**Contract No. TPXXXX**

**PROFESSIONAL SERVICES**
**INDEPENDENT CONSULTANT AGREEMENT**

**This is a Sample Contract, and language and provisions contained herein are subject to change. Contract award is subject to approval by the Commission.**

THIS AGREEMENT is made and entered into on _____, by and between the SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, hereinafter called COMMISSION, and USER FRIENDLY COMPUTING, hereinafter called CONSULTANT. The parties agree as follows:

**1. DUTIES.**

A. CONSULTANT agrees to perform services as specified in the Scope of Services (Exhibit X), which by this reference is incorporated herein. If there is any conflict between the approved Scope of Services (Exhibit X) and this contract document, this contract document shall take precedence.

B. CONSULTANT shall provide the personnel listed below to perform the above-specified services, which persons are hereby designated as key personnel under this AGREEMENT.

| Name | Title |
|---|---|
| | |
| | |

C. No person named in paragraph B of this Article, or their successor, shall be removed or replaced by CONSULTANT, nor shall their agreed-upon function hereunder be changed, without the prior written consent of the COMMISSION Contract Manager. Such consent shall not be unreasonably withheld.

**2. COMPENSATION.** In consideration for CONSULTANT'S performance of the services described in the Scope of Services (Exhibit X), COMMISSION shall compensate CONSULTANT at a fixed monthly service rate of $XXXX, as set forth in the Cost Proposal (Exhibit X) dated <<Date>>, which is incorporated herein by this reference. CONSULTANT may perform additional services as required, only upon the COMMISSION Contract Manager's prior approval, and any such approved services shall be compensated at the applicable hourly rates set forth in Exhibit X.

A. The total compensation payable under this AGREEMENT, including all fees and reimbursable expenses, shall not exceed $XXXX.

B. Reimbursable expenses shall be limited to those approved in advance by the COMMISSION'S Contract Manager. CONSULTANT shall submit supporting documentation with all expenses.

C. Reimbursement for transportation and subsistence costs shall not exceed the per diem rates authorized to be paid rank and file State employees under current State Department of Personnel Administration (Cal HR).

D. No payment shall be made prior to approval of any work, nor for any work performed prior the execution of this AGREEMENT.

E. CONSULTANT shall be reimbursed no more frequently than monthly, in arrears, following the COMMISSION'S receipt and approval of itemized invoices. Invoices shall be sent electronically to the Contract Manager:

Yesenia Parra, Administrative Services Officer
yparra@sccrtc.org *and* accountspayable@sccrtc.org

The invoices must include the following information:

1. This AGREEMENT number and project title;
2. Description of services performed and the dates;
3. Labor (staff name, hours charged, hourly billing rate, and current charges) performed during the billing period by task;
4. Itemized expenses incurred during the billing period;
5. Total invoice/payment requested; and
6. Total amount previously paid under this AGREEMENT.

**3. TERM.**

A. The AGREEMENT shall end on <<Date>>, unless earlier terminated or extended by AGREEMENT amendment.

**4. TERMINATION.**

A. COMMISSION reserves the right to terminate this AGREEMENT upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.

B. COMMISSION may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COMMISSION may proceed with the work in any manner deemed proper by COMMISSION. If COMMISSION terminates this AGREEMENT with CONSULTANT, COMMISSION shall pay CONSULTANT the sum due to CONSULTANT under this AGREEMENT prior to termination, unless the cost of completion to COMMISSION exceeds the funds remaining in the AGREEMENT. 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.

SAMPLE

C. Upon completion or termination of the Services, or upon COMMISSION'S written request, CONSULTANT shall promptly return or securely delete all COMMISSION data in its possession or control, including all copies thereof, and shall certify in writing that such return or deletion has been completed and that no COMMISSION data has been retained.

**5. <u>INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.</u>** To the fullest extent permitted by law, CONSULTANT shall exonerate, indemnify, defend, protect, and hold harmless the COMMISSION, its governing body, officers, officials, agents, employees and volunteers from and against:

A. Any and all claims, demands, costs, damages, losses, expenses, or liability arising from or connected with the services provided under this AGREEMENT to the extent caused by recklessness, willful misconduct or negligent acts, errors, or omissions of the CONSULTANT, its officers, subconsultants, employees, volunteers, or agents. In the event that the CONSULTANT does not fulfill its obligation to defend, indemnify and hold harmless the COMMISSION as required herein, the CONSULTANT will be required to reimburse COMMISSION for any expenditure, including reasonable attorney's fees, incurred by COMMISSION in defending against claims ultimately determined to be due to recklessness, willful misconduct or to negligent acts, errors, or omissions of the CONSULTANT, its officers, subconsultants, employees, volunteers, or agents.

B. Any and all federal, State and local taxes, charges, fees, penalties, or contributions required to be paid with respect to CONSULTANT and CONSULTANT'S employees, officers, subconsultants employees, volunteers, and agents engaged in the performance of this AGREEMENT (including, without limitation, unemployment insurance, social security, and payroll tax withholding). In the event that CONSULTANT or any employee, agent, or subcontractor of CONSULTANT providing services under this AGREEMENT is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of COMMISSION, CONSULTANT shall indemnify, defend, and hold harmless COMMISSION for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of COMMISSION.

C. The provisions of this section shall survive expiration, termination, or suspension of this AGREEMENT.

**6. <u>INSURANCE</u>.**

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

DRAFT

CONSULTANT shall procure and maintain for the duration of the contract insurance claims arising out of their professional services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

CONSULTANT, at its sole cost and expense, for the full term of this AGREEMENT, and any extensions thereof, shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COMMISSION and any insurance or self-insurance maintained by COMMISSION shall be excess of CONSULTANT'S insurance coverage and shall not contribute to it. Insurance is to be placed with insurers reasonably acceptable to COMMISSION.

A. Types of Insurance and Minimum Limits

1. Workers' Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the CONSULTANT has no employees and certifies to this fact by initialing here: _____ / _____.
2. Automobile Liability Insurance for each of CONSULTANT'S vehicles used in the performance of this AGREEMENT, including owned, non-owned (e.g., owned by CONSULTANT'S employees), leased or hired vehicles, in the minimum amount of one million dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage.
3. Comprehensive or Commercial General Liability Insurance coverage at least as broad as ISO form CG 00 01, with a minimum limit of two million dollars ($2,000,000) per occurrence, and four million dollars ($4,000,000) in the aggregate, including coverage for: products and completed operations, bodily and personal injury, advertising injury, broad form property damage, contractual liability, and cross-liability.
4. Technology Professional Liability Errors and Omissions Insurance appropriate to the CONSULTANT's profession and work hereunder, endorsed to include property damage liability coverage with limits not less than two million dollars ($2,000,000) per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the CONSULTANT in this agreement.
5. If CONSULTANT normally carries insurance in an amount greater than the minimum amount required by the COMMISSION for this AGREEMENT, that greater amount shall become the minimum required amount of insurance for purposes of this AGREEMENT. Therefore, CONSULTANT hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this AGREEMENT.

SAMPLE

B. Other Insurance Provisions

1. If any insurance coverage required in this AGREEMENT is provided on a "Claims Made" rather than "Occurrence" form, CONSULTANT agrees that the retroactive date thereof shall be no later than the effective date of this AGREEMENT, and that it shall maintain the required coverage for a period of three (3) years after the expiration of this AGREEMENT (hereinafter "POST AGREEMENT COVERAGE") and any extensions thereof. CONSULTANT may maintain the required POST AGREEMENT COVERAGE by renewal or purchase of prior acts or tail coverage. The COMMISSION will not be responsible for any premiums or assessments on the policy.

2. All policies of Commercial General Liability Insurance shall be endorsed to cover the Santa Cruz County Regional Transportation Commission, its officials, employees, agents and volunteers, as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of, the CONSULTANT, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01, covering ongoing operations and products and completed operations.

3. CONSULTANT agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COMMISSION on or before the effective date of this AGREEMENT with Certificates of Insurance and endorsements for all required coverages. The Certificates of Insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible. The certificates shall require the carrier to notify COMMISSION in writing of any material change, cancellation, termination or non-renewal of the coverage at least thirty days (30) days in advance of the effective date of such cancellation, or material change, or non-renewal. Insurance shall not be canceled until after ten (10) days prior written notice in the event of nonpayment of premium. Failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent electronically to:

   contracts@sccrtc.org

4. If any insurance policy of CONSULTANT required by this AGREEMENT includes language conditioning the insurer's legal obligation to defend or indemnify COMMISSION on the performance of any act(s) by the named insured, then said insurance policy, by endorsement, shall also name the COMMISSION as a named insured. Notwithstanding the foregoing, both the CONSULTANT and its insurers agree that by naming the COMMISSION as a named insured, the COMMISSION may at its sole direction, but is not

SAMPLE

obligated to, perform any act required by the named insured under said insurance policies.

5. CONSULTANT shall do all things required to be performed by it pursuant to its insurance policies including but not limited to paying within five (5) workdays, all deductibles and self-insured retentions (SIR) required to be paid under any insurance policy that may provide defense or indemnity coverage to COMMISSION or any additional insured. If CONSULTANT'S insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this AGREEMENT so as to not prevent any of the parties to this AGREEMENT from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability.
6. CONSULTANT hereby grants to COMMISSION a waiver of any right of subrogation which any insurer of said CONSULTANT may acquire against the COMMISSION by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COMMISSION has received a waiver of subrogation endorsement from the insurer.
7. CONSULTANT shall cause the foregoing provisions to be inserted in all subcontracts for any work covered under this AGREEMENT, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

**7. <u>FEDERAL, STATE AND LOCAL LAWS</u>.**

A. CONSULTANT warrants that in the performance of this AGREEMENT, it shall exercise usual and customary professional care in its efforts to comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder. In the event of a conflict between the laws and lawful regulations of any government entities having jurisdiction over the project, the CONSULTANT shall notify COMMISSION of the nature and impact of such conflict. The COMMISSION agrees to cooperate and work with the CONSULTANT in an effort to resolve any conflict.

B. Those laws, statutes, ordinances, rules, regulations and procedural requirements that are imposed on COMMISSION as a recipient of federal or state funds are imposed on CONSULTANT.

**8. <u>NON-DISCRIMINATION AND COMPLIANCE PROVISIONS</u>.** During and in relation to the performance of this AGREEMENT, CONSULTANT agrees to the following:

A. The CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow discrimination or harassment against any employee, applicant for employment, or subconsultant in any manner prohibited by Federal, State and local laws, including but not limited to race, color, sex, gender, religious creed, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), marital status, sexual orientation, age (over 40), veteran status, denial of family and medical care leave and denial of pregnancy disability leave, or any other non-merit factor unrelated to job duties.

B. CONSULTANT and subconsultants shall ensure 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 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 8113 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 AGREEMENT 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. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

D. CONSULTANT shall comply fully with all federal, State and local laws and regulations which prohibit discrimination. The CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

E. Consultant and its subconsultants shall permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency designated by State to investigate compliance with this Article.

F. In the event of CONSULTANT'S non-compliance with the non-discrimination clauses of this AGREEMENT or with any of the said rules,

SAMPLE

regulations or orders the COMMISSION may cancel, terminate or suspend the AGREEMENT in whole or in part. CONSULTANT may also be declared ineligible for further agreements with the COMMISSION.

**9. HARASSMENT.** The COMMISSION maintains a strict policy prohibiting unlawful harassment, including sexual harassment, in any form, including verbal, physical and visual harassment by any employee, supervisor, manager, officer or board member, or agent of the employer. Vendors, contractors, and consultants shall not engage in conduct that has an effect of unreasonably interfering with a COMMISSION employee's work performance or creates an intimidating, hostile or offensive work environment.

**10. CONFLICT OF INTEREST.**

A. CONSULTANT certifies that it has disclosed to COMMISSION any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise COMMISSION of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either COMMISSION ordinance or State law.

B. CONSULTANT hereby 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.

**11. LICENSES.** If a license of any kind is required of CONSULTANT, its employees, agents, or subcontractors by Federal or State law, CONSULTANT warrants that such license has been obtained, is valid and in good standing, that CONSULTANT shall keep it in effect at all times during the terms of this AGREEMENT, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

**12. INDEPENDENT CONSULTANT STATUS.**

A. CONSULTANT and COMMISSION have reviewed and considered the principal test and secondary factors herein and agree that CONSULTANT is an independent contractor CONSULTANT and not an employee of COMMISSION. CONSULTANT is responsible for provision of all insurance required of employers (including but not limited to workers compensation, disability and unemployment insurance, etc.) and all payment of all payroll related taxes and withholding. CONSULTANT is not entitled to any employee benefits provided by the COMMISSION, including any pension or PERS benefits. COMMISSION agrees that CONSULTANT shall have the right to control the manner and means of accomplishing the result contracted for herein.

SAMPLE

1. PRINCIPAL TEST: The CONSULTANT rather than COMMISSION has the right to control the manner and means of accomplishing the result contracted for.

2. SECONDARY FACTORS: (a) The extent of control which, by agreement, COMMISSION may exercise over the details of the work is slight rather than substantial; (b) CONSULTANT is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONSULTANT is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONSULTANT rather than the COMMISSION supplies the instrumentalities, tools and work place; (f) The length of time for which CONSULTANT is engaged is of limited duration rather than indefinite; (g) The method of payment of CONSULTANT is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COMMISSION; (i) CONSULTANT and COMMISSION believe they are creating an independent CONSULTANT relationship rather than an employer-employee relationship; and (j) The COMMISSION conducts public business.

   It is recognized that it is not necessary that all secondary factors support creation of an independent CONSULTANT relationship, but rather that overall there are significant secondary factors which indicate that CONSULTANT is an independent CONSULTANT.

B. By their signatures to this AGREEMENT, each of the undersigned certifies that it is his or her considered judgment that the CONSULTANT engaged under this AGREEMENT is in fact an independent CONSULTANT.

## 13. RETENTION OF RECORDS/AUDIT.

A. For the purpose of determining compliance with Public Contract Code 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 8546.7; CONSULTANT, subconsultants, and COMMISSION 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, 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 four years from the date of final payment under the contract. The state, State Auditor, COMMISSION, 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 thereof shall be furnished if requested. If any action has occurred relative to the records,

the records must be retained until completion of the action and resolution of all issues that arise from it.

B. Subcontracts in excess of $25,000 shall contain this provision.

**14. INSPECTION OF WORK.** The CONSULTANT and any subconsultant shall permit the COMMISSION or the State, to review and inspect the project activities and files at all reasonable times during the term of this AGREEMENT including review and inspection on a daily basis.

**15. ACKNOWLEDGMENT.** CONSULTANT shall acknowledge in all reports and literature that the material is prepared for and on behalf of the COMMISSION.

**16. WORK PRODUCTS/OWNERSHIP OF DATA.** All material, data, information, and written, graphic or other work produced under this AGREEMENT is subject to the unqualified and unconditional right of the COMMISSION to use, reproduce, publish, display, and make derivative use of all such work, or any part of it, free of charge and in any manner and for any purpose; and to authorize others to do so.

A. Upon completion of all work under this contract, ownership and title to all custom letters, reports, documents, plans, policies, and other products produced as part of this AGREEMENT (herein "deliverables") will automatically be vested in the COMMISSION; and no further agreement will be necessary to transfer ownership to the COMMISSION. The CONSULTANT shall furnish the COMMISSION all necessary copies of data needed to complete the review and approval process.

B. 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).

C. If any of the work is subject to copyright, trademark, service mark, or patent, CONSULTANT now grants to the COMMISSION a perpetual, royalty-free, nonexclusive and irrevocable license to use, reproduce, publish, use in the creation of derivative works, and display and perform the work, or any part of it, and to grant to any third party a comparable and coextensive sublicense.

**17. CONFIDENTIALITY OF DATA.**

A. All financial, statistical, personal, technical, or other data and information relative to COMMISSION's operations, which are designated confidential by COMMISSION 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 COMMISSION relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

SAMPLE

C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or COMMISSION's actions on the same, except to COMMISSION's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

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 thereof by COMMISSION, and receipt of COMMISSION'S written permission.

E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

**18. ACCESS TO AGENCY SYSTEMS.** Access to COMMISSION systems or COMMISSION data shall be limited to CONSULTANT personnel who have a legitimate need to perform the Services. CONSULTANT shall ensure that all such access is individually assigned and that shared or generic accounts are not used. CONSULTANT shall protect authentication credentials against unauthorized use and shall comply with all COMMISSION information technology and security policies provided in writing, including requirements relating to password management, multi-factor authentication, and acceptable use. CONSULTANT shall promptly terminate access for any personnel who no longer require such access, including upon reassignment or separation.

**19. CYBERSECURITY.** CONSULTANT shall implement and maintain administrative, technical, and physical safeguards designed to protect COMMISSION systems and COMMISSION data from unauthorized access, use, disclosure, alteration, or destruction. Such safeguards shall be consistent with generally accepted industry practices and informed by applicable guidance issued by the National Institute of Standards and Technology and the Center for Internet Security.

**20. USE AND PROTECTION OF AGENCY DATA.** CONSULTANT shall use COMMISSION data solely for the purpose of performing the Services and shall not use, disclose, or make available such data for any other purpose. CONSULTANT shall not copy, download, remove, or otherwise duplicate COMMISSION data except as strictly necessary to perform the Services. CONSULTANT shall not store COMMISSION data on personal devices or on systems not expressly authorized by COMMISSION. To the extent that temporary local storage of COMMISSION data is necessary, CONSULTANT shall ensure that such data is encrypted using industry-standard encryption methods and securely deleted upon completion of the applicable task or upon request by COMMISSION.

**21. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS.**

A. CONSULTANT agrees that the AGREEMENT Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31et seq., shall be used to determine the cost allowability of individual items.

B. 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 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 CONSULTANT to COMMISSION.

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.

E. CONSULTANT and subconsultant shall establish and maintain, an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Requests for Reimbursement which segregate and accumulate the costs of work elements by line item (i.e., direct labor, other direct costs, subrecipients/subcontractor, etc.) and enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

**22. AUDIT REVIEW PROCEDURES.**

A. Any dispute concerning a question of fact arising under an interim or post-completion audit of this AGREEMENT that is not disposed of by agreement, shall be reviewed by the COMMISSION'S Contract Manager.

B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the COMMISSION'S Executive Director of unresolved audit issues. The request for review will be submitted in writing. The Executive Director's determination regarding such dispute shall be final unless the Executive Director determines, in its sole discretion, that the dispute shall be determined by the COMMISSION.

C. Neither the pendency of a dispute nor its consideration by the COMMISSION will excuse the CONSULTANT from full and timely performance, in accordance with the terms of this contract.

**23. SUBCONTRACTING.**

A. Nothing contained in this contract or otherwise, shall create any contractual relation between COMMISSION and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to COMMISSION 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 COMMISSION'S obligation to make payments to the CONSULTANT.

SAMPLE

B. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this AGREEMENT shall be subcontracted without prior written authorization by the COMMISSION'S Contract Manager, except that, which is expressly identified in the approved Fee Schedule.

C. CONSULTANT shall not permit any subcontractor or third party to access COMMISSION systems or data without the prior written consent of COMMISSION. CONSULTANT shall ensure that any approved subcontractor is bound by written obligations that are no less protective than those set forth in this AGREEMENT. CONSULTANT shall remain fully responsible for the acts and omissions of its subcontractors.

D. CONSULTANT shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to CONSULTANT by COMMISSION.

E. Any substitution of subconsultants must be approved in writing by the COMMISSION's Contract Manager prior to the start of work by the subconsultant.

F. All subcontracts entered into as a result of this AGREEMENT shall contain ALL the provisions stipulated in this AGREEMENT to be applicable to subconsultants.

**24. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION.** The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any COMMISSION employee. For breach or violation of this warranty, COMMISSION shall have the right in its discretion; to terminate the AGREEMENT 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.

**25. INCIDENT NOTIFICATION AND RESPONSE.** CONSULTANT shall notify COMMISSION in writing without undue delay, and in no event later than twenty-four (24) hours after discovery, of any actual or reasonably suspected unauthorized access to COMMISSION systems or COMMISSION data, or of any loss, theft, or compromise of devices that may contain COMMISSION data. CONSULTANT shall cooperate fully with COMMISSION in investigating, mitigating, and remediating any such incident, including by providing relevant information and access to personnel as reasonably requested by COMMISSION.

**26. COMPLETE AGREEMENT.**

A. AGREEMENT: The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named COMMISSION, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. 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

SAMPLE

accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

B. COMMISSION DESIGNEE: The Executive Director of COMMISSION, or his or her designee, shall have the authority to act for and exercise any of the rights of COMMISSION as set forth in this AGREEMENT subsequent to, and in accordance with the authorization granted by the COMMISSION.

C. COMPLETE AGREEMENT, INCLUDING ATTACHMENTS. This AGREEMENT includes all exhibits, attachments, and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the AGREEMENT between COMMISSION and CONSULTANT, and supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this AGREEMENT shall not affect the validity of other terms or conditions. The COMMISSION's waiver of CONSULTANT's performance of any term(s) or condition(s) of this AGREEMENT shall not be construed as a waiver for any future performance of such term(s) or conditions.

Attachments are:

- Exhibit X: Scope of Services
- Exhibit X: Fee Schedule
- Exhibit X: Levine Act Statement

SAMPLE

The undersigned represents and warrants that they are duly authorized to execute and deliver this AGREEMENT and that such execution is binding upon the entity for which they are executing this document.

SIGNATURE PAGE

**Agreement No. TPXXXX**

**1. CONSULTANT:**

By _____
*Name*
Title

Date_____

Company Name
Address 1
Address 2
Telephone
Email Address

**2. SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION:**

By _____
*Sarah Christensen*
Executive Director

Date_____

1101 Pacific Avenue, Suite 250
Santa Cruz, CA 95060
(831) 460-3200
info@sccrtc.org

**3. APPROVED AS TO FORM:**

By _____
*Steve Mattas*
RTC Counsel

Date_____

**4. APPROVED AS TO INSURANCE:**

By _____
*Yesenia Parra*
RTC Administrative Services Officer

Date_____

Distribution:

RTC Contract Manager, RTC Contracts, CONSULTANT

SAMPLE