitoring and collecting/calculating the data. The monitoring shall be consistent with previous updates.

The CMP roadway system within San Mateo County includes a variety of roadway facilities such as: freeways, multi-lane highways, rural highways, arterials, and signalized intersections.

The CMP Roadway System includes the following:

SR 1, SR 35, SR 82, SR 84, SR 92, US 101, SR 109, SR 114, I 280, I 380, Mission St. (S.F. County Line to SR 82), Geneva Ave. (SF County Line to Bayshore Blvd., Bayshore Blvd. (S.F. County Line to Geneva Ave.

The CMP intersections include the following:

- Geneva Avenue and Bayshore Boulevard
- SR 35 and John Daly Boulevard
- SR 82 (Mission Street) and John Daly Boulevard/Hillside Boulevard
- SR 82 (El Camino Real) and San Bruno Avenue
- SR 82 and Millbrae Avenue
- SR 82 and Broadway
- SR 82 and Peninsula Avenue
- SR 82 and Ralston Avenue
- SR 82 and Holly Street
- SR 82 and Whipple Avenue
- SR 84 (Bayfront Expressway) and SR 109 (University Avenue)
- SR 84 and Willow Road
- SR 84 and Marsh Road
- SR 84 (Woodside Road) and Middlefield Road
- SR 92 and SR 1
- SR 92 and Main Street

2.2 Prepare Final Monitoring Plan

Based on comments made and direction received from C/CAG staff, the consultant will prepare a final monitoring plan

Task 2 Deliverable: Final Monitoring Plan

Task 3: Monitor and Analyze the CMP Network and Companion Network

3.1 Collect Data

Consistent with the final monitoring plan in Task 2, consultant will update and report on traffic and transit data for the entire CMP network in San Mateo County (in all cases, the traffic data should be less than 1-2 years old. C/CAG staff can assist in obtaining traffic data).

- Interstates and State Routes (53 segments): Collect travel time runs and Average Daily Traffic (ADTs) (either from traditional traffic counts or data available from Caltrans or the City)
- Intersections (16 locations): Counts must include all turning movements, as well as bicycle and pedestrian counts
- Roadway Segment Locations from the Companion Monitoring Network: Collect travel time runs and Average Daily Traffic (ADTs) (either from traditional traffic counts or data available from Caltrans or the City)
- Intersections from the Companion Monitoring Network: Counts must include all turning movements, as well as bicycle and pedestrian counts

In addition to the traffic data, consultant will also collect the following:

- Transit Data: Ridership data from SamTrans bus service and Caltrain and BART rail service

3.2 Analyze the Status of the CMP Network and Companion Network

Using the information collected in subtask 2.1, the consultant will calculate measures used in determining the CMP Level of Service (LOS) and other appropriate standards to analyze the current status of each designated location. The analysis will be consistent with methodologies identified in the final monitoring plan.

Task 3 Deliverable: Traffic counts, travel time, and all other requested data provided in an electronic format

Task 4: Prepare CMP Monitoring Report

4.1 Prepare Draft CMP Monitoring Report

The consultant will prepare a draft report on the status of the County-wide transportation network detailing the results of Task 2. The report should at minimum follow the format identified below:

- Introduction
- Purpose of the Monitoring Program
- Description of the Monitoring Program: Include methodologies for collecting and analyzing data
- Monitoring Results: Prepare tables that outlines the current status of each location within the county and a separate table comparing each segment with historic data.
- Actions: Divide the study locations into different levels according to their status and recommend appropriate actions to maintain or improve each level. Include actions that are already being taken by different agencies to address problems
- COVID-19 Response: provide a comparison of the previous CMP Monitoring Report to the 2021 analysis to highlight the impacts due to COVID-19

4.2 Prepare Final CMP Monitoring Report

After meeting with C/CAG staff to discuss the draft report, the consultant will finalize the monitoring report based on comments received

Task 4 Deliverable: Final CMP Monitoring Report

Task 5: Development of the 2021 CMP Document

5.1 Prepare the final CMP document

The consultant will prepare the final CMP document, while ensuring consistency with California state statute and MTC's latest guidance for Consistency of Congestion Management Programs with the Regional Transportation Plan (RTP). Note that MTC's current adopted RTP is Plan Bay

Area 2040 in July 2017. The final CMP document will consist of the following:

- Executive Summary or Highlights from the CMP
- Designated Roadway System: Define the CMP system for San Mateo County
- CMP System Performance: Define the LOS standard for all CMP network roadways. Evaluate alternate CMP System Performance Measures, including Level of Service, Vehicle Miles Traveled, and Vehicle Hours Delayed for traffic congestion and travel time reliability. Utilize the data prepared in the Monitoring Report to report on the status of the Countywide transportation system
- Multi-Modal System Performance: Use the results of the data collection to prepare this section. This section should include ridership of local and regional transit services. It should also include a summary of available bike and pedestrian facilities in San Mateo County.
- Travel Demand Management: Provide a summary and purpose of C/CAG's travel demand management services
- Land Use Analysis: Provide a summary and purpose of C/CAG's program to analyze the impacts of land use decisions made by local jurisdictions on the regional transportation system
- Travel Forecast Model: Provide a summary and purpose of the San Mateo County Travel Demand Model, and the role it plays in monitoring future congestion on San Mateo's roadways
- Update the CMP 7-year Capital Improvement Program (CIP), and Transportation Demand Management (TDM) program
- Include appendices with technical documentation, as appropriate

5.2 Finalize CMP Document and Committee/Board Presentations

Consultant should finalize CMP document after receiving C/CAG staff comments, member agency staff comments, C/CAG Board comments, and public comments. Consultant staff shall be available to present the draft and final CMP document to the C/CAG standing committees and the C/CAG Board.

Task 5 Deliverable: Final 2021 San Mateo County CMP Document; a total of five (5) presentations to a public meeting of C/CAG standing committees and C/CAG Board

ATTACHMENT B: Sample Agreement

**AGREEMENT BETWEEN
CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY
AND
[CONSULTANT NAME]**

This Agreement entered this [DAY] of [MONTH], [YEAR], 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 [CONSULTANT NAME], hereinafter called “Consultant.”

WHEREAS, C/CAG, is the Congestion Management Agency for San Mateo County [OR OTHERWISE DESCRIBE APPLICABLE C/CAG ROLE]; and

WHEREAS, C/CAG is the designated Congestion Management Agency responsible for the development and implementation of the Congestion Management Program for San Mateo County; and

WHEREAS, the California Government Code requires Congestion Management Agencies to develop and monitor Congestion Management Programs; and

WHEREAS, C/CAG has determined that outside consulting services are needed for conducting the monitoring of the 2021 Congestion Management Program; and

WHEREAS, C/CAG has determined that Consultant has the requisite qualifications to perform this work; and

WHEREAS, [ADJUST THIS CLAUSE AS NECESSARY] by adoption of [RESOLUTION #], the C/CAG Board of Directors approved the [PROGRAM/PROJECT] and authorized the C/CAG Chair to execute agreements with Consultant to provide [NATURE OF SERVICES] to assist C/CAG and its 21 member agencies for [X]-year terms, and further authorize the C/CAG Executive Director to negotiate final terms, subject to legal counsel review prior to execution by the C/CAG Chair, in a cumulative amount not to exceed \$[AMOUNT].

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

1. **Services to be provided by Consultant.** In consideration of the payments hereinafter set forth, Consultant shall provide services consistent with Exhibit B and agreed to perform under Attachment B, attached hereto (the “Services”).
2. **Payments.** In consideration of the services rendered with all terms, conditions, and specifications set forth herein, in Exhibit A and Exhibit B, and in any subsequent task orders executed under the governance of this agreement, C/CAG shall reimburse

Consultant on a time and materials basis. The aggregate total amount of payment by C/CAG to Consultant for services shall not exceed [COST, SPELLED OUT] (\$[COST, NUMBER]) for Services provided during the Contract Term set forth below. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this contract through task orders. Payments shall be made to Consultant monthly based on an invoice submitted by Consultant that has been reviewed and approved by the project sponsor and identifies expenditures and describes services performed. C/CAG shall have the right to receive, upon request, documentation substantiating charges billed to C/CAG.

3. **Contract Materials.** At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as “contract materials”) prepared by Consultant under this Agreement shall become the property of C/CAG and shall be promptly delivered to C/CAG. Upon termination, Consultant may make and retain a copy of such contract materials if permitted by law.
4. **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.
5. **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.
6. **Contract Term/Termination.** This Agreement shall be in effect as of [DATE] and shall terminate on [DATE]; 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 completed to the work required by the Agreement.
7. **Hold Harmless/Indemnity.**
 - a. *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.

- b. *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.

8. **Insurance.**

- a. *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.
- b. *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.
- c. *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.

d. *Insurance Limits; Insured Entities; Breach.* Required insurance shall include:

	Required Amount	Approval by 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	_____
4. Motor Vehicle 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.

- 9. **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.
- 10. **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.

11. **Substitutions.** If particular persons or classifications are identified in Exhibit A 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.
12. **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 intended pursuant to this Agreement.
13. **Record Retention; Right to Monitor and Audit.**
 - a. 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.
 - b. 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.
 - c. 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.
14. **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.
15. **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 regarding 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.

16. **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.
17. **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: [NAME]

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

[CONSULTANT NAME]
[ADDRESS]
[ADDRESS]
Attention: [NAME]

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

[NAME] (Consultant)

By _____

Date

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

By _____
Marie Chuang
C/CAG Chair

Date

By _____
Melissa Andrikopoulos
C/CAG Legal Counsel

Date

Exhibit A

CONSULTANT BILLING RATES

Hourly billing rates and staff for CONSULTANT and SUBCONSULTANT(S) are included on the following pages.

Exhibit B

SCOPE OF WORK