

**AGREEMENT FOR CONSULTING SERVICES  
BY AND BETWEEN  
GATEWAY CITIES COUNCIL OF GOVERNMENTS  
AND**

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THIS AGREEMENT FOR CONSULTING SERVICES (“Agreement”) is made and entered into as of \_\_\_\_\_, \_\_\_\_, by and between the Gateway Cities Council of Governments, a joint powers authority organized and existing pursuant to the laws of the State of California (“Agency”) and \_\_\_\_\_, a(n) \_\_\_\_\_ (“Consultant”).

**WITNESSETH:**

WHEREAS, Agency requires the professional services of a qualified consultant in connection with providing the services described herein below; and

WHEREAS, Consultant represents that Consultant is qualified and willing to perform the professional services required herein; and

WHEREAS, Agency and Consultant desire to enter into this Agreement to set forth their rights, duties, and liabilities in connection with the performance of such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other consideration, the sufficiency of which is hereby acknowledged, the parties hereto do agree as follows:

Section 1. Defined Terms. Unless the context otherwise requires, the terms defined in this Agreement shall, for all purposes of this Agreement and of any amendment hereto, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

Section 2. Term of Agreement. Subject to Section 20 of this Agreement, the term of this Agreement shall commence as of \_\_\_\_\_, \_\_\_\_ and shall terminate on \_\_\_\_\_, \_\_\_\_.

Section 3. Scope of Services. Consultant agrees to perform the services set forth in Exhibit "A," "Scope of Services," attached hereto and made a part of this Agreement.

Section 4. Time of Performance. Consultant shall diligently perform the services required under this Agreement and in accordance with any schedule agreed upon by both Consultant and Agency. If Consultant falls behind schedule, it shall immediately notify Agency of the estimated delay and shall provide a written explanation of the delay if requested by Agency. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

Section 5. Excusable Delays and Extension of Agreement. Neither Consultant or Agency shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the parties. Such acts include, but are not limited to, acts of God, the public enemy, fire, floods, epidemics, quarantine restrictions, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If work is delayed at any time as a result of any of such acts, or by reason of a suspension order by Agency, or because of any other act of Agency or neglect by Agency, then Consultant shall be entitled to an extension of time to perform the work equivalent to the time actually lost by such delay.

Section 6. Non-Exclusive Agreement. Consultant acknowledges that Agency may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services.

Section 7. Compensation and Method of Payment. Agency agrees to pay Consultant in accordance with Exhibit "B," Compensation and Method of Payment," attached hereto and made a part of this Agreement.

Section 8. Representatives. \_\_\_\_\_ or his or her designee shall be the representative of Agency for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of Agency called for by this Agreement, except as otherwise expressly provided in this Agreement. \_\_\_\_\_ shall be Consultant's representative for purposes of this Agreement and shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

Section 9. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to Agency or its representative for inspection and/or audit at mutually convenient times for a period of three (3) years from the date this Agreement is terminated.

Section 10. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in Exhibit "A" unless Agency approves such additional services in writing prior to performance. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

Section 11. Status of Consultant. Consultant is and shall at all times remain a wholly-independent contractor and not an officer, employee or agent of Agency. Consultant shall not obtain any rights to any benefits of any kind which accrue to Agency's direct employees, if any. Consultant expressly waives any claim to such rights except those specifically granted herein.

Section 12. Standard of Performance and Licenses. Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement. Consultant represents and warrants to Agency that it has all licenses, permits, and approvals that are legally required to practice its profession and to provide the services hereunder. Consultant further represents and warrants that it shall keep in effect all such licenses, permits, and approvals throughout the term of this Agreement.

Section 13. Conflicts of Interest. Consultant covenants that neither it nor any officer, principal, agent or employee of its firm has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of Agency. Consultant covenants further that neither it nor any officer, principal, agent or employee shall acquire any interest in property sold to or purchased or leased from Agency.

Section 14. Indemnification.

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless Agency and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless Agency, and any and all of its employees, officials and agents from and

against any liability (including, but not limited to, liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including, but not limited to, officers, agents, employees or subconsultants of Consultant.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of Agency to monitor compliance with these requirements imposes no additional obligations on Agency and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend Agency as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

Section 15. Insurance. Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit "C," "Insurance Requirements," attached hereto and made a part of this Agreement.

Section 16. Nondiscrimination. Consultant shall not discriminate on the basis of race, color, creed, religion, national origin, ancestry, sex, sexual preference, age, marital status, physical handicap, or other prohibited grounds in the performance of this Agreement.

Section 17. Compliance with Law. The parties agree to be bound by all federal, state, and local laws and regulations applicable to performance of this Agreement.

Section 18. Assignment. The expertise and experience of Consultant are material considerations for this Agreement. Agency has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant shall not assign or transfer any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the Board of Directors of Agency. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling Agency to any and all remedies at law or in equity, including summary termination of this Agreement.

Section 19. Continuity of Personnel. Consultant will fulfill the obligations of this Agreement with \_\_\_\_\_ as the account principal. Consultant acknowledges that the expertise and experience of \_\_\_\_\_ are material considerations for this Agreement.

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement. Consultant shall notify Agency of any changes in Consultant's staff assigned to perform the services required under this Agreement prior to any such performance.

Section 20. Termination of Agreement. Either party may terminate this Agreement, with or without cause, by giving the other party thirty (30) days written notice of termination. All property belonging to Agency, including, but not limited to, documents prepared by Consultant in the performance of this Agreement, shall be returned to Agency within (five) 5 days of Consultant's delivery of termination notice to Agency or ten (10) days of Agency's delivery of termination notice to Consultant. In the event of termination by either party, Consultant shall immediately cease work and shall furnish a final invoice for work performed and expense incurred by Consultant, and Agency shall pay said invoice within thirty (30) days thereof.

Section 21. Miscellaneous.

(a) Notices. All notices which any party is required or desires to give hereunder shall be in writing and shall be deemed given when delivered personally or three (3) days after mailing by registered or certified mail (return receipt requested) to the following address or at such other address as the parties may from time to time designate by written notice in the aforesaid manner:

To Agency:

To Consultant:

(b) Ownership of Documents. All documents prepared by Consultant in the performance of this Agreement shall be and remain the sole property of Agency and shall be promptly made available to Agency upon request throughout the term of this Agreement at no cost to Agency. Consultant shall deliver to Agency any plans, specifications, studies, reports, drawings or any other items or materials prepared in accordance with the required services under this Agreement to Agency no later than at the conclusion of the performance of such services by Consultant. Consultant agrees that the documents or information prepared by Consultant in the performance of this Agreement shall not be used by anyone except for in connection with the performance of services under this Agreement. Consultant also agrees that any such documents

or information shall not be made available to any individual or organization without the prior consent of Agency. Agency's use of such documents for other projects not contemplated by this Agreement, or use of incomplete documents, shall be at the sole risk of Agency and without liability or legal exposure to Consultant.

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of each party to this Agreement and their respective heirs, administrators, representatives, successors, and assigns.

(d) Amendment. The terms and provisions of this Agreement may not be amended, modified or waived, except by an instrument in writing signed by the parties.

(e) Waiver. Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by Agency of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

(f) Law to Govern; Venue. This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles.

(g) No Presumption in Drafting. The parties to this Agreement agree that the general rule that an Agreement is to be interpreted against the party drafting it or causing it to be prepared shall not apply to this Agreement.

(h) Time of Essence. Time is of the essence for each and every provision of this Agreement.

(i) No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of Agency and Consultant, no other parties are intended to be direct or incidental beneficiaries of this Agreement, and no third party shall have any right in, under, or to this Agreement.

(j) Attorneys' Fees, Costs and Expenses. In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled.

(k) Entire Agreement. This Agreement, including the attached exhibits hereto, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, whether written or oral, with respect thereto.

(l) Severability. If any term, provision, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

(m) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute but one and the same instrument, provided, however, that such counterparts shall have been delivered to both parties to this Agreement.

(n) Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

**GATEWAY CITIES COUNCIL OF GOVERNMENTS**

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President

**ATTEST:**

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RICHARD R. POWERS  
Secretary

**APPROVED AS TO FORM:**

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RICHARD D. JONES  
Legal Counsel

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[Authorized Officer]

**EXHIBIT "A"**

**SCOPE OF SERVICES**

**EXHIBIT “B”**

**COMPENSATION AND METHOD OF PAYMENT**

Consultant shall receive compensation for work performed in accordance with Exhibit “A” as follows:

## EXHIBIT "C"

### INSURANCE REQUIREMENTS

Prior to the commencement of the services to be performed under this Agreement, and throughout the term of this Agreement, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Agency in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to Agency.

Consultant shall provide the following types and amounts of insurance:

1. **Commercial General Liability Insurance** using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to policy limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event shall be less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.
2. **Business Auto Coverage** on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.
3. **Professional Liability or Errors and Omissions Insurance** as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of Consultant and "Covered Professional Services" as designated in the policy must specifically include the services performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.
4. **Worker's Compensation** as required by the state of California with employer's liability limits no less than \$1,000,000 per accident for all covered losses. However, Consultant will not be required to maintain worker's compensation insurance if Consultant does not have any employees.

**Insurance procured pursuant to these requirements shall be written by insurers that are**

**admitted carriers in the state of California and with an A.M. Bests rating of A or better and a minimum financial size VII.**

**General conditions pertaining to provision of insurance coverage by Consultant.** Consultant and Agency agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds Agency, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against Agency regardless of the applicability of any insurance proceeds.
3. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.
4. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured.
5. All coverage types and limits required are subject to approval, modification and additional requirements by Agency, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g., elimination of contractual liability or reduction of discovery period) that may affect Agency's protection without Agency's prior written consent.
6. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to Agency at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, Agency has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by Agency shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at Agency option.
7. Consultant agrees to endorse the insurance provided pursuant to these requirements to require 10 days notice to Agency prior to cancellation of such liability coverage or any material alteration or non-renewal of any such coverage, other than for nonpayment of premium, 30 days notice to Agency prior to any other cancellation of such liability coverage or material alteration or non-renewal of any such coverage, and to require indemnifying parties to do likewise.

8. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Consultant is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to Agency.
9. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to Agency. At that time Agency shall review options with Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
10. Agency reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, Agency will negotiate additional compensation proportional to the increased benefit to Agency.
11. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
12. Consultant acknowledges and agrees that any actual or alleged failure on the part of Agency to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on Agency nor does it waive any rights hereunder in this or any other regard.
13. Consultant will renew the required coverage annually as long as Agency, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until Agency executes a written statement to that effect.
14. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Agency within five days of the expiration of the coverages.
15. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to Agency, its employees, officials and agents.
16. Requirements of specific coverage features or limits contained in this section are not

intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

17. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.
18. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
19. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge Agency or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to Agency. It is not the intent of Agency to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Agency for payment of premiums or other amounts with respect thereto.
20. Consultant agrees to provide immediate notice to Agency of any claim or loss against Consultant arising out of the work performed under this Agreement. Agency assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Agency.