



CONTRACTS & PROCUREMENT DEPARTMENT

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD

AND

Contractor Name

RFP #

This agreement is made and entered into as of _____, 20__ by and between NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD (hereinafter referred to as "NCTD"), a Transit Development Board organized and operating under the North San Diego Transit Development Board Act, Public Utilities Code Section 125000, et seq. and Contractor Name (hereinafter referred to as "Consultant")

RECITALS

1. NCTD is a public agency of the State of California and is in need of professional services for the following project: Project Title (hereinafter referred to as "the Project").
2. Consultant is duly licensed and has the necessary qualifications to provide such services.
3. The parties desire by this agreement to establish the terms for NCTD to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services

Consultant shall provide NCTD with the services described in the Scope of Services attached hereto as Exhibit A.

OPTIONAL - IF APPLICABLE

The terms, conditions, procedures and requirements for this agreement are those described in RFP #####, including Addenda ##, all of which are hereby included, by reference in this Agreement in the following order of precedence:

- a) This agreement
- b) RFP ##### and Addenda ##
- c) Consultant's Best and Final Proposal dated _____
- d) Consultant's Proposal dated _____

2. Compensation

- a) Subject to paragraph 2(b) below, NCTD shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit B.
- b) In no event shall the total amount paid for services rendered by Consultant pursuant to Exhibit A exceed the sum of \$ Contract Value. Periodic payments shall be made within 30 days of receipt of a statement for services rendered. Payments to Consultant for work performed will be made on a monthly billing basis.

- c) The method of payment is to be a firm fixed hourly rate, which includes total compensation for all direct and indirect costs, overhead, fringe benefits and fee (profit).
- d) **OPTIONAL** The method of payment is to be based on fully-burdened hourly rates, which includes total compensation for all direct costs (ODCs), indirect costs, overhead, fringe benefits and fee (profit). ODCs include all local travel expenses (mileage), reproduction (limited to one reproducible set of contracted submittal), postage and phones (reasonable as deemed by NCTD). Local travel is defined as travel within one hundred (100) miles of the work site.
- e) If a Consultant travels beyond one hundred miles of the worksite and NCTD has authorized travel costs in writing, NCTD shall reimburse travel expenses of the Consultant up to the maximum limits listed below:

Lodging	\$99.00 per night exclusive of taxes
Meals and Incidentals	NCTD does not reimburse these costs
Mileage	36.5 ¢ per mile for personal vehicle
Airfare	Lowest customary standard, coach, or equivalent airfare (Fly America Requirements apply)

3. Additional Work

If changes in the work seem merited by Consultant or NCTD, and informal consultations with the other party indicate that a change is warranted, it shall be processed by NCTD in the following manner: a letter outlining the changes shall be forwarded to NCTD by Consultant with a statement of estimated changes in fee or time schedule. An amendment to the agreement shall be prepared by NCTD and executed by both parties before performance of such services or NCTD will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this agreement.

4. Maintenance of Records

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by NCTD, the State Auditor, FHWA or any duly authorized representative of the Federal Government.

5. Time of Performance

Consultant shall perform its services hereunder in a prompt and timely manner, and in accordance with the Activity Schedule shown in attached Exhibit C and shall commence performance upon receipt of a written Notice to Proceed from NCTD. The Notice to Proceed shall set forth the date of commencement of the work. The period of performance is for _____, beginning DATE and expiring DATE.

6. Delays in Performance

Neither NCTD nor Consultant shall be considered in default of this agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this agreement.

7. Compliance with Law

- a) Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.
- b) Consultant shall assist NCTD, as requested, in obtaining and maintaining all permits required of Consultant by Federal, State and local regulatory agencies.
- c) Consultant is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this agreement.
- d) This agreement is subject to the Federal Transit Administration (FTA) requirements of Exhibit E.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this agreement or any rights under or interest in this agreement without the written consent of NCTD, which may be withheld for any reason. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder. Any contract in excess of \$25,000 entered into as a result of this contract shall contain all of the provisions stipulated in this contract to be applicable to subconsultants.

10. Independent Consultant

Consultant is retained as an independent Consultant and is not an employee of NCTD. No employee or agent of Consultant shall become an employee of NCTD. The work to be performed shall be in accordance with the work described in Exhibit A, subject to such directions and amendments from NCTD as herein provided.

11. Integration

This agreement represents the entire understanding of NCTD and Consultant as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated agreement.

12. Insurance

a) Commercial General Liability

- i) The Consultant shall take out and maintain, during the performance of all work under this agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to NCTD.
- ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:
 - a) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)
- iii) Commercial General Liability Insurance must include coverage for the following:
 - a) Bodily Injury and Property Damage
 - b) Personal Injury/Advertising Injury
 - c) Premises/Operations Liability
 - d) Products/Completed Operations Liability
 - e) Aggregate Limits that Apply per Project
 - f) Explosion, Collapse and Underground (UCX) exclusion deleted
 - g) Contractual Liability with respect to this Contract
 - h) Broad Form Property Damage
 - i) Independent Consultants Coverage
- iv) All such policies shall name the North San Diego County Transit Development Board, the board and each member of the board, its officers, employees, agents and NCTD designated volunteers as Additional Insureds under the policy.
- v) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by NCTD.

b) Automobile Liability

- i) At all times during the performance of the work under this agreement the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to NCTD.
- ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 000 1 (ed. 6/92) covering automobile liability, Code I (any auto).
- iii) The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by NCTD.
- iv) All such policies shall name the North San Diego County Transit Development Board, the board and each member of the board, its officers, employees, agents and designated volunteers as Additional Insureds under the policies.

c) Workers' Compensation/Employer's Liability

- i) At all times during the performance of the work under this agreement and for 24 months following the date of Project completion and acceptance by NCTD, the Consultant shall maintain workers' compensation in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts indicated herein.
- ii) Such insurance shall include an insurer's Waiver of Subrogation in favor of NCTD and will be in a form and with insurance companies acceptable to NCTD.
- iii) If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by NCTD.
- iv) Before beginning work, the Consultant shall furnish to NCTD satisfactory proof that he/she has taken out for the period covered by the work under this agreement, full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof Consultant shall require all subconsultants to obtain and maintain, for the period covered by the work under this agreement, worker's compensation of the same type and limits as specified in this Section.

d) Professional Liability (Errors and Omissions)

- i) At all times during the performance of the work under this agreement the Consultant shall maintain professional liability insurance, in a form and with insurance companies acceptance to NCTD and in an amount indicated herein.

e) Railroad Protective Liability

- i) In the event any work performed is within the 50' Railroad Right-Of-Way, Contractor will provide the Board with a policy of insurance companies acceptable to the Board, that includes coverage as follows:
 - a) Named Insured: NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD, (BOARD); SAN DIEGO NORTHERN RAILWAY, (SDNR); SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD, (MTDB); SAN DIEGO TROLLEY, INC., (SDTE); their Directors, Officers, Agents and Employees, as Additional Insured as their Interests may appear.
 - b) Term: Same as the Contract Term.
 - c) The Contractor shall be listed as the covered Contractor with Automatic Coverage included for Contractor's sub-contractors.
 - d) COVERED PROJECT: As described in this Contract.

f) Minimum Policy Limits Required

- i) The following insurance limits are required for the Contract:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per claim and aggregate
Professional Liability (errors and omissions)	\$1,000,000 per claim and aggregate
Railroad	\$10,000,000

g) Evidence Required

- i) Prior to execution of the agreement, the Consultant shall file with NCTD evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent). All evidence of insurance shall be signed by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

h) Policy Provisions Required

- i) All policies shall contain a provision for 30 days advance written notice by the insurer(s) to NCTD of any cancellation. Statements that the carrier "will endeavor" and "that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives," will not be acceptable on certificates.
- ii) All policies shall contain a provision stating that the Consultant's policies are primary insurance and that the insurance of NCTD or any named insureds shall not be called upon to contribute to any loss.

i) Qualifying Insurers

- i) All policies required shall be issued by acceptable insurance companies, as determined by NCTD, which satisfy the following minimum requirements:

Insurance carriers shall be qualified to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an "A-" policyholder's rating and a financial rating of not less than "Class VII" according to the latest Best Key Rating Guide.

j) Additional Insurance Provisions

- i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by NCTD, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this agreement, including but not limited to, the provisions concerning indemnification.
- ii) If at any time during the life of the agreement, the Consultant fails to maintain in full force any insurance required by the agreement documents NCTD may terminate the agreement.
- iii) The Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.
- iv) NCTD may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.
- v) Neither NCTD, nor the board, nor any member of the board, nor any of the directors, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of the Contract.
- vi) Insurance certificates shall be attached hereto as Exhibit D.

13. Indemnification

Consultant agrees to protect, save, defend and hold harmless NCTD and its Board and each member of the Board, officers, agents and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of or in any way connected with the negligent acts, errors or omissions or willful misconduct by Consultant, Consultants agents, officers, employees, subconsultants, or independent

consultants hired by Consultant under this agreement. The only exception to Consultant's responsibility to protect, save, defend and hold harmless NCTD, is due to the sole negligence, willful misconduct or active negligence of NCTD. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

14. Laws, Venue. and Attorneys' Fees

This agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

15. Termination or Abandonment

- a) NCTD has the right to terminate or abandon any portion or all of the work under this agreement by giving ten (10) calendar days written notice to Consultant. In such event, NCTD shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. NCTD shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by NCTD and Consultant of the portion of such task completed but not paid prior to said termination. NCTD shall not be liable for any costs other than the charges or portions; thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.
- b) Consultant may terminate its obligation to provide further services under this agreement upon thirty (30) calendar days' written notice to NCTD only in the event of substantial failure by NCTD to perform in accordance with the terms of this agreement through no fault of Consultant.

16. Organization

Consultant shall assign _____ as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of NCTD.

17. Notice

Any notice or instrument required to be given or delivered by this agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

NCTD:

CONSULTANT:

North San Diego County Transit
Development Board
Mission Avenue
Oceanside, CA 92054

Attn: Contracts Contact

and shall be effective upon receipt thereof

18. Third Party Rights

Nothing in this agreement shall be construed to give any rights or benefits to anyone other than NCTD and the Consultant.

19. Severability

The unenforceability, invalidity or illegality of any provision(s) of this agreement shall not render the other provisions unenforceable, invalid or illegal.

20. Cost Principles and Procedures

The Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, shall be used to determine the allowability of individual items of cost. The Consultant also agrees to comply with Federal procedures in accordance with 49 CFR, Part 19, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Consultant to NCTD.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first written above.

NORTH SAN DIEGO COUNTY TRANSIT
DEVELOPMENT BOARD

Contractor Name

By: _____
Karen King
Executive Director

By: _____
Name
Title

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: _____
C. Michael Cowett
General Counsel
NORTH SAN DIEGO COUNTY TRANSIT
DEVELOPMENT BOARD

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
SCHEDULE OF CHARGES

EXHIBIT C
ACTIVITY SCHEDULE

EXHIBIT D
INSURANCE CERTIFICATES

EXHIBIT E
FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES

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