



REQUEST FOR QUALIFICATIONS

to Pre-Qualify Firms to Operate the C/CAG-VTA Travel Demand Model in Support of Transportation Analysis and Planning in San Mateo County

Issue Date: Friday, November 19, 2021

Closing Date/Time for Requests for Clarifications or Exceptions:
Monday, November 29, 2021 at 4:00 PM

RFQ Due Date: Wednesday, December 15, 2021 at 4:00 PM

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Request for Qualifications Pre-Qualify Firms to Operate the C/CAG-VTA Travel Demand Model in Support of Transportation Analysis and Planning in San Mateo County

I. Introduction

The City/County Association of Governments of San Mateo County (C/CAG), a Joint Powers Agency comprised of each of the 20 cities and the County in San Mateo County, seeks engineering firms to be pre-qualified to operate and enhance the countywide travel demand model used by C/CAG, its member agencies, and planning partners in San Mateo County for transportation analysis and planning.

Also, through this Request for Qualifications (RFQ), C/CAG may select one or more qualified consultants (“Consultant Bench”) with which C/CAG may contract to provide travel demand modeling services on upcoming projects on an as-needed basis. A Preliminary Scope of Work is described in *Attachment A, Preliminary Scope of Work*.

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

Qualification submittals must be received no later than 4:00 PM on December 15, 2021, in accordance with the instructions contained in the instructions contained in the RFQ. Other key RFQ dates are listed in Section V, Consultant Selection Timetable of the RFQ. Late submittals shall be rejected. One (1) electronic version of the Statement of Qualification shall be submitted to the Project Manager by the closing date and time.

Any contract entered into as a result of this RFQ with C/CAG will be funded, in whole or in part, with federal funds administrated by the California Department of Transportation (Caltrans).

The Disadvantaged Business Enterprise (DBE) Program described in Attachment B and D of this RFQ will be applied to all C/CAG projects funded in whole, or in part, with federal funds. The DBE program requirements may be applied later during a later procurement and solicitation for projects involving federal funds.

Questions and responses on the RFQ shall be submitted to:

City/County Association of Governments of San Mateo County
555 County Center, 5th Floor
Redwood City, CA 94063
Attention: Jeff Lacap
E-mail: jlacap@smcgov.org

II. C/CAG and Project Description

The Cities/County Association of Governments of San Mateo County (C/CAG) seeks to retain a Consultant Bench to operate and enhance the countywide travel demand model used by C/CAG, its member agencies, and planning partners in San Mateo County for transportation analysis and planning.

Congestion Management Program legislation requires that C/CAG, as the congestion management agency for San Mateo County, develop and maintain a countywide travel demand model. C/CAG licenses the countywide travel demand model for San Mateo County from the Santa Clara Valley Transportation Authority (VTA), which maintains a travel demand model that is optimized for the counties of Santa Clara and San Mateo and accounts for transportation impacts from neighboring counties and regional commute sheds (the “C/CAG-VTA Model”). Additionally, through this RFQ, C/CAG may contract on a per-project basis to provide a variety of travel demand modeling services.

The C/CAG-VTA Model is a four-step travel demand model implemented in Citilabs Cube Voyager software that is based on the BAYCAST-90 travel forecasting system previously used by the Metropolitan Transportation Commission (MTC). The model is updated every three to four years to be consistent with the most recent land use and socioeconomic database of the Association of Bay Area Governments (ABAG).

Pre-qualified firms will sign a use agreement and be provided a copy of the updated C/CAG-VTA Model. A sample of the use agreement is provided in Attachment D: Sample Agreement Templates. A project sponsor/member agency seeking application of the C/CAG-VTA Model by one of the pre-qualified firms must first obtain authorization for the project from C/CAG staff (typically on a pro forma basis).

There is no fee for authorization if requested by, or under the auspices of, a local government or agency belonging to C/CAG. Developers and other private entities that do not belong to C/CAG will be assessed a fee for authorization. Following authorization, contract negotiations for specific work will remain between the project sponsor/member agency and the pre-qualified firm on the Consultant Bench. Attachments B and C in this RFQ refer only to possible future on-call agreements with C/CAG to provide travel demand modeling services.

Specific projects may require adaptations of, or enhancements to, the C/CAG-VTA Model. Any changes to the C/CAG-VTA Model made by pre-qualified firms during specific model runs will be provided to the VTA for potential incorporation into the C/CAG-VTA Model.

During the initial term of the Bench, under any of the following circumstances, C/CAG may re-advertise this RFQs in cycles in order to select additional consultants to supplement the list of firms already on the Bench:

- When the volume of anticipated projects cannot be adequately handled by the firm(s) on the Consultant Bench;
- When there are fewer than three qualified consultants selected and in active standing on the Consultant Bench;
- When, in C/CAG’s judgment, the qualifications of those on the Consultant Bench do not meet the particularized need of an anticipated project.

Firms that have already qualified for placement on the Consultant Bench will remain on the Consultant Bench and will not be required to resubmit a new SOQ in order to maintain their placement on the Consultant Bench. Consultants who are not selected for the Consultant Bench as a result of any RFQ cycle will not be prohibited from submitting a new SOQ in response to any subsequent RFQs issued.

III. Scope of Work, Period of Performance, and Budget

A. Scope of Work

The general description of the types of work that may be procured from the Consultant Bench is provided in Attachment A, Preliminary Scope of Work. Specific projects solicited to the Consultant Bench may include additional scope and requirements. The Consultant selected to enter into a contract will be expected to perform all work necessary to complete the scope of work.

Selection to be on the Consultant Bench does not guarantee that a firm will be awarded any projects.

B. Period of Performance

C/CAG expects the resultant Consultant Bench from this procurement will be open from the time of award through June 30, 2024. At C/CAG's sole option, the contract may be extended for up to two (2) additional years, in increments of C/CAG's choosing, for work contemplated by Attachment A, Preliminary Scope of Work.

C. Budget

The budget for projects will be determined on a per-contract basis by C/CAG. Additional funding may be available in future Fiscal Years (FYs) subject to approval of future C/CAG budgets.

IV. Pre-Submittal Conference and Requests for Clarification or Exceptions

A non-mandatory Consultants' Conference will be held at **10:00 A.M. on Wednesday, December 1, 2021.**

Consultants may appear via Zoom Teleconference at the following meeting information:

The Pre-Consultants' Conference will be conducted as a Zoom meeting.

When: November 1, 2021 10:00 AM Pacific Time (US and Canada)

Join by Zoom:

<https://us02web.zoom.us/j/88387295328?pwd=Slhyd1FoLzYyallqZWtjLzIwYk9VQT09>

Meeting ID: 883 8729 5328

Passcode: 086461

Join by Phone: 669 -900-6833

Meeting ID: 883 8729 5328

Passcode: 086461

The conference will not be recorded.

If a Consultant knows they will be unable to join via computer and wishes to participate by phone, please contact Jeff Lacap by email: jlacap@smcgov.org.

Individuals appearing by telephone are required to send the following information, prior to the meeting:

1. First and Last Name;
2. Job Title;
3. Firm Name and Address;
4. Email;
5. Phone number;
6. Firm certification as a Disadvantaged Business Enterprise (DBE) include DBE ID No.
7. A brief list of firm services; and
8. Whether the firm is interested as a prime or sub.

Any addenda will be posted on C/CAG's website at <https://ccag.ca.gov/opportunities/rfpsrfqs/>. All Consultants are responsible for checking the website for any addenda to the bid documents.

Any requests for clarification or exceptions to RFQ requirements must be received by C/CAG no later than the Closing Date/Time for Receipt of Requests for Modifications/Exceptions as stated in Section V, Tentative Consultant Selection Timetable of this RFP, to guarantee a response or consideration. Responses will be provided in Questions and Answers Documents or Addenda on an ongoing basis as soon as possible. C/CAG reserves the right to reject any SOQ that contains unauthorized conditions or exceptions.

V. Tentative Consultant Selection Timetable

Date	Description
4:00 P.M. on Monday, November 29, 2021	Closing Date/Time for Requests for Clarifications or Exceptions
10:00 A.M. on Wednesday, December 1, 2021	Non-mandatory Consultants' Conference
4:00 P.M. on Wednesday, December 8, 2021	Deadline for protesting RFQ provisions
4:00 P.M. on Wednesday, December 15, 2021	Response to RFQ Due
Week of January 3, 2022	Interviews (if held)
February 2022	C/CAG Board Approval

Interview, award and approval dates are approximate and are subject to change before or after the closing date of the RFQ.

VI. Submittal Requirements

1. Consultants must submit one (1) electronic copy of the Statement of Qualification. 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 10 pages, excluding cover letter, title page, table of contents, resumes of key staff members, relevant experience and references.
2. This RFQ does not commit C/CAG to award a contract or to pay any costs incurred by any Consultant in the preparation of a response to this RFQ.
3. Only one qualification submittal will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.
4. C/CAG reserves the right to accept or reject all qualification submittals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all Consultants.
5. C/CAG reserves the right in its sole discretion not to enter into any contract as a result of this RFQ.
6. If the selected Consultant fails to enter into a contract with C/CAG in a timely manner as determined by C/CAG, in accordance with the terms and conditions of this RFQ, C/CAG reserves the right to reject the proposal and enter into a contract with the next highest scoring Consultant.
7. 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 RFQ, are entirely the responsibility of the company, and shall not be reimbursed in any manner by C/CAG.
8. 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 qualification documents. C/CAG shall not accept any amendments, revisions, or alterations to qualification documents after the submittal deadline.

VII. Form of SOQ

SOQ must be signed and include a statement that the person or persons signing the proposal is/are authorized to authorize and submit the proposal on behalf of the Consultant. Page limits, where specified, are for single-sided print.

SOQ content and completeness are most important. Clarity is essential and will be considered in assessing the Consultant's capabilities.

Consultants must provide the information listed below. Any material deviation from these requirements may be cause for rejection of the proposal, as determined in C/CAG's sole discretion.

1. Cover Letter

- a. The cover (or transmittal) letter shall be addressed to:

Jeffrey Lacap
Transportation Systems Coordinator
City/County Association of Governments of San Mateo County (C/CAG) 555 County Center, 5th
Floor
Redwood City, CA 94063
jlacap@smcgov.org

- b. Provide a cover letter describing the consultant's interest and commitment to the proposed project. 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 Consultant's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of this RFQ and any Addendum to the RFQ. Indicate that the proposal is a firm offer to enter into a contract to perform work related to this RFQ for a period of 120 days from the due date for qualification submittals.

2. Title Page

- a. Qualification submittals must include a title page that includes the RFQ subject, the name of the Consultant's firm, local address, telephone number, name of contact person, contact person's email address, and the date.

3. Table of Contents

- a. Qualification submittals must include a table of contents that includes a clear identification of the material by section and page number.

4. Overview and Summary

- a. Provide a summary of the qualifications and benefits of selecting firm to perform requested services. This section should clearly convey the Consultant's understanding of the nature of the work and the general approach to be taken and identify any specific considerations.

5. Consultant Information, Qualifications & Experience

- a. Briefly describe your firm's capabilities in Bentley Cube Voyager modeling software.
- b. Identify the qualifications of your staff to operate the C/CAG-VTA Model. Brief resumes of key staff may also be included. Please identify the primary individuals who will be the point of contact and who will be the backup individuals.
- c. Briefly identify any experience your firm has with the C/CAG-VTA Model or models of similar construction.

- d. Briefly describe any experience your firm has working with local public agencies in San Mateo County. Highlight any past projects involving analysis or post-processing of model outputs, such as level of service (LOS), vehicle miles traveled (VMT), and GHG emissions.
- e. Briefly describe any experience your firm has utilizing and enhancing travel demand models for such purposes as traffic impact analyses, operational planning, cost-benefit analyses, and multi-modal level of service analyses.
- f. If possible, provide sample work products, schedules, and budgets from past projects described in items C and D.
- g. Provide a list of references, including contact information, of agencies/individuals for which you have operated the C/CAG-VTA Model or models of similar construction.

6. Required Forms:

- a. California Levine Act Statement – Attachment E
- b. Taxpayer Identification Number and Certification
 - i. Submit a W-9, Request for Taxpayer Identification Number and Certification for Consultant only (containing original signature) available at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

7. Audit and Review

- a. Consultants for A&E contracts equal to or in excess of one hundred fifty thousand dollars (\$150,000) must complete and submit Exhibit 10-K, Consultant Certification of Contract cost and Financial Management System and all documentation described in *Attachment C, Audit and Review Requirements*. Consultants and each of their subconsultants must provide with their submission the appropriate documentation to respond to the audit based on the audit category applicable to their firm. After award of the project, C/CAG shall work with the awarded consultant to complete and/or revise the audit materials prior to submission for review. Please see *Attachment C, Audit and Review Requirements* for more details.

VIII. Evaluation Criteria/Selection Process

A. Evaluation Criteria

Qualifications, Related Experience and References (50%)

- Experience of firms to complete work specified in *Attachment A, Preliminary Scope of Work*, including recently completed relevant projects;
- Strength, stability, experience and technical competence of key staff and project team;
- Experience working with public agencies and multiple stakeholders; and
- Results from reference checks.

Project Understanding and Approach (40%)

- Proposed approach to accomplish the program goals and objectives;

- Ability to meet or exceed requirements as detailed in this RFQ; and
- Logic, clarity of work plans (preliminary scope of work)

Presentation based on written SOQ and sample reports (10%)

- 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.

B. Interviews

Following the initial evaluation of SOQs, the evaluation panel may elect to recommend a Consultant with or without interviews or may develop a short list of firms to be considered for selection. Oral interviews will be held with short-listed firms. If a short list is developed, firms that were not selected for the short list will be notified; however, the evaluation record shall remain confidential until the C/CAG Board authorizes award.

C/CAG reserves the right to not convene interviews and to make an award on the basis of written SOQs, alone. Experience and ability to perform work is a significant consideration. SOQs should be submitted on the most favorable terms. References may be contacted at any point in the evaluation process. Further, C/CAG reserves the right to accept or reject any and all SOQ submitted, to waive minor irregularities in SOQs, and to request additional information from one or more the Consultants. Any award made will be made to the firms whose SOQs are the most advantageous to C/CAG, based on the evaluation criteria listed above.

C. Recommendation for Contract Award

The panel will recommend the selected Consultants to the Consultant Bench to the C/CAG Executive Director, based on evaluation of the written SOQ and oral interviews (if held). The Executive Director will review the recommendation and, if they agree, they will approve the bench and forward the recommendation to the C/CAG Board of Directors for contract award.

D. Assigning Work

Potential contracts awarded by C/CAG may include a specific scope of work based on the areas identified in Attachment A, Preliminary Scope of Work or be Task Order based. C/CAG reserves the right in its sole discretion to determine which panel consultant's qualifications, experience, available resources, ability to perform according to the required schedule, and hourly rates best suit each project. C/CAG reserves the right to issue a mini-Request for Qualifications or mini-Request for Proposal (mini-RFQ or mini-RFP). The mini-RFQ or mini-RFP award will be made based on the evaluation factors listed in the mini-RFQ or mini-RFP. Selection to be on the Consultant Bench will not necessarily result in award of any contract or task order work.

If a firm selected for the Consultant Bench or a project fails to enter into a contract, contract amendment, or task order with C/CAG in a timely manner as determined by C/CAG, in accordance with the terms and conditions of this RFQ, C/CAG reserves the right to reject the SOQ or proposal of the firm and enter into a contract with another firm on the Consultant Bench.

E. Selection Disputes

A Consultant may object to a provision of the RFQ on the grounds that it is arbitrary, biased, or unduly

restrictive, or to the selection of a particular Consultant on the grounds that C/CAG procedures, the provisions of the RFQ or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

- No later than 4:00 p.m. on the third business day prior to the date SOQs are due, for objections to RFQ provisions; or
- No later than 4:00 p.m. on the third business day after the date the firm is notified that it did not meet the minimum qualifications or was found to be non-responsive; or
- No later than 4:00 p.m. on the third business day after the date on which the firm is notified that it was not selected, or if applicable the date the appropriate committee authorizes award, whichever is later, for objections to Consultant selection.

Except with regard to initial determinations of non-responsiveness, the evaluation record shall remain confidential until the C/CAG Board of Directors authorizes award.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the C/CAG review officer to recommend a resolution to the C/CAG Executive Director.

The C/CAG Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Should a Consultant wish to appeal the decision of the C/CAG Executive Director, it may file a written appeal with the C/CAG Board of Directors no later than 4:00 p.m. on the third business day after receipt of the written response from the C/CAG Executive Director. The C/CAG Board of Directors' decision will be the final agency decision.

Authorization to award an agreement to a particular Consultant by C/CAG shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the C/CAG Executive Director or, if the decision of the C/CAG Executive Director is appealed, the issuance of the C/CAG Board of Directors decision.

Attachments:

- Attachment A: Preliminary Scope of Work
- Attachment B: Federal Requirements
- Attachment C: Audit and Review Requirements
- Attachment D: Sample Agreement Templates
- Attachment E: Levine Act Statement

Attachment A: Preliminary Scope of Work

Background

The City/County Association of Governments of San Mateo County (C/CAG), a Joint Powers Agency comprised of each of the 20 cities and the County in San Mateo County, seeks engineering firms to be pre-qualified to operate and enhance the countywide travel demand model used by C/CAG, its member agencies, and planning partners in San Mateo County for transportation analysis and planning.

Also, through this Request for Qualifications (RFQ), C/CAG may select one or more qualified consultants (“Consultant Bench”) with which C/CAG may contract to provide travel demand modeling services on upcoming projects on an as-needed basis.

Scope of Work

Possible tasks may include, but not limited to the following:

- Proficiency with Citilabs Cube Voyager software
- Conduct network identification and accuracy checks
- Conduct parcel, census block, census tract and traffic analysis zone (TAZ) layer identification, accuracy, updating and refinement
- Identify, update, refine and maintain network links, including speed characteristics, geometrics, special circumstances, and other attributes
- Develop and refine project Microsoft Access or Excel files
- Develop specific model output formats for use in planning studies, reports, projects and presentations
- Preparing forecasts on an as-needed basis in support of transportation planning studies.
- Troubleshoot major and minor problems related to the model or model data
- Identify and fix scripting or other model processing errors
- Assist C/CAG staff with the development of new or refined methods for extracting applicable data from the model
- Assist with the review and development of land use, census, and socioeconomic data
- Inform staff of updated software and/or new programs that relate to travel modeling
- Recommend software and/or software updates
- Provide new training and updated model documentation as model is updated or new versions become available
- Improve or modify code for automated procedures that generate standard reports and/or graphics for analysis or presentation purposes
- Prepare model output visualizations that are easy to read and understand for reports, presentations, workshops or other needs

Attachment B: Federal Requirements

In the event a project funded in whole or in part with federal funds is solicited to the Consultant Bench by C/CAG, the following Federal Requirements below will apply.

Federally-required contract provisions are listed below and in Attachment D, C/CAG's Standard Consultant Agreement. In addition, the federal requirements in this Attachment B shall apply to any C/CAG contract resulting from this RFQ.

For other project sponsors or local jurisdictions, contract negotiations for specific work remain between the project sponsor/local jurisdiction and the pre-qualified firm on the Consultant Bench.

Effective July 2012, the California Department of Transportation (Caltrans) requires recipients of DOT grant funds through Caltrans to impose the following DBE utilization requirements on its consultants and contractors. Consultant's DBE participation on its Agreement with C/CAG will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

C/CAG will establish Disadvantaged Business Enterprise (DBE) goals for each contract, or for each task order issued under any contract entered into as a result of this RFQ.

1. TERMS AS USED IN THIS DOCUMENT

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other Small Businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Contractor should ensure that DBEs and other Small Businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Failure by Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as C/CAG deems appropriate.
- B. Consultants are encouraged to use services offered by financial institutions owned and controlled by DBEs.
- C. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, *Exhibit 10-01*, “Local Agency Consultant DBE Commitment” form and *Exhibit 15-H*, “Consultant/Contractor Good Faith Effort” form shall be included in the procurement document. In order for a Consultant to be considered responsible and responsive, the Consultant must make good faith efforts to meet the goal established for the contract. If the goal is not

met, the Consultant must document adequate good faith efforts. All DBE participation will be counted towards the contract goal, and all DBE participation shall be collected and reported.

Exhibit 10-01, “Local Agency Consultant DBE Commitment” form and *Exhibit 15-H*, “Consultant/Contractor Good Faith Effort” form shall be included with the procurement document. The purpose of the forms is to collect data required under 49 CFR 26. These forms collect all DBE participation. Even if no DBE participation will be reported, the successful Consultant must execute and return the forms.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the Consultant’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE Consultant not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - 1. The Consultant is a DBE and will meet the goal by performing work with its own forces.
 - 2. The Consultant will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
 - 3. The Consultant, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The Consultant shall list only one subcontractor for each portion of work as defined in its SOQ and all DBE subcontractors should be listed in the bid/cost SOQ list of subcontractors.
- G. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.
- H. A DBE firm may be terminated only with prior written approval from C/CAG and only for the reasons specified in 49 CFR 26.53 (f). Prior to requesting C/CAG consent for the termination, Consultant must meet the procedural requirements specified in 49 CFR 26.53(f).

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program web site at: <http://www.dot.ca.gov/hq/bep/>.
 - Click on the link in the left menu titled *Disadvantaged Business Enterprise*
 - Click on *Search for a DBE Firm* link
 - Click on *Access to the DBE Query Form* located on the first line in the center of the page
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen
- C. How to Obtain a List of Certified DBEs without Internet Access: DBE Directory - If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered from the Caltrans Publications Unit at (916) 263-0822, 1900 Royal Oaks Drive, Sacramento, CA 95815-3800.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, that is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

7. Final Report

Upon completion of the contract, a summary of these records shall be prepared and submitted on *Exhibit 17-F, Final Report – Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants*”, certified by Consultant or Consultant’s representative and shall be furnished with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in a twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to Consultant when a satisfactory final utilization report is submitted to C/CAG.

Attachment C: Audit and Review Requirements

This section outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Audits and Investigations (A&I), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected by Caltrans on a risk-based approach.

APPLICABLE STANDARDS

State and federal requirements listed below, as well as specific contract requirements, serve as the standards for audits and reviews performed. C/CAG consultants, and subconsultants are responsible for complying with state, federal and specific contract requirements. C/CAG is responsible for determining the eligibility of costs to be reimbursed to consultants. Applicable standards include, but not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- Project Program Supplemental Agreements;
- 23 CFR, Chapter 1, Part 172 – *Administration of Engineering and Design Related Service Contracts*;
- 48 CFR, *Federal Acquisitions Regulation Systems (FAR)*, Chapter 1 FAR, Part 31- *Contract Cost Principles and Procedures*;
- 48 CFR, Chapter 99 – *Cost Accounting Standards*, Subpart 9900;
- 49 CFR, Transportation, Subtitle A, Office of the Secretary of Transportation, Volume 1, Part 18, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government*;
- 49 CFR, Part 18.20 – *Standards for Financial Management Systems*;
- 23 USC, Part 112 – *Letting of Contracts*;
- United States Government Accountability Office, *Government Auditing Standards (GAS)*;
- Proposed contract terms and conditions.

See section 10.10 “References” of LAPM Chapter 10 available at <http://www.dot.ca.gov/hq/LocalPrograms/lam/LAPM/LAPM.pdf> for links to above referenced standards.

AUDIT GUIDANCE AVAILABLE

The American Association of State Highway Officials, Uniform Audit & Accounting Guide ([AASHTO Uniform Audit & Accounting Guide](#)) or (<http://audit.transportation.org/Documents/UAAG-3%20FINAL.pdf>), which is referred to frequently in this section, is an invaluable tool to guide local agencies, consultants and certified public accountants (CPAs) through the requirements for establishing, and audits of, FAR compliant indirect cost rates (ICRs). The [AASHTO Uniform Audit & Accounting Guide](#) is used extensively as an industry guide in the audit and review process.

C/CAG may seek financial and accounting assistance from its own internal audit staff.

The Consultant may also seek professional guidance in selecting its independent CPA. See also the [AASHTO Uniform Audit & Accounting Guide](#), Ch 2.5 C. *Selection of the CPA Firm as Overhead*

Auditor for guidance in the selection process.

Training is also offered by FHWA's National Highway Institute (see <http://www.nhi.fhwa.dot.gov/default.aspx>). Courses offered include:

- Using the AASHTO Uniform Audit & Accounting Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Uniform Audit & Accounting Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA-NHI-231029)
- Using the AASHTO Uniform Audit & Accounting Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

CONTRACTS AND CONSULTANTS SELECTED FOR AUDIT OR REVIEW

Whether a proposed contract or Consultant is selected for audit or review through A&I's risk-based approach is dictated by the dollar thresholds of the proposed contract, and other risk factors listed below.

Dollar thresholds for audits or reviews are stratified as follows:

- Less than \$150K – no audit or review is required, but is optional;
- Between \$150K and \$1M (Case 1);
- Between \$1M and \$3.5M (Case 2);
- \$3.5M and above (Case 3).

Specifics of Cases 1, 2 and 3 are outlined below.

Risk factors considered include the Consultant's, but not limited to:

- History of satisfactory performance;
- Prior FAR compliant history and audit frequency;
- Financial stability;
- Conformance to terms and conditions of previous contracts;
- General responsiveness and responsibility;
- The approximate dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultant's indirect cost rate;
- Responses to internal control questionnaire, see AASHTO Uniform & Accounting Guide, Appendix B;
- Changes in the organizational structure.

If audited or reviewed, contracts, cost proposals, and ICR(s) shall be modified to conform to audit and review recommendations that address requirements. C/CAG is responsible for ensuring contracts, cost proposals, and ICR(s) are modified to conform to audit and review recommendations as necessary, and to ensure that audit findings and review deficiencies are resolved in a timely manner.

SUBCONSULTANT IMPACTS

Subconsultants are required to follow all the state, federal and contract requirements outlined above in *Standards that Apply*. In addition, all subconsultants are required to:

- Certify their contract costs and financial management system (Exhibit 10-K “*Consultant Certification of Contract Costs and Financial Management System*”) when the **total** contract between the prime consultant and the local agency is \$150K or more. (23 U.S.C. 112(b)(2)(B)). Reminder: The contract is between the local agency and the prime consultant. Subconsultants, as parties to the contract, must also adhere to this requirement.
- Use the accrual basis of accounting when developing their ICRs.
- Have an adequate job costing system.

Subconsultants’ cost proposals also must be submitted along with the prime Consultants’ cost proposals through the request for audit process (see *LAPM Exhibit 10-A “A&E Consultant Audit Request Letter and Checklist*”) when the total (prime plus subs) proposed contract is \$1M or more.

COGNIZANT LETTERS OF APPROVAL

“Cognizant” audits and reviews have been developed to assign primary responsibility for an ICR audit to a single entity (the “cognizant agency”) to avoid duplication of audit work performed in accordance with GAS. The objective of these audits and reviews is to obtain reasonable assurance that claimed costs are in accordance with the FAR cost principles. A cognizant agency may be the home state Department of Transportation (DOT) (the state where the consultant’s financial records are located), a federal agency, or a non-home state DOT to whom the home state has transferred cognizance. When providing cognizant ICR approval the cognizant agency may either perform an ICR audit themselves, or they may review and rely on the work/workpapers related to an ICR audit performed by a CPA. The desired outcome of a cognizant audit or CPA Workpaper Review is for the “cognizant agency” to issue a Cognizant Letter of Approval so that the ICR can be relied upon on future contracts with the consultant for a given year and for reliance by other state agencies using the same consultant.

A&I will accept a Consultant’s cognizant approved ICR for the applicable one-year accounting period, if rates are not under dispute. The Consultant is responsible for providing documentation of its cognizant approved ICR and Cognizant Letter of Approval.

MOST COMMON AUDITS AND REVIEWS TO BE PERFORMED

ICR AUDITS

During an ICR audit, the auditors (A&I or independent CPAs) will examine the Consultant’s proposed ICR for the applicable one-year accounting period on the proposed contract to ensure that unallowable costs have been removed from the overhead, that allowable costs have been correctly measured and properly allocated, and that the ICR has been developed in accordance with the FAR cost principles (as specified in 23 USC 112(b)(2)(B), 23 CFR 172.7(a), and 48 CFR Part 31). As a result of the audit, the local agency will work with the Consultant to adjust the ICR where disallowed costs are identified based on audit recommendations.

ICR Audits apply to Case 1 and Case 2 contracts (see Case descriptions below) selected for audit. Cognizant Letters of Approval are issued with ICR Audits.

For guidance regarding the existing policies and procedures set forth in the Federal Regulations, and acceptable samples of ICR schedules, refer to the AASHTO Uniform Audit & Accounting Guide, Chapter 5.

The review program in the AASHTO Uniform Audit & Accounting Guide, Appendix A, should be used as a guide in performing ICR audits. This review program will be used for reviews of CPA audited ICR workpapers.

IMPORTANT NOTE FOR CPAs: Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing is required. Strict use of the AASHTO Uniform Audit & Accounting Guide cannot be stressed enough.

CPA AUDITED ICRWORKPAPER REVIEWS

During a CPA Audited ICR Workpaper Review, A&I will review the CPA's workpapers of its ICR audit to determine whether it is appropriate to issue a Cognizant Letter of Approval. The Workpaper Review is conducted to determine whether: (a) the CPA's audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with FAR Part 31 and related laws and regulations, and (c) the audit report format is acceptable. Chapter 11 of the AASHTO Uniform Audit & Accounting Guide includes a recommended format for the audit report and required disclosures.

CPA Audited ICR Workpaper Reviews apply to Case 3 contracts (see Case descriptions below) selected for review. Cognizant Letters of Approval are issued with CPA Workpaper Reviews.

The review program in the AASHTO Uniform Audit & Accounting Guide, Appendix A, will be used as a guide in performing CPA Workpaper Reviews.

IMPORTANT NOTE FOR CPAs: Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing required. Strict use of the AASHTO Uniform Audit & Accounting Guide cannot be stressed enough.

OTHER AUDITS AND REVIEWS THAT MAY BE PERFORMED

CONTRACT AUDITS AND REVIEWS

During a Contract Audit or Review, auditors will review contracts and the Consultants' financial management system to determine if:

- The Consultants' accounting system is adequate to accumulate and segregate costs;
- Proposed costs are reasonable;
- The contract contains all necessary fiscal provisions and the provisions are sufficient in content;
- Proper state and federal procurement requirements were followed;
- Direct labor costs are compliant;
- Other audits/reviews of the contract is necessary.

RISKASSESSMENTS

During a Risk Assessment, auditors may require an ICQ and certification of the ICRs and may perform a certain level of analytical reviews of the ICRs. They may review the contract provisions, ICQ, ICR, and/or cost proposal(s) to determine if:

- The required fiscal provisions are in the proposed contract;
- The ICR and/or cost proposal(s) are mathematically accurate and in the proper format;
- The ICR and/or cost proposal(s) contain questionable costs.

INCURRED COST AUDITS

During an Incurred Cost Audit, auditors will review contracts to determine if costs claimed are:

- Adequately supported;
- Reasonable in nature;
- Allowable, allocable, and reasonable;
- In compliance with state and federal laws and regulations;
- In compliance with the fiscal provisions stipulated in the contract.

FINANCIAL MANAGEMENT SYSTEM REVIEW

During a Financial Management System Review auditors will determine whether:

- The accrual basis of accounting was used to prepare the ICR;
- There is a job cost accounting system adequate to accumulate and segregate allocable and allowable project costs;
- The consultant complied with 49 CFR, Part 18.20, Standards for Financial Management Systems.

CASE 1: PROPOSED A&E CONSULTANT CONTRACTS OF \$150,000 OR MORE

CONSULTANTS:

Prime Consultants with a proposed contract **totaling** \$150,000 or more, **and** any subconsultants listed on the contract, must certify the accuracy of their contract costs and adequacy of their financial management systems (see Exhibit 10-K “Consultant Certification of Contract Costs and Financial Management System” attached as Attachment C). The certification is to be submitted to C/CAG who in turn will forward a copy to A&I.

Components include certification that:

- All costs included in the proposed contract to establish final ICR are allowable in accordance with the cost principle of the FAR, 48 CFR, Part 31.
- The proposed contract does not include any costs which are expressly unallowable under the cost principles of the FAR, 48 CFR, Part 31.
- All known material transactions or events that have occurred affecting the firm’s ownership, organization, and ICRs have been disclosed.
- The consultant’s financial management system meets the standards for financial reporting, accounting records, internal and budget controls set forth in the FAR 49 CFR, Part 18.20.

- The Consultant has provided the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to the consultant within the last three calendar years, and for all state DOTs and local agency contracts, and the number of states in which the firm does business.
- All direct costs included in the proposed contract are reasonable, allowable, and allocable in accordance with FAR 48 CFR, Part 31, in compliance with applicable accounting principles, and in compliance with the terms of the proposed contract.

Consultants must also ensure their ICRs are prepared in the acceptable ICR scheduled format, see AASHTO Uniform Audit & Accounting Guide, Chapter 5 tables.

C/CAG

C/CAG will forward copies of the Consultant and subconsultant, if any, certification (Exhibit 10-K “Consultant Certification of Contract Costs and Financial Management System” attached as Attachment C) to A&I. ***See bottom of this Appendix for A&I’s email or mailing address.***

Case 1 Consultants and contracts may be selected for an audit or review through a risk based approach described earlier in this section. Potential audits or reviews can be, but are not limited to:

- Contract Audits;
- Incurred Cost Audits;
- Financial Management System Review;
- ICR Audits;
- Risk Assessments.

CASE 2: PROPOSED A&ECONSULTANT CONTRACTS OF \$1M OR MORE

C/CAG and Consultants with a proposed contract ***totaling*** between \$1M and \$3.5M must comply with all the requirements outlined in Case 1 above.

In addition, C/CAG must send copies of the proposed contract and additional supporting documentation to A&I for review in conformance with certain requirements outlined in the LAPM. Once the proposed contract and additional supporting documentation are reviewed, A&I will issue a Conformance Letter noting any deficiencies, if any. A&I will issue the Conformance Letter within 30 business days of receipt of a **complete** packet.

A **complete** packet consists of the documents listed below. C/CAG is required to provide these documents to A&I (see *LAPM Exhibit 10-A “A&E Consultant Audit Request Letter and Checklist”*):

1. Proposed contract between the local agency and consultant;
2. Cost proposal(s) for prime consultant ***and*** all subconsultants;
3. Names, mailing addresses, phone numbers and email addresses for prime consultant ***and*** subconsultants;
4. Name of local agency contact person, phone number, mailing addresses and email addresses;
5. Prime consultant generated ICR schedule prepared in accordance with applicable CFRs;
6. A completed ICQ (see AASHTO Uniform Audit & Accounting Guide, Appendix B), including all applicable attachments, for the prime consultant;
7. Exhibit 10-K “Consultant Certification of Contract Costs and Financial

Management System” attached as Attachment C for the prime Consultant **and** all subconsultants.

And one of the following, **if available**:

- A copy of the prior fiscal year, and most recently completed fiscal year cognizant approved ICR and approved state DOT Cognizant Letter of Approval;
- A copy of the prior fiscal year, and most recently completed fiscal year, ICR Schedules and audited report by an independent CPA. If a CPA audited ICR is available for the appropriate fiscal year (applicable one-year accounting period), then the consultant must use the audited ICR, or a lower ICR (*see 23 CFR 172.7(b) for guidelines*);
- A copy of the prior, and most recently completed fiscal year, ICR(s) evaluation or audit report on a prior Caltrans or local agency contract, and any other governmental agency report/review/attestation.

Through A&I’s risk-based approach, Consultants may be selected for an ICR or other contract audits or reviews. If an ICR audit is performed and the Consultant’s ICR is in compliance with the FAR principles, a Cognizant Letter of Approval will be issued. *See bottom of this Attachment for A&I’s Email or mailing address.*

CASE 3: PROPOSED A&E CONSULTANT CONTRACTS OF \$3.5M OR MORE

C/CAG and Consultants with a proposed contract **totaling** \$3.5M or more must comply with all the requirements in Case 1 and 2 above. Also, Consultants must provide the following to C/CAG who in turn will forward a copy to A&I:

- A state DOT’s approved ICR schedule **and** the Cognizant Letter of Approval;

OR

- CPA Audited ICR Audit Report **and** a copy of the CPA audited financial statements, if any.

Through A&I’s risk-based approach, CPA Audited ICR Workpaper Reviews may be performed. Local agencies are responsible for ensuring both the Consultant and its CPA provide full access to the CPA’s workpapers, including making copies upon request. Failure to do so may be considered a breach of contract. If a review is performed and the CPA’s work is in compliance with the FAR principles, a Cognizant Letter of Approval will be issued. See bottom of this Appendix for A&I’s email or mailing address.

REQUIREMENTS FOR A CONFORMANCE LETTER

A complete packet is required to begin a conformance review. See Case 2: Proposed A&E Consultant Contracts of \$1M or More above for elements of a complete packet.

Requirements for a Conformance Letter include:

- *LAPM* Exhibit 10-A “A&E Consultant Financial Document Review Request” and all applicable items listed.
- Cost proposal(s) presented in the applicable format for the method of payment for the prime consultant **and** all subconsultants in the proposed contracts (see Determine

Method of Payment in Section 10.2 “*Identifying & Defining a Need for Consultants*” and Exhibit 10-H “*Sample Cost Proposal*” for required formats and example proposals).

- ICRs prepared using the accrual basis of accounting for both the prime and subconsultants.
- An adequate financial accounting system (job cost system) for both the prime and subconsultants.
- The required fiscal provisions specified below must be included verbatim in the proposed contract (see *LAPM* Exhibit 10-R “*A&E Sample Contract Language*” for sample language and requirements):
 1. Performance Period (begin and end date) (Article IV);
 2. Allowable Costs and Payments (Article V);
 3. Termination (Article VI);
 4. Cost Principles and Administrative Requirements; (Article VII);
 5. Retention of Records/Audit; (Article VIII);
 6. Audit Review Procedures, (Article IX);
 7. Subcontracting (Article X);
 8. Equipment Purchase (Article XI);
 9. State Prevailing Wage Rates (Article XII);
 10. Conflict of Interest (Article XIII);
 11. Rebates, Kickbacks or other Unlawful Consideration (Article XIV);
 12. Prohibition of Expending Local Agency State or Federal Funds for Lobbying (Article XV).

A Conformance Letter will be issued within 30 business days of receipt of a complete packet.

Contracts cannot be executed until the Conformance Letter is issued and noted deficiencies that address requirements, are corrected. Corrected deficiencies, however, do NOT need to be cleared through A&I before executing the contract. Any supporting documentation addressing Conformance Letter deficiencies along with the executed contract shall be retained in the project file.

A&I email address: caltransfederalaward@dot.ca.gov
A&I mailing address: Department of Transportation Audits and Investigations,
MS 2 Attention: External Audit Manager
P.O. Box 942874
Sacramento, CA 94274-0001

SUMMARY OF CONTRACTS TO BE AUDITED OR REVIEWED

<i>Proposed Contract Amount</i>	<i>Proposed Contract Amount</i>	<i>Conformance Letter Required?</i>	<i>Audit/Review Performed?</i>	<i>If Audited or Reviewed will Cognizant Letter of Approval be Issued?</i>
Small Purchase Procedure Less than \$150K	None	No	Audit/Review not required	N/A
Case 1. Between \$150K and \$1M	Certification by Prime and Subconsultants (Exhibit 10-K attached as Appendix G-1)	No	May be selected for Audit or Review.	<i>If</i> ICR Audit is performed.
Case 2. Between \$1M and \$3.5M	Certification for Prime and Subconsultants (Exhibit 10-Ks attached as Appendix G-1) <ul style="list-style-type: none"> • Cost proposals for Prime and Subconsultants • All other applicable documents listed on Exhibit 10-A of the LAPM 	Yes	May be selected for ICR or Contract Audit, or other Review.	Yes
Case 3. \$3.5M or greater	Certification for Prime and Subconsultants (Exhibit 10-Ks attached as Appendix G-1) <ul style="list-style-type: none"> • Cost proposals for Prime and Subconsultants • All other applicable documents listed on Exhibit 10-A of the LAPM <p style="text-align: center;">AND</p> CPA Audited ICR or cognizant approval.	Yes	May be selected for Review of CPA's workpapers of audited ICR or Contract Audit, or other Review	Yes

Attachment D: Sample Agreement Templates

SAMPLE AGREEMENT BETWEEN THE CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY AND [CONSULTANT NAME] FOR USE OF THE C/CAG-VTA SAN MATEO COUNTYWIDE TRANSPORTATION MODEL

This AGREEMENT (“Agreement”), effective _____, 2022, is entered into by and between the City/County Association of Governments of San Mateo County (“C/CAG”) and [Consultant Name] (“Consultant”), a transportation planning consulting firm providing travel simulation and forecast services for C/CAG and C/CAG’s authorized users.

WHEREAS, for use as an advance transportation planning tool, C/CAG has licensed the Santa Clara Valley Transportation Authority (“VTA”) travel forecasting model of the transportation system of the San Francisco Bay Area that is centered on Santa Clara County and optimized for San Mateo County, but accounts for transportation impacts from neighboring counties and regional commute sheds (the “C/CAG-VTA Model”); and

WHEREAS, C/CAG’s rights in connection with the C/CAG-VTA Model are set forth in the agreement between C/CAG and the VTA dated March 18, 2011 and subsequent amendments to the agreement (the “VTA Agreement”), a copy of which VTA Agreement is attached hereto as Exhibit A; and

WHEREAS, C/CAG and its member agencies have need of a transportation forecasting model in order to develop travel demand analysis for San Mateo County; and

WHEREAS, C/CAG wishes to create terms of use in order to authorize use of the C/CAG-VTA Model by designated transportation planning firms, including Consultant providing travel demand simulation and forecasting services to C/CAG and its Member Agencies, C/CAG Planning partners (including Caltrain JPB, SamTrans, the San Mateo County Transportation Authority), and consultants under contract with C/CAG or its Member Agencies and Planning partners (collectively the “C/CAG Users”); and

WHEREAS, Consultant agrees to abide by the terms and conditions of the VTA Agreement regarding use of the C/CAG-VTA Model; and

WHEREAS, C/CAG and Consultant wish to set forth in this Agreement their respective obligations and terms of use of the C/CAG-VTA Model.

NOW, THEREFORE, C/CAG and Consultant agree as follows:

1. Terms of Use.

- a. Consultant is granted the right to run and/or adapt the C/CAG-VTA Model solely for the purpose of developing and running a travel demand analysis for projects within San Mateo County.

- b. Written authorization from C/CAG to Consultant must be obtained prior to application of the C/CAG-VTA Model for any project within San Mateo County.
- c. Except as provided herein, no copying, reproduction, publication, modification, adaptation, reverse-engineering, distribution or transfer of the C/CAG-VTA Model is allowed. The C/CAG-VTA Model (including the software scripts, files, documentation, and datasets) is proprietary, protected by copyright, and is the intellectual property of VTA. VTA retains all rights, title, and interest in said intellectual property. Consultant shall take affirmative steps as necessary to prevent misappropriation or misuse of the C/CAG-VTA Model.
- d. Upon termination, Consultant shall furnish C/CAG with a signed letter indicating they have removed and destroyed all C/CAG-VTA model components, datasets, files, scripts, etc. in their possession.
- e. In the role of providing configuration control, all enhancements to the C/CAG-VTA Model will be done by the VTA. The VTA will provide archival and nominal technical support for the C/CAG-VTA Model. Minor changes made to the C/CAG-VTA Model by Consultant to perform specific model runs will be provided to the VTA for possible future incorporation into the archived C/CAG-VTA Model.
- f. Violations of Sections 1.a through 1.d above will result in immediate termination of all rights granted to the Consultant.
- g. Nothing herein is intended to serve as, nor shall be deemed to specify or determine, the confidentiality of any of the data input to or obtained through the application of the C/CAG-VTA Travel Forecast Model pursuant to Consultant's third party contractual arrangements. The confidentiality of any such data, including whether or not such data is a public record, is to be determined in accordance with applicable law and the provisions of those contractual arrangements.

2. **No Waiver.**

The failure of either Party to insist upon the strict performance of any of the terms, covenant and conditions of this Agreement shall not be deemed a waiver of any right or remedy that either Party may have, and shall not be deemed a waiver of their right to require strict performance of all of the terms, covenants, and conditions thereafter.

3. **Term.**

The term of this Agreement shall begin upon full execution by both Consultant and C/CAG and shall terminate on _____, 2022; provided however this Agreement may be terminated by either party by delivery of a 30-day written notice of termination to the other Party.

4. **Notice.**

Any notice required to be given by either Party, or which either party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To Consultant:

To C/CAG: C/CAG Staff
San Mateo City/County Association of Governments
555 County Center, 5th Floor
Redwood City, CA 94063

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail.

5. Indemnification.

Consultant shall indemnify, defend, and hold harmless against any Claim, whether arising in tort or contract, brought by any third party for injury to or death of any person or persons, or for loss of or damage to property, or for misuse or misappropriation of the C/CAG-VTA Model by Consultant, arising out of or in any way relating to use of the C/CAG-VTA Model by Consultant, its agents, or assigns, excepting only those Claims caused by the gross negligence or willful misconduct of C/CAG. In the event that California Civil Code Section 2782.8 applies to Consultant’s use of the C/CAG-VTA Model, Consultant’s duty to indemnify, defend, and hold harmless shall be limited by that Section.

6. Amendments.

Future amendments to this Agreement are permitted only by mutual written agreement of the Parties. Whenever possible, notice of a desire to amend this Agreement shall be provided ninety (90) calendar days prior to the desired effective date of such amendment.

7. Warranty of Authority to Execute Agreement.

Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

Consultant

C/CAG

By: _____

By: _____

C/CAG Executive Director

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Consulting Firm Counsel

C/CAG Counsel

Date

Date

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

This Agreement is 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 has determined the need for design services for the Smart Corridor Northern Cities Expansion Project; and

WHEREAS, the purpose of the Smart Corridor Northern Cities Expansion Project, herein referred to as the “PROJECT”, is to make all necessary tasks and activities to develop the plan; and

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

WHEREAS, the total amount available to Consultant under this Agreement is not to exceed \$[AMOUNT]; 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 described in Exhibit A, *Scope of Work* attached hereto (the “Services”).
In the performance of its services, Consultant represents that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services, and Consultant represents that it carries and will

maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

2. **Payments.** In consideration of the services rendered with all terms, conditions, and specifications set forth herein, in Exhibit A, *Scope of Work*, and Exhibit C, *Key Personnel Assignments*, and in any subsequent task orders executed under the governance of this Agreement, C/CAG shall reimburse Consultant on a deliverable basis. The aggregate total amount of payment by C/CAG to Consultant for services shall not exceed [COST, SPELLED OUT] (\$[COST, NUMBER]), as shown in Exhibit B, *Project Budget and Schedule*, for services provided during the Contract Term set forth below, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subconsultants' costs (including mark-up), travel, equipment, materials and supplies, expenses, and any fixed fee. Payments shall be made to Consultant monthly based on an invoice submitted by Consultant that has been reviewed and approved by C/CAG, identifies expenditures and describes services performed and percentage of deliverables completed. C/CAG shall have the right to receive, upon request, documentation substantiating charges billed to C/CAG.

Consultant will be reimbursed promptly according to California Regulations upon receipt by C/CAG Project Manager of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing. Invoices shall detail the work performed on each deliverable or each task as applicable. Invoices shall follow the format stipulated for the approved Exhibit B, *Project Budget and Schedule* and shall reference this Agreement project title. Final invoice must contain the final cost and all credits due C/CAG. The final invoice should be submitted within sixty (60) calendar days after completion of Consultant's work. Invoices shall be mailed or emailed to C/CAG Project Manager at the following address:

City/County Association of Governments of San Mateo County
555 County Center, 5th Floor
Redwood City, CA 94063
Attention: [NAME]
[EMAIL]

- 2.1. **Progress Reports and Meetings.** Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the C/CAG Project Manager to determine, if Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed. Consultant's Project Manager shall meet with C/CAG Project Manager, as needed, to discuss progress on the Agreement.
3. **Key Personnel.** The key personnel to be assigned to this work by Consultant and, if applicable, their hourly rates and the estimated hours to be supplied by each are set forth in Exhibit C, *Key Personnel Assignments*, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Exhibit C or a decrease in the hours provided to the project by such personnel of more than 10% requires the prior

written approval of the C/CAG Project Manager or a designee. Consultant shall maintain records documenting compliance with this Section, and such records shall be subject to the audit requirements of Section 17. Consultant agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. C/CAG reserves the right to direct removal of any individual, including key personnel, assigned to this work.

4. **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.
5. **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.
6. **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.
7. **Contract Term/Termination.** This Agreement shall be in effect as of [DATE], and Consultant shall commence work after notification to proceed by C/CAG Project Manager, and the Agreement 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 Section, 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.
8. **Cost Principles and Administrative Requirements.**
 - a. The Consultant agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
 - b. The Consultant also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
 - c. Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Consultant to C/CAG.

- d. When a Consultant or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

9. **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 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.

This indemnification provision will survive termination or expiration of this Agreement.

- 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.

10. **Disadvantage Business Enterprises (DBE) Participation.**

- a. Consultant, subrecipient (C/CAG), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, C/CAG shows a contract goal for DBEs. Consultant shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

Consultant shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is Consultant's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified

Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found [here](#).

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies Consultant purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

This Agreement is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who enter into a federally-funded agreement will assist the C/CAG in a good faith effort to achieve California's statewide overall DBE goal.

- b. The goal for DBE participation for this Agreement is _____%. Participation by DBE Consultant or subconsultants shall be in accordance with information contained in [Exhibit 10-O2: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the Agreement. If a DBE subconsultant is unable to perform, Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- c. Consultant can meet the DBE participation goal by either documenting commitments to DBEs to meet the Agreement goal, or by documenting adequate good faith efforts to meet the Agreement goal. An adequate good faith effort means that the Consultant must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If Consultant has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information –Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- d. Contract Assurance

Under 49 CFR 26.13(b):

Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying Consultant from future proposing as non-responsible

e. Termination and Substitution of DBE Subconsultants

Consultant shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless Consultant or DBE subconsultant obtains C/CAG's written consent. Consultant shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without written authorization from C/CAG. Unless C/CAG's written consent is provided, the Consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid.

C/CAG authorizes a request to use other forces or sources of materials if Consultant shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. C/CAG stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet C/CAG's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. C/CAG determines other documented good cause exists.

Consultant shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise Consultant and C/CAG of the reasons why the use of other forces or sources of materials should not occur.

Consultant's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from Consultant to the DBE regarding the request.
3. Notices from the DBEs to Consultant regarding the request.

If a listed DBE is terminated or substituted, Consultant must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

f. Commitment and Utilization

The C/CAG's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

C/CAG shall request Consultant to:

1. Notify the C/CAG's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
 - Name and business address of each 1st-tier subconsultant
 - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business (see Local Assistance Procedures Manual (LAPM) Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

If Consultant is a DBE Consultant, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify Consultant in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify Consultant in writing of the certification date. Consultant shall submit the notifications to C/CAG. Upon work completion, Consultant shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Local Assistance Procedures Manual (LAPM) Exhibit 17-O, form and submit the form to C/CAG within 30 days of contract acceptance.

Upon work completion, Consultant shall complete Local Assistance Procedures Manual (LAPM) Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to C/CAG within 90 days of contract acceptance. The C/CAG will withhold \$10,000 until the form is submitted. C/CAG will release the withhold upon submission of the completed form.

In C/CAG's reports of DBE participation to Caltrans, C/CAG must display both commitments and attainments.

- g. A DBE is only eligible to be counted toward the Agreement goal if it performs a commercially useful function (CUF) on the Agreement. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.
- h. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- i. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- j. Consultant shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid to each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE Consultant's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- k. If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify Consultant in writing with the date of certification. Any changes shall be reported to C/CAG's Project Manager within thirty (30) calendar days.
- l. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th day of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to tC/CAG.

m. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

11. **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.

12. **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.

13. **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.

14. **Debarment and Suspension Certification.**
 - a. The Consultant’s signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 3. Does not have a proposed debarment pending; and

4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- b. Any exceptions to this certification must be disclosed to C/CAG. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
 - c. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.
15. **Substitutions.** If particular persons or classifications are identified in Exhibit C 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.
16. **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.
17. **Record Retention; Right to Monitor and Audit.**
 - a. For the purpose of determining compliance with Gov. Code § 8546.7, the Consultant, Subconsultants, and C/CAG shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the Agreement including, but not limited to, the costs of administering the Agreement. All parties, including the Consultant's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. C/CAG, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Consultant, Subconsultants, and the Consultant's Independent CPA, that are pertinent to the Agreement for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.
 - b. 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.

- c. 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.
- d. 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.

17.1. **Audit Review Procedures**

- a. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by Agreement, shall be reviewed by C/CAG's Finance Department.
- b. Not later than thirty (30) calendar days after issuance of the final audit report, Consultant may request a review by C/CAG's Finance Department of unresolved audit issues. The request for review will be submitted in writing.
- c. Neither the pendency of a dispute nor its consideration by C/CAG will excuse Consultant from full and timely performance, in accordance with the terms of this Agreement.
- d. Consultant and subconsultant Agreements, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an Agreement audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Consultant's responsibility to ensure federal, C/CAG, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The Agreement, cost proposal, and ICR shall be adjusted by Consultant and approved by C/CAG Contract Administrator to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by C/CAG at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, C/CAG or local governments have access to CPA work papers, will be considered a breach of Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.
- e. Consultant's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the Consultant and approved by the C/CAG

Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the Consultant to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

1. During IOAI's review of the ICR audit work papers created by the Consultant's independent CPA, IOAI will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, C/CAG will reimburse the Consultant at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.
 3. If the Consultant fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.
 4. Consultant may submit to C/CAG final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Agreement has been

completed to the satisfaction of C/CAG; and, (3) IOAI has issued its final ICR review letter. The Consultant MUST SUBMIT ITS FINAL INVOICE TO C/CAG no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all other agreements executed between C/CAG and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

18. **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.
19. **Lobbying.** Consultant agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 United States Code §1352 and 49 C.F.R. Part 20.
20. **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.
21. **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.
22. **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
Scope of Work

Exhibit B

Project Budget and Schedule

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

Exhibit C

Key Personnel Assignment

Attachment E: California Levine Act Statement

California Levine Act Statement

California Government Code Section 84308, commonly referred to as the "Levine Act," prohibits any City/County Association of Governments of San Mateo County (C/CAG) Board Member from participating in any action related to a contract if he or she receives any political contributions totaling more than \$250 within the previous twelve months, and for three months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires a member of the C/CAG Board who has received such a contribution to disclose the contribution on the record of the proceeding.

A list of C/CAG Board members can be found at <https://ccag.ca.gov/committees/board-of-directors-2/>. Proposers are responsible for accessing this link to review the names prior to answering the following questions.

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any C/CAG Board Member in the 12 months preceding the date of the submission of your proposals or the anticipated date of any Board action related to this contract?

___YES___NO

If yes, please identify the Board Member(s):

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to any C/CAG Board Member in the three months following any Board action related to this contract?

___YES___NO

If yes, please identify the Board Member(s):

Answering yes to either of the two questions above does not preclude the C/CAG from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Board Member(s) from participating in any actions related to this contract.

Date

Signature of authorized individual

Type or write name of authorized individual

Type or write name of company