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## CONSULTING AGREEMENT

This Agreement is made by and between Augusta, Georgia (hereinafter "Client"), and Cambridge Systematics, Inc., with offices at 200 River's Edge Drive, Suite 420, Medford, MA 02155 (hereinafter "CS" or "Consultant") with reference to the following:

WHEREAS, Consultant is engaged in the business of rendering transportation consulting services; and

WHEREAS, in connection therewith, Client wishes to retain Consultant to \_\_\_\_\_; and

WHEREAS, Consultant is willing and able to render said services.

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth herein, the parties agree as follows:

1. Consultant's Services. Consultant agrees to render services to Client in accordance with the Statement of Work attached hereto as Exhibit 1 and incorporated by reference.
2.
  - a. Compensation. In consideration of the services set forth in Exhibit 1, Client shall pay Consultant in accordance with the budget attached hereto as Exhibit 2 and incorporated herein by reference.
  - b. Additional Compensation.
    - i. Consultant may be entitled to an adjustment in compensation in the event that changes are made to the scope of work or level of effort as further set forth in paragraph 6 herein.
    - ii. Client further agrees that in the event that the Consultant is required to provide documents, assistance or testimony in response to claims, demands or actions by third parties in connection with this project, Consultant shall be compensated for its professional fees, costs and associated expenses. This includes, without limitation, any assistance required by the Client relative to any claims made or any actions brought in connection with the project. The foregoing is intended to apply to third party claims, demands or actions that arise from or relate to the Client's project.
  - c. Manner of Payment. Once each month during the term hereof, Consultant shall prepare and submit to the Client an invoice together with such supporting documentation as may be reasonably required by Client. Invoices shall be based on percent complete. Client shall pay Consultant within thirty (30) days after receipt of the invoice and any required supporting documentation.

3. a. Status as Independent Contractors. This Agreement shall not constitute, create, or otherwise imply an employment, joint venture, partnership, agency or similar arrangement. Consultant shall act as an independent contractor, and neither party shall have the power to act for or bind the other party except as expressly provided for herein.

b. Ineligible for Employee Benefits. Consultant shall not be eligible for any benefit available to employees of Client, including, but not limited to, workers compensation insurance, state disability insurance, unemployment insurance, group health and life insurance, vacation pay, sick pay, severance pay, bonus plans, pension plans, savings plans and the like.

4. Term. This Agreement shall be effective as of the date of execution and shall continue in effect through the date of completion unless earlier terminated as provided in paragraph 5 below or the period of performance is extended pursuant to an amendment hereto signed by both parties.

5. Termination. Client shall have the right to terminate this Agreement for convenience upon thirty (30) days' written notice to Consultant. Either party shall have the right to terminate this Agreement if the other party is in default of any obligation hereunder and such default is not cured within thirty (30) days of receipt of a written notice from the non-defaulting party specifying such default unless otherwise agreed in writing. Client shall compensate Consultant for work performed up to the effective date of the termination based on the percent complete.

6. Changes. Consultant acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, Consultant is deemed to possess knowledge concerning Augusta, Georgia's ability to assume contractual obligations and the consequences of Consultant's provision of goods or services to Augusta, Georgia under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that the Consultant may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Consultant agrees that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if the Consultant provides goods or services to Augusta, Georgia in excess of the any contractually authorized goods or services, as required by Augusta, Georgia's Charter and Code, Augusta, Georgia may withhold payment for any unauthorized goods or services provided by Consultant. Consultant assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, Georgia, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, Georgia, however characterized, including, without

limitation, all remedies at law or equity." This acknowledgement shall be a mandatory provision in all Augusta, Georgia contracts for goods and services, except revenue producing contracts

7. Standard of Performance. Consultant agrees to perform the services required hereunder in accordance with the standards of the profession, and to devote such time as is necessary to perform the services required under this Agreement.

8. Conflicts of Interest. Consultant represents that (i) the work hereunder will not create an actual or apparent conflict of interest with any other work it is performing, and (ii) Consultant is not subject to any statute, regulation, ordinance or rule that will limit its ability to perform its obligations under this Agreement.

9. Confidential Information. All data and information provided to Consultant by CLIENT is considered proprietary, privileged and confidential. Consultant agrees not to divulge or publicize in any manner any such data or information which is received from CLIENT, or which is obtained as a result of Consultant's work under this contract unless (1) it was known to Consultant prior to being divulged by CLIENT; (2) it was provided to Consultant by a third party not in breach of any obligation to CLIENT or any other party (3) it was independently developed by Consultant; or (4) Consultant is ordered to divulge the information by a court of competent jurisdiction and has promptly advised CLIENT of such order. Consultant agrees to protect such data and information from unauthorized use and disclosure and to refrain from using such data and information for any purpose other than that for which it was furnished. Consultant shall use at least the same degree of care in protecting CLIENT confidential and proprietary information that it would use in protecting its own confidential and proprietary information. The restrictions set forth in this paragraph shall continue to remain in effect for one year after the expiration of the period of performance hereunder. Consultant may retain a copy of the confidential information for archival purposes only.

Consultant acknowledges that any document, including email or text messages, produced in relation to this Agreement or the services described in this Agreement may be a "public record" as that term is defined in O.C.G.A. 50-18-70. Consultant acknowledges that it may be governed by the Georgia Open Records Act, O.C.G.A. 50-18-70 et seq, during the pendency of this Agreement. If Consultant receives a request pursuant to the Georgia Open Records Act to inspect or copy public records, Consultant shall, as soon as practicable but no later than three business days, notify Augusta of the request and make available those requested public records to the requestor. Consultant shall redact from such provided public records all information that is exempt from disclosure under Georgia law. If Consultant cannot provide such public records within three business days, Consultant shall provide the requestor the information as is required pursuant to O.C.G.A. 50-18-71(b)(1)(A). If Augusta receives a Georgia Open Records Act request for public records solely in the possession of Consultant, Consultant shall provide to Augusta those public records as soon as practicable but no later than

three business days upon receipt of the request, or provide Augusta with a description of the public records and a timeline for when the public records will be provided to Augusta. If Consultant violates the Georgia Open Records Act in any way, or violates the provisions of this paragraph, Consultant shall indemnify, hold harmless, and defend Augusta, its officers, employees, and agents, from any action by any entity or person to enforce the provisions of the Georgia Open Records Act, including but not limited to mediation or investigation by the Georgia Attorney General's Office. As part of the indemnification, Consultant shall be responsible for the payment of any fees or costs, including civil penalties or attorneys' fees.

10. Work Product. Client agrees that all new materials first developed hereunder by Consultant for Client shall become property of Client, except as otherwise set forth herein. Client agrees that Consultant's pre-existing materials and underlying methodologies and intellectual property remain the property of Consultant. Nothing herein shall prevent the Consultant from marketing, developing, using and performing services or products similar to or competitive with the services and products furnished under this Agreement to the extent that such services and products do not include confidential information of the Client.

Client agrees that any data or software obtained from third party vendors will be subject to such third party's license terms and conditions. Client may be required to sign additional documentation covering its use of such data or software.

11. Insurance. Consultant shall be solely responsible for obtaining workers compensation insurance for its employees and agents and such other insurance as may be required by applicable laws. Consultant agrees to carry, for the term of this Agreement, the following insurance in the amounts indicated:

Professional Liability	\$1,000,000		
Commercial General Liability	\$1,000,000	per	occurrence/
	\$2,000,000	aggregate	
Automobile Liability	\$1,000,000		

Upon request of the Client, Consultant shall furnish certificates evidencing any and all such insurance.

12. Liability. Client agrees that Consultant's total aggregate limit of liability hereunder (whether by contract, statute, in tort or otherwise) for damages on any one or more or all claims (regardless of the number of different or other claims, claimants or occurrences) shall not exceed a total of the fees paid under this Agreement. Client further agrees that Consultant shall not be liable to Client for any indirect, incidental, special or consequential damages, any lost profits or any claim or demand, arising out of or in connection with this Agreement even if Consultant has been advised of the possibility of such damages. No action, regardless of form (whether statutory, contract, in tort or otherwise), arising out of the transaction under this Agreement, may be brought by either party more

than one year after the cause of action has accrued.

13. Miscellaneous.

- a. Attorneys' Fees. In the event that suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of the costs of suit, and not as damages, reasonable attorneys' fees to be fixed by the Court.
- b. Hold Harmless. Except as otherwise provided in this agreement, CONSULTANT shall indemnify and hold harmless Augusta, GA, and its employees and agents from and against all liabilities, claims, suits, demands, damages, losses, and expenses, including attorneys' fees, to the extent arising out of or resulting from the Consultant's negligence or willful misconduct in the performance of its Work.

b. Waiver, Modification and Amendment. No provision of this Agreement may be waived unless in writing, signed by all of the parties hereto. Waiver of any one provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other provision. This Agreement may be modified or amended only by a written agreement executed by all of the parties hereto.

c. Governing Law. The law of the State of Georgia shall govern the Agreement between Client and Consultant with regard to its interpretation and performance, and any other claims related to this agreement.

All claims, disputes and other matters in question between Client and Consultant arising out of or relating to the Agreement, or the breach thereof, shall be decided in the Superior Court of Richmond County, Georgia. The Consultant, by executing this Agreement, specifically consents to jurisdiction and venue in Richmond County and waives any right to contest the jurisdiction and venue in the Superior Court of Richmond County, Georgia..

d. Assignment; Subcontracting. Neither this Agreement nor any duties or obligations hereunder may be assigned, transferred, or subcontracted by Consultant without the prior written approval of the Client.

e. Neither Party will be liable for or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any Force Majeure Event or other cause or condition beyond its reasonable control, so long as that Party uses all commercially reasonable efforts to avoid or remove the causes of non-performance. For purposes of this Agreement, "Force Majeure Event" means an act of God, war (whether or not actually declared), armed conflict or the serious threat of the same, hostility, blockade, military embargo, sabotage, insurrection, rebellion, act of a public enemy, riot or other act of civil disobedience, governmental act, judicial action, explosion, act of terrorism or threat thereof (including cyberterrorism), natural disaster (including without limitation asteroid strikes or volcanic activity), violent storm (including without limitation hurricanes, tornados or blizzards),

atmospheric disturbance (including without limitation geomagnetic storm, solar flare or sun outage with respect to electricity grids, transformers and satellite transmissions), destruction by lightning, fire, earthquake, tsunami, flood, plague, epidemic, pan-epidemic, quarantine, civil commotion, strike or lockout or labor dispute (excluding for the avoidance of doubt strikes of Consultant's staff), satellite malfunction, prolonged internet outage, communications line failure or power failure.

e. Notices.

- i. All notices under this Agreement shall be in writing and shall be delivered by personal service, facsimile or certified mail, postage prepaid, or overnight courier to such address as may be designated from time to time by the relevant party, which initially shall be the address set forth below:

Cambridge Systematics, Inc.  
200 South Wacker Drive, Suite 2575  
Chicago, Illinois 60606

Attn: Nick Caccamo

Augusta, Georgia  
535 Telfair Street Suite 900  
Augusta, Ga 30901]

Attn: Administrator

Augusta, Georgia  
535 Telfair Street Suite 605  
Augusta, Ga 30901

Attn: Procurement Director

Augusta, Georgia  
535 Telfair Street Suite 605  
Augusta, Ga 30901

- ii. All notices shall be deemed given when received. No objection may be made to the manner of delivery of any notice actually received in writing by an authorized agent of a party.

f. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or

invalidated in any manner.

g. Benefit. This Agreement is exclusively for the benefit of the parties hereto and may not be enforced by any person or entity other than the parties hereto, their respective successors and permitted assigns.

h. Captions. Captions are for informational purposes only and are not intended to replace contents of paragraphs that are captioned.

i. Entire Agreement. This Agreement and the exhibits attached hereto contain the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior discussions, representations and understandings, whether oral or written.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Cambridge Systematics, Inc.

[CLIENT NAME]

200 River’s Edge Drive  
Suite 420  
Medford, MA 02155

INSERT ADDRESS

Telephone 781-539-6700  
Fax 781-539-6701

INSERT PHONE #

By\_\_\_\_\_

By\_\_\_\_\_

Title\_\_\_\_\_

Title\_\_\_\_\_

**EXHIBIT 1**  
**SCOPE OF WORK**



## **EXHIBIT 2**

### **BUDGET**