

## FRESNO COUNTY RURAL TRANSIT AGENCY

### AGREEMENT FOR CONTRACTOR SERVICES

This AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 by and between the FRESNO COUNTY RURAL TRANSIT AGENCY, 2035 Tulare St., Suite 201, Fresno, California 93721, a joint powers Public Agency (hereafter referred to as "FCRTA"), and Walker Consultants, Inc., a Michigan Corporation registered to do business in the State of California (hereafter referred to as "CONTRACTOR"). FCRTA and CONTRACTOR are each a "Party" to this Agreement and collectively are the "Parties" to this Agreement.

#### WITNESSETH:

WHEREAS, it is necessary and desirable that FCRTA retain a firm to perform a feasibility study for a light-rail, monorail, or BRT (hereafter referred to as "PROJECT"); and

WHEREAS, CONTRACTOR represents it is qualified to perform the services required for the PROJECT and is willing to perform such services pursuant to the terms and conditions stated in this Agreement; and

NOW, THEREFORE, it is agreed by FCRTA and CONTRACTOR as follows:

#### **I. CONTRACTOR'S OBLIGATIONS**

A. The CONTRACTOR shall perform all work necessary to complete the PROJECT. CONTRACTOR shall perform those services as described in: FCRTA's Request for Proposals, released November 29, 2022 (Exhibit A) attached hereto and incorporated herein by this reference as though set forth in full, and CONTRACTOR's Proposal dated January 3, 2023 titled Proposal for Fresno County Rural Transit Agency Transit Feasibility Study, attached hereto as (Exhibit B), and incorporated herein by this reference as if set out in full. CONTRACTOR shall perform those tasks and services in accordance with the instructions set forth in Exhibit A. In the event of any inconsistency between this Agreement the FCRTA's RFP and the CONTRACTOR's Proposal, such inconsistency shall be resolved by giving precedence in the following order of priority: (1) to the text of this Agreement; (2) to the FCRTA's RFP; (3) the CONTRACTOR's Proposal.

B. CONTRACTOR shall perform the tasks and services contemplated by this Agreement according to the proposed work schedule as set forth in Exhibit B (CONTRACTOR's Proposal), and according to the requirements of this Agreement.

C. CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged in the geographical area in which CONTRACTOR practices his profession. All products of whatsoever nature which

D. CONTRACTOR delivers to FCRTA pursuant to this Agreement shall be prepared in a substantial, first class manner and conform to the standards of CONTRACTOR's profession.

## II. FCRTA's OBLIGATIONS

A. FCRTA shall compensate CONTRACTOR as provided in section III of this Agreement.

B. FCRTA will make available to the CONTRACTOR any non-privileged document, studies, or other information in its possession related to the PROJECT.

## III. COMPENSATION

### A. Total Compensation.

Notwithstanding any other provision in this Agreement, the basic fee for the services rendered shall be computed at the hourly and cost rates as set forth in Exhibit B (CONTRACTOR's Proposal), and shall be limited by an amount not to exceed the sum of \$274,225.

### B. Progress Payments.

FCRTA shall make progress payments to CONTRACTOR upon receipt and approval by FCRTA of CONTRACTOR's monthly invoices, based upon completion of the task and services as set forth in Exhibit B. Payment of said progress payments to CONTRACTOR shall be based upon FCRTA's evaluation of the completion of each respective component.

Ten percent (10%) of each progress payment shall be retained by FCRTA as performance retention. Upon CONTRACTOR's full performance of its obligations under this agreement, including, without limitation, submission of its Final Report, and FCRTA's approval of CONTRACTOR's performance hereunder, the accrued performance retention shall be paid to CONTRACTOR by FCRTA. The CONTRACTOR may request FCRTA to make payment of retention funds withheld from progress payments as provided under Section 10263 of the California Public Contracts Code.

### C. Invoices.

CONTRACTOR shall submit two copies of each invoice with adequate supporting documentation of work billed and costs charged by Task as set forth in Exhibit B, to FCRTA, specifying those services which CONTRACTOR believes have been completed. The invoice shall specify: (1) hours worked multiplied times the billing rates authorized in Exhibit B, (2) an itemization of other direct cost and/or subcontractor fees as set forth in Exhibit A; (B) the total amount billed for the current period, (4) the total amount billed to-date for the project. (5) the retention amount withheld. The invoice shall include a written progress report adequately describing the services billed and provided, and summarizing the status of the PROJECT in regards to task completion, timelines, and budget.

D. Payment.

Within 30 days of receipt of a proper invoice, FCRTA shall determine whether CONTRACTOR has adequately performed to the satisfaction of FCRTA the item(s) for which CONTRACTOR seeks payment, and shall remit payment thereof to CONTRACTOR.

E. Disputes.

If FCRTA determines that CONTRACTOR has not adequately performed any such task or services, FCRTA shall inform CONTRACTOR of those acts in writing which are necessary for satisfactory completion of the item(s). CONTRACTOR shall undertake any and all work to satisfactorily complete the item(s) at no additional charge to FCRTA.

In the event there is a dispute over an alleged error or omission by CONTRACTOR, FCRTA shall have the right to withhold payment of CONTRACTOR's fees in the disputed amount.

FCRTA and CONTRACTOR shall endeavor to resolve any dispute informally between them. In the event the dispute cannot be thus resolved, either Party may request the Parties engage in arbitration or mediation (hereafter referred to as "arbitration") of the dispute before an independent arbitrator. In the case the Parties mutually agree to arbitrate the dispute, they shall mutually select an independent arbitrator or panel of arbitrators from Judicial Arbitration and Mediation Services, Inc. ("JAMS"), or another entity mutually agreed to. In the event a panel of arbitrators is selected, each Party shall select one member, and shall mutually agree on a third member of the panel. Any arbitration shall occur in Fresno County, California.

**IV. TERMINATION**

A. Termination Without Cause.

This Agreement may be terminated without cause at any time by FCRTA or the CONTRACTOR upon thirty (30) calendar days written notice. If FCRTA terminates this Agreement, CONTRACTOR shall be compensated for services satisfactorily completed to the date of termination based upon the compensation rates and subject to the maximum amounts payable agreed to in Section III.

B. Breach of Contract.

FCRTA may immediately suspend or terminate this Agreement in whole or in part, where in the determination of FCRTA there is:

1. an illegal or improper use of funds;
2. a failure to comply with any term of this Agreement;
3. a substantially incorrect or incomplete report, study, or other documents or documentation submitted to FCRTA;
4. improperly performed services under this Agreement.

In no event shall any payment by FCRTA constitute a waiver by FCRTA of any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to FCOG with respect to the breach or default.

C. Non-Allocation of Funds.

The terms of this Agreement, and the services to be provided hereunder, are contingent on the approval of funds by the appropriating government agency. CONTRACTOR services and reimbursements beyond February 28, 2025, are subject to the inclusion of this project in the FCRTA FY24-25 Budget. Should sufficient funds not be allocated, the services to be provided hereunder may be modified, or this Agreement terminated at any time by FCRTA's giving the CONTRACTOR thirty (30) days advance written notice.

D. In the event of any termination of this Agreement, all finished and unfinished work materials, including, without limitation, notes, minutes, research, documents, maps, graphs, and studies, shall be FCRTA's property, and at FCRTA's sole option, shall be delivered by CONTRACTOR to FCRTA.

**V. RIGHT TO PUBLISH/OWNERSHIP OF MATERIALS**

FCRTA shall be the owner of all materials produced pursuant to this Agreement upon completion and full performance of this Agreement by CONTRACTOR and shall have the right to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, or other materials prepared by CONTRACTOR under this Agreement. CONTRACTOR shall not be liable for misuse or modification beyond their control by FCRTA of materials produced pursuant to this agreement.

**VI. INDEPENDENT CONTRACTOR**

In performance of the work, duties, and obligations assumed by CONTRACTOR to be provided under this Agreement, it is mutually expressly understood and agreed that CONTRACTOR, including any and all of CONTRACTOR's officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of FCRTA. Furthermore, FCRTA shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and function. However, FCRTA shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof. CONTRACTOR and FCRTA shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to FCRTA employees. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save FCRTA harmless from all matters relating to payment of CONTRACTOR's

employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to FCRTA or to this Agreement.

## **VII. ASSIGNMENT**

CONTRACTOR shall not assign or subcontract its duties under this Agreement without the prior express written consent of the FCRTA. No such consent shall be construed as making the FCRTA a party to such subcontract, or subjecting the FCRTA to liability of any kind to any subcontractor.

No subcontract whether existing or later entered into as set forth herein, under any circumstances shall relieve the CONTRACTOR of his liability and obligation under this contract, and all transactions with the FCRTA must be through the CONTRACTOR. Subcontractors may not be changed by CONTRACTOR without the prior express written approval of FCRTA.

CONTRACTOR has submitted a Proposal (Exhibit B) which names Energeia-USA, Provost and Pritchard Consulting Group, and Scholardev Apps (collectively, "Approved Subcontractors") as subcontractor(s) for the purposes of this Agreement. CONTRACTOR represents and covenants by entering into this Agreement that it is the prime contractor in this Agreement, and that it is responsible for all acts or omissions of its said subcontractors, if any. CONTRACTOR shall also be responsible for submitting invoices, in accordance with the requirements of Section III of this Agreement, to FCRTA for work performed by the Approved Subcontractors, and shall remit payment to the Approved Subcontractors in accordance with the agreements between CONTRACTOR and the Approved Subcontractors. FCRTA shall have no responsibility to provide compensation directly to the approved Subcontractors, if any.

## **VIII. BINDING NATURE OF AGREEMENT; MODIFICATION**

The parties agree that all of the terms of this Agreement and its Exhibits shall be binding upon them and that together these terms constitute the entire Agreement of the parties with respect to the subject matter hereof. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the parties. This Agreement shall be binding upon FCRTA, the CONTRACTOR, and their successors in interest, legal representatives, executors, administrators, and assigns with respect to all covenants as set forth herein.

## **IX. INDEMNITY**

CONTRACTOR agrees to indemnify, save, hold harmless, and at FCRTA's request, defend the FCRTA, its boards, committees, representatives, officers, agents, and employees from and against any and all costs and expenses (including reasonable attorneys fees and litigation costs), damages, liabilities, claims, and losses (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death, and property damage) occurring or resulting to FCRTA to the extent they are caused from any negligent, recklessness or willful misconduct of CONTRACTOR, its officers, agents, subcontractors, or employees in their performance of this Agreement, and from any and all costs and expenses (including reasonable attorneys fees and litigation costs), damages, liabilities, claims, and losses (whether in contract,

tort, or strict liability, including, but not limited to, personal injury, death and property damage), occurring or resulting to any person, firm, corporation, or entity who may be injured or damaged to the extent such injury or damage arises from any negligent acts, errors or omissions of CONTRACTOR, its officers, agents, subcontractors, or employees in their performance of this Agreement.

**X. NON DISCRIMINATION AND DBE**

CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONTRACTOR shall carry out all applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract and such other remedy as FCRTA deems appropriate.

**XI. INSURANCE**

Without limiting FCRTA's right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and affect the following insurance policies throughout the term of this Agreement:

A. Comprehensive general liability insurance with coverage of not less than \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

Comprehensive general liability insurance policies shall name the FCRTA, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned.

Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by FCRTA, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under the CONTRACTOR'S policies herein.

B. Comprehensive automobile liability insurance with limits for bodily injury of not less than \$25,000 per person, \$250,000 per accident and for property damages of not less than \$50,000, or such coverage with a combined single limit of \$250,000.

C. Professional liability insurance in the minimum amount of at least \$1,000,000 coverage per occurrence.

D. Workers compensation insurance as required by law.

No insurance policy required by this Section XI insurance may be canceled or changed without a minimum of thirty (30) days advance, written notice given to FCRTA.

CONTRACTOR shall provide certification of each insurance policy required by this Section XI to FCRTA within twenty-one (21) days of the date of the execution of this Agreement.

Such certification shall show to FCRTA's sole satisfaction that such insurance coverages have been obtained and are in full force; that FCRTA, its officers, agents, and employees will not be responsible for any premiums on the policies; that as and if required such insurance names FCRTA, its officers, agents, and employees, individually and collectively, as additional insured (comprehensive general liability only), but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by FCRTA, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under the CONTRACTOR's policies herein; and that this insurance shall not be canceled or changed without a minimum of thirty (30) days advance, written notice given to FCRTA.

In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, FCRTA may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

## **XII. CONFLICT OF INTEREST**

CONTRACTOR covenants that it has no interest, and will not have any interest, direct or indirect, which would conflict in any manner with the performances of the services required hereunder.

## **XIII. EFFECTIVE DATE, TERM**

This Agreement shall become effective as of the date of its execution by the parties hereto and shall remain in full force and effect through February 28, 2025 unless sooner terminated or unless its term is extended. Upon the mutual written Agreement of the parties hereto, this Agreement may be extended beyond that date.

## **XIV. NOTICES**

Any and all notices between FCRTA and the CONTRACTOR provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such Party, at such addresses set forth below:

### **FCRTA**

Fresno County Rural Transit Agency  
2035 Tulare St., Suite 201  
Fresno, CA 93721

### **CONTRACTOR**

### **WALKER CONSULTANTS**

601 California St, Suite 820  
San Francisco, CA 94108

For all claims arising from or related to this Agreement, nothing in this Section XIV establishes, waives, or modifies any claims presentation requirements or procedures provided by law,

including the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

**XV. PROJECT MANAGER**

The CONTRACTOR's project manager shall be Chrissy Mancini Nichols. CONTRACTOR may not change its project manager without obtaining prior express written approval by FCRTA. It is understood by the parties hereto that in entering into an agreement of this type with CONTRACTOR, FCRTA has evaluated CONTRACTOR's Proposal (Exhibit B) and taken into consideration the project team designated therein for this PROJECT, including but not limited to CONTRACTOR's designation of Chrissy Mancini Nichols as the project manager for said PROJECT.

**XVI. VENUE; GOVERNING LAW**

Venue for any claim or action arising under this Agreement shall only be in Fresno County, California. This Agreement shall be governed in all respects by the laws of the State of California.

**XVII. COMPLIANCE WITH LAWS**

CONTRACTOR shall comply with all current Federal, State, and local laws, ordinances, and regulations applicable in carrying out its obligations under this Agreement.

CONTRACTOR agrees that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et. seq., shall be used to determine the eligibility of individual items of cost.

CONTRACTOR also agrees to comply with applicable federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the contract pursuant to Government Code 8546.7, the CONTRACTOR, contractor's subcontractors, and the FCRTA shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the cost of administering the contract. All parties shall make such material available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. Any duly authorized representative of the FCRTA, the state, or federal government shall have access to any books, records, and documents that are pertinent to the contract for audits examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Any costs for which payment has been made to CONTRACTOR that are determined by subsequent audit to be unallowable under Title 2, CFR part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards



or 2 CFR, Part 1201, Uniform Administrative Requirements Costs Principles, and Audit Requirements for Federal Awards, are subject to repayment by Contractor to FCRTA.

**XVIII. CONTRACTOR'S LEGAL AUTHORITY**

Each individual executing or attesting this Agreement on behalf of CONTRACTOR hereby covenants, warrants, and represents: (1) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with a duly adopted resolution of the corporation's board of directors and in accordance with such corporation's article of incorporation or charter and bylaws; (2) that this Agreement is binding upon such corporation; and (3) that CONTRACTOR is a duly organized and legally existing corporation in good standing in the State of California.

**XIX. NO THIRD PARTY BENEFICIARIES**

Notwithstanding anything else to the contrary herein, the Parties acknowledge and agree that no other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this Agreement.

**XX. SEVERABILITY**

In the event any provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the Parties will use their best efforts to meet and confer to determine how to mutually amend such provisions with valid and enforceable provisions, and the remaining provisions of this Agreement will nevertheless continue in full force and effect without being impaired or invalidated in any way.

**XXI. HEADINGS; CONSTRUCTION; STATUTORY REFERENCES**

The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. This Agreement is the product of negotiation between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the County of Fresno shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

**XXII. DRUG FREE WORK PLACE**

CONTRACTOR shall certify compliance with Government Code Section 8355 pertaining to providing a drug-free workplace per Exhibit C - "Drug Free Workplace Certification", attached hereto and incorporated herein by this reference as though set forth in full.

**XXIV. INTEGRATED AGREEMENT**

This Agreement, and Exhibit A and B, attached hereto and incorporated herein by this reference, represents the full and complete understanding of the parties with respect to the

subject matter hereof, and all preliminary negotiations and oral or written agreements with respect thereto are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof.

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

FRESNO COUNTY RURAL TRANSIT AGENCY

By \_\_\_\_\_

MOSES STITES, General Manager

CONTRACTOR,

By \_\_\_\_\_

CHRISSY MANCINI NICHOLS, Project Manager

APPROVED AS TO LEGAL FORM ON BEHALF OF THE FCRTA:

DANIEL C. CEDERBORG, County Counsel

By *Bryan D. Rome* E-Signed by  
Bryan D. Rome  
January 19, 2023

BRYAN ROME, Deputy County Counsel