

ATTACHMENT F
CALSTART AGREEMENT 2405

AGREEMENT 2405

Professional Services Agreement

This Agreement, entered into this 28th day of February 2024, by and between Kings County Area Public Transit Agency, hereinafter referred to as the "AGENCY," and CALSTART hereinafter referred to as the "FIRM."

W I T N E S S E T H

WHEREAS, the AGENCY is authorized and empowered to employ consultants and specialists to assist the Agency in the performance of its duties and functions; and

WHEREAS, the AGENCY applied for and received a Transit and Intercity Rail Capital Program grant in which CALSTART was a project partner to provide Data Management Services, Grant Administration, and Reporting Services.

NOW, THEREFORE, AGENCY and FIRM agree as follows:

I. SERVICES TO BE PERFORMED BY THE FIRM

Authorized Scope of Work: The FIRM agrees to perform the services as described in the Scope of Work, attached as Exhibit A.

II. TIME OF PERFORMANCE

This Agreement is for a five (5) year period, beginning February 9, 2024, and ending February 8, 2029.

Work will not begin, nor claims paid for services rendered under this Agreement, until the Agreement is fully executed by both parties and all Certificates of Insurance, Business, and Professional Licenses/Certificates are on file with AGENCY.

III. COMPENSATION

A. Compensation and expense reimbursements proposed in Exhibit A attached.

B. Total Compensation: For services performed pursuant to this Agreement, the AGENCY agrees to pay, and the FIRM agrees to accept, as payment in full, a sum not to exceed **One Hundred Thousand Dollars (\$100,000.00)**. This amount shall constitute the total amount of compensation payable under this Agreement, including document production and out-of-pocket expenses for all services for the work identified in Exhibit "A".

The FIRM shall be paid no later than thirty (30) days following submission of a written, detailed, verified billing to the AGENCY. Each invoice must include a description of services rendered, by whom, to whom, the date of service, and the charges being claimed according to the agreed upon method.

IV. AUTHORIZED REPRESENTATIVE

- A. AGENCY: The Executive Director of the AGENCY shall represent the AGENCY in all matters pertaining to the services to be rendered under this Agreement, except where approval of the AGENCY's Board is specifically required.
- B. FIRM: The San Joaquin Valley Deputy Director shall represent and act as principal for FIRM in all matters pertaining to the services to be rendered by it under this Agreement.

V. TERMINATION

The right to terminate this Agreement, with or without cause, may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or equity or as otherwise provided for under this Agreement.

- A. Termination By Either Party Without Cause: The AGENCY or FIRM may terminate this Agreement at any time by giving written notice to the other party of said termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.
- B. Termination of Agreement for Cause: The AGENCY may, by written notice to the FIRM specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination, terminate the whole or any part of this Agreement in any of the following circumstances:
 - 1. If the FIRM fails to perform the services called for by this Agreement within the time(s) specified herein or any extension thereof; or
 - 2. If the FIRM fails to make progress under this Agreement so as to endanger FIRM's performance of this Agreement in accordance with its terms or to interfere with the Agency's ability to perform its duties and functions, and does not correct such failure within a period of ten (10) days (or longer period as the AGENCY may authorize in writing) after receipt of written notice from the AGENCY specifying such failure.
- C. Post-Termination:
 - 1. In the event the AGENCY terminates this Agreement with or without cause, the AGENCY may procure, upon such terms and such manner as it may determine appropriate, services similar to those terminated.
 - 2. Should the Agreement be terminated with or without cause, the FIRM shall provide the AGENCY with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by the FIRM pursuant to this Agreement.
 - 3. Upon termination, with or without cause, FIRM will be compensated for the services satisfactorily completed to the date of termination according to the compensation provisions contained herein. In no event, shall the total compensation paid FIRM exceed the total compensation agreed to herein.

4. If, after notice of termination of this Agreement, it is determined for any reason that the FIRM was not in default under the provisions of this article, then the rights and obligations of the parties shall be the same as if the Agreement was terminated without cause.
5. Termination of this Agreement shall not terminate any obligation to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination activities.

VI. INTEREST OF OFFICIALS AND THE FIRM

- A. No officer, member, or employee of the AGENCY who exercises any functions or responsibilities in the review or approval of this Agreement shall:
 1. Participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she has, directly or indirectly, any interest; or
 2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his/her tenure or for one year thereafter.
- B. The FIRM hereby covenants that it neither has nor will acquire any adverse interests that would constitute a conflict of interest, as defined by the California Rules of Professional Conduct, between the performance of its representation of the Agency as required under this Agreement and representation of any other client of the Firm. The FIRM further covenants that in the performance of this work, no person having any such interest or conflict shall be employed.

VII. NO PERSONNEL, AGENCY, OR COMMISSION

The FIRM warrants, by execution of this Agreement, that no personnel agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide established commercial or selling agencies maintained by the FIRM for the purpose of securing business. For breach or violation of this warranty, the AGENCY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the compensation owed under this Agreement, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

VIII. SUBCONTRACTING

- A. The FIRM shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without the prior written approval of the AGENCY.
- B. In no event shall the FIRM subcontract work in excess of 50% of the contract amount, excluding specialized services. Specialized services are those items not ordinarily furnished by a consultant performing the particular type of services contracted for under this Agreement.

IX. INDEPENDENT CONTRACTOR STATUS

In the performance of the services herein provided for, the FIRM shall be, and is, an independent contractor and not an agent or employee of the AGENCY. The FIRM has and shall retain the right to exercise full control and supervision of all persons assisting the FIRM in the performance of said services hereunder. The FIRM shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, workers compensation, unemployment insurance, and income tax withholding and all other laws and regulations governing such matters.

XI. DOCUMENTS/DATA

- A. Ownership of Documents: All original papers and documents, produced as a result of this Agreement, shall become the property of the AGENCY. In addition, AGENCY shall be provided with access and use of any other papers and documents consistent with the purpose and scope of services covered by this Agreement. Any additional copies, not otherwise provided for herein, shall be the responsibility of the AGENCY. No material prepared in connection with the PROJECT shall be subject to copyright in the United States or in any other country.
- B. Publication: No report, information, or other data given or prepared or assembled by the FIRM pursuant to this Agreement, shall be made available to any individual or organization by the FIRM without the prior written approval of the AGENCY. Notwithstanding the foregoing, however, the FIRM shall not be required to protect or hold in confidence any confidential information which: (1) is or becomes available to the public with the prior written consent of the AGENCY; (2) must be disclosed to comply with law; or (3) must be disclosed in connection with any legal proceedings.

XII. INDEMNIFICATION AND INSURANCE

- A. In respect to all acts, errors, or omissions in the performance of professional services, FIRM agrees to indemnify, defend (at Agency's option) and hold harmless AGENCY, its elected and appointed officers, employees, agents, representatives and volunteers from and against any and all claims, demands, suits, actions, defense costs, liability, actual or consequential damages of any kind or nature arising directly out of FIRM's (or FIRM's subcontractors, if any) negligent acts, errors or omissions, or any willful acts of FIRM (or FIRM's subcontractors, if any) in the performance of services under the terms of this Agreement.
- B. In respect to all acts, errors, or omissions which do not arise directly out of the performance of professional services, including, but not limited to, those acts, errors, or omissions normally covered by general and/or automobile liability insurance, FIRM agrees to indemnify, defend (at AGENCY's option), and hold harmless AGENCY, its elected and appointed officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, suits, actions, defense costs, liability, actual or consequential damages of any kind or nature arising out of or in connection with FIRM's (or FIRM's subcontractors, if any) performance or failure to perform, under the terms of this Agreement, excepting those which arise out of the sole gross negligence or willful misconduct of AGENCY.

- C. Without limitation to the AGENCY's right to indemnification, it is agreed that FIRM shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:
1. Workers' compensation insurance as required by California law.
 2. Professional and/or commercial general liability insurance, as appropriate, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence from an insurance carrier authorized to transact business in the State of California. Such insurance shall include coverage for Malpractice, Premises and Operations, Contractual Liability, Personal Injury Liability, Products and Completed Operations Liability, Broad Form Property Damage (if applicable), and Independent FIRM's Liability (if applicable).
 3. Automobile Liability coverage with a combined single limit of not less than Five Hundred Thousand Dollars (\$500,000) per occurrence from an insurance carrier authorized to transact business in the State of California. Such insurance shall include coverage for owned, hired, and non-owned automobiles and shall be provided by a business automobile policy.
- D. AGENCY'S Executive Director is hereby authorized to reduce the requirements set forth above in the event he/she determines that such reduction is in the AGENCY'S best interest.
- E. Each insurance policy required by this Agreement shall contain the following clause:

"This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to KCAPTA, Clerk of the Board, 610 W. 7th Street, Hanford, CA 93230."

In addition, the commercial general liability and comprehensive automobile liability policies required by this Agreement shall contain the following clauses:

"It is agreed that any insurance maintained by Kings County Area Public Transit Agency shall apply in excess of, and not contribution to, any insurance provided by this policy."

"Kings County Area Public Transit Agency, its officers, agents, employees, representatives, and volunteers are added as additional insured with respect to operations and activities of, or on behalf of, the named insured as performed under contract with Kings County Area Public Transit Agency."

- F. Prior to commencing any work under this Agreement, FIRM shall deliver to AGENCY insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Within thirty (30) days of the execution date of this Agreement, FIRM shall provide to AGENCY endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by AGENCY, it shall be FIRM's responsibility to see that AGENCY receives documentation acceptable to AGENCY, which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. AGENCY

has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.

- G. In addition to any other remedies AGENCY may have if FIRM fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, AGENCY may, at its sole option:
1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement; or
 2. Order FIRM to stop work under this Agreement and/or withhold any payment(s) which become due to FIRM hereunder until FIRM demonstrates compliance with the requirements hereof; or
 3. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies AGENCY may have and is not the exclusive remedy for FIRM's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which FIRM may be held responsible for payments of damages to persons or property resulting from FIRM's or its subcontractor's performance of the work covered under this Agreement.

XIII. MISCELLANEOUS PROVISIONS

- A. Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.
- B. Prohibition of Assignment: Neither the AGENCY nor FIRM shall assign, delegate, or transfer their rights and duties in this Agreement without the written consent of the other party.
- C. Dispute/Governing Law: Any dispute not resolvable by informal arbitration between the parties to this Agreement shall be adjudicated in a Court of Law under the laws of the State of California.
- D. Notices: Notice shall be sufficient hereunder if personally served upon the Clerk of the Board, or an officer or principal of the FIRM, or if sent via the United States Postal Service, postage prepaid, addressed as follows:
- | | |
|---|--|
| <u>Kings County Area Public Transit Agency</u>
610 W. 7 th Street
Hanford, CA 93230
Attention: Clerk of the Board | <u>CALSTART</u>
5000 S Airport Way, Suite 208
Stockton, CA 95206
Attention: Valerie Thorsen |
|---|--|
- E. Jurisdiction/Venue/Waiver of Removal: This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in California. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Kings County, California. The FIRM hereby expressly waives any right to remove any action to a county

other than Kings County as permitted pursuant to Section 394 of the California Code of Civil Procedure.

- F. Integration/Modification: This Agreement and each of the exhibits referenced herein, which are incorporated by reference, represents the entire understanding of the AGENCY and the FIRM as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the AGENCY and the FIRM.
- G. Severability: If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of the Agreement shall be in full force and effect.
- H. Construction: This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code Section 1654 that in the event of uncertainty, the language will not be construed against the party causing the uncertainty to exist.
- I. Authority: Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the party to which its signature represents.
- J. Headings: Section headings are provided for organizational purposes only and do not in any manner affect the scope or intent of the provisions thereunder.

IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

KINGS COUNTY AREA PUBLIC TRANSIT AGENCY

CALSTART

Joe Neves
Chairman

Piero Stillitano
Chief Financial Officer

Approved as to Form

Legal Counsel

Attachments:
Exhibit "A": Scope of Work

Scope of Work

Cross Valley Corridor (CVC) ZEB Project – Kings County

Project Description

In 2022, Tulare County Regional Transit Agency (TCRTA), Kings County Area Transit Agency (KCAPTA), and the City of Visalia were awarded a Transit and Intercity Rail Capital Project (TIRCP) grant through CalSta for the Cross-Valley Corridor ZEB Expansion (or “CVC ZEB Project”). CALSTART was listed as a partner to support all three agencies in grant implementation activities that include project management, ZEB modeling, infrastructure planning, data collection, and reporting. Support for KCAPTA will mainly include project management and reporting efforts required through grant implementation.

Project Scope

CALSTART will support KCAPTA during the construction of the Kings Area Regional Transit (KART) Transit Center. This mainly includes completing and/or supporting KCAPTA with fulfilling reporting requirements through the primary/master agreement with CalSta.

Task 1: KART Transit Station

CALSTART will support KCAPTA administratively during the construction of the KART Transit Station. Administrative support will include emission estimation, annual and/or quarterly reporting, and general grant management as necessary. This task will also capture

Task 2: Bus Deployment and Analysis

CALSTART will support KCAPTA with a route modeling analysis for the buses deployed in the TIRCP award. This includes 4 zero emission feeder buses and 8 microtransit zero emission vehicles.

Project Timeline

CALSTART will support KCAPTA through FY26 or the fiscal year following the deployment of the zero emission vehicles, whichever is later.

Budget

CALSTART will perform the activities stated above with a budget not to exceed \$100,000 per the breakdown below.

TASK	PROJECT COMPONENT	BUDGET
TASK 1	KART Transit Station	\$37,500
TASK 2	Purchase 4 Heavy Duty Zero-Emission Feeder Buses and 8 Microtransit ZE Vehicles	\$62,500