

AGREEMENT NO. C0890

BETWEEN THE ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY  
AND  
SOUTHERN CALIFORNIA CENTER  
FOR NONPROFIT MANAGEMENT

THIS AGREEMENT ("Agreement") is made and entered into by and between the ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY, a California Joint Powers Authority ("ACTA"), acting by and through its Governing Board ("Board") and SOUTHERN CALIFORNIA CENTER FOR NONPROFIT MANAGEMENT, a California nonprofit corporation, 1000 N. Alameda Street, Suite 250, Los Angeles, California 90012 ("Consultant").

WHEREAS, ACTA requires the professional, expert and technical services of Consultant on a temporary or occasional basis to assist ACTA to develop and implement a comprehensive executive search program for highly qualified individuals to fill officer positions at ACTA; and

WHEREAS, ACTA requires the professional, expert and technical services of Consultant on a temporary or occasional basis to assist ACTA in developing and implementing a comprehensive executive search for highly qualified individuals to fill the positions of Chief Executive Officer and Chief Financial Officer at ACTA; and

WHEREAS, Consultant possesses extensive experience in dealing with the recruitment of highly qualified individuals nationwide and providing the requested services;

WHEREAS, Consultant, by virtue of training and experience, is well-qualified to provide such services to ACTA; and

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to ACTA, as an independent contractor, certain professional, technical and expert services as set forth in Exhibit A ("Scope of Work").

B. Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between ACTA and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, city, or any other governmental entity.

C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of ACTA's Governing Board Chair or her designee, whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to ACTA and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon ACTA's Governing Board Chair's written request, Consultant shall supply ACTA with all agreements between Consultant and its Subconsultants.

## II. SERVICES TO BE PERFORMED BY ACTA

A. ACTA shall furnish Consultant, upon its request, all documents and papers in possession of ACTA which may lawfully be supplied to Consultant and which are necessary for Consultant to perform its obligations.

B. ACTA's Governing Board Chair or her designee is designated as the contract administrator for ACTA and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article VIII (Termination) hereof.

## III. TERM OF AGREEMENT

The term of this Agreement shall be a period of one year from the date of execution of this Agreement by ACTA's Chief Executive Officer or his designee.

## IV. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, ACTA shall pay and reimburse Consultant at the rates set forth in Exhibit B.

B. The maximum amount payable under this Agreement, including reimbursable expenses (see Exhibit B), shall be Two Hundred Thousand Dollars (\$200,000).

C. Following the effective date of this Agreement, Consultant shall submit invoices in duplicate to ACTA according to the Fee Payment Schedule in Exhibit B, and where expenses are incurred, on a monthly basis, for services performed during the preceding month. Each such invoice shall be signed by the Consultant and shall include the following certification:

“I certify under penalty of perjury that the above invoice is true and just, in accordance with the terms of Agreement No. C0890, that payment of this invoice has not been received and that none of the items contained in the invoice have been submitted to any other agency.

\_\_\_\_\_  
(Consultant’s Signature)

D. All invoices shall be approved by ACTA’s Chief Financial Officer (“CFO”) or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of ACTA business, the same may be approved, audited and processed.

Invoices that include charges for expenses shall include a detailed explanation of the charges incurred. Consultant shall submit appropriate supporting documents with each such invoice, which may include third-party provider invoices and receipts. ACTA may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of \$25 or less.

Further, where the Consultant employs Subconsultants under this Agreement, the Consultant shall submit to ACTA a Monthly Subconsultant Monitoring Report Form (Exhibit C) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts.

E. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Department  
Alameda Corridor Transportation Authority  
3760 Kilroy Airport Way, Suite 200  
Long Beach, California 90806

V. RECORDKEEPING AND AUDIT RIGHTS

A. Consultant shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at Consultant’s premises by ACTA, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of

any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

B. During the term of this Agreement, ACTA may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to ACTA. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide ACTA at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by ACTA. ACTA's right shall also include inspection at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to ACTA, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Article IV shall constitute a material breach of this Agreement and shall entitle ACTA to withhold any payment due under this Agreement until such breach is cured.

#### VI. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of ACTA. Consultant shall not represent itself as an agent or employee of ACTA and shall have no power to bind ACTA in contract or otherwise.

#### VII. INDEMNIFICATION

Except for the sole negligence or willful misconduct of ACTA, its Board or any of its Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to defend, indemnify and hold harmless ACTA, its Board and any of its Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by ACTA, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Consultant or its Subcontractors of any tier. Rights and remedies available to ACTA under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States and the State of California.

## VIII. INSURANCE

A. In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article VII, Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

### (1) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ACTA if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that ACTA's CFO may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by ACTA shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name ACTA, its Board, officers, agents and employees as additional insureds.

### (2) Automobile Liability Insurance

Automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to ACTA if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall name ACTA, its Board, officers, agents and employees as Primary additional insureds.

### (3) Workers' Compensation and Employer's Liability

Consultant shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Consultant shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private

carrier, which provide that the public or private carrier waives its right of subrogation against ACTA in any circumstance in which it is alleged that actions or omissions of ACTA contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Consultant, and for all employees of any subcontractor or other vendor retained by Consultant.

B. Insurance Procured by Consultant on Behalf of ACTA

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article VII, and where Consultant is required to name ACTA, its Board, officers, agents and employees as Primary additional insureds on any insurance policy required by this Agreement, Consultant shall cause ACTA to be named as an additional insured on all policies it procures in connection with this Article VIII. Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that ACTA, its Board, their officers, agents and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts and activities of the insured under Agreement No. C0890, and under any amendments, modifications, extensions or renewals of said Agreement regardless of where such contractual obligations, operations, uses, occupations, acts and activities occur.

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by ACTA is excess coverage;

"In the event of one of the named insured's incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to ACTA's CFO with copies sent to ACTA's Co-General Counsel at the following addresses; 1) Office of the Long Beach City Attorney, 411 West Ocean Boulevard, 9<sup>th</sup> Floor, Long Beach, California 90802, and 2) Office of the Los Angeles City Attorney, 425 S. Palos Verdes Street, San Pedro, California, 90731."

C. Required Features of Coverages

Insurance procured by Consultant in connection with this Article VIII shall include the following features:

(1) Acceptable Evidence and Approval of Insurance

Consultant's insurance broker or agent shall submit to ACTA the appropriate proof of insurance on Consultant's behalf.

Upon request by ACTA, Consultant shall furnish full copies of certified policies of any insurance policy required herein. This obligation is intended to, and shall, survive the expiration or earlier termination of this Agreement.

(2) Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to ACTA.

(3) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other reason, by written notice to ACTA.

(4) Modification of Coverage

ACTA's CFO, at his sole reasonable discretion, based upon recommendation of independent insurance consultants to ACTA, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

(5) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, Consultant shall renew or extend such policy in accordance with the requirements of this Agreement and direct their insurance broker or agent to submit to ACTA a renewal endorsement or renewal certificate or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, ACTA's CFO may, at his or her own option but without any obligation, obtain such insurance to protect ACTA's interests. The cost of such insurance shall be deducted from the next payment due Consultant.

(6) Limits of Coverage

If Consultant maintains higher limits than the minimums required by this Agreement, ACTA requires and shall be entitled to coverage for the higher limits

maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to ACTA.

D. Accident Reports

Consultant shall report in writing to ACTA's CFO within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon any Alameda Corridor property if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

IX. TERMINATION PROVISION

The Governing Board Chair, in her sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant fifteen (15) business days' advance, written notice of ACTA's election to cancel and terminate this Agreement. It is agreed that upon providing written notice of ACTA's election to cancel and terminate the Agreement, Consultant's exclusivity arrangement is terminated and ACTA shall have the right thereafter to hire additional consultants or itself perform the services described in this Agreement.

X. PERSONAL SERVICE AGREEMENT

A. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of ACTA's Governing Board Chair where the work may conflict with the interests of ACTA.

B. Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Article I. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on ACTA to such Subconsultant(s) or give the Subconsultant(s) any rights against ACTA.

XI. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because

of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. All subcontracts awarded shall contain a like nondiscrimination provision.

## XII. SMALL BUSINESS ENTERPRISE PROGRAM

It is the policy of ACTA to provide Small Business Enterprises (SBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all ACTA contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist ACTA in implementing ACTA's Small Business Program attached hereto as Exhibit D, and shall use its best efforts to afford the opportunity for SBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement.

## XIII. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of ACTA. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of ACTA relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, ACTA may immediately terminate this Agreement by giving written notice thereof.

## XIV. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of ACTA's CEO.

## XV. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

## XVI. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify ACTA, its Board and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by ACTA of any materials supplied by Consultant in the performance of this Agreement.

## XVII. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by ACTA as soon as they are developed, whether in draft or final form. ACTA has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that ACTA at all times owns rights provided for in this Article free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for ACTA the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by ACTA, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to ACTA, its Board, officers, agents or employees, is not given in confidence. Accordingly, ACTA or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

B. If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, ACTA shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by ACTA. Upon ACTA's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to ACTA. It is expressly understood and agreed that, as between ACTA and Consultant, the referenced license shall arise for ACTA's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. ACTA may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by ACTA.

## XVIII. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel.

## IXX. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice ACTA shall be addressed to its Chief Financial Officer, Alameda Corridor Transportation Authority, 3760 Kilroy Airport Way, Suite 200, Long Beach, California 90806, and notice to Consultant shall be addressed to it at Consultant's address set forth in the opening paragraph of this Agreement. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

## XX. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

## XXI. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the

applicable law or public policy and to effect the original intent of the parties as closely as possible.

## XXII. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

## XXIII. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

## XIV. MODIFICATION IN WRITING

This Agreement may be modified, amended or changed only by written agreement of all parties, said agreement duly executed and delivered by both parties. Any such modifications are subject to all applicable approval processes required by ACTA.

## XV. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

## XVII. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

## XVII. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

ALAMEDA CORRIDOR  
TRANSPORTATION AUTHORITY

Date: \_\_\_\_\_

By: \_\_\_\_\_  
John T. Doherty, P.E.  
Chief Executive Officer

SOUTHERN CALIFORNIA CENTER  
FOR NONPROFIT MANAGEMENT

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_, 2019  
Michael N. Feuer, Los Angeles City Attorney

By \_\_\_\_\_  
Heather M. McCloskey, Deputy City Attorney  
ACTA Co-General Counsel

Rev. 02/19

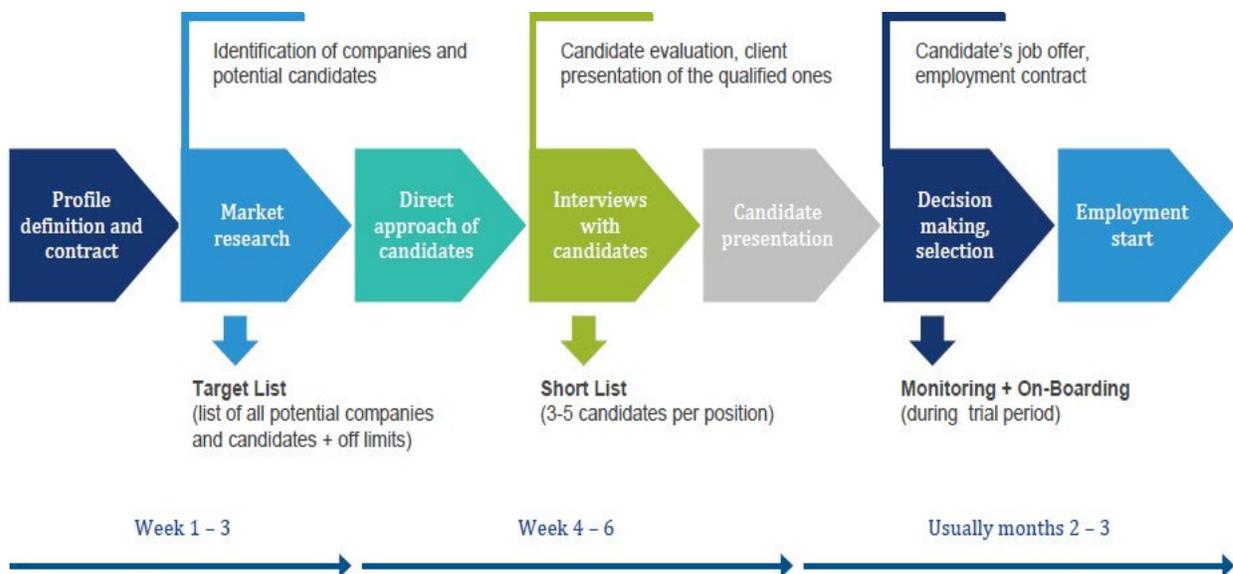
## **EXHIBIT A SCOPE OF WORK**

Consultant Southern California Center for Nonprofit Management (hereinafter “Consultant” or “CNM”) and its proposed Subconsultant Stanton Chase shall provide executive recruitment services to the satisfaction of ACTA to hire an individual for the position of Chief Executive Officer and, upon written request, an individual for the position of Chief Financial Officer. Such services shall include but are not limited to the following:

1. Schedule at least one search committee (ACTA) facilitated meeting to complete the organization/position assessment and confer with key stakeholders (ACTA’s Governing Board members, its current CEO, CFO and staff) to determine specific position responsibilities, levels of experience and training required, expectations, perceptions and concerns, reporting relationships, company culture, management style, business objectives, challenges and opportunities;
2. Draft the Recruitment Profile (Recruitment Brochure) for search committee (ACTA) approval;
3. Research strategy outline, including original research combined with Consultant’s proprietary database of potential candidates and a list of target organizations;
4. Develop diversity outreach strategies;
5. Research and develop a candidate pool;
6. Identify benchmark candidates;
7. Meet with search committee to discuss any necessary re-calibration of the search strategy or position requirements;
8. Develop and Place Recruitment Ads;
9. Outreach to prospective candidates/sources in Consultant’s proprietary database;
10. Outreach to prospective candidates and sources from original research;
11. Conduct a screening process to determine candidates’ interest, qualifications, pertinent accomplishments, relevant experience, and overall ability to perform the duties of the position and provide documentation to the Port’s contract administrator;
12. Reduce “long list” of candidates to a “short list” of three (3) to five (5) candidates;

13. Conduct interviews with “short list” candidates and provide written evaluations on qualified finalists, including reference summaries which focus on verified job-related accomplishments, academic, and professional credential checks;
14. Coordinate interview schedules and appropriate travel accommodation details for finalists, if required;
15. Prepare questions, exercises, and evaluation forms to be used by the interview panel;
16. Attend interviews to introduce the finalists and assist with the interview panel debrief after each interview;
17. Conduct a credit and criminal background check (felony and misdemeanor) of the top finalist(s);
18. Notify all candidates of their status in the selection process by written letter.

### Estimated Timeline for Each Position Search



## Consultant and Subconsultant Professionals

The following individuals shall provide the services under this Agreement, and shall not be substituted without the written approval of ACTA:

Regina Birdsell, CEO & President, CNM  
Leslie Robin, Senior Consultant, CNM  
Maura J. Harrington, Senior Vice President, CNM  
Jennifer Moran, Project Coordinator, CNM  
Peter Deragon, Managing Director, Stanton Chase  
Lindsay Lautz, Director, Stanton Chase  
Julie Gibas, Strategic Operations Associate, Stanton Chase

## Services to be performed by ACTA:

1. Coordinate meeting times, dates, and locations with Consultant;
2. Provide Consultant with information on ACTA and the duties of the position, for discussion with the ACTA Governing Board Chair, or designee, for the Position Profile and Recruitment Brochure;
3. Coordinate the approval of the Position Profile and Recruitment Brochure prior to distribution by Consultant; and
4. Provide Consultant with the ACTA's Travel Policies and Procedures and Personal Expense Statement for dissemination to the finalist candidates who are invited to the selection interview(s).

# EXHIBIT B COMPENSATION

## Fees by Position

Consultant shall conduct an executive recruitment search for ACTA's CEO and, upon written request from ACTA, for ACTA's CFO, for a fee of 30% of each position's first year's total cash compensation (base salary, bonus, incentives, etc.).

Given ACTA's Fiscal Year 19/20 annual salary ranges, the following fees are estimates for each position:

CEO position salary range: \$194,727 - \$284,678  
CEO position fee range: **\$58,000 - \$86,000**

CFO position salary range: \$165,411 - \$241,832  
CFO position fee range: **\$50,000 - \$73,000**

In the event that the selected individual for either position is paid a higher compensation amount than shown above, the fee will be increased to the amount equal to 30% of the position's first year's compensation.

Each position shall have a minimum fee of **\$50,000**.

## Fee Payment Schedule

For the following payment schedule, the parties agree to the estimated fee amounts of \$86,000 for the CEO and \$73,000 for the CFO.

Consultant shall be paid pursuant to the following schedule for each position:

		<b>CEO</b>
<b>First Payment</b>	Upon Agreement Execution	\$28,666
<b>Second Payment</b>	30 Days after Effective Date of Agreement	\$28,667
<b>Third Payment</b>	60 Days after Effective Date of Agreement or upon Hiring, whichever occurs first	\$28,667
<b>Final Payment</b>	Upon determination of Final First Year's Compensation Amount	Difference Owed or Returned

		<b>CFO</b>
<b>First Payment</b>	Upon Receiving Written Notice to Proceed (NTP) with CFO Search	\$24,334
<b>Second Payment</b>	30 Days after NTP Issue Date	\$24,333
<b>Third Payment</b>	60 Days after NTP Issue Date or upon Hiring, whichever occurs first	\$24,333
<b>Final Payment</b>	Upon determination of Final First Year's Compensation Amount	Difference Owed or Returned

## **Expenses**

ACTA shall pay reasonable, appropriate and verifiable direct expenses incurred by the Consultant in the performance of the services agreed to under this Agreement, including candidate travel, per diem, and accommodations for interviews; job posting and advertising fees on various Web sites and classified advertising fees in printed publications; and verifications including credit, criminal and civil checks, and education verification. All expenses shall be pre-approved by ACTA and supported by detailed, appropriate accompanying documentation.

## **Other Terms & Conditions**

The parties agree that during the term of the Agreement, Consultant's services shall be exclusive and candidates from all sources, including individuals who contact or are referred to ACTA and its affiliated public entities, will be referred to Consultant for interviews and evaluation on a consistent basis as other candidates. Any individual considered for a position will be considered candidates of Consultant's for fee purposes.

In the event that ACTA hires additional staff as a result of this assignment, a fixed fee of 30% of the first year's total compensation will be billed to ACTA for each additional hire. Furthermore, if ACTA, or any successor or related entity, whether for these assignments or otherwise, and for a period of one year from termination of the assignment, hires an individual identified to ACTA by Consultant, the full fee is considered earned and due. An amendment to the Agreement shall be executed by the parties in order to fulfil the obligations of this paragraph.

If ACTA elects to terminate the Agreement, any fees paid up to the date of cancellation shall be retained by Consultant and Consultant will be reimbursed for any expenses incurred in accordance with the Agreement prior to termination.

After the initial compilation of a position's profile, any material changes of such profile requiring a different sourcing and recruitment strategy shall be considered a distinct and new search.

Consultant offers an unconditional performance guarantee. If the employment of any candidate placed by Consultant ends for any reason, voluntarily or involuntarily, within 12 months from the initial date of hire, Consultant will, on ACTA's request, replace that individual at no additional cost, except for any direct expenses. This performance guarantee does not apply to candidates voluntarily terminated by ACTA due to a job elimination or workforce reduction, including due to a material change of position profile.

**EXHIBIT C**  
**MONTHLY SUBCONSULTANT MONITORING REPORT**

Instructions: Please indicate the participation levels achieved for the month of \_\_\_\_\_ for the referenced contract number.

Contract Name and No. \_\_\_\_\_ Start Date \_\_\_\_\_ End Date \_\_\_\_\_

Committed SBE Participation Percentage \_\_\_\_\_

	Name of Subcontractor	Work Performed	Certifications.* SBE/SBE/MBE/WBE/OBE/DVBE	ACTUALS			
				PROPOSED Original Proposed SBE Percentage	Amount Paid This Month	Amount Paid to Date	Overall Contract Amount Percentage (Paid to Date)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

\* Indicate all certifications held by each subcontractor

## EXHIBIT D

### SMALL BUSINESS ENTERPRISE PROGRAM

The Alameda Corridor Transportation Authority ("ACTA") is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at ACTA. ACTA's Small Business Enterprise (SBE) Program was created to provide opportunities for small businesses to participate in professional service and construction contracts. It is the policy of ACTA to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBES). The SBE Program allows ACTA to target small business participation, including MBEs, WBEs, and DVBES, more effectively.

An overall ACTA goal of 25% SBE participation by total contract value and/or by total number of contracts awarded to SBE prime consultants or contractors has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work, and will be stated in the specific request for proposals or bids. **Based on the work to be performed under this Agreement, it has been determined that the percentage of required small business participation will be 0%.**

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement, where required, and for reporting to ACTA. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs.



**Executive Recruitment Services RFP**

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**Contractor Description Form**

For the Prime Contractor and each Subcontractor, state the type of SBE certification claimed and, if available, return documentation with this form to ACTA evidencing the declared SBE certification.

**PRIME CONTRACTOR**

Contract #: \_\_\_\_\_ Award Date: \_\_\_\_\_ Contract Term: \_\_\_\_\_  
Contract Title: Alameda Corridor Executive Recruitment Services  
Business Name: Center for Nonprofit Management Award Total: \$ \_\_\_\_\_  
Owner's Ethnicity: N/A Gender N/A Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)

If claimed, state SBE certification type: N/A

Address: 1000 N. Alameda St., Suite 250  
City/State/Zip: Los Angeles, CA 90012  
Telephone: ( 213 ) 266-8459 FAX: ( 213 ) 266-8485  
Contact Person/Title: Maura J. Harrington, Senior Vice President  
Email Address: mharrington@cnmsocal.org

**SUBCONTRACTOR**

Business Name: Stanton Chase Award Total: \$ \_\_\_\_\_  
Services to be provided: Executive Search Firm  
Owner's Ethnicity: N/A Gender N/A Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)

If claimed, state SBE certification type: N/A

Address: 100 Wilshire Blvd., Suite 700  
City/State/Zip: Santa Monica, CA 90401  
Telephone: ( 805 ) 440-9940 FAX: ( ) \_\_\_\_\_  
Contact Person/Title: Peter M. Deragon, Managing Director  
Email Address: p.deragon@stantonchase.com

**SUBCONTRACTOR**

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group: SBE VSBE MBE WBE DVBE OBE  
(Circle all that apply)

If claimed, state SBE certification type: \_\_\_\_\_

Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person/Title: \_\_\_\_\_  
Email address: \_\_\_\_\_

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