

CAPITAL SOUTHEAST CONNECTOR AUTHORITY

AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____ 2014, at Sacramento, California, by and between the Capital SouthEast Connector Authority,¹ a joint powers agency, (hereinafter “Authority”), through its Executive Director, and **FIRM**, a California Corporation, (hereinafter “Consultant”).

RECITALS:

WHEREAS, Authority has determined that it is necessary to obtain a Consultant to assist with engineering and environmental services for its Segment D3/E1 Project;

WHEREAS, Consultant has represented to Authority that it is specially trained, experienced, expert, and competent to perform the special services required hereunder, and Authority has determined to rely upon such representations;

WHEREAS, it is the intent of the parties that consultant use due professional care so as such services be in conformity with all applicable federal, state and local laws and ordinances applicable to the work, including compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775;

NOW, THEREFORE, Authority and Consultant mutually agree as follows:

1. **Time of Performance:** Consultant shall commence work upon execution of this Agreement and in accordance with the Scope of Work, attached hereto as Exhibit A and incorporated herein. Consultant shall complete work as expeditiously as is consistent with generally accepted standards of professional skill and care and the orderly progress of work. Work shall be completed and this Agreement shall expire on _____, unless otherwise terminated as provided for in this Agreement or extended by written agreement between the parties.

2. **Scope of Work:** Consultant’s services to be provided are specifically in support of Authority’s Segment D3/E1 Preliminary Engineering and Environmental Documentation Phase (hereinafter referred to as “Project”).

Consultant shall perform all professional and technical services, work, and tasks required to accomplish the objectives set forth herein, and shall provide and make available Consultant's own personnel, subconsultants, materials, equipment, and services customarily necessary to provide design services, and other services generally including, but not limited to, those tasks identified in **Exhibit A, “Scope of Work,”** incorporated herein and made by reference a part hereof, or as identified in the individual Work Orders, to be issued in accordance with this Agreement.

Deliverables for the specific items of work to be provided under the Scope of Work shall be as specified therein, shall be prepared using the software described in this Article, and shall be

¹ The full legal name of the Capital SouthEast Connector Authority is the “Elk Grove-Rancho Cordova-El Dorado Connector Authority.”

submitted in accordance with the timeframes specified in Exhibit A, hereto. Modifications to the deliverables required and completion times specified in Exhibit A, hereto or to the software requirements may only be made in accordance with the prior written approval of Authority's Executive Director.

Unless otherwise indicated, receipt of this executed Agreement is Consultant's Notice to Proceed with the work specified herein. No payment will be made for any work performed prior to the effective date of the Agreement.

In addition to the specific services identified in Exhibit A, hereto, this Agreement may also include Optional Tasks, as subsequently identified during the course of work under this Agreement by Authority's Executive Director, related to the Scope of Work as identified in Exhibit A. Such Optional Tasks may supplement or modify the Scope of Work as identified in Exhibit A, hereto or may include, but not be limited to, additional items of work that are deemed critical by Authority's Executive Director to the furtherance of completing the Project.

Before proceeding with any work concerning Optional Tasks under this Agreement, the parties will identify the specific services to be provided for each assignment in individual Work Orders to be issued in accordance with this Agreement.

The specific services for each Optional Tasks assignment shall be determined at a meeting or telephone conference between Consultant and Authority's Executive Director, or designee, to discuss the needs, applicable standards, required deliverables, specific Consultant staff, subconsultants, if applicable, and any necessary permits on a task-by-task basis. Following the meeting, Consultant shall provide Authority's Executive Director with a written scope of work, a schedule including a list of tasks with completion dates, a target completion date for the overall scope of work, Consultant's Project Manager, and a not-to-exceed cost itemization to complete the work (resulting in a Work Order), which shall require written approval, authorization, and written notification to proceed from Authority's Executive Director, prior to commencement of the work.

If a submittal or deliverable is required to be an electronic file, Consultant shall produce the file using Microsoft (MS) Office 2010 applications (specifically, MS Word, MS Project and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). Electronic AutoCAD 2010 or AutoCAD Civil 3D 2010 format shall be used for submittal of plans or other similar documents as specified by the Authority. All digital photographs shall be submitted on CD-ROMs in jpeg format with a minimum resolution of 2816 X 2112. All deliverables shall be submitted in language, format and design that are compatible with and completely transferable to Authority's computer and engineering applications and that are acceptable to the Authority. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by Authority's Executive Director.

No payment will be made for any Optional Tasks performed prior to approval and full execution of the applicable Work Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the applicable Work Order. Each approved Work Order shall be incorporated in Exhibit A by this reference. In the event of any inconsistency between Exhibit "A" or a Work Order, and the other terms and conditions of this Agreement, this Agreement shall control.

3. Standard of Quality: All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compliance with Laws: Consultant shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders and decrees. Consultant warrants and represents to the Authority that Consultant shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession or are necessary and incident to the performance of the services and work Consultant performs under this Agreement. Consultant shall provide written proof of such licenses, permits, insurance and approvals upon request by the Authority. The Authority is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

5. Consideration: Payment to Consultant by the Authority shall be made as set forth in Exhibit "A". The amount to be paid to Consultant under this Agreement shall not exceed **\$FEES**, unless expressly authorized in writing by the Executive Director. In no instance shall the Authority be liable for any payments or costs for work in excess of this amount, nor for any unauthorized or ineligible costs. Consultant shall be paid at the times and in the manner set forth in this Agreement. The consideration to be paid Consultant, as provided in this Agreement, shall be in compensation for all of Consultant's expenses incurred in the performance of work under this Agreement, including travel and per diem, unless otherwise expressly so provided.

6. Reporting and Payment: Consultant shall submit monthly billings in arrears to the Authority no later than the 15th of each month and in accordance with the Scope of Work. Consultant shall be notified within fifteen (15) working days following receipt of its invoice by the Authority of any circumstances or data identified by the Authority in Consultant's written billing which would cause withholding of approval and subsequent payment. Consultant shall be paid within thirty (30) days after Authority approval of each billing; however, the Authority, at its own discretion, may withhold at least ten percent (10%) of each invoice until the successful completion of the scope of work and the delivery and acceptance by the Authority of all final products. Said billings shall indicate the number of hours worked by each of Consultant's personnel and reimbursable costs incurred to the date of such billing since the date of the preceding billing, if any. The billings shall include documentation of reimbursable expenses and billed items sufficient for the Authority, in its opinion, to substantiate billings. The Authority reserves the right to withhold payment of disputed amounts.

7. Independent Consultant: The Consultant, and the agents and employees of the Consultant, in the performance of this Agreement, shall act as and be independent Consultants and not officers or employees or agents of the Authority. Consultant, its officers, employees, agents, and subconsultants, if any, shall have no power to bind or commit the Authority to any decision or course of action, and shall not represent to any person or business that they have such power. Consultant has and shall retain the right to exercise full control of the supervision of the services and work and over the employment, direction, compensation and discharge of all persons assisting Consultant in the performance of services under this Agreement. Consultant shall be solely responsible for all matters relating to the payment of its employees, including but not limited to compliance with social security and income tax withholding, workers' compensation insurance and all regulations governing such matters.

8. Termination:

- a. The Authority shall have the right to terminate this Agreement by giving Consultant fifteen (15) days written notice. The notice shall be deemed served and effective for all purposes on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to Consultant at the address indicated in Section 17.
- b. If the Authority issues a notice of termination:
 - (1) Consultant shall immediately cease rendering services pursuant to this Agreement.
 - (2) Consultant shall deliver to the Authority copies of all Writings, whether or not completed, which were prepared by Consultant, its employees or its subconsultants, if any, pursuant to this Agreement. The term "Writings" shall include, but not be limited to, handwriting, typesetting, computer files and records, drawings, blueprints, printing, photostating, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including, letters, works, pictures, sounds, symbols computer data, or combinations thereof.
 - (3) The Authority shall pay Consultant for work actually performed up to the effective date of the notice of termination, subject to the limitations in Section 5 less any compensation to the Authority for damages suffered as a result of Consultant's failure to comply with the terms of this Agreement. Such payment shall be in accordance with Section 6. However, if this Agreement is terminated because the work of Consultant does not meet the terms or standards specified in this Agreement, then the Authority shall be obligated to compensate Consultant only for that portion of Consultant's services which is of benefit to the Authority.

9. Assignment: The parties understand that the Authority entered into this Agreement based on the professional expertise and reputation of Consultant. Therefore, without the prior express written consent of the Authority, this Agreement is not assignable by the Consultant either in whole or in part.

10. Binding Agreement: This Agreement shall be binding on the parties hereto, their assigns, successors, administrators, executors, and other representatives.

11. Time: Time is of the essence in this Agreement.

12. Amendments: No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

13. Consultants and Subconsultants: Consultant shall not subcontract any portion of the work without the prior express written authorization of the Authority. If the Authority consents to a subcontract, Consultant shall be fully responsible for all work performed by the subconsultant.

- a. The Authority reserves the right to review and approve any contract or agreement to be funded in whole or in part using funds provided under this Agreement.
- b. Any contract or sub-contract shall require the Consultant and its subconsultants, if any, to:
 - (1) Comply with applicable State and Federal requirements that pertain to, among other things, labor standards, non-discrimination, the Americans with Disabilities Act, Equal Employment Opportunity, and Drug-Free Workplace.
 - (2) Maintain at least the minimum State-required Workers' Compensation Insurance for those employees who will perform the work or any part of it.
 - (3) Maintain unemployment insurance and disability insurance as required by law, along with liability insurance in an amount that is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the Consultant or any subconsultant in performing work associated with this Agreement or any part of it.
 - (4) Retain all books, records, computer records, accounts, documentation, and all other materials pertaining to the performance of this Agreement for a period of three (3) years from the date of termination of this Agreement, or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.
 - (5) Permit the Authority and/or its designees, upon reasonable notice, unrestricted access to any or all books, records, computer records, accounts, documentation, and all other materials pertaining to the performance of this Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

14. Indemnity: Contractor specifically agrees to indemnify, defend, and hold harmless the Authority, its directors, officers, members, agents, and employees (collectively the "Indemnitees") from and against any and all actions, claims, demands, losses, expenses, including reasonable attorneys' fees and costs, damages, and liabilities (collectively "Losses") arising out of or in any way connected with the performance of this Agreement. The parties agree that Consultant's obligation to defend the Authority is limited to reimbursing the Authority for its costs and expenses (collectively "Costs") for defending a claim, as those Costs are incurred by the Authority. The parties further agree that the Authority will reimburse Consultant for that portion of the reasonable Costs incurred by Consultant in the defense of the Authority which are attributable to the Authority's active negligence, recklessness, or willful misconduct, as determined through settlement, arbitration, or litigation. Consultant shall pay all Costs that may be incurred by the Authority in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this Section shall survive the expiration, termination or assignment of this Agreement.

15. Insurance Requirements: Consultant hereby warrants that it carries and shall maintain, at its sole cost and expense, in full force and effect during the full term of this Agreement and any extensions to this Agreement, the described insurance coverage per Table 1.

Table 1: Insurance Requirements

POLICY	MINIMUM LIMITS OF LIABILITY
<u>Workers' Compensation;</u> <u>Employer's Liability</u>	Statutory requirements for Workers' Compensation; \$1,000,000 Employer's Liability.
<u>Comprehensive Automobile:</u> Insurance Services Office, Form #CA 0001 covering Automobile Liability, code 1 (any auto).	Bodily Injury/Property Damage \$1,000,000 each accident.
<u>General Liability:</u> Insurance Service Office Commercial General Liability coverage (occurrence Form #CG 0001).	\$1,000,000 per claim. If Commercial General Liability Insurance or other form with a general aggregate limit, such limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
<u>Errors and Omissions/Professional Liability:</u> Errors and Omissions liability insurance appropriate to the Consultant's profession as defined by the Authority.	\$1,000,000 per claim.

- a. Deductibles and Self-insured Retentions: Any deductibles or self-insured retentions in excess of \$5,000 must be declared to and approved by the Authority.
- b. Required Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - (1) For any claims related to this Agreement, the Consultant's insurance coverage shall be primary insurance as respects the Authority, its directors, officers, employees and agents. Any insurance or self-insurance maintained by the Authority, its directors, officers, employees or agents shall be in excess of the Consultant's insurance and shall not contribute to it.
 - (2) Any failure by Consultant to comply with reporting or other provisions of the policies including breaches of warrants shall not affect coverage provided to the Authority, its directors, officers, employees or agents.
 - (3) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - (4) Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Authority.

- c. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise approved by the Authority.
- d. Certificate of Insurance and Additional Insured Requirement: Consultant shall furnish to the Authority an original Certificate of Insurance on a standard ACORD form, or other form acceptable to the Authority, substantiating the required coverages and limits set forth above and also containing the following:
 - (1) Thirty (30) days prior written notice to the Authority of the cancellation, non-renewal, or reduction in coverage of any policy listed on the Certificate; and
 - (2) The following statement with respect to the Commercial General Liability policy:
"The Elk Grove – Rancho Cordova – El Dorado Connector Authority and its directors, officers, employees and agents, are made additional insureds, but only insofar as the operations under this Agreement are concerned."
- e. Certified Copies of Policies: Upon request by the Authority, Consultant shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.
- f. Consultant's Responsibility: Nothing herein shall be construed as limiting in any way the extent to which Consultant may be held responsible for damages resulting from Consultant's operations, acts, omissions, or negligence. Insurance coverage obtained in the minimum amounts specified above shall not relieve Consultant of liability in excess of such minimum coverage, nor shall it preclude the Authority from taking other actions available to it under this Agreement or by law, including but not limited to, actions pursuant to Consultant's indemnity obligations.

16. Audit, Retention and Inspection of Records:

- c. The Authority or its designee shall have the right to review, obtain, and copy all books, records, computer records, accounts, documentation and any other materials (collectively "Records") pertaining to performance of this Agreement, including any Records in the possession of any subconsultants, for the purpose of monitoring, auditing, or otherwise examining the Records. Consultant agrees to provide the Authority or its designees with any relevant information requested and shall permit the Authority or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of interviewing employees and inspecting and copying such Records to determine compliance with any applicable federal and state laws and regulations. Consultant further agrees to maintain such Records for a period of three (3) years after final payment under the Agreement or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.
- d. If so directed by the Authority upon expiration of this Agreement, the Consultant shall cause all Records to be delivered to the Authority as depository.

17. Project Managers: The Authority's project manager for this Agreement is the Executive Director unless the Authority otherwise informs Consultant. Any notice, report, or other communication required by this Agreement shall be mailed by first-class mail to the Authority's Project Manager at the following address:

Tom Zlotkowski
Capital SouthEast Connector Authority
10640 Mather Blvd., Suite 120
Mather, CA 95655

Consultant's project manager for this Agreement is **NAME**. No substitution of Consultant's project manager is permitted without the prior written agreement of the Authority, which agreement shall not be unreasonably withheld. With the exception of notice pursuant to Section 8 (a) above, any notice, report, or other communication to Consultant required by this Agreement shall be mailed by first-class mail to:

NAME
TITLE
FIRM NAME
ADDRESS 1
ADDRESS 2

18. Successors: This Agreement shall be binding on the parties hereto, their assigns, successors, administrators, executors, and other representatives.

19. Waivers: No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Authority to enforce at any time the provisions of this Agreement or to require at any time performance by the Consultant of these provisions, shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Authority to enforce these provisions.

20. Litigation: Consultant shall notify the Authority immediately of any claim or action undertaken by it or against it that affects or may affect this Agreement or the Authority, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Authority.

21. National Labor Relations Board Certification: Consultant, by signing this Agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant's failure to comply with an order of a federal court which orders Consultant to comply with an order of the National Labor Relations Board (Public Contract Code § 10296).

22. Americans with Disabilities Act (ADA) of 1990: By signing this Agreement, Consultant assures the Authority that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

23. Compliance with Non-Discrimination and Equal Employment Opportunity Laws: It is the Authority's policy to comply with state and federal laws and regulations including Title VI of the Civil Rights Act of 1964, Americans with Disabilities Act of 1990 (ADA) and other federal discrimination laws and regulations, as well as the Unruh Civil Rights Act of 1959, the California Fair Employment and Housing Act, and other California State discrimination laws and regulations. The Authority does not discriminate on the basis of race, color, sex, creed, religion, national origin, age, marital status, ancestry, medical condition, disability, sexual orientation or gender identity in conducting its business. The Authority prohibits discrimination by its employees, Consultants and consultants. Consultant assures the Authority that it complies with, and that Consultant will require that its subconsultants comply with, the following non-discrimination and equal opportunity laws. Any failure by Consultant to comply with these provisions shall constitute a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Authority may deem appropriate.

- a. Consultant and its subconsultants shall comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., with U.S. D.O.T. regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act", 49 C.F.R. Part 21, and with any applicable implementing federal directives that may be issued.
- b. Consultant and its subconsultants shall comply with all applicable equal employment opportunity (EEO) provisions of 42 U.S.C. §§ 2000e, implementing federal regulations, and any applicable implementing federal directives that may be issued. Consultant and its subconsultants shall ensure that applicants and employees are treated fairly without regard to their race, color, creed, sex, disability, age, or national origin.
- c. Consultant and its subconsultants will not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religion, national origin, physical disability, mental disability, medical condition, age or marital status. Consultant and its subconsultants will insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its subconsultants will comply with all applicable federal and state employment laws and regulations including, without limitation, the provisions of the California Fair Employment and Housing Act (Government Code § 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §§ 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 will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- d. Consultant will include the non-discrimination and equal employment opportunity provisions of this section (provisions a. through c. above) in all contracts to perform work funded under this Agreement.

24. Drug-Free Certification: By signing this Agreement, Consultant hereby certifies under penalty of perjury under the laws of the State of California that Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The person's or the organization's policy of maintaining a drug-free workplace;
 - (3) Any available counseling, rehabilitation, and employee assistance programs; and
 - (4) Penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee of Consultant who works under this Agreement shall:
 - (1) Receive a copy of Consultant's Drug-Free Workplace Policy Statement; and
 - (2) Agree to abide by the terms of Consultant's Statement as a condition of employment on this Agreement.

25. Union Organizing: By signing this Agreement, Consultant hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.

- a. Consultant will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.
- b. Consultant will not meet with employees or supervisors on the Authority's or state property if the purpose of the meeting is to assist, promote or deter union organizing, unless the property is equally available to the general public for meetings.

26. Debarment, Suspension, and Other Responsibilities: Consultant certifies and warrants that neither the Consultant firm nor any owner, partner, director, officer, or principal of Consultant, nor any person in a position with management responsibility or responsibility for the administration of funds:

- a. Is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency.

- b. Has within the three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- c. Is presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commissions of any of the offenses enumerated in paragraph "b" above.
- d. Has within a three-year period preceding this Agreement, had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.
- e. Consultant shall complete **Exhibit B, "Debarment Certification Form."**

27. Conflicts of Interest: Consultant shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the Authority's interest. During the term of this Agreement, Consultant shall not accept any employment or engage in any consulting work that would create a conflict of interest with the Authority or in any way compromise the services to be performed under this Agreement. Consultant shall immediately notify the Authority of any and all potential violations of this paragraph upon becoming aware of the potential violation.

28. Political Reform Act Compliance: Consultant is aware and acknowledges that certain Consultants that perform work for governmental agencies are "consultants" under the Political Reform Act (the "Act") (Government Code § 81000, et seq.) and its implementing regulations (2 California Code of Regulations § 18110, et seq.). Consultant agrees that any of its officers or employees deemed to be "consultants" under the Act by the Authority, as provided for in the Conflict of Interest Code for the Authority, shall promptly file economic disclosure statements for the disclosure categories determined by the Authority, to be relevant to the work to be performed under this Agreement and shall comply with the disclosure and disqualification requirements of the Act, as required by law.

29. Campaign Contribution Disclosure: Consultant has complied with the campaign contribution disclosure provisions of the California Levine Act (Government Code § 84308) and has completed **Exhibit C "Levine Act Disclosure Statement"** attached hereto.

30. Costs and Attorneys' Fees: If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and reasonable attorneys' fees.

31. Governing Law and Choice of Forum: This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Sacramento County.

32. Integration: This Agreement represents the entire understanding of the Authority and Consultant as to those matters contained herein and supersedes all prior negotiations,

representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 12.

33. Severability: If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

34. Headings: The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.

35. Authority: Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.

36. Ownership; Permission:

- a. Consultant agrees that all work products, including but not limited to, notes, designs, drawings, reports, memoranda, and all other tangible personal property produced in the performance of this Agreement, shall be the sole property of the Authority, provided that Consultant may retain file copies of said work products. Consultant shall provide said work products to the Authority upon request.
- b. Consultant represents and warrants that: (i) all materials used or work products produced in the performance of this Agreement, including, without limitation, all computer software materials and all written materials, are either owned by or produced by Consultant or that all required permissions and license agreements have been obtained and paid for by Consultant; and (ii) the Authority is free to use, reuse, publish or otherwise deal with all such materials or work products except as otherwise specifically provided in Exhibit A. Consultant shall defend, indemnify and hold harmless the Authority and its directors, officers, employees, and agents from any claim, loss, damage, cost, liability, or expense to the extent of any violation or falsity of the foregoing representation and warranty.

37. Counterparts: This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS AGREEMENT AS OF THE DATE HEREIN ABOVE APPEARING:

CAPITAL SOUTHEAST CONNECTOR AUTHORITY

TOM ZLOTKOWSKI
Executive Director

APPROVED AS TO FORM:

MILLER & OWEN
Legal Counsel to the Authority

FIRM NAME

NAME
TITLE

Attachments:

- Exhibit A: Scope of Work
- Exhibit B: Debarment Certification Form
- Exhibit C: Levine Act Disclosure Statement