

**To:** Board of Directors

**Date:** 10/24/2017

**From:** Ruby Horta, Director of Planning & Marketing

**Reviewed by:** Bill Churchill

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**SUBJECT: On-Call Planning Services Contract Award**

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### **Background:**

Many cities and public transit agencies retain planning services on an on-call basis. Rates are agreed upon up front then specific work orders are developed for each project. Consultants must be able to deliver planning services working in collaboration with internal staff and external parties such as municipalities and other transit agencies. County Connection released a Request for Proposals (RFP) for On-Call Planning Services on May 18, 2017. The RFP requested interested firms provide detailed planning experience with various transit planning activities including: operations and capital planning, FTA compliance, evaluation of emerging mobility options, and public outreach.

Hanson Bridgett, our legal firm, worked with staff to develop the RFP and sample agreement to ensure conformance to State and Federal requirements. There is no guaranteed minimum level of compensation. The contract will be for a term of three (3) years with two (2) one-year options.

### **Selection Process**

Four (4) firms submitted a proposal by the deadline on June 28<sup>th</sup> and two (2) were selected for an in-person interview. County Connection staff invited staff from the Contra Costa Transportation Authority (CCTA) and the Metropolitan Transportation Commission (MTC) to be part of the interview panel. The interview panel agreed to award the contract to Nelson/Nygaard.

### **Recommendation:**

The Marketing, Planning & Legislative Committee recommends approval of Resolution 2018-006 authorizing the General Manager to enter into an agreement with Nelson/Nygaard for On-Call Planning Services.

### **Financial Implications:**

The Authority is under no obligation to spend the NTE amount of \$1.8 million. As projects are identified, staff will notify the appropriate committee.

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**AGREEMENT FOR ON-CALL PLANNING SERVICES**  
**RFP# 2017-04**

THIS AGREEMENT is made as of the 16<sup>th</sup> day of November, 2017, by and between the Central Contra Costa Transit Authority ("CCCTA") and Nelson/Nygaard ("CONSULTANT").

WHEREAS, CCCTA desires to obtain professional services as further defined in this Agreement and has issued a Request for Proposals dated May 18, 2017, a copy of which is attached hereto and incorporated herein by this reference as Exhibit 1; and

WHEREAS, the CONSULTANT desires to furnish such services and has submitted a written proposal dated June 28, 2017, which is attached hereto and incorporated herein by this reference as Exhibit 2.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. RENDITION OF SERVICES

The CONSULTANT agrees to provide professional services to CCCTA in accordance with the terms and conditions of this Agreement.

2. SCOPE OF SERVICES

2.1 Scope of Services

Scope of Services is described in Attachment A, "Scope of Services, On-Call Planning Consulting Services" of Exhibit 1. The specific Scopes of Services shall be contained in the Work Orders (WO) issued under this Agreement. The Agreement is not exclusive. CCCTA reserves the right to contract for performance of services described in this Agreement through other CONSULTANTS.

2.2 Work Order Terms

Work Orders may be issued against this Agreement any time during the three (3) year base term or the two additional one-year option terms. Terms of individual Work Orders may exceed the base term and/or option terms. The CONSULTANT'S performance of services shall commence for each Work Order upon receipt of a Work Order Notice to Proceed (WONTP) issued by CCCTA. The CONSULTANT shall complete the services within the time frame specified in the Work Order.

2.3 Work Orders

Work Orders will be initiated in accordance with the following procedure:

- A. CONSULTANT services will be on an as-needed, on-call basis throughout the term of the Agreement. The professional services to be furnished by the CONSULTANT may vary according to CCCTA's needs. The actual services to be provided shall be described in specific Work Orders for each assignment. Work Orders (WOs) can be issued at any time during the Agreement. Each WO will

contain a period of performance specific to the WO. The period of performance of individual WOs may exceed that of the Agreement. In such an event, the Agreement's terms and conditions will remain in full force and effect, unless terminated by CCCTA, until all services required under outstanding WOs are completed to CCCTA's satisfaction.

- B. CCCTA will issue a WO Proposal Request (WOPR) for services to be provided. CCCTA will advise consultant if the WOPR is subject to federal funding and federal cost principle requirements. CONSULTANT is responsible for preparing and submitting Work Order Proposals within seven (7) days after receipt of the WOPR. CCCTA may accept the CONSULTANT'S proposal or negotiate with CONSULTANT, as appropriate. Once accepted by CCCTA, a WO will be issued. Services shall be under the direction of CCCTA's staff representative so identified in the WO.
- C. CCCTA expressly reserves the right to contract for performance of these services with other CONSULTANTS. There is no guarantee on the minimum quantity of services to be ordered or allocated, or the total compensation to be paid under this RFP.

#### 2.4 Deliverables

The deliverables under this Agreement will be detailed in each Work Order that is issued and authorized.

#### 2.5 Removal of Personnel

The CCCTA reserves the right to direct the removal of any CONSULTANT or subconsultant personnel assigned to an individual Work Order when in CCCTA's opinion the individual's performance is unsatisfactory.

If such removal is for cause, the costs of such removal shall be borne by the CONSULTANT.

### 3. SCHEDULE AND TIME OF COMPLETION

The term of this Agreement will be for a base term of three (3) years with two additional one-year options, to be exercised in CCCTA's sole discretion, commencing upon written Notice to Proceed issued by CCCTA. The Agreement will remain in effect until all services required under all Work Orders are completed or terminated.

### 4. COMPENSATION

The CONSULTANT agrees to perform the services to be specified in each Work Order in accordance with the terms and conditions of this Agreement. Compensation for satisfactory performance of services performed under Work Orders shall be as stated in each Work Order and, unless specifically stated otherwise in the Work Order, will be in accordance with the hourly labor rates set forth in Exhibit 2. Hourly labor rates set forth in Exhibit 2 shall remain firm for two years. For the third or subsequent years of the Agreement term, increases in future hourly labor shall be limited to the equivalent of the Consumer Price Index

(CPI) for the applicable year based on the percentage change as evidenced by the most recent Consumer Price Index (CPI) for CCCTA's geographic area available to CCCTA up to a maximum of 3.5 percent escalation, unless otherwise mutually agreed. The effective date of the CPI adjustment, if any, will commence on either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of the Consultant's request, whichever event is later.

It is expressly understood and agreed that in no event shall CONSULTANT commence work without a mutually agreed upon Work Order. Further, it is expressly understood and agreed that in no event shall CONSULTANT be compensated in an amount greater than the amount specified in any individual Work Order for the services performed under such Work Order without issuance of a written Amendment to such Work Order by CCCTA's authorized representative.

If at any time, CONSULTANT has reason to believe that the total compensation payable for the performance of services under this Agreement will exceed the maximum not-to-exceed amount as set for in the Work Order, CONSULTANT shall notify CCCTA immediately in writing to that effect, indicating the estimated additional amount necessary to complete the services in the Work Order. Any cost incurred by CONSULTANT in excess of the not-to-exceed amount as set forth in the Work Order shall be at CONSULTANT'S own risk.

Further, it is understood that execution of this Agreement does not guarantee any level of effort and/or dollar expenditure to be provided under the Agreement to CONSULTANT. The maximum compensation that the DISTRICT has authorized to be expended for this Contract shall not exceed \$1,800,000. CCCTA will pay the CONSULTANT in accordance with Section 5.

#### 5. MANNER OF PAYMENT

The CONSULTANT shall submit separate invoices/billing statements on or as soon as practical after the first day of each calendar month. CONSULTANT shall submit monthly invoices, detailing the services performed and allowable reimbursable expenses incurred during the previous calendar month for Services to be performed at CCCTA's request.

CONSULTANT shall provide supporting documentation for its invoices as required by CCCTA. CCCTA will endeavor to pay approved invoices/billing statements within 30 calendar days of their receipt. CCCTA reserves the right to withhold payment to the CONSULTANT if CCCTA determines that the quantity or quality of the work performed is unacceptable. CCCTA shall provide written notice to the CONSULTANT within 10 business days of CCCTA's decision not to pay and the reasons for non-payment.

Invoices shall be made in writing and delivered or mailed to CCCTA as follows:

Two copies of each invoice must be sent to the attention of:

Ruby Horta, Director of Planning & Marketing  
Central Contra Costa Transit Authority  
2477 Arnold Industrial Way

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Concord, CA 94520

CONSULTANT represents that CONSULTANT'S taxpayer identification number (TIN) is as evidenced by a completed Federal Form W-9.

6. OWNERSHIP OF WORK

All reports, analyses, charts, tables, schedules and all other materials prepared, or in the process of being prepared by the CONSULTANT as part of the services to be performed, shall be and are the property of CCCTA. The CCCTA shall be entitled to access to and copies of these materials during the progress of the work. Any such materials remaining in the hands of the CONSULTANT or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to CCCTA. If any materials are lost, damaged or destroyed before final delivery to CCCTA, the CONSULTANT shall replace them at its own expense and the CONSULTANT assumes all risks of loss, damage or destruction of or to such materials. The CONSULTANT may retain a copy of all material produced under this Agreement for its use in its general business activities, but the copying and material costs shall be at the CONSULTANT'S expense. The CONSULTANT will not be liable for CCCTA or third party misuse of any documents, reports, records, plans, or materials prepared, procured, or produced in the rendition of services under this Agreement.

Any and all rights of copyright to all reports, analyses, charts, tables, schedules and all other materials prepared under this Agreement, are hereby assigned to CCCTA. CONSULTANT agrees to execute any additional documents, which may be necessary to evidence such assignment. In addition, the FTA, FHWA and other funding Agencies shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for governmental purposes.

The CONSULTANT represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

7. PATENT RIGHTS

If any invention, improvement, or discovery of CONSULTANT is conceived or first actually reduced to practice in the course of or under this Agreement, which invention, improvement, or discovery may be patentable under the Patent Laws of the United States or any foreign country, CONSULTANT shall immediately notify CCCTA and provide a detailed report. The rights and responsibilities of CCCTA, CONSULTANT and the federal government with respect to such invention will be determined in accordance with applicable federal laws, regulations, policies and any waivers thereof.

8. CONFIDENTIALITY

Any CCCTA materials to which the CONSULTANT has access or materials prepared by the CONSULTANT during the course of this Agreement ("Confidential

Information") shall be held in confidence by the CONSULTANT, who shall exercise all reasonable precautions to prevent the disclosure of Confidential Information to anyone except the officers, employees and agents of the CONSULTANT as necessary to accomplish the rendition of services under this Agreement.

CONSULTANT shall not release any reports, information or promotional materials prepared in connection with this Agreement, whether deemed confidential or not, without the prior approval of CCCTA.

#### 9. USE OF SUBCONSULTANTS

The CONSULTANT shall not subcontract any services to be performed by it under this Agreement without the prior written approval of CCCTA, except for service firms engaged in drawing, reprographics, typing, and printing. CONSULTANT shall pay any subconsultants approved by CCCTA for work that has been substantially performed no later than ten (10) days from the date of CONSULTANT'S receipt of progress payments from CCCTA. Within thirty (30) days of satisfactory completion of all work required of the subconsultant, CONSULTANT shall release any retainage payments withheld to the subconsultant. CCCTA may require CONSULTANT to provide documentation satisfactory to CCCTA of CONSULTANT'S compliance with this requirement as a condition of final payment and release of contract retentions, if any.

#### 10. CHANGES

The CCCTA may, at any time, by written order, make changes to the scope of work and services described in this Agreement. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed shall be made in the limit on compensation as set forth in "COMPENSATION" of this Agreement or in the time of required performance as set forth in "SCHEDULE AND TIME OF COMPLETION" of this Agreement, or both.

In the event that CONSULTANT encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, CONSULTANT shall so advise CCCTA immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in schedule or compensation. This notice shall be given to CCCTA prior to the time that CONSULTANT performs work or services related to any proposed adjustment. The pertinent changes shall be expressed in a written supplement to this Agreement prior to implementation of such changes. Failure to provide written notice and receive CCCTA approval for extra work, prior to performing extra work, may, at CCCTA's sole direction result in nonpayment of the invoices reflecting such work.

#### 11. CLAIMS OR DISPUTES

The CONSULTANT shall be solely responsible for providing timely written notice to CCCTA of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is CCCTA's intent to investigate and attempt to resolve any CONSULTANT claims before the CONSULTANT has performed any disputed work.

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Therefore, CONSULTANT'S failure to provide timely notice shall constitute a waiver of CONSULTANT'S claims for additional compensation and/or time.

The CONSULTANT shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by CCCTA, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given CCCTA due written notice of a potential claim. The notice of a potential claim shall set forth the reasons for which the CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

If based on an act or failure to act by CCCTA, such notice shall be given to CCCTA prior to the time that the CONSULTANT has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice shall be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

If there is a dispute over any claim, the CONSULTANT shall continue to work during the dispute resolution process in a diligent and timely manner as directed by CCCTA, and shall be governed by all applicable provisions of this Agreement. The CONSULTANT shall maintain cost records of all work which is the basis of any dispute.

If an agreement can be reached which resolves the CONSULTANT'S claim, the parties will execute a contract change to document the resolution of the claim. If the parties cannot reach an agreement with respect to the CONSULTANT'S claim, they may choose to pursue a dispute resolution process.

## 12. CONFLICT OF INTEREST

The RFP sets forth important Conflict of Interest rules that will be in force throughout the term of this Agreement. In addition to those provisions, the following also apply:

### A. General

Depending on the nature of the work performed, a CONSULTANT of CCCTA may be subject to the same conflict of interest prohibitions established by the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) and California law that govern CCCTA's employees and officials (Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.). During the proposal process or the term of the Agreement, CONSULTANT and its employees may be required to disclose financial interests.

The CONSULTANT warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §1090 et seq. or §87100 et seq. during the performance of services under this Agreement. The CONSULTANT further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable or subject to termination.

Depending on the nature of the work performed, CONSULTANT may be required to publicly disclose financial interests under CCCTA's Conflict of Interest Code. Upon receipt, the CONSULTANT agrees to promptly submit a Statement of Economic Interest on the form provided by CCCTA.

No person previously in the position of director, officer, employee or agent of CCCTA may act as an agent or attorney for, or otherwise represent the CONSULTANT, by making any formal or informal appearance, or any oral or written communication, before CCCTA, or any officer or employee of CCCTA, for a period of twelve months after leaving office or employment with CCCTA if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or contract.

No officer or employee of CCCTA during his or her tenure or for one year after that tenure shall have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement.

#### B. Organizational Conflicts of Interest

CONSULTANT shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts: a firm or person is unable, or potentially unable, to render impartial assistance or advice to CCCTA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

CONSULTANT shall not engage the services of any Subconsultant or independent consultant on any work related to this Agreement if the Subconsultant or independent consultant, or any employee of the Subconsultant or independent consultant, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT immediately shall provide CCCTA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONSULTANT'S written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest.

If at any time during the term of this Agreement, CCCTA becomes aware of an organizational conflict of interest in connection with CONSULTANT'S performance of the work hereunder, CCCTA shall similarly notify CONSULTANT.

In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by CCCTA, CCCTA will consider the conflict presented and any alternatives proposed and meet with the CONSULTANT to determine an appropriate course of action. The CCCTA's determination as to the manner in which to address the conflict shall be final.



During the term of this Agreement, CONSULTANT must maintain lists of its employees, and the Subconsultants and independent consultants used and their employees. CONSULTANT must provide this information to CCCTA upon request. However, submittal of such lists does not relieve the CONSULTANT of its obligation to assure that no organizational conflicts of interest exist. CONSULTANT shall retain this record for five (5) years after CCCTA makes final payment under this Agreement. Such lists may be published as part of future CCCTA solicitations.

CONSULTANT shall maintain written policies prohibiting organizational conflicts of interest and shall ensure that its employees are fully familiar with these policies. CONSULTANT shall monitor and enforce these policies and shall require any subconsultants and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the CONSULTANT to damages incurred by CCCTA in addressing organizational conflicts that arise out of work performed by CONSULTANT, or to termination of this Agreement for breach

### 13. RESPONSIBILITY; INDEMNIFICATION

The CONSULTANT shall indemnify, keep and save harmless CCCTA and its directors, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:

- A. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONSULTANT caused by a negligent act or omission or willful misconduct of the CONSULTANT or its employees, subcontractors, subconsultants or agents; or
- B. Any allegation that materials or services provided by the CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

The CONSULTANT further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defense as they are incurred. If any judgment is rendered against CCCTA or any of the other individuals enumerated above in any such action, the CONSULTANT shall, at its expense, satisfy and discharge the same to the proportionate extent of Consultant's fault as finally determined by a court or other final decision maker with proper authority. This indemnification shall survive termination or expiration of the Agreement.

### 14. INSURANCE

The insurance requirements specified in this section shall apply to Contractor and any subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Contractor authorizes to work under this Agreement (hereinafter collectively referred to as "Agents"). Contractor is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full

force and effect throughout the term of this Agreement. Contractor is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks; the limit for the commercial general liability insurance in each subcontract shall not be less than \$1 million per occurrence, general aggregate and if applicable, products completed operations aggregate. To the extent that any Agent does not procure and maintain such insurance coverage, Contractor shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Contractor's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event Contractor or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the Contractor's insurance be primary without any right of contribution from CCCTA. Prior to beginning work under this contract, Contractor shall provide CCCTA with reasonably satisfactory evidence of compliance with the insurance requirements of this section.

## **1. Minimum Types and Scope of Insurance**

### **A. Workers Compensation and Employers' Liability Insurance.**

- 1) Workers Compensation with Statutory Limits, as required by Section 3700 et seq of the California Labor Code, or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.
- 2) Employer's Liability coverage with minimum limits of \$1 million each accident. \$1 million policy limit-disease and \$1 million each employee - disease.
- 3) Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
  - Waiver of Subrogation.

### **B. Commercial General Liability Insurance.**

Commercial General Liability insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$1 million per occurrence or claim and a general aggregate limit of at least \$2 million and \$2 million products and completed operations aggregate. Such insurance shall cover all of Contractor's operations both at and away from the project site.

- 1) This insurance shall include coverage for, but not be limited to:
  - Premises and operations.
  - Products and completed operations.
  - Contractual liability.
  - Personal injury.
  - Advertising injury.
  - Explosion, collapse, and underground coverage (xcu).
  - Broad form property damage.

2) Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Cross Liability or Severability of Interests Clause.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

**C. Business Automobile Liability Insurance.**

Business Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least \$1 million per accident.

1) This insurance shall include coverage for, but not be limited to:

- All Owned vehicles.
- Non-owned vehicles.
- Hired or rental vehicles.

2) Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.

**D. Professional Liability Insurance.**

A professional liability policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to CCCTA and having minimum limits of liability of \$1 million per claim or occurrence and \$1 million annual aggregate.

The policy shall cover:

1) The policy shall include coverage for:

- All services and work performed under this Agreement.

**2. ENDORSEMENTS**

**A) Additional Insured.**

The General Liability and Automobile Liability policies and any Excess or Umbrella policies shall include as Additional Insureds the Central Contra Costa Transit Authority and its directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

**B) Waiver of Subrogation.**

The referenced policies, except Professional Liability, and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the Central Contra Costa Transit Authority and its officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

**C) Primary Insurance.**

The General Liability and Automobile Liability policies and any Excess and Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the Central Contra Costa Transit Authority.

**D) Severability of Interests or Cross Liability.**

The referenced policies and any Excess or Umbrella policies shall contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the Central Contra Costa Transit Authority as an Additional Insured shall not in any way affect CCCTA's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the Contractor. Said policy shall protect Contractor and the Central Contra Costa Transit Authority in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

**3. EVIDENCE OF INSURANCE**

- (a) **All Coverages** - Prior to commencing work or entering onto the Property, Contractor shall provide CCCTA with a certificate evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate shall also show that the Contractors' policy(ies) will not be cancelled without 30 days prior written notice to CCCTA.

**4. GENERAL PROVISIONS**

**A. Notice of Cancellation.**

The policies shall provide that the Contractors' policies will not be cancelled without 30 days prior written notice to CCCTA.

**B. Acceptable Insurers.**

All policies will be issued by insurers acceptable to CCCTA (generally with a Best's Rating of A-10 or better).

**C. Self-insurance.**

Upon evidence of financial capacity satisfactory to CCCTA and Contractor's agreement to waive subrogation against CCCTA respecting any and

all claims that may arise, Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

**D. Failure to Maintain Insurance.**

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of Contractor's personnel and equipment have been removed from CCCTA property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

**E. Claims Made Coverage**

If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

- (1) Policy retroactive date coincides with or precedes the Contractor's start of work (including subsequent policies purchased as renewals or replacements).
- (2) Contractor shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all named insureds.
- (3) If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.
- (4) Policy allows for reporting of circumstances or incidents that might give rise to future claims.

**F. Deductibles and Retentions**

Contractor shall be responsible for payment of any deductible or retention on Contractor's policies without right of contribution from CCCTA.

15. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, CCCTA shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

16. CONSULTANT'S STATUS

Neither the CONSULTANT nor any party contracting with the CONSULTANT shall be deemed to be an agent or employee of CCCTA. The CONSULTANT is and shall be an independent CONSULTANT, and the legal relationship of any person performing services for the CONSULTANT shall be one solely between that person and the CONSULTANT.

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**17. ASSIGNMENT**

CONSULTANT and CCCTA shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the other party.

**18. WARRANTY OF SERVICES**

A. CONSULTANT warrants that its professional services will be performed in accordance with the same skill and care ordinarily exercised by other reputable members of Consultant's profession practicing in the same or similar locality under similar circumstances. In addition, CONSULTANT shall provide such specific warranties as may be set forth in the individual Work Orders as agreed upon by the parties.

B. In the event that any services provided by the CONSULTANT hereunder are deficient because of CONSULTANT'S or subconsultants failure to perform said services in accordance with the warranty standards set forth above, CCCTA shall report such deficiencies in writing to the CONSULTANT within a reasonable time. The CCCTA thereafter shall have:

1. The right to have the CONSULTANT re-perform such services at the CONSULTANT'S expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if within thirty days after written notice to the CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to CCCTA that it has undertaken said re-performance.
3. The right to terminate the Agreement for default.

CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all redesign and re-construction work as a result of errors and omissions.

**19. CCCTA REPRESENTATIVE**

Except when approval or other action is required to be given or taken by the Board of Directors of CCCTA, the General Manager/CEO of CCCTA, or such person or persons as shall be designated in writing by CCCTA from time to time, shall represent and act for CCCTA.

**20. REMEDIES**

In the event the CONSULTANT fails to comply with the requirements of this Agreement in any way, CCCTA reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

**21. TEMPORARY SUSPENSION OF WORK**

The CCCTA, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as CCCTA may deem necessary. The suspension may be due to the failure on the part of the CONSULTANT to carry out orders given or to perform any provision of the Contract or to factors that are not the responsibility of the CONSULTANT. The CONSULTANT shall comply immediately with the written order of CCCTA to suspend the work wholly or in part. The suspended work shall be resumed when the CONSULTANT is provided with written direction from CCCTA to resume the work.

If the suspension is due to the CONSULTANT'S failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the CONSULTANT, all costs shall be at CONSULTANT'S expense and no schedule extensions will be provided by CCCTA.

In the event of a suspension of the work, the CONSULTANT shall not be relieved of the CONSULTANT'S responsibilities under this Agreement, except the obligations to perform the work which CCCTA has specifically directed CONSULTANT to suspend under this section.

If the suspension is not the responsibility of the CONSULTANT, suspension of all or any portion of the work under this Section may entitle the CONSULTANT to compensation and/or schedule extensions subject to the Contract requirements.

## 22. TERMINATION

The CCCTA shall have the right to terminate this Agreement at any time by giving written notice to the CONSULTANT. Upon receipt of such notice, the CONSULTANT shall not commit itself to any further expenditure of time or resources.

If the Agreement is terminated for any reason other than a default by CONSULTANT, CCCTA shall pay to CONSULTANT, in accordance with the provisions of this Agreement, all sums actually due and owing from CCCTA for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessarily incurred by CONSULTANT to effect such termination. If the Agreement is terminated for default, CCCTA shall submit a written ten-day cure notice to the CONSULTANT. If CONSULTANT does not cure the default within the said ten-day period, CCCTA shall remit final payment to CONSULTANT in an amount to cover only those services performed and expenses incurred, in full accordance with the terms and conditions of this Agreement up to the effective date of termination.

## 23. COMPLIANCE WITH ALL LAWS

CONSULTANT shall comply with all Federal, State and local laws and ordinances applicable to the work under this Agreement, regardless of whether such laws are particularly referenced by this Agreement.

## 24. NO ASSIGNMENT

CONTRACTOR shall not assign any of the rights nor transfer any of its obligations under the Agreement without the prior written consent of CCCTA.

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## 25. NOTICES

All communications relating to the day-to-day activities of the project shall be exchanged between CCCTA and the CONSULTANT'S Project Director.

All other notices and communications regarding interpretation of the terms of this contract and changes thereto shall be given to the other party in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to CCCTA: Central Contra Costa Transit Authority  
2477 Arnold Industrial Way  
Concord, CA 94520  
Attn: General Manager/CEO

If to the CONSULTANT: Nelson/Nygaard  
116 New Montgomery Street, #500  
San Francisco, CA 94105  
Attn: Paul Jewel

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

## 26. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable attorneys' fees.

## 27. APPLICABLE LAW

This Agreement, its interpretation and all work performed under it shall be governed by the laws of the State of California. Venue shall be in Contra Costa County.

## 28. WARRANTIES

The CCCTA makes no warranties, representations, or Agreements, either expressed or implied, beyond such as are explicitly stated in this Agreement.

## 29. AUDIT

CONSULTANT and its subconsultants shall permit CCCTA, FTA, FHWA, and their authorized representatives to inspect, examine, make excerpts from, transcribe, and copy CONSULTANT'S and subconsultant's books, work documents, papers, materials, payrolls, records, accounts, and any and all data relevant to this Agreement at any reasonable time for the purpose of auditing and verifying statements, invoices or bills submitted by CONSULTANT pursuant to this Agreement, and shall provide such assistance as may be reasonably required in the course of such inspection.



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Pursuant to California Government Code Section 8546.7, the parties to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of CCCTA or as part of any audit of CCCTA by the State Auditor, for a period of three years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement, including but not limited to, the cost of administering this Agreement.

See also Exhibit 1, RFP section XIV.F, Access to Records and Reports, for additional audit requirements.

30. RIGHTS AND REMEDIES OF CCCTA

The rights and remedies of CCCTA provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

31. BINDING ON SUCCESSORS

All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

32. SEVERABILITY

Should any provision herein be found or deemed to be invalid or unenforceable, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect.

33. NO THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

34. ENTIRE AGREEMENT; MODIFICATION

This Agreement, including any attachments, constitutes the entire Agreement between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

**CCCTA:**

**CONSULTANT: (See footnote below) \***

Signature: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Attorney for CCCTA

**Note: If the CONSULTANT is a Corporation, this Agreement must be executed by two Corporate Officers, consisting of:**

- (1) the President, Vice President or Chair of the Board, and**
- (2) the Secretary, Assistant Secretary, Chief Financial Officer, Assistant CFO, Treasurer, or Assistant Treasurer.**

**In the alternative, this Agreement may be executed by a single Officer or a person other than an Officer provided that evidence satisfactory to CCCTA is provided demonstrating that such individual is authorized to bind the Corporation (e.g. a copy of a certified resolution from the Corporation's Board or a copy of the Corporation's bylaws.)**

**RESOLUTION NO. 2018-006**

**BOARD OF DIRECTORS, CENTRAL CONTRA COSTA TRANSIT AUTHORITY  
STATE OF CALIFORNIA**

\* \* \*

**AUTHORIZING AWARD OF PROFESSIONAL SERVICES AGREEMENT  
TO NELSON\NYGAARD CONSULTING ASSOCIATES, INC. FOR ON-CALL PLANNING SERVICES**

**WHEREAS**, the County of Contra Costa and the Cities of Clayton, Concord, Lafayette, Martinez, Orinda, Pleasant Hill, San Ramon, and Walnut Creek, and the Towns of Danville and Moraga (hereinafter "member jurisdictions"), have formed the Central Contra Costa Transit Authority ("CCCTA"), a joint exercise of powers agency created under California Government Code Sections 6500, *et seq.*, to provide coordinated and integrated public transportation services within the area of such member jurisdictions;

**WHEREAS**, on May 18, 2017, the CCCTA issued a Request for Proposals for on-call planning consulting services;

**WHEREAS**, the proposal submitted by Nelson\Nygaard Consulting Associates, Inc. ("Nelson/ Nygaard"), dated June 28, 2017, was determined by staff to be the top-ranked proposal for such services;

**WHEREAS**, staff and legal counsel have reviewed the exceptions to the professional services agreement proposed by Nelson/Nygaard and have prepared an agreement satisfactory to both parties;

**WHEREAS**, services to be provided under the agreement will be on a work order basis at the hourly rates set forth in the proposal; and

**WHEREAS**, the Marketing, Planning & Legislative Committee concurs with the staff recommendation to award the contract for On-Call Planning Services to Nelson\Nygaard, for a base term of three (3) years, with two additional one-year options, with a maximum compensation not to exceed One Million Eight Hundred Thousand Dollars (\$1,800,000) over the potential five (5) year term.

**NOW, THEREFORE, BE IT RESOLVED** that the Central Contra Costa Transit Authority Board of Directors hereby awards a contract to Nelson\Nygaard Consulting Associates, Inc. for On-Call Planning Services for a base term of three (3) years with two additional on-year option terms, at a not to exceed amount of \$1,800,000, and authorizes the General Manager or his designee to execute an agreement with Nelson\Nygaard Consulting Associates, Inc., in full conformity with all of the terms and conditions in the Request for Proposals and in a form approved by Legal Counsel.

Regularly passed and adopted this 16<sup>th</sup> day of November, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Rob Schroder, Chair, Board of Directors

ATTEST:

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Lathina Hill, Clerk to the Board