



**REQUEST FOR PROPOSALS
RFP # 19-12
SPECIFICATIONS
FOR**

“Federal Legislative Consultant”

The schedule for this project is as follows: Pacific Daylight Time (PDT)

Date Issued:	February 20, 2019
Proposers Written Questions Due	February 28, 2019
MST Response to Questions	March 6, 2019
Proposals Date Due	March 25, 2019
Selection of Consultant	Week of April 8, 2019

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INTRODUCTION

Monterey-Salinas Transit District was created by state law AB644 and formed July 1, 2010. The district succeeds Monterey-Salinas Transit Joint Powers Agency formed in 1981 when the City of Salinas joined the Monterey Peninsula Transit Joint Powers Agency which was formed in 1972.

Current members of the district are the Cities of Carmel, Del Rey Oaks, Gonzales, Greenfield, King City, Marina, Monterey, Pacific Grove, Salinas, Sand City, Seaside, Soledad and the County of Monterey. A board of directors with a representative from each member jurisdiction governs the agency and appoints the general manager.

Monterey-Salinas Transit serves a 280 square-mile area of Monterey County and Southern Santa Cruz County. MST's 55 routes serve an estimated 428,826 population based upon the area within 3/4 mile of established routes within the county.

For more information about MST, log onto <http://www.mst.org/>.

1. SCOPE OF SERVICES

A. BACKGROUND INFORMATION

MST desires to engage a consultant to analyze federal legislation, policies and regulations affecting MST, and to develop strategies for advancing actions at the federal level that are beneficial to MST and its programs. Contract services of a Federal Legislative advocate are being sought to provide MST with effective representation regarding federal transportation initiatives before Congress, the Department of Transportation (DOT) and related interest groups. The priorities for such a consultant in this regard are as follows: (a) provide timely information to the MST Board of Directors and staff on major federal actions and events occurring in Washington D.C.; (b) advocate for MST before the various legislative committees in Washington D.C.; (c) advocate on behalf of MST's interests on select transportation and related policy issues, as directed by MST staff; and (d) represent MST's interests and provide information to MST relative to legislative issues and/or bills which MST has identified as critical.

The consultant will be expected to: (a) provide complete, professional and high-quality services and products; (b) consult with MST personnel and others who are involved with the work; and (c) provide advice and assistance in accomplishing the work. The General Manager/CEO will be the project manager for MST.

The selection will be made of the firm or person whose proposal is most responsive to the Request for Proposal (RFP) and offers the best advantage to MST.

As part of the selection process, consultants may be requested to provide information concerning client representation for evaluation by MST. If, in the discretion of MST, a

conflict of interest, real or apparent, exists or may exist, then MST reserves the right not to select a consultant to perform the services herein, regardless of the qualifications of that consultant or the ranking of the consultant as provided below.

B. PROJECT TASKS AND DELIVERABLES

Under the general direction of MST's General Manager/CEO, and with policy guidance provided by the Board of Directors, the consultant shall provide professional support and assistance on a regular and continuing basis to accomplish the following:

- a. Monitor and report on federal legislative activities that are germane to the transportation industry in general and to MST in particular, with an emphasis on activities that affect the State of California and Monterey County and have a potential impact on MST.
- b. Provide technical, political, and logistical support for MST to meet with appropriate stakeholders, federal officials, and legislators. This includes making recommendations and arranging meetings as necessary.
- c. Provide professional counsel on and analysis of federal transportation legislation, policies, regulations, and other activities that impact MST.
- d. Communicate directly with the elected representatives of the House of Representatives, the Senate, Congressional committees and their respective staff members, as well as with staff members of the various agencies within the Department of Transportation (DOT), Department of Defense, Department of Agriculture, and other federal agencies with transportation-related programs, regarding current and future federal transportation policies, issues, grant opportunities and regulations.
- e. Assist in the development and implementation of federal transportation legislation, policies and regulations favorable to MST.
- f. Provide assistance in preparing briefing information, notes, testimony, letters, or legislation, as needed, to advance the interests of MST before Congress.
- g. Provide assistance, as needed, in the development of MST's federal legislative program prior to the beginning of each calendar year.
- h. Provide a brief written monthly update for the Board of Directors summarizing major Legislative actions and events occurring during the previous month. Provide other written status reports to MST on key federal transportation issues and legislation, as appropriate.
- i. Maintain a level of awareness and knowledge of MST programs, activities and policies necessary to conduct all of the above.

- j. During the term of the agreement, maintain a business office in the Washington, D.C., metropolitan area.

C. WORK SCHEDULE

Performance under a contract pursuant to this RFP is estimated to commence May 1, 2019, and conclude April 30, 2024.

2. INSTRUCTIONS TO PROPOSERS

A. Examination of Proposal Documents

By submitting a proposal, the Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP, and that it is capable of performing quality work to achieve MST's objectives.

B. Addenda/Clarifications

Questions or comments regarding this RFP must be put in writing and must be received by MST no later than close of business February 28, 2019. Correspondence shall be addressed to Sandra Amorim, Purchasing Manager, Monterey-Salinas Transit, 19 Upper Ragsdale Drive, Suite 200 Monterey, CA 93940. Questions may be submitted via e-mail, and the e-mail address is samorim@mst.org. Responses from MST will be communicated in writing to all recipients of this RFP. Inquiries received after the date and time stated above will not be accepted and will be returned to the senders without response.

C. Submission of Proposals

All proposals shall be submitted to Monterey-Salinas Transit, Attention: Purchasing Manager, 19 Upper Ragsdale Drive, Suite 200, Monterey, CA 93940. Proposals must be delivered no later than close of business, March 25, 2019.

The Proposer shall submit 2 copies of its proposal in a sealed envelope, addressed as noted above, bearing the Proposer's name and address, and clearly marked as follows:

"RFP 19-12,
Federal Legislative Consultant Services"

D. Withdrawal of Proposals

A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in this RFP by delivering to the Purchasing Manager a written request for withdrawal signed by, or on behalf of, the Proposer.

E. Rights of MST

This RFP does not commit MST to enter into a Contract, nor does it obligate MST to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract.

MST may investigate the qualifications of any Proposer under consideration, require confirmation of information furnished by the Proposer, and require additional evidence or qualifications to perform the Services described in this RFP.

MST reserves the right to:

1. Reject any or all proposals.
2. Issue subsequent Requests for Proposal.
3. Postpone opening for its own convenience.
4. Remedy technical errors in the Request for Proposal process.
5. Approve or disapprove the use of particular sub consultants.
6. Negotiate with any, all, or none of the Proposers. Solicit best and final offers from all or some of the Proposers.
7. Award a contract to one or more Proposers.
8. Accept other than the lowest offer. Waive informalities and irregularities in proposals.

F. Contract Type

It is anticipated that the agreement resulting from this solicitation, if awarded, will be a firm, fixed-price contract. The term of the agreement will be five years.

Proposers shall be prepared to accept the terms and conditions of the Agreement, including Exhibit C, Insurance & Indemnification Requirements. If a Proposer desires to take exception to the Agreement, Proposer shall provide the following information as a section of the Proposal identified as "Exceptions to the Agreement": Proposer shall clearly identify each proposed change to the Agreement, including all relevant Attachments. Proposer shall furnish the reasons therefore as well as specific recommendations for alternative language. The above factors will be taken into account in evaluating proposals. Proposals that take substantial exceptions to the Agreement or proposed compensation terms may be determined by MST, at its sole discretion, to be unacceptable and no longer considered for award.

G. Collusion

By submitting a proposal, each Proposer represents and warrants that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that the Proposer has not directly or indirectly, induced or solicited any other person to submit a sham proposal or any other person to refrain from

submitting a proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

I. Audit Report/Requirements

Proposers must agree to cooperate with the requirements in Paragraph 10 of FTA Circular 4220.1E. Every proposer that has been the subject of any audit report by any government or public agency or qualified independent CPA must attach with its proposal, the latest such audit report, including direct labor, materials, fringe benefits and general overhead.

If the contract falls under the requirement provided by the Federal of California Department of Transportation Local Program Procedures (LPP) 00-05, the successful proposer must agree to undergo the pre-award audit mandated by the LPP. The contract will not be awarded before the pre-award audit is completed.

Proposers must also agree to submit cost or pricing data in accordance with 48 CFR Part (FAR) 15.408 Table 15-2.

3. PROPOSER'S MINIMUM QUALIFICATIONS

- A.** The consultant shall have sufficient results-oriented experience in federal legislative activities, policies and regulations relating to transportation matters; a demonstrated ability as an effective legislative advocate; and a proven track record of respect and credibility with members of the legislature and with the Department of Transportation.
- B.** The consultant shall have sufficiently experienced staff members, who possess comprehensive knowledge of federal legislative activities, policies and regulation relating to transportation matters as well as the Department of Defense, who can show a track record of success with federal New Starts/Small Starts/Very Small Starts and discretionary grant programs, and who will be assigned to manage the tasks discussed in the scope of work and to coordinate their work with MST staff and other involved agencies.
- C.** The consultant shall possess knowledge of federal regulations and codes, and shall be familiar with local conditions relating to transportation matters in and around MST.
- D.** The MST Board of Directors desires to award a firm, fixed-price contract resulting from the RFP. One of the criteria that will be used to evaluate proposals will be price. Consultants are requested to submit a pricing proposal that accurately reflects their costs in performing the services discussed in the Scope of Work.
- E.** The consultant shall comply with applicable federal, state, and local regulations concerning equal employment opportunity requirements and take affirmative action to ensure equal employment opportunity as further described in MST's Small Business Enterprise (SBE) Policy.

4. EVALUATION AND SELECTION

A. Evaluation Criteria: The following criteria will be used to evaluate proposals:

1. Qualifications of the Firm: Technical experience in performing work of a closely similar nature; experience working with transportation organizations or other public agencies; record of completing work on schedule; strength and stability of the firm; technical experience and strength and stability of proposed sub consultants, if any; and assessments by client references. **(25 points)**
2. Staffing and Project Organization: Qualifications of project staff, particularly key personnel, especially the project manager; key personnel's level of involvement in performing related work; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel. **(25 points)**
3. Demonstrated understanding of the project requirements and potential problem areas; project approach, work plan, and quality assurance program. **(25 points)**
4. Cost and Price: Reasonableness of the total price and competitiveness of this amount with other offers received. Consultants are asked to submit a pricing proposal that accurately reflects their costs in performing the services discussed in the scope of work. **(25 points)**

B. Award

When the RFP evaluation has been completed based on the criteria listed above, negotiations will be conducted for the extent of services to be rendered and for the method of compensation. Because MST may award without conducting negotiations, the proposal submitted shall contain the Proposer's most favorable terms and conditions.

5. STANDARD TERMS AND CONDITIONS

1. PROPOSAL ACCEPTANCE PERIOD

Proposals are valid for a period of 90 days after opening.

2. RIGHTS RESERVED

2.1 Rejection

MST reserves the right to reject any or all proposals or any part thereof, or to accept any proposal or any part thereof, or to waive any informality in any proposal, deemed to be the best interest of MST.

2.2 Cover

Should the successful Proposer fail to comply with the conditions of this proposal or fail to complete the requirements of the proposal, MST reserves the right to complete the required work, at the expense of the Consultant.

2.3 Severability

If any provision, or any portion of any provision, of any contract resulting from this proposal shall be held invalid, illegal or unenforceable, the remaining provisions or portions of any provisions shall be valid and enforceable to the extent possible.

3. PROHIBITED INTERESTS

3.1 By submitting a proposal, the Proposer represents and warrants that neither the MST General Manager/CEO, nor any MST employee is in any manner interested directly or indirectly in the proposal or in the Contract, which may be awarded under it, or in any expected profits to arise.

3.2 No member, officer, or employee of MST or any public entity during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in the Contract to be awarded.

4. CONTRACT

Proposer's signed proposal and written acceptance by MST shall constitute a Contract.

5. PROPOSER AGREEMENT

Submission of a signed proposal will be interpreted to mean that Proposer has hereby agreed to all the terms and conditions set forth in this document.

6. STATEMENT OF EXPERIENCE AND QUALIFICATIONS

The Proposer may be required upon request of the MST General Manager/CEO to prove to his/her satisfaction that their firm has the skill and experience and the necessary facilities and financial resources to perform in a satisfactory manner.

7. WAIVER

The Proposer shall represent and warrant that it has sufficiently informed itself in all matters affecting the performance of the work called for in the scope of this proposal; that it has checked its proposal for errors and omissions; that the prices stated in its proposal are correct and as intended by it and are a complete and correct statement of its prices for performing the work required by the Contract documents.

8. COMPLIANCE WITH LAWS

ADHERENCE TO ALL LOCAL, STATE, AND FEDERAL LAWS AND REQUIREMENTS. The Consultant shall adhere to all applicable federal, state, and local laws, codes and ordinances, including, but not limited to, those promulgated by CAL-OSHA, FED-OSHA, EPA, the California State Department of Health Services, and MST Environmental Health Department.

9. LAWS GOVERNING CONTRACT

This Proposal and any resulting contract shall be governed and construed in accordance with the laws of the state of California. The parties stipulate that this contract was entered into in the county of Monterey, in state of California. The parties further stipulate that the county of Monterey, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from. All parties to this proposal and any resulting contract agreed that Venue shall be within County of Monterey, California. Each party will perform its obligations hereunder in accordance with all applicable laws, rules, and regulations now or hereafter in effect.

10. ATTORNEY FEES

In the event that suit is brought to enforce or interpret any part of this proposal or resulting contract, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, a reasonable attorney's fee, including expert witness fees, as may be fixed by the court. These fees and cost shall be taxed as costs in that proceeding, and shall not necessitate the filing of a separate attempt to recover. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to recover its costs or attorney's fees.

11. EFFECT OF EXTENSION OF TIME

Granting, or acceptance, of extensions of time to complete the work or furnish the labor, supplies, materials, or equipment, will not operate as a release to Consultant.

12. NOTIFICATION

If the Consultant believes that the action of MST, lack of action by MST, or any other reason, will result in or necessitate the revision of the contract, MST must be notified immediately. This will be considered the initial notice and shall be in writing. Such contract revisions might include, but are not limited to: the amount agreed upon for payment to Consultant; the period of time allowed for contract performance; the types of materials specified; or the scope of work or services required.

If within two working days of the immediate notification, the identified issue has not been resolved between MST and the Consultant, the Consultant shall provide a second written notice. At a minimum the written notice shall provide a description of the nature of the issue, the time, date, and location at which the problem was discovered, and the name of the MST representative to whom initial notice was given.

Within seven calendar days of the date of the initial written notice, the Consultant shall provide in writing the following information to MST:

- a. The date of occurrence and the nature and circumstances of the issue for which the initial notice was given.
- b. Name, title, and activity of each MST representative knowledgeable of the issue.
- c. Identity of any documents and the substance of any oral communication related to the issue.
- d. The basis for an assertion that work required is a change from the original contract work or schedule.
- e. Identity of particular elements of contract performance for which additional compensation may be sought, including:
 - (1) Pay item(s) that has been or may be affected by the issue.
 - (2) Labor or materials, or both that will be added, deleted, or wasted by the problem and what equipment will be idled or required.
 - (3) Delay and disruption in the manner and sequence of performance that has been or will be caused.

- (4) Adjustments to contract price(s), delivery schedule(s), staging, and contract time estimated due to the issue.
- (5) Estimate of the time within which MST must respond to the notice to minimize cost, delay, or disruption of the issue.
- (6) The Consultant's written certification, under oath, attesting to the following:
 - (a) The request is made in good faith.
 - (b) Supporting data is accurate and complete to the Consultant's best knowledge and belief.
 - (c) The amount requested accurately reflects the Consultant's actual cost incurred.

The failure of the Consultant to comply with the requirement of this section constitutes a waiver of entitlement to additional compensation and/or time extension to complete work.

Within ten calendar days after the Consultant's submission, MST will respond in writing to the Consultant to:

- a. Confirm that a proposed change request is necessary and, when necessary, give appropriate direction for further performance.
- b. Deny that the contract has been revised and, when necessary, direct the Consultant to proceed with the contract work.
- c. Advise the Consultant that adequate information has not been submitted to decide whether/if paragraphs a. and b. above apply, and indicate the needed information and date it is to be received by MST for further review. MST will respond to such additional information within ten calendar days of receipt from the Consultant.

13. CHANGES BY CONSULTANT

If the Consultant, on account of conditions developing during the performance of the Contract, finds it impracticable to comply strictly with the requirements of this contract, an application for modification of requirements must be made in writing. MST will respond in writing as to the acceptability of any Consultant-proposed changes.

14. CHANGES BY MST

If requirements are identified which are not specified in this document, the Consultant shall, if ordered in writing by MST, perform such work at the Consultant's fair market prices.

If requirements specified in the Contract are required to be omitted from the work, the Consultant shall, if ordered by MST, omit the performance of such work. A deduction shall be

made from the amount to be paid to the Consultant in an amount that MST and Consultant shall determine and mutually agree to be the reasonable value of such work. It is understood, however, that the amount of work required by the Contract shall not, in accordance with the above provisions referring to additions and omissions, be increased or diminished to substantially alter the general character or extent of the Contract.

15. APPROVAL BY THE GENERAL MANAGER/CEO

All work shall be executed under the direction and supervision of the General Manager/CEO or authorized agent(s), on whose inspection of work shall be accepted or rejected. The General Manager/CEO shall have full power to accept or reject work performed under the Contract, which does not conform to the terms and conditions set forth in the Contract documents.

16. DAMAGES

The Consultant shall sustain all loss or damage arising from any unforeseen obstruction or difficulties, either natural or artificial, during the performance of this Contract, on the part of the Consultant or any agent or person employed by it.

17. SELL OR ASSIGN

The Consultant shall not have the right to sell, assign, or transfer any obligations resulting from this proposal without the specific written consent of MST.

18. COVENANT AGAINST GRATUITIES

Consultant shall not offer or provide gifts, favors, entertainment, or any other gratuities of monetary value to any official, employee, or agent of MST during the period of this Contract or for a period of one year after.

19. RIGHTS AND REMEDIES OF MST

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

20. BINDING EFFECT

All of the terms, provisions and conditions of this Contract shall be binding upon the both parties and their respective successors, assigns, and legal representatives.

21. WAGE AND PRICE REGULATIONS

If the Federal Government should reinstate wage-price regulations, which are applicable to this Contract, the Consultant shall comply with the provisions of such laws and regulations.

22. DOCUMENTS DEEMED PART OF THE CONTRACT

The Contract includes a Contract signature sheet together with any Attachments and any Exhibits, all of which are incorporated into the contract and shall be construed together to form the contract between the two parties.

Such documents include:

- a. Contract signed by both parties
- b. MST RFP # 19-12, "Federal Legislative Consultant", consisting of:
 - (1) Addenda to MST RFP # 19-12, if any
 - (2) Scope of Work
 - (3) Required Certifications/Forms
 - (4) Standard Terms and Conditions
 - (5) Special Terms and Conditions
 - (6) Proposal, as submitted by Proposer

In the event of conflict between any of the above documents, the precedence for clarification shall be in the order listed.

6. SPECIAL TERMS AND CONDITIONS

1. FTA FUNDING REQUIREMENT

This project may be financed in part by the Federal Transit Administration. Accordingly, federal requirements apply to this Contract and if those requirements change then the changed requirements shall apply to the project as required. MST and the Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to MST, Consultant, or any other party pertaining to any matter resulting from the underlying contract. The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subConsultant who will be subject to its provisions.

MST and the Consultant recognize that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies, " 49 CFR Part 31, apply to actions pertaining to this Contract. MST and the Consultant also agree to comply with the requirements of 49 U.S.C. 5323 (h) (2) by refraining from the use of any FTA assistance to support procurements using exclusionary or discriminatory specifications. MST also agrees to refrain from using state or local geographic restrictions unless otherwise allowed by FTA. Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subConsultant who will be subject to its provisions.

2. FEDERAL CHANGES

Consultant shall at all times comply with all applicable FTA regulation, policies, procedures and directives, including without limitation those listed directly or by reference in the current Master Agreement (Form FTA MA (2) between MST and FTA, as amended. Consultant's failure to so comply shall constitute a breach of contract.

3. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

The Consultant shall permit the authorized representatives of MST, the United States Department of Transportation and the Comptroller General of the United States to inspect, audit, make copies and transcriptions of all work, materials, payrolls and other data and records of the Consultant relating to its performance under the Contract. The Consultant shall maintain all such records for a period of three (3) years after MST makes final payment under this Contract.

4. DISADVANTAGED BUSINESS ENTERPRISES

MST has not established a Disadvantaged Business Enterprise (DBE) Availability Advisory Percentage for this Agreement. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Bidders who obtain DBE participation on this contract will assist the California Department of Transportation in meeting its federally mandated statewide overall DBE goal.

DBE and other small businesses, as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant or subConsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out the applicable requirements of 49 CFR, Part 26 in the award and administration of U.S. Department of Transportation assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

Any subcontract entered into as a result of this Agreement shall contain all of the provision of this section.

5. Title VI Compliance

5.1 The Consultant shall comply with all requirements of the Civil Rights Act of 1964, as amended; the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as amended; and any implementing requirements of FTA. All of these requirements are incorporated by reference and made a part of this Contract. The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

5.2 Equal Employment Opportunity

The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, disability, age, national origin, ancestry, marital status, pregnancy, medical condition, or sexual orientation. The Consultant shall take affirmative action to insure that applicants are employed, and the employees are treated during their employment, without regard to their race, color, religion, gender, disability, age, national origin, ancestry, marital status, pregnancy, medical condition, or sexual orientation. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant shall comply with any implementing regulations FTA may issue.

5.3 Access Requirements for Individuals with Disabilities

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the Consultant agrees that it will comply with the requirements of U.S. Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630. These requirements pertain to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

6. ENERGY CONSERVATION REQUIREMENTS

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. ENVIRONMENTAL REQUIREMENTS

7.1 The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to MST and understands and agrees that MST will report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant also agrees to include these requirements in each subcontract exceeding \$25,000 financed in whole or in part with Federal assistance provided by FTA.

7.2 The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended 42 U.S.C. 7401 et seq. The Consultant agrees to report each violation to MST and understands and agrees that MST will report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant also agrees to include these requirements in each subcontract exceeding \$25,000 financed in whole or in part with Federal assistance provided by FTA.

8. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The Consultant shall submit with proposal, documentation showing that neither the Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. For this purpose, the Consultant must complete and Execute the form entitled "Certification Regarding Debarment, Suspension, and Other Responsibility Matters," found in SECTION VI FORMS. Consultant also agrees to include this provision in any subcontract exceeding \$25,000 and forward the certification to MST with the proposal.

9. NON-COLLUSION AFFIDAVIT

Proposer will be required to submit with their proposal a Non-Collusion Affidavit.

10. PENALTY FOR COLLUSION

If it is found that the person, firm or corporation to whom a Contract has been awarded has colluded with any other party or parties, then the Contract shall be null and void and the Consultant shall be liable to MST for all loss or damage that MST may suffer. The MST Board of Directors may advertise for a new Contract for required services.

11. RESTRICTIONS ON LOBBYING

11.1 Consultants who apply or propose for an award of \$25,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer of employee of MST, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to MST.

11.2 Each proposer is required to review the above referenced regulations and complete and submit a Certification of Compliance with Federal Lobbying Regulations.

11.3 Pursuant to federal regulations, the proposer is required to have all subConsultants (at any tier) providing more than \$25,000 towards the Contract also complete with this Certification, to be included with the proposal.

12. TERMINATION

12.1 Termination for Convenience

MST may terminate this Contract, in whole or in part, at any time by written notice to the Consultant when it is in MST's best interest. The Consultant shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Consultant shall promptly submit its termination claim to MST to be paid. If the Consultant has any property in its possession belonging to MST, the Consultant will account for the same, and dispose of it in the manner MST directs.

12.2 Termination for Default/Breach

If the Consultant fails to perform the services within the time specified in this contract or any extension or if the Consultant fails to comply with any other provisions of this contract, MST may terminate this contract for default. MST shall terminate by delivering to the Consultant a Notice of Termination specifying the default. The Consultant will only be paid the contract price for work services delivered and accepted, or services performed in accordance with the manner or performance required in this Contract.

12.3 Termination for Force Majeure

MST may terminate this Contract upon written notice from the Consultant for unforeseen causes beyond the control and without the fault or negligence of the Consultant. Such causes are those of acts of God, acts of the public enemy, governmental acts, fires and epidemics whose causes irrecoverably disrupt or render impossible the Consultant's performance. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Consultant to foresee or make preparation in defense against.

12.4 Opportunity to Cure

MST in its sole discretion may, in the case of a termination for breach or default, allow the Consultant within fourteen (14) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Consultant fails to remedy to MST's satisfaction the breach or default, within fourteen (14) calendar days after receipt by Consultant of written notice from MST, MST shall have the right to terminate the Contract without any further obligation to the Consultant. Any such termination for default shall not in any way operate to preclude MST from also pursuing all available remedies against Consultant and its sureties for said breach or default.

12.5 Waiver of Remedies for any Breach

In the event that MST elects to waive its remedies for any breach by Consultant of any covenant, term or condition of this Contract, such waiver by MST shall not limit MST's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

13. DISPUTE RESOLUTION

Disputes arising in the performance of this Contract, which are not resolved by agreement of the parties, shall be decided in writing by the General Manager of MST. This decision shall be final and conclusive unless within fourteen (14) calendar days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Consultant and the Consultant shall abide by the decision.

Unless otherwise directed by MST, Consultant shall continue performance under this Contract while matters in dispute are being resolved.

14. PROTEST PROCEDURES

14.1 General Procedures

a. Any proposer or Consultant whose direct economic interest would be affected by the award of the Contract or the failure to award the Contract may file a protest, claim or dispute with MST pursuant to these protest procedures prior to filing any protest, claim or dispute with the FTA.

b. Claims or disputes, where applicable, shall be in writing and filed with MST directed to the General Manager, 19 Upper Ragsdale Drive, Suite 200, Monterey, CA 93940.
FAILURE TO COMPLY WITH ANY OF THE REQUIREMENTS MAY RESULT IN REJECTION OF THE PROTEST.

14.2 Protest Before Proposal Opening

Protests shall be submitted in writing prior to the opening of proposals, unless the aggrieved person did not know and could not have known of the facts giving rise to such protest prior to the opening.

In that case, the protest shall be submitted within five (5) calendar days after such aggrieved person knows or should have known of the facts giving rise to the protest. The protest shall clearly identify:

14.2.1 The name, address, and telephone number of the protester.

14.2.2 The grounds for the protest, any and all documentation to support the protest and the relief sought.

14.2.3 Steps that have been taken to date in an attempt to correct the alleged problem or concern.

14.3 Protest After Contract Award

a. Any individual or entity may file a protest with MST alleging a violation of applicable federal, state law and/or MST policy or procedure relative to seeking, evaluating and/or intent to award a procurement Contract. In addition, any individual or entity may file a protest with MST alleging that MST has failed to follow its Procurement Protest Procedures. Such protest must be filed no later than five (5) calendar days from the notice of intent to award or non-award of the procurement Contract.

b. A protest, dispute, or claim with respect to the award of a Contract through solicitation of proposals shall be submitted in writing within five (5) days of notification of such award to the General Manager/CEO for a decision. All claims shall clearly identify:

- (1) The name, address, and telephone number of the protester.
- (2) The grounds for the protest, any and all documentation to support the protest and the relief sought.
- (3) Steps that have been taken to date in an attempt to correct the alleged problem or concern.

c. A written decision by the MST General Manager/CEO stating the grounds for allowing or denying the protest will be mailed to the protestor prior to execution of the Contract. Such decision shall be final unless the Board of Directors accepts an appeal of the General Manager/CEO's decision.

14.4 FTA Protest Procedures

FTA will only review protests regarding the alleged failure of MST to have written protest procedures, or the alleged failure to follow such procedures. An alleged violation on other grounds falls under the jurisdiction of the appropriate State or local administrative or judicial authorities. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with the Federal regulation. FTA will only review protest submitted by an intercede party as defined in FTA 4220.1E. FTA's decision on any appeal will be final.

7. INSURANCE REQUIREMENTS

Insurance requirements for this project are set forth in Exhibit C – Insurance and Indemnity Requirements.

8. PROPOSAL FORMAT AND CONTENT

A. Format

Proposals shall be typed and be: 1) as brief as possible, and 2) not include any unnecessary promotional material. **Two copies of the proposal are required.**

For ease of handling, it is requested that standard 8 -1/2 x 11” paper be used with the simplest possible method of fastening, considering the size of the proposal.

The nature and form of response are at the discretion of those responding, but shall include the information listed below.

B. Content

1. **General Information:** Complete the attached General Information Form, and place in the front of all proposals submitted.
2. **Profile of Firm:** This section shall include a brief description of the firm’s size as well as the local organizational structure. Include a discussion on the firm’s financial stability, capacity and resources. Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the Proposer or by its sub consultants where litigation is still pending or has occurred within the last five years or (b) any type of project where claims or settlements were paid by the consultant or its insurers within the last five years.
3. **Qualifications of the Firm:** This section shall include a brief description of the Proposer’s and any sub consultant’s qualifications and previous experience on similar or related projects. Description of pertinent project experience shall include a summary of the work performed, the total project cost, the percentage of work the firm was responsible for, the period over which the work was completed, and the name, title, and phone number of clients to be contacted for references. Give a brief statement of the firm’s adherence to the schedule and budget for each project.
4. **Work Plan:** By presentation of a well-conceived work plan, this section of the proposal shall establish the Proposer’s understanding of MST’s objectives and work requirements and Proposer’s ability to satisfy those objectives and requirements. Succinctly describe the proposed approach for addressing the required work, outlining the activities that would be undertaken in completing the various tasks and specifying who would perform them. Include a timetable for completing all work specified in the Scope of Work. The Proposer

may also suggest technical or procedural innovations that have been used successfully on other projects and which may facilitate the completion of this project.

5. **Project Staffing:** This section shall discuss how the Proposer would propose to staff this project. Proposer project team members shall be identified by name, location, specific responsibilities on the project and the estimated person-hours of participation. An organizational chart for the project team and resumes for key Proposer personnel shall be included. Key Proposer personnel will be an important factor considered by the Review Board.
6. **Cost/Pricing Information:** This section shall include the Proposer's price for performing the services discussed in the scope of work. The **attached Price Proposal Form (Attachment B)** must be completed and submitted with the proposal. Proposals in which the costs do not reflect a reasonable relationship to the work to be conducted may be viewed as failing to comprehend the requirements of the scope of work, and, therefore, cause the proposal to be rejected as being non-responsive. **Small Business Enterprise Participation:** Complete the attached SBE Listing of Prime or Sub consultants (Attachment C) and place in the front of all proposals submitted.
5. **Exceptions to the Agreement:** This section shall include any exceptions the Proposer has taken to Exhibit A – Agreement for Services or Exhibit C - Insurance and Indemnity Requirements.

ATTACHMENT B (Continued)

PRICING PROPOSAL FORM
CONTRACT YEAR TWO

Instructions: Prepare one form for each of the five proposed contract years.

WORK SCOPE ACTIVITY	ESTIMATED MONTHLY HOURS	HOURLY RATE	MONTHLY TOTAL
Other Ordinary Expenses:			
Monthly Total:			

Proposed price for fixed monthly retainer (contract year two): _____

Note: The monthly retainer shall include all ordinary expenses, plus all transportation and lodging costs, if necessary.

ATTACHMENT B (Continued)

PRICING PROPOSAL FORM
CONTRACT YEAR FOUR

Instructions: Prepare one form for each of the five proposed contract years.

WORK SCOPE ACTIVITY	ESTIMATED MONTHLY HOURS	HOURLY RATE	MONTHLY TOTAL
Other Ordinary Expenses:			
Monthly Total:			

Proposed price for fixed monthly retainer (contract year four): _____

Note: The monthly retainer shall include all ordinary expenses, plus all transportation and lodging costs, if necessary.

ATTACHMENT B (Continued)

PRICE PROPOSAL RECAP

- (A) Proposed Fixed Monthly Retainer, Contract Year 1: _____ X 12 = _____ total for year 1
- (B) Proposed Fixed Monthly Retainer, Contract Year 2: _____ X 12 = _____ total for year 2
- (C) Proposed Fixed Monthly Retainer, Contract Year 3: _____ X 12 = _____ total for year 3
- (D) Proposed Fixed Monthly Retainer, Contract Year 4: _____ X 12 = _____ total for year 4
- (E) Proposed Fixed Monthly Retainer, Contract Year 5: _____ X 12 = _____ total for year 5

(F) Total overall sum, for proposed Fixed Monthly Retainers added up throughout the term of a five-year contract: _____

ATTACHMENT C

**REQUEST FOR PROPOSAL RFP 19-12
LISTING OF SBE PRIME OR SUBCONSULTANTS
(IF APPLICABLE)**

Firm (Prime): _____ Phone/ Fax: _____

Small Business Enterprise: ___ Yes ___ No Age of Firm _____

Street Address: _____ Name & Title: _____

City, State, Zip: _____ Signature/ Date: _____

Contract dollar value must exclude work performed by non-SBEs except materials or equipment purchased and used in this contract.

CREDIT FOR SBE VENDORS of materials or supplies is limited to 60% of its expenditures for materials and supplies required under this Contract and obtained from a SBE regular dealer. Credit for SBE manufacturers is given at 100% toward the SBE goal only where the SBE vendor manufactures or substantially alters the material prior to resale.

CREDIT FOR SBE BROKERS (Distributor or Representative) is limited to the fees and commissions of the amount paid. All other firms receive 100% credit, less work subcontracted by the SBE to non-SBE firms, towards the SBE goal.

CREDIT FOR SBE TRUCKING FIRMS is limited to amount performed by the SBEs own trucks and drivers and by SBE trucking subhaulers. A SBE trucking firm must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

A SBE must be accepted as certified by MST.

Name & Address of Certified SBE	Certification Number	Agency Certifying	Age of Firm	Dollar Value Of Contract
1-				
2-				
3-				
4-				
5-				

Description of Work
1-
2-
3-
4-
5-

SBE GOALS ARE DETERMINED ON BASE PROPOSAL AMOUNT:

Total Contract Amount \$ _____
SBE Contract Amount: \$ _____

SBE Contract Amount _____ SBE Goal Achieved: _____ SBE Contract Goal: _____
----- X 100 = _____ %
Base Contract _____ No Specific Goal **IMPORTANT!**

ATTACHMENT D

Certificate of Primary Consultant Regarding Debarment

DEBARMENT AND SUSPENSION CERTIFICATE

**CERTIFICATION OF POTENTIAL CONSULTANT REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

If unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

The primary participant, _____ certifies or
(firm name/principal)

affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. sections 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

Date

ATTACHMENT E LOBBYING CERTIFICATE

CERTIFICATION REGARDING LOBBYING

The undersigned [Consultant] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Consultant's Authorized Official_____

Name and Title of Consultant's Authorized Official_____

Date_____

ATTACHMENT G

AFFIDAVIT AND INFORMATION REQUIRED OF BIDDERS

I hereby swear (or affirm) under penalty for perjury:

1. That I am the bidder or an officer or employee of the bidding corporation having authority to sign on its behalf (if the bidder is a corporation);
2. That the attached bid or bids has been arrived at by the bidder independently and have been submitted without collusion and without any agreement, understanding, or planned course of action with any other vendor of materials, supplies, equipment, or service described in the invitation to bid, designed to limit independent bids or competition;
3. That the contents of the bid or bids has not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids, and will not be communicated to any such person prior to the official opening of the bid or bids; and,
4. That I have fully informed myself regarding the accuracy of the statement made in this affidavit.

SIGNED _____

FIRM NAME _____

Subscribed and sworn to before me this _____ day of _____, 2019

Notary Public

My commission expires _____, _____

Bidder's E.I. Number _____
(Number used on employer's Quarterly Federal Tax Return)

EXHIBIT A

AGREEMENT BETWEEN
MONTEREY-SALINAS TRANSIT
AND
[CONSULTANT]
FOR FEDERAL LEGISLATIVE SERVICES

CONTRACT NO. _____

THIS AGREEMENT for Professional Services (“Agreement”), effective as of May 1, 2019 (“Effective Date”) is entered into between Monterey-Salinas Transit (MST), and [INSERT CONSULTANT’S NAME, ADDRESS, PHONE] (CONSULTANT).

1. **SERVICES TO BE PERFORMED:** CONSULTANT shall furnish all technical and professional labor, and materials to satisfactorily provide services as described in Exhibit _____ [Scope of Services per Section I of RFP 19-12].
2. **TERM OF THE AGREEMENT:** The term of the Agreement shall commence upon the Effective Date and continue through completion on or before _____.
3. **COMPENSATION:** CONSULTANT shall be paid for services performed hereunder in accordance with Exhibit B, which exhibit is attached and incorporated herein by this reference.
4. **PERFORMANCE OF THE SERVICES:**
 - 4.1 CONSULTANT represents that it is sufficiently experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the Services under this Agreement.
 - 4.2 CONSULTANT shall perform the Services under this Agreement with that degree of skill and judgment normally exercised by firms performing services of a similar nature. In addition to other rights and remedies that MST may have, MST, at its option, may require CONSULTANT at CONSULTANT’s expense to re-perform any Services that fail to meet the above standard.
5. **ASSIGNMENT AND SUBCONTRACTS:**
 - 5.1 CONSULTANT shall not assign or transfer this Agreement or any portion thereof without the prior written consent of MST. Additionally, CONSULTANT shall not subcontract any part of the Services hereunder other than to those subconsultants that may be identified in Attachment C. Any assignment, transfer, change or subcontract in violation of this Agreement shall be void.

5.2 CONSULTANT shall be fully responsible and liable for the services, products and actions of all sub consultants and suppliers of any tier, and shall include in each subcontract any provisions necessary to make all the provisions of this contract fully effective.

6. **CHANGES:** By written notice from MST's Authorized Representative, MST may, from time to time, make changes within the general scope of this Agreement. If any such changes cause an increase or decrease in the price of this Agreement or in the time required for its performance, CONSULTANT shall promptly notify MST thereof and assert its claim for adjustment within ten days after the change is ordered, and an equitable adjustment shall be negotiated.

7. **INDEMNIFICATION AND INSURANCE:** Indemnification and Insurance requirements are set forth in Exhibit C, which is attached and incorporated herein by this reference.

8. **AUDIT AND RECORDS:**

8.1 CONSULTANT shall maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data with respect to actual time devoted and costs incurred for Services under this Agreement. Such documentation shall be supported by properly executed payrolls, invoices, contracts and vouchers evidencing in detail the nature and propriety of any charges and sufficient to allow a proper audit of the Services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the Services shall be clearly identified and readily accessible.

8.2 For the duration of the Agreement, and for a period of three years thereafter, MST, its representatives and the federal auditor shall have the right to examine and audit during CONSULTANT normal business hours these books, accounts, records, data and other relevant information to the extent required to verify the costs incurred hereunder where such costs are the basis for billings under this Agreement.

8.3 CONSULTANT shall report indirect costs in accordance with the cost principles contained in 48CFR, Part 31, and follow the uniform administrative requirements set forth in 49 CFR, Part 18.

8.4 The provisions of this section shall be included in any subcontracts hereunder.

9. **SMALL BUSINESS ENTERPRISES:** In connection with its performance under this Agreement, although there is no specified goal, CONSULTANT agrees to cooperate with MST in meeting MST's overall goal of 6% annual utilization of Small Business Enterprises. In this regard CONSULTANT will use its best efforts to ensure that SBEs shall have an equitable opportunity to compete for subcontract work under this Agreement.

CONSULTANT shall submit an SBE Utilization Report, with each invoice submitted, if any sub consultant work is involved.

CONSULTANT shall submit a DBE/SBE Final Utilization Report, at the conclusion of the contract, indicating the total of any DBE or SBE utilization during the course of the Contract.

10. PROHIBITED INTERESTS:

- 10.1 Solicitation: CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, MST shall have the right to rescind this Agreement without liability.
- 10.2 Interest of Public Officials: No Board Member, officer or employee of the MST during his or her tenure or for two years thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- 10.3 Interest of the CONSULTANT: The CONSULTANT covenants that neither it nor its officers, directors or agents, presently has any interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required to be performed under this Agreement. The CONSULTANT further covenants that in the performance of this Agreement no person having any such interest shall knowingly be employed.

11. TERMINATION AND SUSPENSION:

- 11.1 MST may, by giving at least ten business days' written notice to CONSULTANT, terminate this Agreement, or suspend performance hereunder, in whole or in part at any time for MST's convenience. CONSULTANT shall be compensated in accordance with the terms of the Agreement for Services satisfactorily performed prior to the effective date and time of termination or suspension. CONSULTANT shall have no right to recover lost profits on the balance of the contract work.
- 11.2 MST, by written notice given to CONSULTANT, may declare default in CONSULTANT's performance of any term of this Agreement, specifying with particularity the basis for such default. CONSULTANT shall deliver a response thereto in writing to MST within two business days of receipt of the notice, setting forth a reasonable proposal to cure the default. If CONSULTANT fails to

deliver the foregoing response on time or fails to cure the default within ten business days after receipt of the notice (or within such additional time the Parties may agree upon in writing), MST may elect to terminate this Agreement for cause by serving written notice thereof to CONSULTANT.

11.3 In the event of such termination for cause, MST shall be relieved of any obligation of further payment to CONSULTANT and may proceed with the work. The additional cost to MST of completing the Services shall be deducted from any sum due the CONSULTANT and the balance, if any, shall be paid the CONSULTANT upon demand. The foregoing shall be in addition to any other legal or equitable remedies available to MST.

11.4 If, after termination for failure to fulfill contract obligations, it is determined that the Consultant was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of MST.

12. AUTHORIZED REPRESENTATIVES AND NOTICES: The Authorized Representatives assigned below have authority to authorize changes to the scope, terms and conditions of this Agreement, as set forth herein.

12.1	For MST: Carl G. Sedoryk General Manager/CEO	For Consultant: Name Title
------	--	----------------------------------

12.2 Written notification to the other party shall be provided, in advance of changes in the name or address of the designated Authorized Representatives.

12.3 NOTICES: Notices shall be in writing and shall be addressed as follows:

For MST: MST – Purchasing Manager 19 Upper Ragsdale Drive, Suite 200 Monterey, CA 93940	For CONSULTANT: ADDRESS ADDRESS ADDRESS ADDRESS
---	---

13. GENERAL PROVISIONS

13.1 **OWNERSHIP OF DATA:** All drawings, specifications, reports and other data developed by CONSULTANT, its assigned employees or sub consultants pursuant to this Agreement shall become the property of MST as prepared, whether delivered to MST or not. Unless otherwise provided herein, all such data shall be delivered to MST or its designee upon completion of the Agreement or at such other times as MST or its designee may request.

13.2 **NONDISCRIMINATION AND AFFIRMATIVE ACTION:** During performance of this Agreement CONSULTANT, its employees and sub consultants shall not

unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age or sex, and shall take affirmative action to assure that applicants are lawfully employed, and that employees are lawfully treated during their employment, without regard to their race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age or sex.

- 13.3 **CONFIDENTIALITY AND PUBLICITY:** Without the written consent of MST, CONSULTANT shall not disclose to third parties other than its employees or authorized sub consultants or disclose or use for any purpose other than performance of the Services any information provided to CONSULTANT by MST in connection with performance of this Agreement, or any information developed or obtained by CONSULTANT in the performance of this Agreement, unless: (1) the information is known to CONSULTANT prior to obtaining same from MST or performing Services under this Agreement; (2) the information is at the time of disclosure by CONSULTANT then in the public domain; or (3) the information is obtained by or from a third party who did not receive it, directly or indirectly, from MST and who has no obligation of confidentiality with respect thereto.
- 13.4 **NONWAIVER:** Failure of MST to insist upon strict performance of any terms or conditions of this Agreement or failure or delay in exercising any rights or remedies provided herein by law or its failure to properly notify CONSULTANT in the event of breach or its acceptance of or payment for any Services hereunder shall not release CONSULTANT from the representations or obligations of this Agreement and shall not be deemed a waiver of any right of MST to insist upon strict performance hereof or any of its rights or remedies hereunder.
- 13.5 **SEVERABILITY:** If any of the provisions or portions or applications thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, MST and CONSULTANT shall negotiate an equitable adjustment in the provisions of the Agreement with a view toward affecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions or portions or applications thereof shall not be affected thereby.
- 13.6 **INDEPENDENT CONSULTANT:** CONSULTANT is an independent consultant and not the agent or employee of MST in performing its Services under this Agreement.
- 13.7 **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between MST and CONSULTANT relating to the subject matter hereof and supersedes any previous agreements or understandings, oral or written.

- 13.8 **AMENDMENT:** Except as expressly provided herein, the provisions of this Agreement shall not be altered, modified or amended except through the execution of written amendment executed by MST and CONSULTANT.
- 13.9 **COMPLIANCE WITH APPLICABLE LAW:** In the performance of Services hereunder, CONSULTANT and its sub consultants, shall comply with all applicable requirements of state, federal, and local law. The provision of this paragraph shall be included in any subcontracts hereunder.
- 13.10 **DOCUMENTS AND WRITTEN REPORTS.** In accordance with Government Code § 7550 *Preparation by nonemployees of federal or local agency; inclusion of contract and subcontract numbers and dollar amounts:* If CONSULTANT prepares any documents or written reports pursuant to the scope of work under this Agreement for Services, for which the total cost of preparation exceeds \$5,000, such documents or written reports shall contain a separate section that contains the numbers and dollar amounts of all contracts and subcontracts relating to their preparation.

Monterey-Salinas Transit

Consultant

By: _____

By: _____

EXHIBIT B

COMPENSATION

For CONSULTANT'S full and complete performance of its obligations under this Agreement, MST shall pay CONSULTANT compensation as set forth herein.

I. INVOICING: CONSULTANT shall invoice MST on a monthly basis for services performed during the preceding month. On each invoice, Base Work (Retainer Fee) and any Extra Work (Extraordinary Expenses) shall be charged separately. Furthermore, each invoice shall include a description of the work performed, and the number of hours allotted.

A. Professional services shall be invoiced in accordance with the following Rate Schedule:

MONTHLY RETAINER: \$ _____

The monthly retainer shall include all ordinary expenses, plus all transportation and lodging costs, if necessary.

B. Project-related travel expenses, beyond the monthly retainer fee, which are directly identifiable to the performance of services under this Agreement shall be reimbursed at actual cost without mark-up. Airfare shall be at the lowest available coach fare. Vehicle mileage shall be reimbursed at the current IRS rate. Reimbursement for subsistence for such travel shall not exceed \$250 per day. All extraordinary expenses shall require appropriate backup documentation for reimbursement.

C. Each invoice shall cite Agreement No. _____ and shall specify the time period covered by the invoice and the amount of payment requested.

D. Invoices shall be mailed to the attention of Accounts Payable, 19 Upper Ragsdale, Drive, Suite 200 Monterey, CA 93940-5795.

E. **WAIVER-SERVICES NOT INVOICED WITHIN 6 MONTHS.**
CONTRACTOR SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO PAYMENT FOR SERVICES NOT INVOICED WITHIN 6 MONTHS OF THE DATE THE SERVICE WAS PERFORMED. For purposes of this provision, the date of the invoice shall be the date it is received by MST.

F. Should MST contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. MST may, at any time, conduct an audit of any and all records kept by CONSULTANT

for the Services. Any overpayment uncovered in such an audit may be charged against the CONSULTANT's future invoices.

- II. PAYMENT:** Payment will be made to CONSULTANT within 30 days after receipt by MST of a proper invoice. CONSULTANT shall pay subconsultants, if any, for satisfactory performance of Services performed under this Agreement within 15 days of receipt of payment by MST for such services.

EXHIBIT C

**INSURANCE AND INDEMNITY REQUIREMENTS
for
PROFESSIONAL SERVICE CONTRACTS**

PROPOSERS' ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT PROPOSERS CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS IN ADVANCE OF PROPOSAL SUBMISSION TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS PRESCRIBED AND PROVIDED HEREIN.

I. INDEMNITY

The Consultant shall indemnify, defend, and hold harmless Monterey-Salinas Transit (hereinafter "MST"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, the negligent performance of this Agreement by Consultant and/or its agents or employees or sub consultants, excepting only loss, injury or damage caused by the negligence or willful misconduct of MST employees.

II. INSURANCE

Without limiting the Consultant's indemnification of MST, the Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees, or sub consultants. The cost of such insurance shall be included in the Consultant's bid.

A. Liability and Worker's Compensation Insurance

1. Minimum Scope of Coverage

Coverage shall be at least as broad as:

- a. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001). Liability insurance written on a "claims made" basis is not acceptable.
- b. Insurance Services Office Business Auto Coverage form number CA 0001 covering Automobile Liability, code 1 "any auto".

- c. Workers' Compensation insurance as required by the Labor Code of the Federal of California, and Employers Liability insurance.

2. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

- a. General Liability \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. If a Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability \$250,000 combined single limit per accident for bodily injury and property damage.

3. Self-Insured Retention

Any self-insured retention in excess of \$10,000 must be declared to and approved by MST. To apply for approval for a level of retention in excess of \$10,000 the proposer/bidder must provide a current financial statement documenting the ability to pay claims falling within the self-insured retention. At the option of MST, either: the insurer shall reduce or eliminate such self-insured retention as respects MST, its officers, officials, employees and volunteers; or the propose/bidder shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

B. Claims Made Provisions

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly state so. In addition to all other coverage requirements, such policy shall provide that:

1. The policy must be in effect as of the date of this Agreement and the retroactive date shall be no later than the date of this Agreement.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, the Consultant shall obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision shall be of at least two (2) years.
3. No prior acts exclusion to which coverage is subject that predates the date of this Agreement.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. Other Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. MST, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Consultant, including MST's general supervision of the Consultant; products and completed operations of the Consultant and its sub consultants; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to MST, its officers, officials, employees, or volunteers.
- b. The Consultant's insurance coverage shall be primary insurance as respects MST, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by MST, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to MST, its officers, officials, employees, or volunteers.
- d. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability

The insurer shall agree to waive all rights of subrogation against MST, its officers, officials, employees, and volunteers for losses arising from work performed by the Consultant and its sub consultants for MST.

D. Acceptability of Insurers

Insurance and bonds are to be placed with insurers with a Best's rating of no less than B+VIII, unless MST has granted specific prior written approval.

E. Certificates of Insurance

Consultant shall furnish MST with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates will be issued on a standard ACORD Form or something substantially similar thereto.

The certificates will (1) identify the underwriters, the types of insurance, the insurance limits and the policy term, (2) specifically list the provisions enumerated for such insurance in Sections B and C. above, and (3) in the "Certificate Holder" box include:

Monterey-Salinas Transit
19 Upper Ragsdale Drive, Suite 200
Monterey, CA 93940-5795

All certificates are to be received and approved by MST before work commences. MST reserves the rights to require complete, certified copies of all required insurance policies, at any time.

Each insurance policy required by this Exhibit shall provide that if the policy is canceled or coverage reduced, such cancellation or reduction shall not be effective for 30 days, except for non-payment of premium which shall be 10 days, after receipt by MST of written notice of such cancellation or reduction.

III. MAINTENANCE OF INSURANCE

If Consultant fails to maintain such insurance as is called for herein, MST, at its option, may suspend payment for work performed and/or may order the Consultant to suspend work at Consultant's expense until a new policy of insurance is in effect.