

**CONSULTANT SERVICES AGREEMENT
BETWEEN
THE SOLANO TRANSPORTATION AUTHORITY
AND
[REDACTED]
FOR Community-Based Transportation Plan for the Vallejo**

ARTICLE I INTRODUCTION

- A. This contract is between the following named CONSULTANT and the Solano Transportation Authority (STA).

The name of the “CONSULTANT” is as follows:

Incorporated in the State of NAME OF STATE

The Project Manager for the “CONSULTANT” will be NAME

- B. The work to be performed under this contract is described in Article II entitled Statement of Work and the approved CONSULTANT’s Cost Proposal dated DATE. The approved CONSULTANT’s Cost Proposal is attached as Attachment I and incorporated by reference. If there is any conflict between the approved Cost Proposal and this contract, this contract shall take precedence.
- C. CONSULTANT agrees to indemnify and hold harmless STA, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent acts, errors, or omissions of CONSULTANT. CONSULTANT will reimburse STA for any expenditure, including reasonable attorney fees, incurred by STA in defending against claims ultimately determined to be due to negligent acts, errors, or omissions of CONSULTANT.
- D. CONSULTANT and the agents and employees of CONSULTANT, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of STA.
- E. Without the prior written consent of STA, this contract is not assignable by CONSULTANT either in whole or in part.
- F. No alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties; and no oral understanding or agreement not incorporated in, shall be binding on any of the parties.
- G. The consideration to be paid to CONSULTANT under this contract shall be in compensation for all of CONSULTANT’s expenses incurred in the performance of this contract, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II STATEMENT OF WORK

- A. Contractor shall perform those services specified here. Contractor’s services are described in various attachments and exhibits, each of which is incorporated into this Contract by this reference which define and describe the Project to be undertaken by Contractor. STA has materially relied upon the representations of Contractor as may have been made in STA’s selection of Contractor for this Project. Contractor agrees to

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perform or secure the performance of all specified services in their entirety within the maximum payment specified. Said Scope of Services comprises, and includes, the following documents:

- a. STA staff report to the STA Board dated February 1, 2019 and approved by the STA Board on February 8, 2019;
- b. STA'S REQUEST FOR PROPOSAL/QUALIFICATIONS (STA Project No. 2019-02);
- c. Contractor's written response to the Request for Proposal/Qualifications for the Project dated _____;
- d. Contractor's Cost Proposal; and, further all statements and representations of Contractor made during their presentation to STA's selection board and to the officers and employees of STA who have participated in the determination to contract with Contractor for this Project. Those documents, presentations and discussions are material representations upon which STA has relied in selecting and contracting with Contractor and shall be utilized in any matter in which interpretation of this Contract is required.

ARTICLE III CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Administrator 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.
- B. CONSULTANT's Project Manager shall meet with STA's Contract Administrator, as needed, to discuss progress on the contract.

ARTICLE IV PERFORMANCE PERIOD

- A. This contract shall go into effect on (DATE), contingent upon approval by STA, and CONSULTANT shall commence work after notification to proceed by STA'S Contract Administrator. The contract shall end on (DATE), unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on STA until the contract is fully executed and approved by STA.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS (Verbatim)

- A. This is a "not to exceed" contract. Contractor shall be paid, as full compensation for the satisfactory completion of the work, in an amount not to exceed \$85,000 payable at the completion of the milestones set forth in the Contractor's Cost Proposal.
- B. Payment for Contractor's services shall be due in the amounts agreed upon, if any, upon acceptance by the Project Manager of those deliverables marking completion of a particular portion of the Project and as invoiced in accordance with Contractor's proposal.
- C. Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation to be paid Contractor under this Contract exceed the sums set forth herein unless pursuant to written amendment of this Contract approved by the STA Board.
- D. Contractor shall submit an invoice identifying the Project deliverable or milestone, along with a brief status statement of the Study's progress to date for which payment is sought, no later than thirty days after STA's

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acceptance of such deliverable milestone. Payment shall be made by STA within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative. All invoices shall be made in writing and delivered or mailed to the STA Project Manager as follows:

Daryl K. Halls, Executive Director
Solano Transportation Authority
One Harbor Center, Suite 130
Suisun City, CA 94585
Attn: **Ron Grassi**

- E. The total amount payable by STA shall not exceed \$_____
- F. All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE VI TERMINATION

- A. STA reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.
- B. STA may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants contained in this contract at the time and in the manner provided here. In the event of such termination, STA may proceed with the work in any manner deemed proper by STA. If STA terminates this contract with CONSULTANT, STA shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to STA exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.
- C. The maximum amount for which the Government shall be liable if this contract is terminated is \$0 dollars.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to STA.
- D. All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE VIII RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Public Contract Code section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code section 8546.7; CONSULTANT, subconsultants, and STA shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to,

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the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, STA, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by STA'S Executive Director.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by STA'S Executive Director of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by STA will excuse CONSULTANT from full and timely performance, in accordance with the terms of this contract.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between STA and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to STA for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from STA'S obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by STA's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by STA.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by STA's Contract Administrator prior to the start of work by the subconsultant(s).

ARTICLE XI EQUIPMENT PURCHASE

- A. Prior authorization in writing, by STA's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.

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- B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by STA's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, STA shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit STA in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established STA procedures; and credit STA in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by STA and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by STA." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.
- D. All subcontracts in excess \$25,000 shall contain the above provisions.

ARTICLE XII STATE PREVAILING WAGE RATES

- A. The State of California's General Prevailing Wage Rates are not applicable to this contract.

ARTICLE XIII CONFLICT OF INTEREST

- A. CONSULTANT shall disclose any financial, business, or other relationship with STA that may have an impact upon the outcome of this contract, or any ensuing STA construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing STA construction project, which will follow.
- B. CONSULTANT certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONSULTANT warrants that this contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any STA employee. For breach or violation of this warranty, STA shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV STATEMENT OF COMPLIANCE

- A. CONSULTANT's signature affixed below shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination

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program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

- B. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

ARTICLE XVI DEBARMENT AND SUSPENSION CERTIFICATION

- A. CONSULTANT's signature affixed below shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to STA.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

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- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

ARTICLE XVII FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- B. This contract is valid and enforceable only, if sufficient funds are made available to STA for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or STA governing board that may affect the provisions, terms, or funding of this contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- D. STA has the option to void the contract under the 30-day termination clause pursuant to Article VI, or by mutual agreement to amend the contract to reflect any reduction of funds.

ARTICLE XVIII CHANGE IN TERMS

- A. This contract may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by STA's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract without prior written approval by STA's Contract Administrator.

ARTICLE XIX DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This contract is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this contract is 1%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Information (Exhibit 10-O2) attached to and incorporated as part of this contract. 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. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. 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 STA deems appropriate.

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- D. Any subcontract entered into as a result of this contract shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from STA and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting STA consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, 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.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- I. 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 each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- J. Upon completion of the contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 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 Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- K. If a DBE subconsultant is decertified during the life of the contract, 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 Contract, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to STA's Contract Administrator within 30 days.

ARTICLE XX CONTINGENT FEE

CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, STA has the right to annul this contract without liability; pay only for the value of the work actually

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performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXI DISPUTES

- A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of STA's Contract Administrator and Robert Guerrero, who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than 30 days after completion of all work under the contract, CONSULTANT may request review by the STA Executive Director of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this contract.

ARTICLE XXII INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit STA, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

ARTICLE XXIII SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by STA Safety Officer and other STA representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, STA has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXIV INSURANCE AND INDEMNIFICATION

- A. CONSULTANT shall procure and maintain for the duration of this Contract the following insurance:

Minimum Scope of Insurance:

Coverage shall be at least as broad as:

- 1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
- 2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto). If CONSULTANT owns no vehicles, this requirement may be satisfied by a non-

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owned auto endorsement to the general liability policy described above. If CONSULTANT or CONSULTANT's employees will use personal autos on this project, CONSULTANT shall obtain evidence of personal auto liability coverage for each person.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
4. Errors and Omissions liability insurance appropriate to the CONSULTANT's profession. Architect's and engineers' coverage is endorsed to include contractual liability.

Minimum Limits of Insurance:

CONTRACTOR shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage, combined single limit.
3. Employer's Liability: \$2,000,000 per accident for bodily injury or disease, and in the aggregate.
4. Errors and Omissions Liability: \$1,000,000 on a claims made basis.

Deductibles and Self-Insurance Retentions:

Any deductibles or self-insured retentions exceeding \$50,000 must be declared to and approved by the STA. At the option of STA, either: the CONSULTANT shall reduce or eliminate such deductibles or self-insured retentions regarding the STA, its officers, officials, employees and volunteers; or CONSULTANT shall provide a financial guarantee satisfactory to the STA guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions:

The general liability and automobile liability policies must contain, or be endorsed to contain, the following provisions:

1. The STA, its officers, officials, employees and volunteers be covered as insureds regarding the liability arising out of automobiles owned, leased, hired or borrowed by or for the CONSULTANT, and regarding liability arising out of work or operations by or for the CONSULTANT including materials, parts or equipment furnished with such work or operations. General liability coverage can be in an endorsement to the CONSULTANT's insurance or as a separate owner's policy.
2. For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the STA, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the STA, its officers, officials, employees and volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

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3. Should the above described policies be cancelled prior to the policies' expiration date, CONSULTANT agrees that notice of cancellation will be delivered under the policy provisions.

Acceptability of Insurers:

Insurance is placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to STA.

Verification of Coverage:

CONSULTANT shall furnish STA with original certificate and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements must be received and approved by the STA before work commences. STA reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting coverage required by these specifications.

All insurance documents are to be sent to:

Solano Transportation Authority
Attn: STA Legal Counsel
One Harbor Center, Suite 130
Suisun City, CA 94585

Sub-Contractors:

CONSULTANT shall include all sub-contractors as insureds under its policies or shall furnish separate certificates and endorsements for each sub-contractor. All coverages for sub-contractors shall be subject to all of the requirements stated above unless specifically waived by STA in writing.

B. CONSULTANT shall indemnify and hold harmless the STA, its officers, officials, employees and volunteers against all actions, causes of actions, damages, costs, liabilities, claims, losses, judgments, penalties and expenses of every type and description, including without limitation any fees and/or costs reasonably incurred by STA's staff attorneys or contract attorneys and any and all costs, fees and expenses incurred in enforcing this provision (collectively referred to as "liabilities"), arising out of or for any negligent act or omission, misconduct or other legal fault of CONSULTANT, its officers, employees, sub-contractors, subcontractors or agents in connection with the performance or nonperformance of this Contract, whether or not STA accepted or approved any service or work product performed or provided by CONSULTANT, and whether or not such liabilities are litigated, settled or reduced to judgment. If a final decision or judgment allocates liability by determining any portion of damages awarded is attributable to STA's negligence or willful misconduct, STA shall pay the portion of damages allocated to STA's negligence or willful misconduct, provided that STA shall not be liable for any passive negligence of STA, its officers, officials, employees and volunteers in reviewing, accepting or approving any service or work product performed or provided by CONSULTANT.

CONSULTANT shall, upon STA's request, defend with counsel approved by STA (which approval shall not be unreasonably withheld), at CONSULTANT's sole cost and expense, any action, claim, suit, cause of action or portion which asserts or alleges liabilities resulting from any allegedly negligent act, omission, misconduct or other legal fault of CONSULTANT, its officers, employees, sub-contractors, subcontractors or agents in connection with the performance or nonperformance of this Contract, whether or not such action, claim, suit, cause of action or portion is well founded or lacking in merit.

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Acceptance of required insurance certificates or endorsements does not relieve CONSULTANT from liability under this contract and shall apply to all damages and claims of every kind suffered, or alleged to have been suffered, by CONSULTANT's negligence, misconduct, or other legal fault whether such insurance policies shall have been determined to apply to such damages or claims for damages. This Article shall survive any termination of this contract.

ARTICLE XXV OWNERSHIP OF DATA

- A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in STA; and no further agreement will be necessary to transfer ownership to STA. CONSULTANT shall furnish STA all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.
- C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by STA of the machine-readable information and data provided by CONSULTANT under this contract; further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by STA of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by CONSULTANT.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. STA may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.
- F. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXVI CLAIMS FILED BY STA'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by STA's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with STA'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that STA considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from STA. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this contract.
- C. Services of CONSULTANT's personnel in connection with STA's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this contract in order to resolve the construction claims.

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- D. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXVII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to STA's operations, which are designated confidential by STA and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by STA relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or STA's actions on the same, except to STA's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or as required by law.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents of it by STA, and receipt of STA'S written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

ARTICLE XXVIII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code section 10296, CONSULTANT states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXIX EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by STA. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

ARTICLE XXX RETENTION OF FUNDS

- A. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.
- B. No retainage will be held by the STA from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the STA's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or

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subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.

ARTICLE XXXI NOTIFICATION

All notices and communications regarding interpretation of the terms of this contract and changes to it, shall be effected by the mailing of a notice by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

_____ (CONSULTANT)
_____, Project Manager
_____ (ADDRESS)

STA:

Daryl K. Halls, Executive Director
Solano Transportation Authority
One Harbor Center, Suite 130
Suisun City, CA 94585
Attn: Ron Grassi
Telephone: (707) 424-6075
Fax: (707) 424-6074

ARTICLE XXXII CONTRACT

The two parties to this contract agree that this contract constitutes the entire agreement between them. This contract may be executed in duplicate originals, each of which is deemed an original, but when taken together shall constitute one instrument. Facsimile copies or copies delivered via e-mail as a portable document format (pdf) file shall be deemed original copies. Both of these parties, for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this contract as evidenced by the signatures and effective date below.

ARTICLE XXXIII SIGNATURES

(Name of CONSULTANT)

Solano Transportation Authority

(Signature)

(Name of Signer)

(Signature)
Daryl K. Halls, Executive Director

EFFECTIVE DATE: _____