

**WCCTAC Staff Report with Attachments for Agenda Item 9 for  
June 15, 2018 Board Meeting**



**TO:** WCCTAC Board **MEETING DATE:** June 15, 2018  
**FR:** Leah Greenblat, Project Manager  
**RE:** **West Contra Costa County Express Bus Implementation Plan: Contract Authorization**

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**REQUESTED ACTION**

Adopt Resolution 2018-07 authorizing the Executive Director or his designee to execute a contract with Kimley-Horn for planning and engineering services to develop the West Contra Costa Express Bus Implementation Plan in a form approved by WCCTAC General Counsel.

**BACKGROUND AND DISCUSSION**

WCCTAC received \$639,456 in Caltrans Sustainable Transportation Planning Program funds to develop an express bus implementation plan building off of the work completed in the West County High Capacity Transit Study. The Board previously approved a local match which is comprised of a cash match of \$46,827 in Measure J, 28b funds and in-kind staff time.

Following a review of responses to WCCTAC's Request for Proposals and interviews with two consulting teams, the WCCTAC Board authorized staff to negotiate with Kimley-Horn, the highest ranked team at its May 25, 2018 Meeting. Staff is now requesting that the Board adopt Resolution 2018-07 authorizing the Executive Director or designee to execute a consulting services agreement for the proposed scope of work with a not to exceed dollar amount and in a form approved by WCCTAC General Counsel. The resolution, revised draft scope of work and WCCTAC's standard consulting contract will be provided separately.

**Attachments:**

- A. Resolution 2018-07
- B. Revised Scope of Work
- C. Draft Consulting Contract between Kimley-Horn and WCCTAC

**WEST CONTRA COSTA TRANSPORTATION ADVISORY COMMITTEE  
RESOLUTION NO. 18-07**

**AWARDING A CONSULTING SERVICES CONTRACT TO KIMLEY-HORN AND  
AUTHORIZING THE WCCTAC EXECUTIVE DIRECTOR OR DESIGNEE TO  
NEGOTIATE AND EXECUTE A CONTRACT IN A FORM APPROVED BY  
GENERAL COUNSEL, IN THE AMOUNT NOT TO EXCEED SIX HUNDRED  
FORTY TWO THOUSAND FOUR HUNDRED FORTY FIVE DOLLARS AND  
SIXTY SEVEN CENTS (\$642,445.67)**

**WHEREAS**, the West Contra Costa Transportation Advisory Committee (“WCCTAC”) requires professional services of a qualified consultant for planning and engineering services to develop a West Contra Costa County Express Bus Implementation Plan (“Project”), which is funded with \$639,456 of Caltrans Community Transportation Planning Program funds, \$46,827 of Measure J Program 28b funds and additional in-kind staff time; and

**WHEREAS**, WCCTAC will be reimbursed \$15,000 from the available budget for the use of staff time, leaving \$671,283 available for consultant services;

**WHEREAS**, WCCTAC staff solicited qualifications for consulting services to prepare the Project and evaluated and reviewed responses and proposals from several consulting firms or consultants; and

**WHEREAS**, in accordance with the California Government Code and other applicable laws, WCCTAC staff carefully reviewed the qualifications and proposal of Kimley-Horn and determined that Kimley-Horn possesses the necessary quality, fitness, capacity, experience and expertise to provide the services sought by WCCTAC; and

**WHEREAS**, WCCTAC staff negotiated an acceptable and fair price for the consultant’s services; and

**WHEREAS**, Kimley-Horn has provided a proposed budget for the scope of work contained in the agreement presented with this Resolution and additional funds in excess of that proposed budget would be used for contingency should the Project’s development require additional funds; and

**WHEREAS**, in order to expedite the delivery of the Project on schedule and on budget and insure that WCCTAC completes the Project to WCCTAC’s highest standards, the Board of Directors of WCCTAC finds that providing authorization for the expenditure of contingency funds is in the best interests of public health, safety and welfare; and

**WHEREAS**, the award of a consulting services agreement is exempt from the California Environmental Quality Act (“CEQA”) in that it is not a discretionary project pursuant to Title 14, the California Code of Regulations (“CEQA Guidelines”), Section 15301.

**NOW THEREFORE, BE IT RESOLVED THAT:**

1. The Board of Directors of the West Contra Costa Transportation Advisory Committee does hereby award a consulting services contract in an amount not to exceed \$642,445.67, conditioned upon Kimley-Horn timely executing a consulting services agreement, in a form approved by WCCTAC General Counsel, and submitting all required documents, including but not limited to, all required exhibits, executed bonds (if applicable), certificates of insurance, and endorsements, in accordance with the consulting services agreement; and

2. The Board of Directors of the West Contra Costa Transportation Advisory Committee does hereby authorize the Executive Director or his designee to issue change orders to the consulting services agreement with Kimley-Horn in the total contract amount not to exceed Six Hundred Seventy One Thousand Two Hundred and Eighty Three Dollars (\$671,283) for necessary costs associated with the Project; and

3. The Board of Directors of the West Contra Costa Transportation Advisory Committee does hereby direct the Executive Director or his designee to issue a notice of award to Kimley-Horn; and

4. The Executive Director (or his designee) is hereby authorized and directed, on behalf of the Board of Directors of the West Contra Costa Transportation Advisory Committee, to execute a consulting services agreement on behalf of the West Contra Costa Transportation Advisory Committee, in a form approved by the General Counsel, upon timely submission by Kimley-Horn of the signed agreement; and

5. The Executive Director (or his designee) is authorized to make all approvals and take all actions necessary or appropriate to carry out and implement the terms of the consulting services agreement, and make any necessary revisions to the consulting services agreement and scope of work substantially similar to that presented for completion of the Project, and to administer the West Contra Costa Transportation Advisory Committee's obligations, responsibilities and duties to be performed under the agreement.

The foregoing Resolution was adopted by the WCCTAC Board at a regular meeting on June 15, 2018 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

By: \_\_\_\_\_  
Cecilia Valdez, Chair

Attest:

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John Nemeth, Executive Director

Approved as to Form:

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Kristopher Kokotaylo, General Counsel  
2975319.2



## DRAFT SCOPE OF WORK

### **Task 1: Project Initiation**

This task group is largely the responsibility of WCCTAC in coordination with its primary funding partner, Caltrans. Two subtasks will primarily require our Team's support.

#### ***Task 1.4: Technical Advisory Committee***

Our Team will prepare technical information for Technical Advisory Committee (TAC) review and assist WCCTAC with presentations and meeting facilitation. Our PM, Adam Dankberg, will be our primary spokesperson. The TAC will meet approximately every two to three months.

**Challenges:** Concise materials are necessary for TAC review and input. They must be received in advance of meetings, and when presentations are made at TAC meetings, what TAC actions are expected must be clearly indicated.

**Opportunities:** The TAC is the channel to the Executive Leadership Team (ELT). Even if the ELT is not called to meet periodically, the TAC will be informing members of the ELT of program progress. We will help WCCTAC meet the challenge of making the TAC and ELT instrumental and supportive.



**Deliverables:** Study background materials and presentations, responsive follow-ups to TAC information requests, and meeting notes.

#### ***Task 1.5: Executive Leadership Team***

We will support WCCTAC staff when ELT meetings are held. We will develop materials to support resolution of issue(s) for which ELT action is requested.

**Challenges:** We want to address all issues at the study team and TAC levels; however, resolution of certain policy matters may unavoidable. Accurate information must be presented to properly characterize issues and achieve clear direction in response.

**Actions/Opportunities:** The ELT may help the study team resolve issues before they become political. Quick direction from the ELT will help the study stay on schedule.

**Deliverables:** Background materials and support at ELT meetings, and meeting notes.

#### ***Task 1.6: Policy Advisory Committee***

Our team role here is similar to that for the ELT (Task 1.5).

**Challenges:** We want to address most issues without having to go to the PAC for decisions. However, some decisions are inherently political. We want the PAC to be well informed about the study and have the right information for their actions, when necessary.

**Opportunities:** Some matters can only be resolved by political bodies. As with the ELT, when PAC action may be useful to advance the study, we will help WCCTAC prepare the necessary materials and provide technical support at meetings.

**Deliverables:** Background materials and support at PAC meetings, and meeting notes.

### **Task 2. Public Outreach**

Outreach that ensures the public and stakeholders are informed about this project and obtains representative public and stakeholder input will help establish the best possible implementation plan. We are placing emphasis on outreach, at all phases of the project.

**Challenges:** Obtaining useful feedback from the public and stakeholders on “another study” can be difficult. However, as we progress towards implementation, continued or expanded public involvement becomes even more critical.

In last couple of years, MTC helped transit operators throughout the Bay Area completed on-board user surveys. We will review those responses. Also, we will survey commuters to get more targeted information pertinent to developing the express bus plan. We want to better understand:

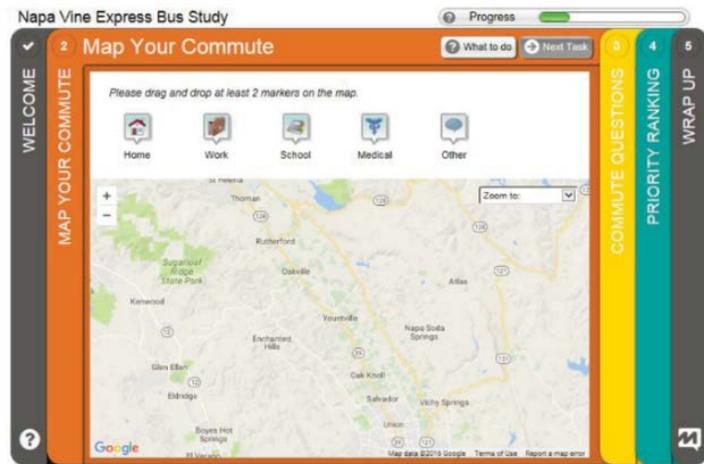
- **Primary mobility needs** for the Express Bus Implementation Plan;
- **User preferences** about service characteristics, including routes, stops, and frequencies;
- **Stakeholder objectives and concerns** about new and/or enhanced express services from West County to the East Bay and San Francisco;
- **Desirable service attributes**, including amenities; and Costs/fares.

A major public outreach challenge is finding potential transit riders to provide input. Aside from a small number of BART stations, there is currently no point-to-point transit service between West County and northern Alameda County in this corridor. The outreach effort involves finding these potential transit riders at their places of employment and/or homes/neighborhoods to solicit their input. A key group we are seeking input from are



those living in disadvantaged communities who may have fewer transportation options, lower-incomes, and more environmental and health challenges.

**Opportunities:** Representative public and stakeholder input will support the technical elements of this study and produce a better plan that the transit operators and other public policy makers can support. Based on WCCTAC's experience with the West County community, we understand that traditional meetings and workshops are not typically the best way of reaching residents, including disadvantaged communities. WCCTAC has achieved the most success using online formats and meeting



residents at existing forums. **This plan's outreach efforts are focused on bringing outreach tools to where people already are whether it is online or in-person.** To reach a broad audience, public outreach information materials will be made available in both English and Spanish and in-person outreach efforts will utilize bilingual (Spanish) personnel.

**THE FOLLOWING REPLACES TASK 2 OF THE KIMLEY-HORN AND ASSOCIATES  
PROPOSAL FOR *PLANNING AND ENGINEERING SERVICES FOR THE WEST  
CONTRA COSTA COUNTY EXPRESS BUS IMPLEMENTATION PLAN***

**[WCCTAC RFP NO. R18-01]**

The proposed public outreach activities will be led by PlaceWorks, Inc., out of their Berkeley, CA office. PlaceWorks will replace Circlepoint on the Kimley-Horn Team. They will also lead the marketing and branding activities that are described in Task 3.8 of our Team's proposal. That work content is unchanged from our original proposal.

Kimley-Horn remains the prime consultant responsible for management of all Team members' work, including that of new member PlaceWorks for Tasks 2 and 3.8. We will directly supervise their staff and be directly involved in all outreach activities. Our staff will have a major role in the conduct of certain outreach activities that include direct interviews. Where this is to occur is noted in the task scope that follows.

We propose to retain use of online tools to reach people and obtain information. However, we will use PlaceWorks' proprietary platform rather than MetroQuest as the main tool for information gathering and distribution. PlaceWorks will be able to quickly tailor its platform to align with local requirements and potentially changing needs.

## **2. PUBLIC OUTREACH**

Relative to the public outreach program of the High Capacity Transit Study, for the Express Bus Plan, outreach will be more focused on identifying potential bus riders and their travel needs. Successful outreach will answer such questions as:

- Who is most interested in using this service?
- What are the key destinations? Where should the stops be?
- What are the service characteristics that will make it successful?
- What amenities drive ridership?
- How can we better serve disadvantaged populations and make it easier for them to use express service?

To obtain valid responses to these questions will be a challenge. Every community is different and so requires a unique constellation of outreach tools. Traditional outreach methods will likely not be productive. We will instead employ tools that allow us to reach people where they "already are, whether it is online or in-person" at neighborhood meetings, community and social events, at transportation hubs, and on-board buses.

Outreach will be heavily digital, using social media to disseminate information and perform online surveys. Outreach is organized into three rounds and intended to help WCCTAC and the Kimley-Horn team:

- 1) Understand transportation needs and create awareness about the project (Round 1)
- 2) Obtain input on the draft express bus plan (Round 2)
- 3) Notify the public about the draft and final plan, excite interest in the proposed services, and build strong support for plan implementation (Round 3).

Our efforts will be aimed at balancing interests, educating participants about project tradeoffs, and creating an open and inclusive process.

The immediate result of the public outreach efforts will be better designed express service than if we attempted to establish it without public and stakeholder input. The longer-term result will be increased ridership. The ultimate goal of this project is to increase transit use by encouraging a mode shift from auto and providing better access to jobs and activity centers in San Francisco and the East Bay. This will help to mitigate congestion on I-80 and improve express bus operating performance (e.g., fare recovery).

### **Task 2.1 Review Proposed Public Outreach Efforts and Adjust Plans as Needed.**

Kimley-Horn and PlaceWorks will meet with WCCTAC staff to review the proposed outreach plan described in the tasks below. The plan will be developed with flexibility in mind so that adjustments to outreach can easily be made to meet the project's requirements.

Understanding the unique needs of the many communities within the study area is key, so we have devised an outreach approach that utilizes a broad range of tools, from in-person surveys and online engagement to stakeholder interviews, to solicit meaningful input from all segments of the population. Our approach includes, but is not limited to:

#### ***Direct Outreach***

- Surveys of Transit Users
- Surveys of Stakeholders, including Residents and Businesses near Proposed Stops along the Express Bus Routes
- On-board Signage and Information Cards (e.g., announcing meetings, how to get in touch with project staff)
- Providing/Distributing Information through Neighborhood Associations, Community Groups, and at Social Events and Other Activities in West County.

### ***Online/Digital Media***

- PlaceWorks Online Platform and Associated Digital Tools for Engaging Community Members in Online Comment and Discussion Forums and Conducting Surveys (such as story-map based prioritization exercises that elicit individuals' preferences)
- Project Web Page
- Social Media
- E-Blasts.

A major goal of the public outreach plan will be to confirm that all segments of the community have the opportunity to participate in the outreach process. It will be important to target outreach opportunities at traditionally underrepresented groups, including disadvantaged/low-income communities for whom language and cultural differences may preclude or discourage involvement. To this end, written media (including electronic documents) will be prepared in both English and Spanish as will major verbal announcements. At formal project meetings, a Spanish interpreter will be provided as agreed to with WCCTAC. If other language translations are desired at project events, this can also be arranged.

The outreach plan will be refined to include staff comments and reviewed by the WCCTAC Board. The draft plan will be finalized by incorporating WCCTAC staff and board comments. During the course of the project the PlaceWorks outreach lead and Kimley-Horn Project Manager will periodically meet with the WCCTAC Project Manager and discuss how the outreach is progressing. When appropriate, we'll draw on lessons from recent activities to adjust upcoming activities to increase their effectiveness. For instance, this could be emphasizing small group meetings more and/or working with neighborhood groups more closely if we find we are not getting adequate feedback from certain communities.

### **Task 2.2 Development of Outreach Tools for Round 1**

#### **Task 2.3 Collect Community Input Round 1**

Who will ride proposed new express bus services and where do they want to go? What features should the services include to make them convenient, attractive and therefore desirable alternatives to travel by auto? These are two of the most important questions we must answer as part of the WCCTAC express bus project. While other tasks will revisit travel markets and use O-D and related data to refine routes and service characteristics, information obtained through the outreach process is equally important

for developing a successful plan. Round 1 of the outreach program is designed to help us answer the key questions and increase public and stakeholder interest in the project.

Tools we will use will include:

- **Project Webpage.** PlaceWorks will develop a webpage that will be in both English and Spanish, to serve as the repository for background information, project updates, and information about how to become involved. The webpage will also link to the online engagement platform. PlaceWorks will manage the website for the duration of the project.
- **Online Engagement Platform.** PlaceWorks will create an online civic engagement platform for the project. Online engagement tools will include:
  - ✓ **Online Survey.** Online surveys are a way to solicit feedback on proposed services, including possible stop locations, operating schedules, branding and marketing concepts, and fares. PlaceWorks will conduct an online survey for Round 1 (as described below).
  - ✓ **Online Route Building and Review.** PlaceWorks' proprietary on-line engagement platform allows stakeholders to build and comment on route alternatives and identify desired amenities (ex. bike and vehicle parking, shelters, etc.). PlaceWorks has conducted similar online exercises on other transportation projects. (See attached file.).
- **Information Bilingual Postcard.** This instrument will be used to notify groups and individuals of project milestones and events (e.g. pop-up events).

These tools will be available in both English and Spanish and will connect residents with information, decision-makers, and other residents in a professionally facilitated community **discussion that** builds public awareness of and trust in the project process, without constraints on the time, place, or method of public input. Paper equivalents will be made of the online engagement tools and will also be available in both English and Spanish.

**Social Media.** PlaceWorks will utilize WCCTAC Facebook, Twitter, Instagram, and nextdoor.com to promote project updates and events. Visibility will be “boosted” through paid advertising on these sites.

**Press Releases.** PlaceWorks will draft up to three press releases for Round 1 work to be released to *The East Bay Times*, *The Richmond Standard*, *El Observador*, and other local newspapers.

**On-Board, Transit Stop, and/or Park and Ride Lot Surveys.** As opposed to most other outreach tasks, which PlaceWorks will lead with oversight and some technical support from Kimley-Horn, this subtask will be led by Kimley-Horn with support from PlaceWorks. The surveys will be performed using either notepads (e.g., I-Pad) or smartphones or a combination of the two, administered by bi-lingual Kimley-Horn staff. The survey of existing and potential transit users will be largely the same format. Questions will be developed and reviewed with WCCTAC before used in the field. As background, we will review results of comprehensive on-board surveys performed by AC Transit (with MTC) in 2012 and WestCAT (with MTC) in 2013 and any more recent targeted surveys.

We do not perceive the need to ask many repeat questions from prior surveys; we want to make the survey instrument short (for a better response rate) and directed towards this project. For existing transit riders, we propose to survey riders on the WestCAT Lynx and J lines and on the AC Transit Transbay L and local 72 lines (including the Rapid). Lynx and L line services will provide us access to individuals traveling to and from San Francisco whereas J and 72-line services will include riders destined to the central business districts of Berkeley, Emeryville and Oakland.

Questions may include:

- What was your trip origin and what is your destination?
- What is your trip purpose?
- How often do you make this trip?
- What service improvements would you like to see (span of service, frequencies, more stops...)? For Transbay services we will ask about other San Francisco destinations that passengers may desire direct connections to. For J and 72 passengers, we will ask about connections to the East Bay activity centers of downtown Berkeley, Emeryville and Oakland and potential use of a direct express service to those locations.
- What passenger amenities would make bus service more attractive or user-friendly?
- What do you see as the major obstacle to increased transit use (e.g., fares, service reliability/travel times, crowded buses, etc.)?
- Other

For efficiency, we will attempt to isolate riders on the J and 72 lines who are going to and from East Bay locations to be served by the new routes proposed in the Express Bus Plan.

The surveys will be a combination of onboard the bus and intercept surveys at park and ride lots and transit centers, including BART stations. The information obtained will help us to complete the express bus usage picture, including trip purposes, origins/destinations, perceptions about bus use, fare tolerance, and desired amenities. The intercept survey will be drafted in both English and Spanish. We propose to perform the surveys of existing users as follows:

- One representative weekday during the a.m. and p.m. commuter periods (approximately 3 hours each).
- One Saturday between 10:00 am and 2:00 p.m.

To reach potential express bus riders who do not currently use transit or use it infrequently, we will not be able to perform direct, in-person surveys. Instead we will use the PlaceWorks online engagement platform to solicit feedback to many of the same survey questions except modified for the fact respondents are not existing or regular users. A greater emphasis will be on questions that can reveal consumer preferences about transit, particularly what would be necessary to get non-users to switch modes and try a new express service to San Francisco or the East Bay. (Existing transit users will also be given the option of completing an online survey much the same as the field survey.)

Online surveys can be posted for extended periods but we must carefully track response activity and recognize the possible response bias that can result due to types of individuals who are inclined to respond online. (The experience from online surveys for other projects is that it is hard to obtain a valid cross section of the population; lower-income/disadvantaged populations are likely to have lower response rates.)

To obtain broad feedback about the express bus plan, it is important to complement formal, controlled surveys, whether direct or online, with informal surveys. By the latter, we mean take the opportunity at public meetings and events where the project is discussed to solicit comments from the public and stakeholder about what should be included in new express bus services, what people see as necessary to attract them to the service, and in general ways to generate express bus ridership. (See the following subsection.)

Our team will tabulate all formal survey findings and summarize findings from informal surveys taken at project meetings and outreach events. We will write up results in a technical memorandum for discussion with WCCTAC staff.

**Stakeholder and Community Group Meetings.** Kimley-Horn with PlaceWorks support will facilitate a series of small roundtable interviews with groups of key stakeholders to gather feedback on the proposed express bus service. During the public outreach team meeting described in Task 2.1, WCCTAC, Kimley-Horn, and PlaceWorks will refine the list of stakeholders, including large employers, employees, neighborhood councils, and community groups. This scope of work envisions one round of meetings with four groups of stakeholders:

- Local Employer and Employee Input
- Neighborhood Councils and Religious Organizations
- Community Focus Groups
- Local Agency Focus Groups.

As a subset of the stakeholder outreach, we will when appropriate contact residents and businesses located where bus stops for new express bus services are proposed. It is anticipated that most if not all stops will be co-located with existing bus stops for either WestCAT or AC Transit. However, this is not assured. If there are new stops proposed, we will contact the affected parties and meet with them directly. A specific survey instrument is not proposed. Results of the interviews will be documented as part of the outreach record and taken into account when refining the express bus routing and stop plans.

**Round 1 Outreach Summary Report.** PlaceWorks and Kimley-Horn will prepare a report that summarizes the outreach results collected in Task 2.3. These results will inform the other technical tasks the Kimley-Horn Team performs to establish a viable express bus plan.

#### **Task 2.4: Development of Outreach Tools for Round 2**

#### **Task 2.5: Collect Community Input, Round 2**

**Online Engagement Platform.** PlaceWorks will focus the online engagement platform tools to refine and prioritize the proposed services as follows:

- **Online Survey.** PlaceWorks will conduct an online survey for Round 2 (as described below).

- **Online Route Review and Comment.** PlaceWorks will display the proposed bus routes and create a tool that allows users to geotag comments on specific areas of the route to identify issues, concerns, or desired amenities. A major goal of this tool will be to show how feedback from Round 1 was incorporated into Round 2 outputs.

These tools will be available in both English and Spanish. Paper equivalents will be made of the online engagement tools and will also be available in both English and Spanish.

**Transit Stop and/or Park and Ride Lot Surveys.** This subtask involves face-to-face surveys and will be led by Kimley-Horn with PlaceWorks support. We will administer an intercept survey to get feedback on the proposed express bus routes. PlaceWorks will target three strategic locations, in consultation with WCCTAC and study corridor cities, at which to administer the survey. The intercept survey will be prepared in both English and Spanish and so that it can also be administered online, via the online civic engagement platform.

Two, bi-lingual Kimley-Horn staff will administer the intercept survey for Round 2 of outreach as follows:

- One representative weekday during the a.m. and p.m. commuter periods (approximately 3 hours each).
- One Saturday between 10:00 am and 2:00 p.m.

**Social Media.** PlaceWorks will utilize WCCTAC Facebook, Twitter, Instagram, and nextdoor.com to promote project updates and events. Visibility will be “boosted” through paid advertising on these sites.

**Press Releases.** PlaceWorks will draft up to three press releases for Round 2 work to be released to *The East Bay Times*, *The Richmond Standard*, *El Observador*, and other local newspapers.

**Stakeholder and Community Group Meetings.** Kimley-Horn and PlaceWorks will conduct a series of small roundtable interviews with groups of key stakeholders to gather feedback on the proposed express bus routes. This scope of work envisions four separate meetings with the following groups of stakeholders:

- Local Employer and Employee Input
- Neighborhood Councils and Religious Organizations
- Community Focus Groups

- Local Agency Focus Groups.

**Round 2 Outreach Summary Report.** PlaceWorks will prepare a report that summarizes the outreach results collected in Task 2.5. The report will include a record of all input obtained through the outreach process. This report will be presented first as an administrative draft, screen check draft, and final draft

**Task 2.6: Community Check Back, Round 3**

PlaceWorks will update the project webpage with the draft and final plans. The purpose is to announce to outreach participants and stakeholders the availability online of the final plan.

Task	Deliverables
2.1	<ul style="list-style-type: none"> <li>• <i>Meeting notes and updated outreach plan. Updated study schedule that fully integrates public outreach into the study process with sufficient time to prepare, review, print, distribute outreach materials and meaningfully incorporate input into the plan.</i></li> </ul>
2.2	<ul style="list-style-type: none"> <li>• <i>Webpage, online and paper equivalent of survey and interactive maps, bi-lingual postcard, West County mailing list, social media messages, press release, evaluation of media markets with list of targeted markets, and summary of outreach input collected.</i></li> </ul>
2.3	<ul style="list-style-type: none"> <li>• <i>Copy of outreach materials distributed, list of groups and employers contacted, summary notes from focus group(s) discussions and contact information for interested parties.</i></li> </ul>
2.4	<ul style="list-style-type: none"> <li>• <i>Updated webpage, second survey and interactive maps with paper equivalents, online outreach material, press release, and if applicable outreach materials for various media markets and PowerPoint presentation.</i></li> </ul>
2.5	<ul style="list-style-type: none"> <li>• <i>Summary of public comments received from all rounds of public outreach efforts with information on how comments were addressed in the development of the final draft Express Bus Implementation Plan. Updated contact information list, and if applicable PowerPoint presentation.</i></li> </ul>
2.6	<ul style="list-style-type: none"> <li>• <i>Online notification to stakeholders of the final draft plan.</i></li> </ul>



## Task 3: Express Bus Implementation Plan

### Task 3.1: Review Existing Travel Market Data and Recent Studies

The Team will review background studies, plans, projects, and relevant goals and policies to establish the study's context in relation to past and concurrent studies, leveraging Team members' participation in those efforts, including the HCT Study and I-80 SMART Project. Planned and programmed transportation projects, relevant policies, land use and economic development plans, and key transportation trends and performance measures will be summarized. We will also collect relevant data to gain a robust understanding of existing transit utilization in the area, major origins and destinations, existing and planned land uses, population characteristics, and travel projections. Our Team will synthesize findings from this data to establish a baseline understanding of the conditions that will inform the selection of route and stop locations, infrastructure improvements, and operating plans.

**Deliverables:** Draft and Final Background Studies and Travel Data Technical Memorandum.

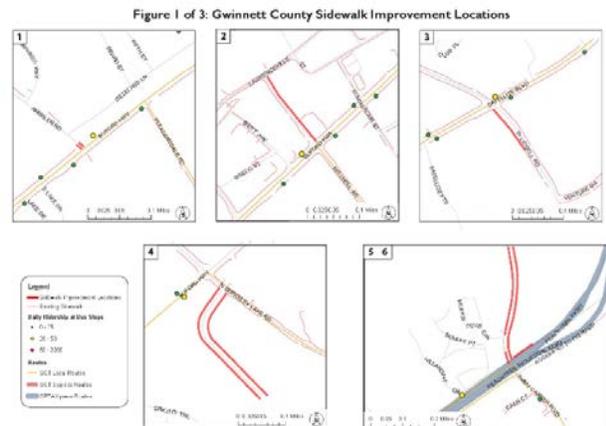
### Task 3.2: Draft and Final Markets, Routes and Stop Locations

Our Team will build on findings of previous studies – primarily the HCT Study – and the analysis of census and travel data in Task 3.1. This analysis will be combined with the community input received in the first phase of community outreach to inform the development of draft route and stop locations. We will prepare maps depicting the street-level alignments of the proposed routes and the stop locations. Following the second round of outreach, our Team will revise the proposed route and stop locations based on community feedback, and prepare a set of revised maps.

**Deliverables:** Draft and Final Graphical Maps, depicting street-level route alignments and stop locations

### Task 3.3: Pedestrian and Bicycle Connectivity and Gaps

Our Team will utilize the data collected as part of Task 3.1 to prepare base maps showing the existing and planned bicycle and pedestrian facilities in the study area. Much of this information has already been collected by the team as part of the San Pablo Avenue Corridor Project. Following the development of stop locations as part of Task 3.2, we will perform a bicycle and pedestrian facility gap analysis within ¼-mile of proposed stops. After identifying gaps in bicycle and pedestrian facilities, our Team will prioritize improvements based on their proximity to major trips generators, ridership potential, and community input. The prioritized ranking of these facility gaps will inform the identification of the capital investments and their prioritization.

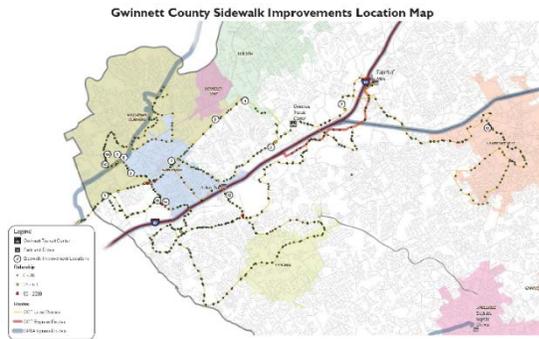


Transit access sidewalk gap analysis maps prepared for the Gwinnett County CTP



**Deliverables:** Maps depicting bicycle and pedestrian gaps within ¼ mile of identified stop locations, and maps and tables showing prioritized ranking of facility gaps.

### Task 3.4: Identify Transit Preferential/Priority Treatments



Kimley-Horn is a leader locally and across the nation in planning and designing transit priority treatments—both physical (queue jumps, bus lanes and ramps, traffic/pedestrian/bike signals) and technology (traffic control and bus priority software/systems) improvements. Once we have confirmed the preferred express bus routing, we will inventory conditions in the field along the routes. Through our work on the I-80 SMART Project and numerous other ITS projects in the East Bay, we already have a strong understanding of the technology capabilities of ITS

infrastructure along the I-80 corridor. We will summarize potential improvements in a matrix and assign a level of feasibility and cost. The benefits compared to the costs will be quantified (e.g., cost per minute of bus running time savings). These transit priority treatments will be discussed with WCCTAC, the transit operators, the TAC, Caltrans, and the cities in which they are proposed. We may find that the feasibility of treatments affects the bus routing and stops; refinements to the route and stops may be proposed to take better advantage of bus priority opportunities.

Following evaluation and consideration of public and stakeholder comments, we will rank the treatments by effectiveness and priority. Those requiring environmental review, permits and other regulatory actions will be documented, and this will be considered when assessing feasibility and time to implement. Costs will be rolled into the capital investment/costs element of the implementation plan.

**Deliverable:** Transit Preferential/Priority Treatments Technical Memorandum.

### Task 3.5: Identify Capital Investments Needed to Support Service, Cost Estimates and Funding Sources

Our team will conduct an assessment of potential technologies and capital improvements, and will develop a summary matrix which describes potential solutions, identifies typical applications, and assesses their relevancy to the travel markets being served. The matrix will address the following elements:

- Vehicle type – Examples may include over-the-road coaches, articulated buses, local buses, and community buses.
- Runningways – Examples may include direct access ramps, time-of-day dedicated or reversible lanes, bus/bike corridors, and bus on shoulder.
- Stations – Examples may include in-line freeway stops, freeway ramp pullouts, shelters and amenities, and parking facilities.
- Fare collection strategies – Examples may include technological solutions such as off-board fare collection and proof-of payment systems, and policy decisions such as the pricing/availability of passes, discounts, and transfers.
- ITS applications – Examples may include transit priority, transit pre-emption, queue jumps/bypass lanes, and signal coordination.



Enhanced station facility designed by Kimley-Horn in San Diego

Our Team will engage with the TAC during the development and revision of this matrix. The matrix will be utilized to identify recommended capital improvements.

After the identification of recommended transit treatments, our Team will develop conceptual layouts of capital infrastructure improvements on aerial photography and prepare construction cost estimates for each proposed capital improvement. Kimley-Horn and Transportation Analytics will

assemble information on funding sources. The Team will identify potential funding sources that would be a good fit for the service market, service

type and recommended improvements. For example, the routes might be targeted to relieve congestion choke-points, which could qualify the service for funding from CARB or BAAQMD. We will provide a roadmap for pursuing each of the funding sources to lay out a path to implementation.

**Deliverables:** Draft and Final Capital Improvements Matrix, Draft and Final Improvement Recommendations, and Funding Plan Memorandum.

### Task 3.6 Draft and Final Operating Hours, Schedules and Fares

For each route proposed for implementation, we will establish the span of service, schedules (weekday and, if applicable, weekend) showing departure and arrival times at stops, and identify up to three fare structures. Leading this will be Connetics Transportation Group (CTG), which brings a wealth of knowledge and experience in service implementation and understands the impacts of running times, trip development and blocking on a service's cost. Applicable to this project is CTG's recently completed work for SRTA's Xpress service in Atlanta, GA. With the help of INRIX data, CTG was able to develop running times, scheduled trips, and prepared blocking strategies.

This task is anticipated to involve multiple iterations. The operating plans will be reviewed with project partners, the public and stakeholders. Elements may be refined based on their input; also, operating plans could be affected by the final operational and management structure adopted for the new express service (if nothing else, revenue vehicle recovery times, layover and garage locations, and thus deadhead time and miles associated with a route will depend on the operator).

**Challenges/Opportunities:** Run times and other service characteristics must be reasonable to identify resource impacts, provide for the availability of the required resources, and not lead to under or over estimation of costs

**Deliverables:** Draft/final operating schedules for express service; hours of service, revenue and total vehicle hours/ miles of service; and up to three fare structures.

### Task 3.7: Operating and Maintenance Costs and Potential Funding Sources

In the HCT Study, we based O&M costs on a blended rate of costs for the two bus operators in the study area — WestCAT and ACT. No decision was made on the preferred operator for enhanced West County express service. In this study, a proposed operator or operators will be identified. Thus, O&M costs for express service will reflect the cost structure of the proposed operator(s).

O&M cost models will be based upon current factors of the operator, such as cost per hour or mile, to evaluate service changes. We will coordinate closely with service planners at each agency and include all possible costs for a service. We will be certain each operator agrees with the assumptions/factors used to



estimate costs. The final O&M methodology will be reviewed and approved by staff of the operator before calculating O&M costs for the proposed service.

The cost models will be single or multi-variable models, where each expense incurred by a transit system is “driven” by a key variable such as annual vehicle revenue or total hours, annual vehicle revenue or total miles, and the number of peak or total vehicles. Expenses will be classified under vehicle operations, vehicle maintenance, non-vehicle maintenance, and general administration. We anticipate two iterations of cost modeling: draft estimates and final estimates to reflect the adopted plan.

Kimley-Horn will also estimate fare revenue from new express services, using demand projections from the HCT Study and refinements during this study. If service assumptions differ significantly from those made during the HCT Study, we will adjust demand accordingly using service elasticity or other accepted methods. The operating subsidy for service, segregated by route, will be estimated by subtracting estimated annual fare revenue from estimated annual operating costs.

**Funding Plan.** Team member Transportation Analytics (TA) will develop funding and implementation options for consideration by WCCTAC and project participants. The first step will be to identify candidate funding sources that could be an appropriate fit based on eligibility guidelines, local match requirements, and funding capacity of each source. A screening will be conducted to highlight any issues that could negatively impact future funding availability, such as year-to-year volatility in funding levels or a highly competitive grant selection process. Depending on the nature of the service delivery approach selected, including the proposed service operator(s), cost sharing payments between partners may also be explored to support ongoing operating costs.

Once each source is sufficiently well-defined to isolate the best-fit sources, TA will synthesize them into a comprehensive funding plan that incorporates the required capital investments, estimated operating costs, fare revenues, and any cost-sharing payments for the new services. This preliminary funding plan model will show the anticipated sources, uses, and timing of all funds needed through at least 10 years after opening, and will be flexible enough to allow for revisions to the operating plan and service delivery approach that may be requested as stakeholders provide input on the final proposal. The final funding plan, established in Task 3.13, will also identify key milestones in the project funding process, such as grant cycle timing for target funding sources, to feed directly into the implementation steps.

**Deliverables:** O&M costs for each service and by operator, estimated fare review, and comprehensive funding plan describing funding resources and options for covering the required operating subsidy and proposed capital improvement costs.

### **Task 3.8: Marketing and Branding**

These activities will in large part reflect how we propose to implement the service, including the operator. Expanded SF service if operated by WestCAT could be integrated into the overall promotion of that service. A new East Bay express service would require more intense marketing to inform potential users of its availability. If ACT is to be the operator, the new service would need to be interwoven and consistent with the marketing programs of the agency. This task cannot be performed independently but must closely involve the transit operators. We will meet with marketing and service planning/scheduling staff to establish the basic parameters for promoting the service.

**Deliverables:** Marketing and branding strategies laid out in technical memorandum, to include descriptions of recommended marketing strategies and branding concepts.



### **Task 3.9: Conceptual Review Meeting with Caltrans**

Focusing on plan elements that affect the use and the configuration of State facilities, we will prepare materials for a presentation to Caltrans. Improvements in Caltrans ROW will be shown on aerials and annotated to explain the uses. These may include freeway ramp improvements, TSP/signal and signing improvements, bus stop or station improvements, measures to enhance the operation of the I-80 HOV lane, etc. The 10-year implementation plan will indicate phasing of improvements. Short-term improvements will be limited to those easy to approve and implement; mid-term more substantial improvements will not involve major environmental review, design and extended construction (e.g., median bus on-off ramps on the north side of Richmond Parkway @ I-80) unless an accelerated project delivery approach can be developed.

**Challenges/Opportunities:** Major changes to State facilities can trigger involved Caltrans reviews if not consistent with Caltrans design standards and the stated purpose of the affected State facilities. Obtaining Caltrans concurrence with proposed improvements removes a potential project delay or revision when the plan is near final. Our Team understands the Caltrans review and approval process.

**Deliverables:** Meeting materials and meeting notes, including actions items, and responses to Caltrans comments in a Comment/Response table.

### **Task 3.10: Draft Plan with Implementation Steps**

We will incorporate Caltrans review comments and prepare a more detailed plan, with details on final routing, including bus turn backs and options for layovers, which are can be an issue in developed urban areas; number and locations of stops/stations; frequencies; phased improvements, both operational and capital; and rolling stock requirements. We will prepare draft weekday and, if appropriate, weekend schedules, indicating departure/arrival times for the stops along the route. Weekend service is not anticipated for initial East Bay express service; but weekend Lynx type service to San Francisco (now weekdays only) could be warranted if funding is available.

Access improvements will be identified covering: feeder bus or shuttle connections at express bus stops; bicycle and pedestrian access gaps and proposed improvements; wayfinding improvements; preliminary fares by service type (e.g., expanded Transbay/San Francisco, new East Bay, augmented BART feeder).

The timeline for service implementation and expansion, and for phased capital improvements over the 10-year timeframe of the Express Bus Implementation Plan, will be defined. The timeline will show the year additional revenue and spare vehicles are needed and the estimated implementation year for capital improvements.

O&M costs from Task 3.7 will be refined, recalculated to reflect the costs for the preliminary operating schedules. Fare levels will be identified along with estimated fare revenues, which is an important element of the funding plan. The starting point would be current fares for Lynx (\$5 adult cash one way), BART feeder and local (\$1.75 adult cash), ACT Transbay (\$4.50 adult cash), and ACT local/express (\$2.25 adult cash). Two optional fare scenarios will be developed (one with higher fares for the new premium East Bay express service and another for both East Bay express and Transbay San Francisco) to determine the benefits if additional fare revenue can be generated compared to the current fare policies.

A clear chronology of milestones for plan implementation will be prepared for the 10-year horizon in PowerPoint or similar format, with graphics and tables that provide a full picture of major elements, including the terms for operational and management agreements needed to implement the proposed services. Capital improvements will be shown on aerial bus maps as well as documented in tables. We envision the graphics and tables providing the primary information in the final document.



### **Task 3.11: Operational and Management Agreements**

The objective of this task is to establish the institutional framework for operating and funding the proposed express services from West County. Agreements could be straightforward. For instance, if agreed that WestCAT is to be the operator of expanded S.F. service, the main issues may be funding—thus the formalization of funding agreements between the operator and entities providing financial support is needed. If ACT is to be the operator of new East Bay express service, funding agreements and an operating agreement between ACT and WestCAT defining the conditions under which ACT would operate within the WestCAT service area (e.g., out of the SR 4 transit center) may be required. An agreement would also need to establish maintenance responsibilities and provide for construction of capital improvements.

**Kimley-Horn helped Santa Clara VTA draft and finalize several agreements**—some very complex and controversial—**with cities and operators as part of the \$2.5 billion BART extension** into eastern Santa Clara County, and we continue to lead in resolving issues arising during project implementation.

We propose to first develop a term sheet that describes clearly, concisely but not in final detail the terms and conditions for new and expanded express service. Based on the commitments made in the term sheet, Draft MOU(s) or MOA(s) would be prepared. WCCTAC would decide with the involved parties when to execute the agreement(s).

**Challenges:** The operators may have diverging opinions as to who should operate and maintain new services. Funding certainty is necessary before an operator would commit to operating new or expanded service, or design and construct capital improvements.

**Opportunities:** A Draft MOU clears the way for finalizing the details of the service and capital improvement plan. An acceptable MOA removes perhaps the biggest obstacle—lack of institutional consensus—to service implementation.

**Deliverables:** Draft and final term sheets, and Draft MOU.

### **Task 3.12: Presentation of Draft Plan to Review Bodies**

The preliminary or administrative draft implementation plan will be presented to the TAC for review and comment. The plan, updated for Caltrans and other comments, will be reviewed with WestCAT, ACT, the WCCTAC Board and other bodies.

**Challenges:** The administrative draft plan must be without unresolved issues, which could likely delay action by the reviewing parties. The material that goes to transit agencies and other parties should already be fully vetted with involved staff.

**Opportunities:** TAC review will help us understand the concerns that operators and other parties may have about the preliminary draft plan. Early reviews by operators and other third parties will make the plan stronger and lay the foundation for its success.

**Deliverables:** Preliminary Draft Express Bus Implementation Plan

### **Task 3.13: Prepare Draft Final West Contra Costa Express Bus Implementation Plan**

The preliminary plan will be revised following operator and other party reviews and then presented to the public and stakeholders (see Public Outreach, Round 3, in Task 2.6.)

**Deliverables:** Revised Plan and responses to comments of Caltrans, transit operators and other parties in Comment/Response matrix.



### **Task 3.14: Presentation of Draft Final Plan**

The Draft Final Plan will be revised following comments received as part of Task 3.13. The Plan will be presented to WestCAT, ACT, the WCCTAC Board and other bodies.

## **Task 4: Fiscal Management**

### **Tasks 4.1 Invoicing & 4.2 Quarterly Reports**

Following a format agreed to by WCCTAC and Caltrans, Kimley-Horn will provide a preliminary invoice and progress report each month for WCCTAC review approval. Every 3 months a detailed progress report per Caltrans format will be prepared for WCCTAC to submit to Caltrans.

**Deliverables:** Monthly invoices, monthly progress, and quarterly status reports

### **1b. Project Timetable**

Establishing a reasonable schedule at the project's beginning will lead to the highest potential for success. Schedule control begins with the preparation of a detailed schedule that includes milestone completion dates for specific tasks and the overall project. We will develop a work plan that allocates item and person-hour commitments by individual for each task. This workplan is reviewed and updated twice per month. This internal control allows us to make any adjustments to maintain schedule and stay within budget. Our project schedule, on the following page, shows the timeline for major tasks and milestones.

### **1c. Technical and Procedural Innovations**

Kimley-Horn has a long history of providing successful, innovative, and cost-efficient solutions. We look for better and more creative ways to help clients solve complex and time-consuming challenges. We know how to think outside of the box and recognize what trends offer sound design advantages.

### **1d. Risks and Approach to Controlling Risks**

An important aspect of this study is understanding risks to successful project completion. A systematic approach will be taken to ensure risks do not significantly disrupt study progress. We will:

- Anticipate and document when possible adverse risk events could occur;
- Discuss those external to our Team's organization with WCCTAC staff;
- Develop risk mitigation and management strategies.

The risk list will identify affected parties, mitigation action items, the responsible party to address each risk, and the status of the risk and mitigation measures. Study risks will be discussed in management meetings between our Project Manager, **Adam Dankberg**, and the WCCTAC Project Manager, **Leah Greenblat**. We must think creatively to mitigate a potential risk, thereby avoiding extra costs and time to complete the study.

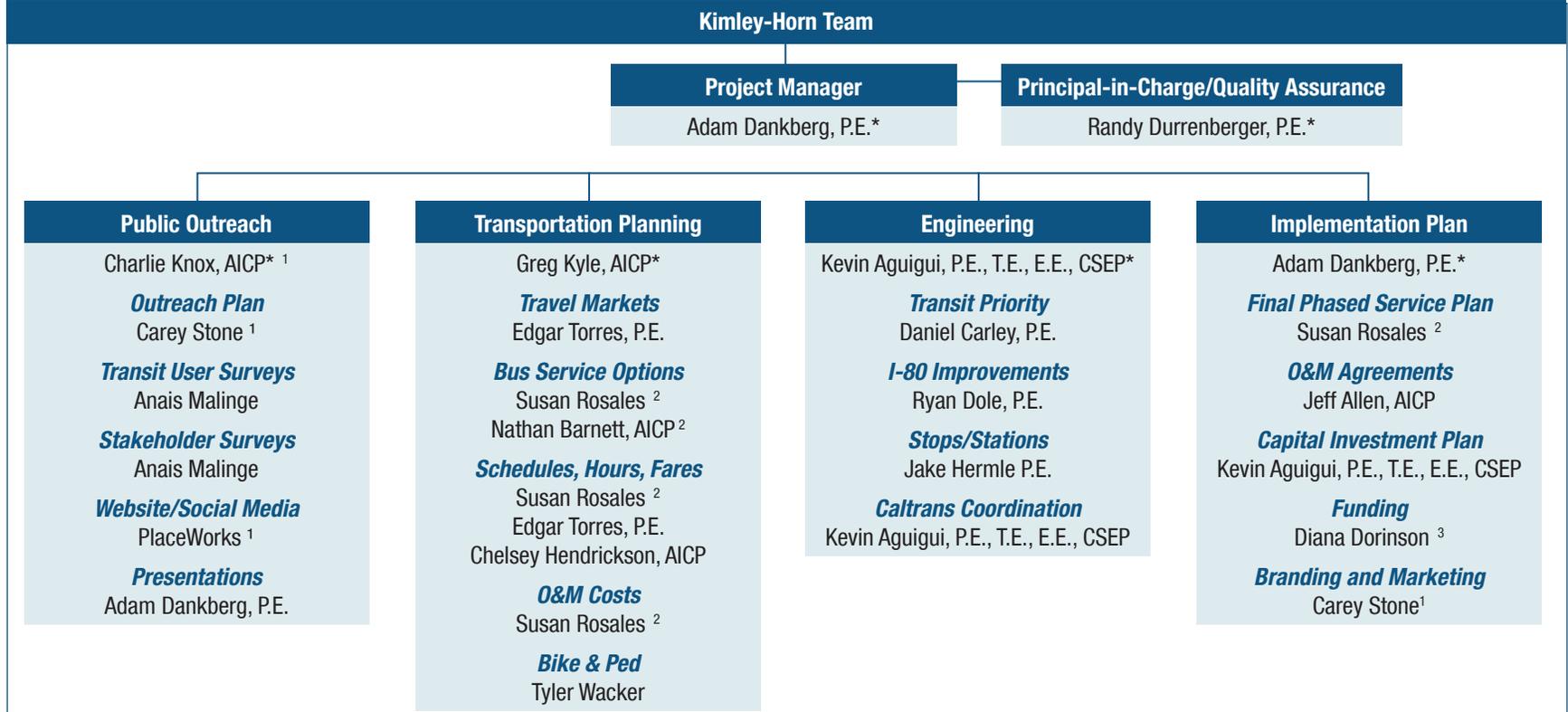


## Project Schedule

TASK	TIME LINE																					
	2018							2019												2020		
	June	July	Aug	Sept	Oct	Nov.	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	
<b>1. PROJECT INITIATION</b>																						
1.2 Plan Management Coordination																						
1.4 Technical Advisory Committee			★			★		★		★			★		★		★					
1.5 Executive Leadership Team											●							●				
1.6 Policy Advisory Committee											■									■		
<b>2. PUBLIC OUTREACH</b>																						
2.1 Final Outreach Plan		■																				
2.2 & 2.3 Tools & Community Input, Rd 1				■	■	■	■															
2.4 & 2.5 Tools & Community Input, Rd 2														■	■	■	■	■				
2.6 Community Check Back, Rd 3																		■	■			
																					Website by WCCTAC	
<b>3. EXPRESS BUS IMPLEMENTATION PLAN</b>																						
3.1 Travel Markets & Other Studies		■	■																			
3.2 Transit Markets, Routes & Stops				■	■	■	■															
3.3 Pedestrian & Bicycle Connectivity					■	■	■															
3.4 Transit Preferential Treatments						■	■	■	■													
3.5 Capital Investments & Costs								■	■	■	■											
3.6 Draft & Final Operating Plan									■	■	■	■										
3.7 O&M Costs; Funding										■	■	■	■									
3.8 Marketing & Branding											■	■	■	■								
3.9 Caltrans Review Meeting														●								
3.10 Draft Implementation Plan														■	■							
3.11 Operational & Mgmt Agreements														■	■	■	■					
3.12 Draft Plan Reviews															■	■	■	■				
3.13 & 3.14 Draft Final & Final Plan																		★	★			
<b>4. FISCAL MANAGEMENT</b>																						
Invoicing		○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	
Quarterly Progress Reports				▲			▲			▲			▲			▲			▲		▲	

### LEGEND

- ★ Technical Advisory Committee Meetings
- Executive Leadership Team Meetings
- Policy Advisory Committee Meetings
- Caltrans Review Meeting
- ★ Final Plan Presentations
- Monthly Invoices
- ▲ Quarterly Progress Reports



**LEGEND**

\*Key Staff

**Subconsultants**

1. PlaceWorks    2. Connetics Transportation Group    3. Transportation Analytics



**CONSULTING SERVICES AGREEMENT BETWEEN**  
**THE WEST CONTRA COSTA TRANSPORTATION ADVISORY COMMITTEE**  
**AND**  
**KIMLEY-HORN**

This Agreement for consulting services is made by and between the between the West Contra Costa Transportation Advisory Committee, a Joint Powers Agency existing under the laws of the State of California, (“WCCTAC”) and Kimley-Horn, a \_\_\_\_\_ (corporation / limited liability company / sole proprietor), with offices located at 1300 Clay Street, Suite 325, Oakland, CA 94612, (“Consultant”), (together referred to as the “Parties”) as of \_\_\_\_\_, 20\_\_ (the “Effective Date”).

**Section 1. Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to WCCTAC the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail. Consultant’s performance of the services set forth in the Scope of Work shall comply with all requirements in the Restricted Grant Agreement between WCCTAC and the California Department of Transportation (“Caltrans”) attached hereto as Exhibit B and incorporated herein by reference.

**1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2020, and Consultant shall complete the work described in Exhibit A on or before that date in accordance with the schedule contained in Exhibit A, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect WCCTAC’s right to terminate the Agreement, as referenced in Section 8.

**1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.

**1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that WCCTAC, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons,

Consultant shall, immediately upon receiving notice from WCCTAC of such desire of WCCTAC, reassign such person or persons.

**1.4 Time is of the Essence.** Time is of the essence. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to timely finish the Scope of Work, to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder. Notwithstanding any other provisions of this Agreement, the Consultant shall not have liability for or be deemed in breach because of delays caused by any factor outside of its reasonable control, including but not limited to natural disasters, adverse weather, or acts of the Client, third parties, or governmental agencies.

**Section 2. COMPENSATION.** WCCTAC hereby agrees to pay Consultant a sum not to exceed [Spell out amount] \_\_\_\_\_, (\$ \_\_\_\_\_) notwithstanding any contrary indications that may be contained in Consultant's proposal for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. WCCTAC shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from WCCTAC to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to WCCTAC in the manner specified herein. Except as specifically authorized by WCCTAC in writing, Consultant shall not bill WCCTAC for duplicate services performed by more than one person.

Consultant and WCCTAC acknowledge and agree that compensation paid by WCCTAC to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. WCCTAC therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;

- At WCCTAC's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;

**2.2 Monthly Payment.** WCCTAC shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. WCCTAC shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

**2.3 Final Payment.** WCCTAC shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to WCCTAC of a final invoice, if all services required have been satisfactorily performed.

**2.4 Total Payment.** WCCTAC shall pay for the services to be rendered by Consultant pursuant to this Agreement. WCCTAC shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. WCCTAC shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

**2.5 Hourly Fees.** Unless the services provided are for a lump sum or flat fee, fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit C. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit C, the Agreement shall prevail.

**2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit D. Reimbursable expenses not listed in Exhibit D are not chargeable to WCCTAC. Reimbursable expenses shall not include a mark-up and are billed as a direct costs. In no event shall expenses be advanced by WCCTAC to the Consultant. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

**2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

**2.8 Payment upon Termination.** In the event that WCCTAC or Consultant terminates this Agreement pursuant to Section 8, WCCTAC shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

**2.9 Authorization to Perform Services.** Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. WCCTAC shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

WCCTAC shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant’s use while consulting with WCCTAC employees and reviewing records and the information in possession of WCCTAC. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of WCCTAC. In no event shall WCCTAC be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to WCCTAC of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to WCCTAC. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement, except as waived by WCCTAC in writing, in its sole and absolute discretion. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to WCCTAC. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

**4.1 Required Coverage.** Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

<u>COVERAGE</u>	<u>TYPE OF INSURANCE</u>	<u>MINIMUM LIMITS</u>
A	Commercial General Liability	\$1,000,000 per occurrence; Bodily Injury and Property Damage

	Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$2,000,00 in the aggregate; Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis
B	<b>Commercial or Business Automobile Liability</b> All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence; Any Auto; Bodily Injury and Property Damage; Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.
C	<b>Workers’ Compensation (WC) and Employers Liability (EL)</b> Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer shall waive all rights of subrogation against WCCTAC and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement
D	<b>Professional Liability/Errors &amp; Omissions</b>	\$1,000,000 per occurrence \$2,000,000 policy aggregate; Any deductible or self-insured retention shall not exceed \$150,000 per claim

**4.2 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a. All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until three (3) years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement

b. All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: West Contra Costa Transportation Advisory Committee, its Board of Directors, and all WCCTAC officers, agents, employees, volunteers and representatives.

c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects WCCTAC, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by WCCTAC, its officers, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it.

d. Reserved.

e. **Certificates of Insurance:** Before commencing operations under this Agreement, Consultant shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to WCCTAC, evidencing that all required insurance coverage is in effect. WCCTAC reserves the rights to require Consultant to provide complete, certified copies of all required insurance policies.

f. **Subcontractors:** Consultant shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein, except as waived or modified by WCCTAC in writing, in its sole and absolute discretion.

g. **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

i. The retroactive date of the policy must be shown and must be before the date of the Agreement.

ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

iii. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of three (3) years after completion of work under this Agreement.

iv. A copy of the claim reporting requirements must be submitted to WCCTAC for review prior to the commencement of any work under this Agreement.

#### **4.3 All Policies Requirements.**

a. **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A: VII. Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to WCCTAC. Acceptance of Consultant's insurance by WCCTAC shall not relieve or decrease the liability of Consultant hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of Consultant. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Consultant.

b. **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of WCCTAC for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of WCCTAC, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects WCCTAC, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to WCCTAC guaranteeing payment of losses and related investigations, claim administration and defense expenses.

c. **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense). If a policy required by Section includes a "wasting" policy, the amount of the required coverage shall be double the amounts set forth in Section 4.1.

d. **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.

**4.4 Remedies.** In addition to any other remedies WCCTAC may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, WCCTAC may, at its sole option exercise any of the following remedies, which are alternatives to other remedies WCCTAC may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

Consultant shall indemnify, defend with counsel acceptable to WCCTAC, and hold harmless WCCTAC and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of WCCTAC.

Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by WCCTAC, unless this time has been extended by WCCTAC. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by WCCTAC, may be retained by WCCTAC until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is subject to California Civil Code Section 2782.8, as may be amended from time to time, such duties of consultant to indemnify and defend shall be limited be and shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of WCCTAC, Consultant shall indemnify, defend, and hold harmless WCCTAC for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of WCCTAC.

## **Section 6. STATUS OF CONSULTANT.**

**6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of WCCTAC. WCCTAC shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise WCCTAC shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other WCCTAC, state, or federal policy, rule, regulation, law, or ordinance to the contrary,

Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by WCCTAC, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of WCCTAC and entitlement to any contribution to be paid by WCCTAC for employer contributions and/or employee contributions for PERS benefits.

**6.2 Consultant Not an Agent.** Except as WCCTAC may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of WCCTAC in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind WCCTAC to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

**7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

**7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

**7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which WCCTAC is bound by the terms of such fiscal assistance program.

**7.4 Licenses and Permits.** Consultant represents and warrants to WCCTAC that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to WCCTAC that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from WCCTAC.

**7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

**8.1 Termination.** WCCTAC may cancel this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to WCCTAC and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; WCCTAC, however, may condition payment of such compensation upon Consultant delivering to WCCTAC any or all work product, including, but not limited to documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or WCCTAC in connection with this Agreement.

**8.2 Extension.** WCCTAC may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

**8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

**8.4 Assignment and Subcontracting.** WCCTAC and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to WCCTAC for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

**8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between WCCTAC and Consultant shall survive the termination of this Agreement.

**8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, WCCTAC's remedies shall include, but not be limited to, the following:

**8.6.1** Immediately terminate the Agreement;

**8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

**8.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

**8.6.4** Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that WCCTAC would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

**9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of WCCTAC. Consultant hereby agrees to deliver those documents to WCCTAC upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for WCCTAC and are not necessarily suitable for any future or other use. WCCTAC and Consultant agree that, until final approval by WCCTAC, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

**9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to WCCTAC under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of WCCTAC. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of WCCTAC or as part of any audit of WCCTAC, for a period of 3 years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

**10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

**10.2 Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, WCCTAC and Consultant agree to resolve the dispute in accordance with the following:

**10.2.1** Each party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority.

**10.2.2** If the dispute remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both Parties. Mediation will begin within thirty (30) days of the selection of this disinterested third party, and will end fifteen (15) days after commencement. The Parties shall equally bear the costs of any mediator, and shall bear their own attorney's fees for the mediation.

**10.2.3** The alternative dispute resolution process in this section is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code Section 900, *et. seq.*

**10.3 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.

**10.4 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**10.5 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

**10.6 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

**10.7 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

**10.8 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of WCCTAC or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any WCCTAC official in the work performed pursuant to this Agreement. No officer or employee of WCCTAC shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of WCCTAC. If Consultant was an employee, agent, appointee, or official of WCCTAC in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse WCCTAC for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

**10.9 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.10 Contract Administration.** This Agreement shall be administered by WCCTAC Executive Director, or his designee, identified as Leah Greenblat ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator.

**10.10 Notices.** Any written notice to Consultant shall be sent to:

Adam Dankberg,  
Project Manager  
Kimley-Horn  
1300 Clay Street, Suite 325  
Oakland, CA 94612

Any written notice to WCCTAC shall be sent to:

John Nemeth,  
Executive Director  
WCCTAC  
6333 Potrero Avenue, Suite 100  
El Cerrito, CA 94530

with a copy to

Kristopher Kokotaylo,  
General Counsel  
Meyers Nave  
555 12<sup>th</sup> Street, Suite 1500  
Oakland, CA 94607

**10.11 Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.

\_\_\_\_\_  
Seal and Signature of Registered Professional with  
report/design responsibility.

**10.12 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, [[and]C [, and D]] **[ENSURE THAT THE CORRECT EXHIBITS ARE LISTED]** represents the entire and integrated agreement between WCCTAC and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

- Exhibit A      Scope of Services
- Exhibit B      Restricted Grant Agreement
- Exhibit C      Payment Schedule
- Exhibit D      Expenses [DELETE IF NOT APPLICABLE]

**10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.

WCCTAC

CONSULTANT

\_\_\_\_\_  
JOHN NEMETH, EXECUTIVE DIRECTOR

\_\_\_\_\_  
[NAME / TITLE]

**APPROVED AS TO FORM:**

\_\_\_\_\_  
KRISTOPHER J. KOKOTAYLO, GENERAL COUNSEL

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B  
RESTRICTED GRANT AGREEMENT

**ADAPTATION GRANTS  
(STATE)**

**RESTRICTED GRANT  
AGREEMENT**

THIS RESTRICTED GRANT AGREEMENT (RGA), between the State of California acting by and through its Department of Transportation, referred to herein as **CALTRANS** and the West Contra Costa Transportation Advisory Committee, hereinafter referred to as **AGENCY**, will commence on **April 16, 2018**, or approval by **CALTRANS**, whichever occurs later. This RGA is of no effect unless approved by **CALTRANS**. **AGENCY** shall not receive payment for work performed prior to approval of the RGA and before receipt of notice to proceed by the **CALTRANS** Contract Manager. This RGA shall expire on **February 28, 2020**.

**RECITALS**

1. Under this RGA, **CALTRANS** intends to convey State grant funds to **AGENCY**, pursuant to Budget Act Line Item 2660-102-3290, who will conduct transportation studies and planning within the regional area under the jurisdiction of **AGENCY** under the terms, covenants and conditions of this RGA.
2. **CALTRANS** and **AGENCY** intend that only funds that are authorized as grants will be subject to this RGA, and that no funds that should be the subject of a Joint Powers Agreement, Interagency Agreement, or other non-grant agreement shall be subject to this RGA.

**SECTION I**

**AGENCY AGREES:**

To timely and satisfactorily complete all Project Work described in **Attachment II** within the project budget and in accordance with the items of this RGA.

**SECTION II**

**CALTRANS AGREES:**

That when conducting an audit of the costs claimed by **AGENCY** under the provisions of this RGA, to conduct the audit in accordance with applicable laws and regulations.

**SECTION III**

**IT IS MUTUALLY AGREED:**

In consideration of the foregoing and the mutual promises of the parties

hereto, **AGENCY** and **CALTRANS** agree as follows:

1. Under this RGA, **CALTRANS** will convey State grant funds to **AGENCY**, pursuant to Budget Act Line Item 2660-102-3290, who will conduct transportation studies and planning within the regional area under the jurisdiction of **AGENCY**. The funds subject to this RGA must be (a) identified as available for a grant in **CALTRANS**' budget and (b) for the purpose of conducting transportation studies or planning or to a **CALTRANS** organization that is responsible for conducting transportation studies or planning.
2. Under this Restricted Grant, funds may be only used for the purpose set forth in this paragraph and funds may only be used for costs and expenses that are directly related to such purpose.
3. **AGENCY** shall perform all the duties and obligations described in the "**West Contra Costa Express Bus Implementation Plan**," hereinafter the Project, subject to the terms and conditions of this RGA. The Approved Project Grant Application (Scope of Work and Project timeline), which are attached hereto as **Attachment II**.
4. The resolution authorizing **AGENCY** to execute this RGA pertaining to the above described Project is attached hereto as **Attachment I**.
5. All services performed by **AGENCY** pursuant to this RGA shall be performed in accordance with all applicable State and **AGENCY** laws, regulations, ordinances, policies and procedures and **CALTRANS** published manuals, including Grant Application Guide at: <http://www.dot.ca.gov/hq/tpp/offices/orip/Grants/grants.html>. In case of conflict between State and **AGENCY** laws, regulations, ordinances, policies or procedures, the order of precedence applicability of these laws shall be established by prevailing California laws and regulations; **CALTRANS** policies and procedures; ordinances; and, **AGENCY** policies and procedures. This RGA may not include any federal funds.

6. Project funding is as follows:

<b>FUND TITLE</b>	<b>FUND SOURCE</b>	<b>DOLLAR AMOUNT</b>
<b>RMRA</b>	<b>SB 1</b>	<b>\$639,456.00</b>
<b>LOCAL MATCH</b>	<b>Agency Provided</b>	<b>\$ 83,654.00</b>
<b>Total Project Costs</b>		<b>\$723,110.00</b>

No in-kind contributions may be made unless the amount and type of the contribution is identified above.

7. This RGA is exempt from legal review and approval by the Department of General Services, pursuant to AG Opinions: 58 Ops. AG 586 (1974), 63 Ops. AG 290 (1980), 74 Ops AG 10 (1991), and 88 Ops AG 56.]

**8. Notification of Parties**

- a. **AGENCY's** Project Manager for PROJECT is Leah Greenblat.
- b. **CALTRANS'** Contract Manager is Jerry Cheung. "Contract Manager" as used herein includes his/her designee.
- c. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and received by the parties at their respective addresses:

**West Contra Costa Transportation Advisory Committee**

Attention: Leah Greenblat, Project Manager  
Phone Number: (510) 210-5935  
6333 Potrero Ave  
El Cerrito, CA 94530

**California Department of Transportation**

District 4/Planning  
Attention: Jerry Cheung, Contract Manager  
Phone Number: (510) 286-5562  
Email: [jerry.cheung@dot.ca.gov](mailto:jerry.cheung@dot.ca.gov)  
111 Grand Avenue  
Oakland, CA 94612

**9. Period of Performance**

- a. Reimbursable work under this RGA shall begin no earlier than on **April 16, 2018**, contingent upon the approval by **CALTRANS** and receipt of the Notice to Proceed letter of this RGA by the **CALTRANS** Contract Manager, and will expire on **February 28, 2020**.
- b. **AGENCY** will attend a kickoff meeting with **CALTRANS** to be scheduled within one (1) week from receipt of Notice to Proceed letter by the **CALTRANS'** Contract Manager.

**10. Changes in Terms/Amendments**

This RGA may only be amended or modified by mutual written agreement of the parties.

**11. Cost Limitation**

- a. The total amount reimbursable to **AGENCY** pursuant to this RGA by **CALTRANS** shall not exceed **\$639,456.00**.
- b. It is agreed and understood that this RGA fund limit is an estimate and that

**CALTRANS** will only reimburse the cost of services actually rendered as authorized by the **CALTRANS** Contract Manager at or below that fund limitation established hereinabove.

## **12. Termination**

- a. **CALTRANS** reserves the right to terminate this RGA upon written notice to **AGENCY** at least thirty (30) days in advance of the effective date of such termination in the event **AGENCY** fails to proceed with PROJECT work in accordance with the terms of this RGA.
- b. This RGA may be terminated by either party for any reason by giving written notice to the other party at least thirty (30) days in advance of the effective date of such termination. In the event of termination for convenience, **CALTRANS** will reimburse **AGENCY** for all allowable, authorized and non-cancelled costs up to the date of termination.
- c. **AGENCY** has sixty (60) days after the Termination Date to submit invoices to **CALTRANS** to make final allowable payments for Project costs in accordance to the terms of this RGA. Failure to submit invoices within this period may result in a waiver by **AGENCY** of its right to reimbursement of expended costs.

## **13. Budget Contingency Clause**

- a. It is mutually agreed that if the U.S. Congress or the State Legislature fail to appropriate or allocate funds during the current year and/or any subsequent years covered under this RGA does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, **CALTRANS** shall have no liability to pay any funds whatsoever to **AGENCY** or to furnish any other considerations under this Agreement and **AGENCY** shall not be obligated to perform any provisions of this RGA.
- b. If funding for any fiscal year is reduced or deleted by the U.S. Congress or the State Legislature for purposes of this program, **CALTRANS** shall have the option to either terminate this Agreement with no liability occurring to **CALTRANS**, or offer a RGA Amendment to **AGENCY** to reflect the reduced amount.

## **14. Payment and Invoicing**

- a. The method of payment for this RGA will be based on actual allowable costs. **CALTRANS** will reimburse **AGENCY** for expended actual allowable direct costs and including, but not limited to labor costs, travel, and contracted consultant services costs incurred by **AGENCY** in performance of the Project work. Indirect costs are reimbursable only if the **AGENCY** has an approved Indirect Cost Allocation Plan or an Indirect Cost Rate Proposal as set forth in **Section III – Cost Principles, Item 16.d**. The total cost shall not exceed the cost reimbursement limitation set forth in **Section III – Cost Limitations, Item 11.a**. Actual costs shall not exceed the estimated wage rates, labor costs, travel and

other estimated costs and fees set forth in **Attachment II** without an amendment to this RGA, as agreed between **CALTRANS** and **AGENCY**.

- b. Reimbursement of **AGENCY** expenditures will be authorized only for those allowable costs actually incurred by **AGENCY** in the performance of the Project work. **AGENCY** must not only have incurred the expenditures on or after the start date and the issuance of the Notice to Proceed letter for this RGA and before the Expiration Date, but must have also paid for those costs to claim any reimbursement.
  - c. Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Human Resources for similar employees (i.e. non-represented employees) unless written verification is supplied that government hotel rates were not then commercially available to **AGENCY**, its sub-recipients, contractors, and/or subcontractors, at the time and location required as specified in the California Department of Transportation's Travel Guide Exception Process at the following link: [http://www.dot.ca.gov/hq/asc/travel/ap\\_b/bu1.htm](http://www.dot.ca.gov/hq/asc/travel/ap_b/bu1.htm)
- Also see website for summary of travel reimbursement rules.
- d. **AGENCY** shall submit invoices to **CALTRANS** at least quarterly but no more frequently than monthly in arrears for completion of milestones in accordance with the Project Timeline in **Attachment II** to the satisfaction of the **CALTRANS'** Contract Manager. Invoices shall reference this RGA Number and shall be signed and submitted to the **CALTRANS'** Contract Manager at the following address, as stated in **Section III – Notification of Parties, Item 8.c**.

e. Invoices shall include the following information:

- 1) Names of the **AGENCY** personnel performing work
- 2) Dates and times of project work
- 3) Locations of project work
- 4) Itemized costs as set forth in **Attachment II**, including identification of each employee or subcontractor staff that provided services during the period of the invoice, the number of hours and hourly rates for each employee or subcontractor staff member, authorized travel expenses with receipts, receipts for authorized materials or supplies, and subcontractor invoices.
- 5) **AGENCY** shall submit written progress reports with each set of invoices to allow the **CALTRANS'** Contract Manager to determine if **AGENCY** is performing to expectations, is on schedule, is within funding cost limitations, to communicate interim findings, and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed.

f. Incomplete or inaccurate invoices shall be returned to the **AGENCY** unapproved for correction. Failure to submit invoices on a timely basis may be

grounds for termination of this RGA for material breach per **Section III – Termination, Item 12.**

- g. **CALTRANS** will reimburse **AGENCY** for all allowable Project costs at least quarterly but no more frequently than monthly in arrears as promptly as **CALTRANS** fiscal procedures permit upon receipt of an itemized signed invoice.
- h. The RGA Expiration Date refers to the last date for **AGENCY** to incur valid Project costs or credits and is the date the RGA expires. **AGENCY** has sixty (60) days after that Expiration Date to make final allowable payments to Project contractors or vendors, submit the Project's Final Product(s) as defined in **Attachment II** and final invoice to **CALTRANS** for reimbursement for allowable Project costs. Any unexpended Project funds not invoiced by the sixtieth (60th) day will be reverted and will no longer be accessible to reimburse late Project invoices.

#### **15. Local Match Funds**

- a. **AGENCY** shall contribute not less than a proportional cash amount toward the services described herein on a monthly or quarterly basis. The frequency of the payments shall be agreed upon by the parties in a document signed by both parties. Notwithstanding the foregoing, to the extent that in-kind contributions are permitted under this Agreement, the contributions may be counted as cash when they are actually received by **CALTRANS**. Except where expressly allowed in writing herein, reimbursement of credits for local matching funds will be made or allowed only for work performed on and after the date of issuance of the Notice to Proceed and prior to the Expiration Date of this RGA.
- b. Local cash and in-kind match requirements can be found at: <http://www.dot.ca.gov/hq/tpp/offices/orip/Grants/grants.html>, Grants Application Guide. **AGENCY** agrees to contribute the statutorily required local contribution of matching funds if any is specified within this RGA or in any Attachment hereto, toward the actual cost of the services described in **Attachment II**. **AGENCY** shall contribute not less than its required match amount toward the services described herein. Local cash and in-kind match requirements can be found at the Office of Regional Planning (ORP) website: <http://www.dot.ca.gov/hq/tpp/offices/orip/Grants/grants.html>

#### **16. Cost Principles**

- a. **AGENCY** agrees to comply with Title 2, Code of Federal Regulations (CFR), Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- b. **AGENCY** agrees, and will assure that its contractors and subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq.,

shall be used to determine the allowability of individual Project cost items and (b) and (b) all parties shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Every sub-recipient receiving Project funds as a sub-recipient, contractor, or subcontractor under this RGA shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards to the extent applicable.

- c. Any Project costs for which **AGENCY** has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, and/or Part 48, Chapter 1, Part 31, are subject to repayment by **AGENCY** to **CALTRANS**. Should **AGENCY** fail to reimburse moneys due **CALTRANS** within thirty (30) days of discovery or demand, or within such other period as may be agreed in writing between the parties hereto, **CALTRANS** is authorized to intercept and withhold future payments due **AGENCY** from **CALTRANS** or any third-party source, including, but not limited to, the State Treasurer, the State Controller or any other fund source.
- d. Prior to **AGENCY** seeking reimbursement of indirect costs, **AGENCY** must prepare and submit annually to **CALTRANS** for review and approval an indirect cost rate proposal and a central service cost allocation plan (if any) in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and Chapter 5 of the Local Assistance Procedures Manual which may be accessed at:  
<http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>.
- e. **AGENCY** agrees and shall require that all of its agreements with consultants and sub-recipients contain provisions requiring adherence to this section in its entirety **except for section c, above**.

## **17. Americans with Disabilities Act**

By signing this RGA, **AGENCY** assures **CALTRANS** that in the course of performing Project work, it will fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

## **18. Indemnification**

Neither **CALTRANS** nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by **AGENCY**, its officers, employees, agents or its subcontractors under or in connection with any work, authority or jurisdiction conferred upon **AGENCY** under this RGA. It is understood and agreed that **AGENCY**, its officers,

employees, agents, or subcontractors shall fully defend, indemnify and save harmless **CALTRANS** and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by **AGENCY**, its officers, employees, agents or subcontractors under this RGA.

**19. Nondiscrimination Clause (2 CCR 11105 Clause b)**

- a. During the performance of this RGA, the **AGENCY**, and its Subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. **AGENCY** shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
  
- b. **AGENCY** shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§ 11135-11139.5), and the regulations or standards adopted by **CALTRANS** to implement such article.
  
- c. **AGENCY** shall permit access by representatives of the Department of Fair Employment and Housing and **CALTRANS** upon reasonable notice at any time during the normal business hours, but in no case less than twenty four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or **CALTRANS** shall require to ascertain compliance with this clause.
  
- d. **AGENCY** and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
  
- e. **AGENCY** shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the RGA.

## **20. Retention of Records/Audits**

- a. **AGENCY**, its contractors, subcontractors and sub-recipients shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line. The accounting system of **AGENCY**, its contractors, all subcontractors, and sub-recipients shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of **AGENCY**, its contractors, subcontractors and sub-recipients connected with Project performance under this RGA shall be maintained for a minimum of three (3) years from the date of final payment to **AGENCY** and shall be held open to inspection, copying, and audit by representatives of **CALTRANS**, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by **AGENCY**, its contractors, its subcontractors and sub-recipients upon receipt of any request made by **CALTRANS** or its agents. In conducting an audit of the costs and match credits claimed under this RGA, **CALTRANS** will rely to the maximum extent possible on any prior audit of **AGENCY** pursuant to the provisions of State and **AGENCY** law. In the absence of such an audit, any acceptable audit work performed by **AGENCY's** external and internal auditors may be relied upon and used by **CALTRANS** when planning and conducting additional audits.
- b. For the purpose of determining compliance with applicable State and **AGENCY** law in connection with the performance of **AGENCY's** contracts with third parties pursuant to GC Section 8546.7, **AGENCY**, **AGENCY's** sub-recipients, contractors, subcontractors, and **CALTRANS** shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to **AGENCY** under this RGA. **CALTRANS**, the California State Auditor, or any duly authorized representative of **CALTRANS** or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions, and **AGENCY** shall furnish copies thereof if requested.
- c. **AGENCY**, its sub-recipients, contractors, and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other **AGENCY** of the State of California designated by **CALTRANS**, for the purpose of any investigation to ascertain compliance with this RGA.

- d. Additionally, all grants may be subject to a pre-award audit prior to execution of the RGA to ensure **AGENCY** has an adequate financial management system in place to accumulate and segregate reasonable, allowable and allocable costs.
- e. Any contract with a consultant or sub-recipient entered into as a result of this Agreement shall contain all the provisions of this article.

## **21. Disputes**

- a. Any dispute concerning a question of fact arising under this RGA that is not disposed of by agreement shall be decided by the **CALTRANS** Contract Officer, who may consider any written or verbal evidence submitted by **AGENCY**. The decision of the **CALTRANS** Contract Officer shall be the **CALTRANS**'s final decision regarding the dispute.
- b. Neither the pendency of a dispute nor its consideration by the **CALTRANS** Contract Officer will excuse **AGENCY** from full and timely performance in accordance with the terms of the RGA.

## **22. Third-Party Contracts**

- a. **AGENCY** shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without prior written authorization by **CALTRANS** Contract Manager unless expressly included (sub-recipient identified) in **Attachment II** as part of the identified Project work.
- b. All State-government-funded procurements must be conducted using a fair and competitive procurement process. **AGENCY** may use its own procurement procedures as long as the procedures comply with the local **AGENCY**'s laws, rules, and ordinances governing procurement and all applicable provisions of state law, including without limitation the requirement that the **AGENCY** obtain at least three (3) competitive bids for solicitation of goods, services and consulting services (see Part 2, Chapter 2, Articles 3 and 4 of the Public Contract Code); a qualifications-based solicitation process, for which statements of qualifications are obtained from at least three (3) qualified firms for architecture and engineering services (see Title 1, Division 5, Chapter 10 of the Government Code); and, the provisions of the Local Assistance Procedures Manual (LAPM), Chapter 10, which are not inconsistent with this section 23, Third Party Contracts. The LAPM can be found and the following link: <http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm#LAPMop1>.
- c. Any subcontract entered into as a result of this RGA shall contain all the provisions stipulated in this RGA to be applicable to **AGENCY**'s sub-recipients, contractors, and subcontractors. Copies of all agreements with sub-recipients, contractors, and subcontractors must be submitted to the **CALTRANS** Contract Manager.

- d. **CALTRANS** does not have a contractual relationship with the **AGENCY's** sub-recipients, contractors, or subcontractors and the **AGENCY** shall be fully responsible for all work performed by its sub-recipients, contractors, or subcontractors.
- e. Prior authorization in writing by the **CALTRANS** Contract Manager shall be required before **AGENCY** enters into any non-budgeted purchase order or sub-agreement for supplies, or consultant services. **AGENCY** shall provide an evaluation of the necessity or desirability of incurring such costs. **AGENCY** shall retain all receipts for such purchases or services and shall submit them with invoices per **Section III, Item 14e.4, above.**
- f. Any subcontract entered into by **AGENCY** as a result of this RGA shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors. Travel expenses and per diem rates for subcontractors shall be reimbursed pursuant to **Section III, Item 14c, above.**

### **23. Drug-Free Workplace Certification**

By signing this RGA, **AGENCY** hereby certifies under penalty of perjury under the laws of California that **AGENCY** will comply with the requirements of the Drug-Free Workplace Act of 1990 (GC Section 8350 et seq.) and will provide a Drug-Free workplace by doing all of the following:

- 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, as required by GC Section 8355(a).
- b. Establish a Drug-Free Awareness Program as required by GC Section 8355(b) to inform employees about all of the following:
  - 1) The dangers of drug abuse in the workplace.
  - 2) The person's or organization's policy of maintaining a Drug-Free workplace;
  - 3) Any available counseling, rehabilitation, and employee assistance programs.
  - 4) Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide, as required by GC Section 8355(c), that every employee who works on the proposed contract or grant:
  - 1) Will receive a copy of the company's Drug-Free policy statement.
  - 2) Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.

- d. Failure to comply with these requirements may result in suspension of payments under this RGA or termination of this RGA or both, and **AGENCY** may be ineligible for the award of any future state contracts if **CALTRANS** determines that any of the following has occurred: (1) **AGENCY** has made a false certification or, (2) **AGENCY** violates the certification by failing to carry out the requirements as noted above.

#### **24. Relationship of Parties**

It is expressly understood that this RGA is an agreement executed by and between two independent governmental entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

#### **25. State-Owned Data**

- a. **AGENCY** agrees to comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:
  - 1) Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect **CALTRANS** data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space.
  - 2) Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.
  - 3) Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.
  - 4) Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.
  - 5) Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.
  - 6) Notify the **CALTRANS** Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.
  - 7) Advise the owner of the State-owned data, the **AGENCY** Information

Security Officer, and the **AGENCY** Chief Information Officer of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that State-owned data.

- b. **AGENCY** agrees to use the State-owned data only for State purposes under this RGA.
- c. **AGENCY** agrees to not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s). (State Administrative Manual (SAM) Section 5335.1)

**26. Assumption of Risk and Indemnification Regarding Exposure to Environmental Health Hazards**

In addition to and not a limitation of the **AGENCY'S** indemnification obligations contained elsewhere in this Agreement, the **AGENCY** hereby assumes all risks of the consequences of exposure of **AGENCY'S** employees, agents, Subcontractors, Subcontractors' employees, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, to any and all environmental health hazards, local and otherwise, in connection with the performance of this Agreement. Such hazards include, but are not limited to, bodily injury and/or death resulting in whole or in part from exposure to infectious agents and/or pathogens of any type, kind or origin. **AGENCY** also agrees to take all appropriate safety precautions to prevent any such exposure to **AGENCY'S** employees, agents, Subcontractors, Subcontractors' employees, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement. **AGENCY** also agrees to indemnify and hold harmless **CALTRANS**, the State of California, and each and all of their officers, agents and employees, from any and all claims and/or losses accruing or resulting from such exposure. Except as provided by law, **AGENCY** also agrees that the provisions of this paragraph shall apply regardless of the existence or degree of negligence or fault on the part of **CALTRANS**, the State of California, and/or any of their officers, agents and/or employees.

**27. Mandatory Organic Waste Recycling**

It is understood and agreed that pursuant to Public Resources Code §42649.8 et. seq, if **AGENCY** generates four (4) cubic yards of organic waste per week the **AGENCY** shall arrange for organic waste recycling services. "Organic waste" means food waste, green waste, landscape and pruning waste, non-hazardous wood waste, and food-soiled paper waste that is mixed in food.

The **AGENCY** shall take at least one of the following actions:

- 1) Source separate organic waste from other waste and subscribe to a basic level of organic waste recycling service that includes collection and recycling of organic waste.
- 2) Recycle its organic waste onsite or self-haul its own organic waste for recycling.
- 3) Subscribe to an organic waste recycling service that may include mixed waste processing that specifically recycles organic waste.

**28. Project Close Out/Final Product**

- a. **AGENCY** will provide two (2) copies and two (2) electronic versions of the Final Product(s) to the **CALTRANS** Contract Manager.
- b. **CALTRANS** reserves the right to withhold final payment to **AGENCY** pending receipt of Final Product(s) to the **CALTRANS** Contract Manager.

**29. OWNERSHIP OF PROPRIETARY PROPERTY**

a. **Definitions**

- 1) **Work**: The work to be directly or indirectly produced by **AGENCY** under this RGA.
- 2) **Work Product**: All deliverables created or produced from Work under this Agreement including but not limited to, all Work and Deliverables conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of this Agreement and during a period of six (6) months after the termination thereof, which relates to the Work commissioned or performed under this Agreement. "Work Product" includes all deliverables, inventions, innovations, improvements, or other works of authorship Contractor may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret, or other legal protection.
- 3) **Inventions**: Any idea, methodologies, design, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Contractor or jointly with the Contractor's Subcontractor and/or the Contractor's Subcontractor's employee's with one or more employees of the Department of Transportation (herein after referred to as "the Department"), during the term of this Agreement and in performance of any Work under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in performance of Work issued under this Agreement.

b. **OWNERSHIP OF WORK PRODUCT AND RIGHTS**

- 1) **Ownership of work product**: Except in regard to Pre-existing Works, all Work Product derived by the Work performed by the Contractor, its employees or by any of the Contractor's Subcontractor's employees under

this Agreement, shall be owned by the Department and shall be considered to be works made for hire by the Contractor's Subcontractor for the Department. The Department shall own all United States and international copyrights in the Work Product.

As such, all Work Product shall contain, in a conspicuous place, a copyright designation consisting of a "c" in a circle followed by the four-digit year in which the Work Product was produced, followed by the words "California Department of Transportation." For example, a Work Product created in the year 2012 would contain the copyright designation © 2012 California Department of Transportation.

- 2) **Vesting of copyright rights:** Contractor, its employees or any of Contractor's Subcontractor's employees agrees to perpetually assign, and upon creation of each Work Product automatically assigns, to the Department, its successors and assigns, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Contractor's Subcontractor from the Department. From time to time upon the Department's request, the Contractor's Subcontractor and/or its employees, shall confirm such assignments by execution and delivery of such assignments, confirmations or assignment, or other written instruments as the Department may request. The Department, its successors and assigns, shall have the right to obtain and hold in its or their own name(s) all copyright registrations and other evidence of rights that may be available for Work Product. Contractor hereby agrees to waive all moral rights relating to identification of authorship restriction or limitation on use, or subsequent modifications of the Work.

c. **INVENTIONS**

- 1) **Vesting of patent rights:** The Contractor, its employees and any Contractor's Subcontractor hereby agrees to assign to the Department, its successors, and assigns, all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority there under, and the same shall become and remain the Department's property regardless of whether such protection is sought. The Contractor, its employees and Contractor's Subcontractor shall promptly make a complete written disclosure to the Department of each Invention not otherwise clearly disclosed to the Department in the pertinent Work Product, specifically pointing out features or concepts that the Contractor, its employees and Contractor's Subcontractor believes to be new or different. The Contractor, its employees and Contractor's Subcontractor shall, upon the Department's request and at the Department's expense, cause patent applications to be filed thereon, through solicitors designated by the Department, and shall sign all such applications over to the Department, its

successors, and assigns. The Contractor, its employees and Contractor's Subcontractor shall give the Department and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or documents as the Department may consider necessary or appropriate to carry out the intent on this Agreement.

- 2) **Agency**: In the event that the Department is unable for any reason whatsoever to secure the Contractor's, its employees' and/or Contractor's Subcontractor's signature to any lawful or necessary document required or desirable to apply for or prosecute any United States application (including renewals or divisions thereof), Contractor, its employees and Contractor's Subcontractor hereby irrevocably designates and appoints the Department and its duly authorized officers and agents, as its agent and attorney-in-fact, to act for and on Contractor, its employees and Contractor's Subcontractor's behalf and stead, to execute and file such applications and to do all other lawfully permitted acts to further the prosecution and issuance of any copyrights, trademarks or patents thereon with the same legal force and effect as if executed by Contractor, its employees and/or Contractor's Subcontractor. The Department shall have no obligations to file any copyright, trademark or patent applications.

d. **ADDITIONAL PROVISIONS**

- 1) **Avoidance of infringement**: In performing services under this Agreement, Contractor and its employees agree to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor or its employees becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor or its employees shall immediately notify the Department in writing.
- 2) **Pre-existing works and license**: Contractor acknowledges that all Work Product shall be the sole and exclusive property of the Department, except that any pre-existing works created by Contractor and third parties outside of the Agreement but utilized in connection with the Agreement (the "Pre-existing Works") shall continue to be owned by Contractor or such parties. Contractor agrees to notify the Department in writing of any Pre-existing Works used in connection with any Work Product produced under this Agreement and hereby grants to the Department a non-exclusive, perpetual, royalty-free license to utilize the Pre-existing Works in connection with the Work Product.

- 3) **Subcontractors:** Contractor shall affirmatively bind by contract any of its subcontractors or service vendors (hereinafter “Contractor’s Subcontractor”) providing services under this Agreement to conform to the provisions of this Exhibit. Contractor’s Subcontractor shall then provide the signed contract to the Contractor, who shall provide it to the Department’s Contract Manager prior to the commencement of any work. In performing services under this Agreement, Contractor’s Subcontractor agrees to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Contractor’s Subcontractor becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor’s Subcontractor shall immediately notify the Contractor in writing, Contractor will then immediately notify the Department in writing.

e. **OWNERSHIP OF DATA**

- 1) Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates, produced as part of this Agreement will automatically be vested in **CALTRANS** and no further agreement will be necessary to transfer ownership to **CALTRANS**. The Consultant shall furnish **CALTRANS** all necessary copies of data needed to complete the review and approval process.
- 2) It is understood and agreed that all calculations, drawings, and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.
- 3) The Consultant is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by **CALTRANS** of the machine readable information and data provided by the Consultant under this Agreement; further, the Consultant is not liable for claims, liabilities or losses arising out of, or connected with, any use by **CALTRANS** of the project documentation on other projects, for additions to this project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Consultant.
- 4) Any sub-agreement in excess of \$25,000.00, entered, into as a result of this Agreement, shall contain all of the provisions of this clause

**SECTION IV**

**ATTACHMENTS:**

The following attachments are incorporated into and are made a part of this RGA by this reference and attachment.

- I. **AGENCY** Resolution
- II. Scope of Work and Project Timeline

IN WITNESS WHEREOF, the parties hereto have executed this RGA on the day and year first herein above written:

**STATE OF CALIFORNIA DEPARTMENT  
OF TRANSPORTATION**

**WEST CONTRA COSTA  
TRANSPORTATION ADVISORY  
COMMITTEE**

By:

By: 

Printed Name:

Printed Name: John Nemeth

Title: Contract Officer

Title: Executive Director

Date:

Date: April 3, 2018

By:

Printed Name:

Title:

Date:

By:

Printed Name:

Title:

Date:

EXHIBIT C

COMPENSATION SCHEDULE

*To be inserted prior to signing.*

EXHIBIT D

REIMBURSABLE EXPENSES

*To be inserted prior to signing.*

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