



# TUOLUMNE COUNTY TRANSPORTATION COUNCIL

## **Request for Qualifications (RFQ) for Professional Engineering and Transportation Planning Consulting Services Issued: April 20, 2020**

### **Notice**

The Tuolumne County Transportation Council (TCTC) is soliciting qualifications to retain firms for professional engineering, regional traffic modeling, and transportation planning consulting services. The major objective of this project will be to develop various traffic studies and provide engineering and transportation planning consulting services for various projects.

### **Background**

Tuolumne County is located in the center of the California Mother Lode area along the western slope of the Sierra Nevada mountain range. The County extends from the foothills to the Sierra crest and is bordered on the north by Calaveras County, on the South by Mariposa County, on the west by Stanislaus County and on the east by Alpine and Mono Counties. Tuolumne County is approximately 2,217 square miles and includes portions of the Stanislaus National Forest and Yosemite National Park. Approximately 78 percent of the land within the County is owned by government agencies. Sonora is the only incorporated city in the Tuolumne County Region and is also the County Seat.

The Department of Finance population estimate for Tuolumne County is 54,039 for 2020. The population projection for Tuolumne County is approximately 63,000 by the year 2040.

### **Project Description**

The TCTC is considering a four-year retainer agreement with at least one qualified firm for professional engineering and transportation planning consulting services. Specific project descriptions, delivery schedules and costs for services will be identified in Work Orders that have been agreed upon and approved in writing by the Executive Director and an authorized representative of the consultant. Upon agreement, the TCTC will issue a notice to proceed to the chosen consultant for a specific work order.

Generally, the TCTC is requesting professional consulting services including, but not limited to, the following functions:

1. Prepare reports regarding requests for traffic control device installations such as traffic signals, stop signs, parking regulations, speed zones, channelization, crosswalks and pedestrian and bicycle facilities.
2. Advise, support and assist the TCTC on engineering related issues on an as needed basis.

3. Prepare studies, plans, specifications and estimates, and provide contract administration and construction observations for traffic safety projects, including geometric and channelization improvements, traffic signal installations and modifications, street safety lighting installations and modifications, traffic signing, striping and pavement marking improvements.
4. Prepare engineering drawings, specifications and calculations for capital improvement projects consistent with applicable standards.
5. Attend meetings pertaining to traffic related issues and projects as needed.
6. Prepare grant applications for funding from Federal, State and regional agencies for traffic safety studies and improvements as needed.
7. Review and comment on land development traffic impacts reports.

### **Sample Work Orders**

The specific work orders contemplated under this RFQ may include, but not be limited to:

1. *Prepare engineering drawings and specifications for capital improvement projects such as Park and Rides, electric vehicle charging stations, roadway projects including pedestrian facilities.*
2. *Maintain and update the Tuolumne County Regional Traffic Demand Model as needed. Provide traffic model runs for use in traffic impact studies for local development projects.*
3. *Develop an updated Nexus Study for the Tuolumne County Regional Traffic Mitigation Fee Program, develop a Sub Area Fee Program, develop scope and descriptions of capital improvement projects, planning or engineering level cost of projects, develop the cost per dwelling, develop the cost per trip, etc.*
4. *Prepare feasibility studies and product study reports of planned infrastructure projects.*
5. *Prepare safety studies, roadway operational improvement studies, and ADA improvement needs assessments.*
6. *Plan and design bus stop shelters and turnouts facilities.*
7. *Preparation of project study reports.*
8. *Plan and design bicycle and pedestrian facilities.*

The successful consultant(s) may be requested to attend progress meetings and present written reports of the accomplishments to date on individual work orders. The reports shall also disclose any issues that may affect the progress of the work.

The consultant shall be available for consultation subsequent to the completion of each Work Order at the request of the TCTC on an "as requested" basis. The retainer agreement will be nonexclusive and shall not be binding upon the TCTC for consulting services. The TCTC will maintain the ability to secure other consulting services.

**Schedule**

- |    |   |                |
|----|---|----------------|
| 1. | Request for Qualifications released         | April 20, 2020 |
| 2. | Last day to submit written questions on RFQ | May 6, 2020    |
| 3. | Responses to questions posted on website    | May 11, 2020   |
| 4. | <b>Deadline to submit qualifications</b>    | May 23, 2020   |
| 5. | Selection process concluded (tentative)     | May 30, 2020   |
| 6. | Agreement negotiation concluded (tentative) | June 5, 2020   |
| 7. | Agreement(s) executed (tentative)           | June 8, 2020   |

**Communications**

It is the TCTC's intent to provide the same information to all proposers and questions will not be answered individually by telephone. Any oral responses to questions are not binding on the TCTC. Prospective proposers may make written inquires by email concerning the RFQ to obtain clarification of requirements. The TCTC will post all of the questions received, along with TCTC's written responses, to the TCTC website, <http://tuolumnecountytransportationcouncil.org>. **It is the responsibility of the proposers to check the TCTC website to review the questions and responses.** Except for questions that might render the award of the Engineering and Transportation Planning Consulting Services Agreement(s) invalid, the TCTC will not respond to any questions submitted after May 6,2020. Any communications related to this RFQ should be directed to:

Darin Grossi, Executive Director  
Tuolumne County Transportation Council  
Mailing: 2 South Green Street, Sonora, CA, 95370  
Physical: 975 Morning Star Dr, Ste A, Sonora, California 95370  
Email: [dgrossi@co.tuolumne.ca.us](mailto:dgrossi@co.tuolumne.ca.us)

**Addenda**

Any changes to the Request for Qualifications documents will be made by written addendum. Upon issuance, such addenda shall be incorporated in this Request for Qualifications document, and shall prevail over inconsistent provisions of earlier issued documentation. Addenda will be posted on the TCTC website. **It is the responsibility of the proposers to check the TCTC website for any addenda.** Proposers must certify receipt of the addenda on the appropriate form (see ADDENDA ACKNOWLEDGMENT) to be included and submitted with their qualifications.

**Contents of Qualifications**

Each qualifications submittal shall concisely respond to this request for qualifications as outlined in the project description. The submittal shall include, but not necessarily be limited to, the following:

1. Discussion of the consultant’s qualifications for each of the eight sample work orders identified on page 2 in this RFQ, including a discussion of the understanding of the project requirements, their capability to provide the requested scope of services.
2. A general discussion of the consultant’s qualifications and expertise in providing on going engineering and transportation planning consulting services to Regional Transportation Planning Agencies.
3. Project Management Plan.
4. List of Project Personnel and their duties and qualifications.
5. Past experience in similar work. List of projects similar in nature to the project, showing past record of performance and project cost control, quality control and ability to meet schedules.
6. List of past public sector clients.
7. A detailed rate schedule for future work orders.

**Evaluation Criteria**

A Consultant Selection Committee, appointed by the TCTC Executive Director, shall review and rate each Qualifications submittal and, if necessary, conduct an interview with the consultant's project management and key personnel of the most qualified firm(s).

The Consultant Selection Committee shall identify the rank of qualifications in a selection order based upon the following criteria:

**Rating Items**

1. Firm’s specialized experience, qualifications and technical competence as related to the services required. (20 points possible)
2. Project manager’s specialized qualifications and technical experience as related to the services required. (20 points possible)
3. Firm’s demonstration of a clear understanding of the services required as evidenced in their written and/or oral statements. (20 points possible)
4. Firm’s past record of performance including control of costs, quality of work and completion, in a timely manner. (20 points possible)
5. Firm’s present work load, availability of staff, company size, and list of major projects contracted to perform. (10 points possible)

6. Tuolumne County address of prime consultant and/or sub-consultants. (10 points possible)

**Consultant Selection**

Upon completion of the rating of the consultant firms, the Executive Director may negotiate a draft agreement with the top-ranked consultant(s). The goal of negotiation is to agree on a final agreement that will deliver the services or products required based on the professional qualifications of the selected firm(s).

If an agreement cannot be reached with any of the consultants recommended by the Selection Committee, the Selection Committee may be asked to make additional recommendations.

Upon attainment of a draft agreement(s), the draft agreement(s) will be forwarded internally within the TCTC for review of content prior to final approval and execution by the TCTC.

The TCTC hereby notifies all proposers that it will affirmatively ensure that in regard to any agreement(s) entered into pursuant to this RFQ, disadvantaged business enterprises will be afforded full opportunity to submit qualifications in response to this invitation, and that proposers will not be discriminated against on the grounds of race, religion, creed, medical condition, color, marital status, ancestry, gender, age, national origin or physical or mental disability in consideration for award. In addition, the TCTC requires that any consultant hired by the TCTC to perform any work activity does not discriminate against any employee or applicant for employment because of race, religion, creed, medical condition, color, marital status, ancestry, sex, age, national origin or disability. The consultant(s) shall comply with Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act, as amended from time to time.

The TCTC retains the right to withdraw this Request for Qualifications at any time, without prior notice, to reject any or all qualifications submittals submitted, and/or to waive any irregularities or informalities in the qualification or in the qualification procedure.

**Fee and Method of Payment**

The TCTC will pay the consultant(s) on a percent of task completed basis at the rates set forth in the agreement(s), subject to any limitations set forth in a specific Work Order. Progress payments will be made no more frequently than at monthly intervals. Payment will be made only on submitted claims describing work completed prior to the close of the billing period and approved by the Executive Director. Progress payments will be limited to the budget for the tasks completed. Payment for work completed can be expected within 30 days of invoice receipt and verification of work performed. A ten percent retention on each task will be withheld until project completion.

**Agreement for Professional Consulting Services**

This Request for Qualifications does not obligate the Tuolumne County Transportation Council to award an agreement for professional engineering and transportation planning consulting services, nor does it commit the TCTC to pay for any costs associated with the preparation and submittal of qualifications.

A draft copy of the Engineering and Transportation Planning Consulting Services Agreement to be executed between the parties follows as Attachment A to this RFQ. It is imperative that the prospective consultants

familiarize themselves with each of the provisions contained in the Agreement form prior to preparing and submitting their qualifications. **If substantive revisions to the Agreement will be proposed by the consultant if selected, these items/issues should be clearly specified in their qualifications submittal.**

**Insurance Requirements**

The successful consultant will be required to maintain, throughout the term of the agreement work, insurance of the type and amount indicated in Exhibit A.

**Qualifications Submission & Deadline**

All qualifications submittals and accompanying materials shall become the property of the Tuolumne County Transportation Council upon submittal. Qualifications submittals must be received and date stamped at the Tuolumne County Transportation Council office no later than **2:00 p.m. on Friday, March 17, 2020**. Six (6) copies of each qualifications submittal should be sealed in an envelope which is clearly marked "To Provide Professional Engineering and Transportation Planning Consulting Services to the Tuolumne County Transportation Council" and delivered to:

Tuolumne County Transportation Council  
Darin Grossi – Executive Director  
2 South Green Street  
Sonora, CA 95370

The consultant's name and return address must also appear on the envelope. Qualification submittals may also be hand delivered to the TCTC office, 975 Morning Star Dr. Ste. A, Sonora, California 95370.

Qualifications submittals will be received only at the address shown above, and must be received by the time indicated. It is the sole responsibility of the consultant to send or deliver its qualifications submittal so that it is received by the time and date required, regardless of postmark. Any qualifications submittal received after said time and/or date or at a place other than the stated address, cannot be considered and will not be accepted. No e-mailed or facsimile qualifications submittals will be considered. The TCTC time stamp shall be considered the official timepiece for the purpose of establishing the actual receipt of qualifications submittals.

**ADDENDA ACKNOWLEDGMENT**

(To be submitted with qualifications packet)

Receipt of the following addenda is hereby acknowledged:

Addendum No. _____	Proposer's Initials _____
Addendum No. _____	Proposer's Initials _____
Addendum No. _____	Proposer's Initials _____
Addendum No. _____	Proposer's Initials _____

**Attachment A to RFQ**  
**Draft Agreement for Professional Services**  
***Professional Engineering and Transportation Planning Consulting Services***

This Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the Tuolumne County Transportation Council (“TCTC”), a California joint powers authority and \_\_\_\_\_, a California based company or a (identify state) based company or corporation licensed to do business in the State of California (“Consultant”).

**1. Agreement Documents**

**1.01** The total agreement between the parties consists of this Agreement and the following additional documents, copies of which are attached hereto and incorporated herein by this reference:

- A. Request for Qualifications, issued January 27, 2020, including Exhibits and Addenda, if any.
- B. Consultant’s Statement of Qualifications and Rate Schedule, as accepted by the TCTC, attached hereto as Exhibit B.
- C. Work Orders issued pursuant to Section 3.01.

In the event of a conflict or ambiguity arising between such documents or any term therein, the document issued or executed later in time shall prevail over the document issued or executed earlier in time. Notwithstanding the above, in the event of a conflict or ambiguity between the Consultant’s Statement of Qualifications and Rate Schedule and any other Agreement Document, the other Agreement Document will control.

**2. Recitals**

- 2.01** The TCTC desires professional engineering, travel demand modeling, and transportation planning consulting services for various projects managed by the TCTC (such services are hereinafter referred to as the “Project”) and,
- 2.02** The TCTC has determined the Project involves the performance of specialized professional and technical services; and,
- 2.03** Consultant has responded to the TCTC’s Request for Qualifications soliciting professional engineering and transportation planning consulting services; and,
- 2.04** Consultant hereby represents that it is in the business of, and fully qualified in the field of professional engineering and transportation planning consulting services, and is fully willing and able to perform the work orders described in the RFQ, of the Agreement, and with the level of

service and operating quality specified herein. TCTC awarded this Agreement in reliance on such representations, and on Consultant's particular skills, experience and abilities as represented by Consultant in their Statement of Qualifications; and,

- 2.05** TCTC and Consultant intend to enter into an agreement for the furnishing of certain articles and services for the consideration hereinafter set forth.

The TCTC and Consultant, for the consideration hereinafter described, mutually agree as follows:

- 3. Project Description:** This is a non-exclusive Master Agreement setting forth the terms under which Consultant will provide engineering and transportation planning consulting services. Specific project descriptions will be contained in Work Orders prepared pursuant to Section 3.01.
- 3.01** The scope of work will be set forth in Work Orders that will be approved by the parties from time to time. Work Orders must be approved in writing by the Executive Director of the TCTC and an authorized representative of Consultant.
- 4. Effective Date/Term:** This Agreement shall be effective from the date of execution and shall expire four (4) years after the date of execution or the completion of any Work Orders issued pursuant to Section 3.01 of this Agreement, whichever is later, unless this Agreement is extended by a written amendment pursuant to Section 4.01.
- 4.01** TCTC or the Consultant at any time during the fourth year of this Agreement may request in writing an extension of the Agreement term for additional periods of up to two years. Upon receiving such a request, and provided the Consultant is not in default, the TCTC will consider extending the Agreement term for the additional years.
- 5. Commencement/Completion of Work:** The Consultant shall commence work under each Work Order upon receipt of a written notice to proceed from the TCTC Executive Director. Consultant shall perform and complete the work described within sixty (60) calendar days from receipt of the notice to proceed or according to the instructions of the Work Order.
- 6. Suspension, Delay or Interruption of Work:** The TCTC may suspend, delay or interrupt the services of the Consultant for the convenience of the TCTC. In the event of force majeure or such suspension, delay or interruption, an equitable adjustment in the Project's schedule, commitment and cost of Consultant's personnel and subcontractor, and Consultant's compensation will be made.
- 7. Additional Services:** For additional services not outlined in Section 3 above, a separate scope of work describing the scope, schedule, fee and work products will be negotiated by the TCTC and the Consultant and approved as written work orders under this Agreement prior to any additional work effort being commenced upon.

- 8. Professional Standards:** Consultant warrants and guarantees that the work provided under this Agreement shall be performed and completed in a professional manner. All services shall be performed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and any subcontractor are engaged.
- 9. Performance:** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory accomplishment of the Consultant's obligations under this Agreement. Performance of services shall comply with the schedule set forth in the Work Orders. A time extension may be granted in the event that acts or omissions by the TCTC cause delay. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.
- 10. Work Standard:** The TCTC has relied upon the professional training and ability of the Consultant to perform the services hereunder as a material inducement to enter into this Agreement. The Consultant shall, therefore, provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by the Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in the Consultant's field of expertise. The Consultant shall be responsible for ensuring any approved subcontractor adheres to this same work standard.
- 11. Personnel:** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Consultant shall provide all staff necessary to completion of services under this Agreement. The Consultant's Project Team identified in their Statement of Qualifications shall be the Project Team for the duration of the Agreement unless TCTC agrees to accept replacement personnel. In the event that the TCTC, at its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Consultant to perform services pursuant to this Agreement because of their incompetence, Consultant shall remove any such person(s) immediately upon receiving notice from the TCTC of the desire of the TCTC for the removal of such person(s).
- 12. Independent Contractor:** In providing the services as set forth in the Agreement Documents, Consultant shall act as an independent contractor and not as an employee of the TCTC. In accordance with that relationship, Consultant shall assume all responsibility for its employees for Federal and State income tax withholding, FICA, SDI and any other deductions from income that Consultant is properly required to make as an independent contractor.
- 13. Administration of Agreement:** Consultant's compliance with this Agreement shall be supervised and administered by the TCTC through the office of the Executive Director. This paragraph shall not relieve Consultant of any obligation or liability undertaken by virtue of this Agreement.
- 14. Written Notification:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class United States mail. Any such notice, demand, request, consent, approval or communication shall be addressed to the other party at the address set forth herein below. Either party

may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of depositing in the United States mail box if mailed as provided in this section.

**If to TCTC:**

Tuolumne County Transportation Council  
Darin Grossi, Executive Director  
2 South Green Street,  
Sonora, CA 95370  
[dgrossi@co.tuolumne.ca.us](mailto:dgrossi@co.tuolumne.ca.us)

**If to Consultant:**

*(Insert Name/Contact information)*

**15. Consents and Agreements:** Any and all consents and agreements provided for or permitted by this Agreement shall be in writing, and a signed copy thereof shall be filed and kept with the books of this Agreement.

**16. Signature Authority**

**16.01** The Executive Director or his designee shall have authority on behalf of the TCTC to sign Agreement amendments and other documents related to this Agreement.

**16.02** Consultant certifies that the following person(s) have authority to sign Agreement amendments and other documents related to this Agreement on behalf of Consultant. Written certification of the signatory authority of the following persons shall be provided by the Consultant to the TCTC prior to execution of this Agreement.

Name	Title

**17. Insurance Requirements:** Consultant and/or any subcontractor shall provide a Certificate of Insurance as proof of a policy of insurance satisfactory to the TCTC evidencing that Consultant and/or subcontractor maintains insurance that meets the requirements included in Exhibit A, "Standard Insurance Requirements," of this Agreement.

**18. Workers Compensation**

**18.01** Consultant shall comply with the provisions of the Worker's Compensation and Insurance Law of the State of California.

**18.02** The TCTC shall not be responsible for providing Workers' Compensation insurance or any other protective insurance coverage for the Consultant that is based upon the relationship of employer and employee.

**19. Method of Payment:** The TCTC will pay the consultant (s) on a percent of task complete basis at the rates set forth in the agreement(s), subject to any limitations set forth in a specific Work Order. Progress payments will be made no more frequently than at monthly intervals. Payment will be made only on

submitted claims describing work completed prior to the close of the billing period and approved by the Executive Director. Progress payments will be limited to the budget for the task completed. Payment for work completed can be expected within 30 days of invoice receipt and verification of work performed. A ten percent retention on task payment will be withheld until project completion.

- 20. Reporting Requirements:** The Consultant will provide to the TCTC a monthly written progress report detailing status of the work schedule and outputs, the percentage of work completed by task and any other relevant factors to completion of all work in a timely manner. The Consultant will notify the TCTC of any potential or existing problem areas as soon as possible.
- 21. Maintenance of Records/Audit Rights:** Consultant shall maintain books, records, documents and other evidence directly pertinent to work under this Agreement in accordance with generally accepted accounting principles and practices. Consultant shall also maintain for a period of at least three (3) years from the expiration date of this Agreement the financial information and data used by Consultant to determine charges and costs related to work performed under this Agreement. The TCTC, and any Federal or State authorized representatives, shall have the right to inspect and audit Consultant's accounting books, records and documents during normal business hours. Such records shall be turned over to the TCTC upon request.
- 22. Work Product Property of the TCTC:** All plans, specifications, reports, computer files and other work products prepared by Consultant pursuant to this Agreement shall become the property of the TCTC. The TCTC's use of documents produced under this Agreement and/or supporting information or calculations other than as intended hereunder shall be at the TCTC's sole risk.
- 23. Release of Documents and Information:** Services provided within the scope of this Agreement are for the exclusive use of the TCTC. The TCTC and Consultant agree that all data, plans, specifications, reports, computer files and other work products will not be released to third parties by Consultant without the prior written consent of the TCTC.
- 24. Covenant Against Contingent Fees:** The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee or subcontractor working for the Consultant, as provided for in the Consultant's Statement of Qualifications (as accepted by TCTC), to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, a fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon, resulting from the award or making this Agreement. For breach or violation of this warranty, the TCTC shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
- 25. Covenant Against Gratuities:** Consultant covenants that it has not offered or given gratuities in the form of entertainment, gifts or otherwise to any member, officer or employee of the TCTC with a view toward securing favorable treatment in the award, modification or performance evaluation of this Agreement. For

breach or violation of this covenant the TCTC shall have the right to cancel this Agreement without any liability to Consultant.

**26. Restrictions on Lobbying:** Consultant shall not pay any person or organization to influence or attempt to influence an officer or employee of any federal, state or county agency in connection with awarding this Agreement or any other Federal award from which funding for this Project is originally derived, consistent with 31 U.S.C. section 1352.

**27. Transfer of Agreement:** This Agreement is made in reliance by TCTC upon the qualifications and responsibility of Consultant. The performance by Consultant of this Agreement may not be assigned, sublet, transferred or in any way subcontracted, except upon the prior written approval of the TCTC.

**28. Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under subcontract, including procurement of material or leases of equipment, each potential sub-Consultant or supplier shall be notified by Consultant of Consultant's obligations under this Agreement relative to civil rights requirements. Consultant shall provide the TCTC documentation of such notifications.

Consultant agrees to refrain from awarding any third party subcontract without prior written approval by TCTC. Payment for such services shall be the responsibility of the Consultant.

**29. Third Party Obligations:** Consultant shall be solely liable to third parties with whom it enters into contracts to effectuate the purpose of this Agreement. Consultant shall pay directly such parties for all amounts due under said arrangement. Consultant shall indemnify, defend and hold the TCTC harmless from any and all claims and liabilities arising from any third party contracts. Consultant shall exert its best efforts to prevent any loss to the TCTC from the failure of proper performance of any third party.

**30. Conflicts of Interest:** Consultant shall not enter into any agreement, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project, in which any member, officer or employee of Consultant or the TCTC, during the Project term and for one year thereafter, has any direct or indirect interest. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of the Project term any such interest, and if such interest is immediately disclosed to Consultant and such disclosure is entered upon the minutes of Consultant's written report to the TCTC of such interest, Consultant, with the prior written approval of the TCTC, may waive the prohibition contained in this subsection; provided that any such present member, officer or employee shall not participate in any action by Consultant or the TCTC relating to such agreement, subcontract or arrangement.

**31. Debarment and Suspension Certification:** Consultant agrees to refrain from entering into any sub-agreement to this Agreement of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal Procurement or Non-Procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. The List also includes the names of parties debarred, suspended or otherwise excluded by

agencies, and Consultants declared ineligible for Agreement award under statutory or regulatory authority other than Executive Order Nos. 12549 and 1268. Consultant shall provide the TCTC debarment and suspension certification containing information about the debarment and suspension status and other specific information of Consultant and its “principals”, as defined in 49 CFR 29, prior to entering into any sub-agreement to this Agreement.

Consultant agrees to refrain from awarding any third party sub-contract of any amount (at any tier) to a debarred or suspended subcontractor, and to obtain similar certification from any third party subcontractor (at any tier) seeking a contract exceeding \$100,000.

**32. Civil Rights Requirements:** During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (collectively, “Consultant”) agree as follows:

- A. Compliance with Regulations:** The Consultant shall comply with regulations relative to Title VI (nondiscrimination in Federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations Part 21 – Effectuation of Title VI of the 1964 Civil Rights Act) (“Title VI” or “Regulations”). Title VI provides that the recipients of Federal assistance will implement and maintain a policy of nondiscrimination in which no person in the State of California shall, on the basis of race, color, national origin, religion, sex, age or disability, be excluded from participation in, denied the benefits of or subjected to discrimination under any program or activity by the recipients of Federal assistance or their assignees and successors in interest.
- B. Nondiscrimination:** The Consultant, with regard to the work performed by it during the Agreement term shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT’s regulations, including employment practices when the Agreement covers a program whose goal is employment.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant’s obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin. Consultant shall provide the TCTC documentation of such notifications.
- D. Information and Reports:** The Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined the TCTC, State or Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a Consultant is in the exclusive possession of another

who fails or refuses to furnish this information, the Consultant shall so certify to the TCTC, State or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

**E. Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the TCTC and/or State shall impose such Agreement sanctions as they or the FTA may determine to be appropriate, including, but not limited to:

- 1) Withholding of payments due to the Consultant under this Agreement until the Consultant complies, and/or
- 2) Cancellation, termination or suspension of this Agreement, in whole or in part.

**F. Incorporation of Provisions:** The Consultant shall include the provisions of these paragraphs (A) through (F) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Consultant will take such action with respect to any subcontractor or procurement as the TCTC, State or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the TCTC and/or State to enter into such litigation to protect the interest of the TCTC and/or State, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

**33. Health, Safety, Fire and Environmental Protection:** The Consultant and any subcontractor or agent shall comply with Federal, State and local requirements pertaining to safety, health, fire and environmental protection.

The Consultant shall comply with all applicable provisions of the California Occupational Safety and Health Act of 1973, including any amendments thereto, and the rules, standards, orders and regulations prescribed by the Occupational Safety and Health Standards Board and the Division of Industrial Safety in the California Department of Industrial Relations. Consultant shall further comply with all other applicable safety laws, ordinances and regulations.

In the event standards conflict, the standard providing the highest degree of protection and not in violation of any other applicable standard or law shall prevail.

**34. Federal, State and Local Laws:** Consultant warrants and covenants that it shall fully and completely comply with all applicable Federal, State and local laws and ordinances, and all lawful orders, rules and regulations issued by any authority with jurisdiction in all aspects of its performance of this Agreement.

**35. Governing Law:** The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this Agreement.

**36. Indemnification:** To the extent permitted by law, Contractor does hereby assume liability for, and agrees to defend, indemnify, protect, save and keep harmless the TCTC and its elected and appointed officials, officers, employees, agents and volunteers and its successors and assigns (collectively, TCTC) from and against any and all liabilities, obligations damages, penalties, fines, actions, and expenses and disbursements (including legal fees and expenses) of any kind and nature imposed, asserted against, incurred or suffered by the TCTC by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property caused by or in any way relating to or arising out of:

- A. Any negligent or intentional act or action, or any neglect, omission or failure to act when under a duty to act on the part of Consultant or any of its officers, agents, servants, employees, subcontractors or subcontractors of any tier in its or their performance hereunder, except to the extent caused by the negligence or willful wrongful act of the TCTC; and,
- B. any claim of patent or copyright infringement or publication of defamatory material, including the TCTC's failure to request removal of such material in connection with the services performed and/or work products provided under this Agreement by Consultant or any of its officers, agents, servants, employees, subcontractors or subcontractors of any tier; and,
- C. a release by Consultant of any of its officers, agents, servants, employees, subcontractors or subcontractors of any tier in its or their performance hereunder of any substance or material defined or designated as a hazardous or toxic substance, material or waste by any Federal, State or local law or environmental statute, regulation or ordinance presently in effect, or as amended or promulgated in the future, but only to the extent that such release is not proximately contributed to or caused by the TCTC.

The parties shall establish procedures to notify the other party where appropriate of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnification provision. The parties shall cooperate in the defense of such actions brought by others with respect to the matters covered in this indemnity. Nothing set forth in this Agreement shall establish a standard of care for, or create any legal rights in, any person not a party to this Agreement.

If such indemnification becomes necessary, the legal Counsel for the TCTC shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the TCTC. This indemnification clause shall survive the termination or expiration of this Agreement.

**37. Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the provisions of this Agreement, the TCTC shall impose such Agreement sanctions as it may determine to be appropriate, including, but not limited to:

- A. Withholding of payments due to the Consultant under this Agreement until the Consultant complies to the TCTC's satisfaction, and/or
- B. Cancellation, termination or suspension of this Agreement, in whole or in part.

**38. Termination of Agreement**

**38.01 Acts Constituting Termination:** This Agreement shall commence on the date of its execution and shall continue until:

- A. Voluntary or involuntary transfer or assignment by either party hereto without the prior written consent of the other party of any of the rights, titles or obligations set forth in this Agreement;
- B. Mutual agreement of the parties hereto to terminate this Agreement;
- C. Any default or breach of this Agreement by either party hereto which has not been cured within thirty (30) days after notice of such default by the other party, or such later time as is reasonably necessary if the default cannot be reasonably cured within such thirty (30) day period;
- D. Written notice is delivered by either party to the other party ninety (90) days prior to the effective date of termination;
- E. The TCTC may terminate this Agreement for convenience upon thirty (5) calendar days' written notice to Consultant.

**38.02** Consultant shall be paid for all work performed through the date of termination at the rates set forth in the Rate Schedule in Exhibit B, and subject to the proportion of work completed and approved by the Executive Director.

Upon termination of this Agreement, all affairs undertaken or conducted pursuant to this Agreement shall be wound up and debts paid.

**39. Breach:** If Consultant materially breaches the terms of this Agreement, the TCTC shall have the following remedies:

- A. Immediately terminate the Agreement with Consultant;
- B. Complete the unfinished work under any Work Orders with a different consultant;
- C. Charge Consultant with the difference between the cost of completion of the unfinished work pursuant to any Work Orders and the amount that would otherwise be due Consultant, had Consultant completed the work; and/or
- D. Allow the Consultant five (5) business days to diligently complete the correction.

- 40. Waiver:** A waiver by the TCTC of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure. No failure on the part of the TCTC to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
- 41. Disputes:** It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Tuolumne, State of California. The prevailing party shall be entitled to its reasonable attorneys' fees in any legal action to enforce the terms of this Agreement.
- 42. Amendments:** This Agreement may be amended or modified in any way by an instrument in writing, stating the amendment or modifications, signed by the parties hereto.
- 43. Survivorship:** Any responsibility of Consultant for warranties, insurance or indemnity with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.
- 44. Severability:** If any term, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall remain in effect.
- 45. Successors and Assigns:** This Agreement is binding upon the TCTC and the Consultant and their successors. Except as otherwise provided herein, neither the TCTC nor the Consultant shall assign, sublet or transfer its respective interest in this Agreement or any part thereof without the prior written consent of the other.
- 46. Succession:** This Agreement shall be binding on and inure to the benefit of heirs, executors, administrators and assigns of the parties hereto.
- 47. Third Party Beneficiary:** Nothing in this Agreement is intended to, nor shall anything in this Agreement be construed to, benefit any third party.
- 48. Ambiguities:** The parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. Both parties have had the opportunity to engage counsel and negotiated the term of the Agreement. No ambiguity shall be presumed to be construed against either party.
- 49. Integration:** The Agreement Documents embody the entire agreement of the parties in relation to the scope of services herein described, and no other understanding whether verbal, written or otherwise exists between the parties.
- 50. Relationship Between the Parties:** Nothing in these Agreement Documents is intended to create, and nothing herein shall be considered as creating, any partnership, joint venture or agency relationship between the TCTC and Consultant.

- 51. Modification:** No waiver, alteration, modification or termination of this Agreement shall be valid unless made in writing and signed by the authorized parties hereof.
- 52. Headings and Subtitles:** Headings and subtitles to the Sections of this Agreement have been used for convenience only and do not constitute matter to be considered as interpreting this Agreement.
- 53. Sole and Only Agreement:** This instrument contains the sole and only agreement of the parties and correctly sets forth the rights, duties and obligations of each party to the other as of this date. Any prior agreements, policies, negotiations and/or representations are expressly set forth in this Agreement.
- 54. Acceptance of Agreement:** The undersigned, having read the foregoing, accept and agree to the terms set forth therein. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the administrators for the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties thereto.

**Tuolumne County Transportation Council**

Professional Engineering & Transportation Planning Consulting Services

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*In witness hereof*, the parties have caused their authorized representatives to execute this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

*For the Consultant:*

\_\_\_\_\_  
Legal Name of Firm

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Name (typed)

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Title

*For the TCTC:*

**Tuolumne County Transportation Council**

**Approval Recommended:**

\_\_\_\_\_  
Chair of the TCTC

\_\_\_\_\_  
Executive Director

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

**Approved as to Legal Form:  
TCTC Legal Counsel**

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

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

**Exhibit A**  
**Standard Insurance Requirements**

Consultant at its own expense, shall procure, and maintain for the duration of the Agreement, the following insurance policies and endorsements with insurers licensed in the State of California possessing a Best's rating of no less than an A:VII.

- A. Workers' Compensation Coverage - Worker's Compensation Insurance and Employer's Liability Insurance for employees in accordance with the laws of the State of California (including requiring any authorized subcontractor to obtain such insurance for its employees).
- B. General Liability Coverage - Commercial general liability insurance with a minimum liability limit per occurrence of one million dollars (\$1,000,000) for bodily injury and one hundred thousand dollars (\$100,000) for property damage. If a commercial general liability insurance form or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Coverage shall be included for premises, operations and broad form contractual.
- C. Automobile Liability Coverage - Automobile liability insurance with a minimum liability limit per occurrence of one million dollars (\$1,000,000) for bodily injury and one hundred thousand dollars (\$100,000) for property damage, and including coverage for owned, hired and non-owned vehicles.
- D. Professional Liability Coverage - Professional errors and omissions liability for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) per claim with an aggregate limit of two million dollars (\$2,000,000).
- E. Policy Endorsements: Each general liability and automobile liability insurance policy shall be endorsed with the following specific provisions:
  - 1) The TCTC, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds ("TCTC additional insureds").
  - 2) This policy shall be considered, and include a provision it is, primary as respects the TCTC additional insureds, and shall not include any special limitations to coverage provided to the TCTC additional insureds. Any insurance maintained by the TCTC, including any self-insured retention the TCTC may have; shall be considered excess insurance only and shall not contribute with it.

- 3) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
  - 4) The insurer waives all rights of subrogation against the TCTC additional insureds.
  - 5) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the TCTC additional insureds.
  - 6) The insurance policy and endorsements shall not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days' written notice has been given to the Executive Director by registered mail, return receipt requested, at 2 South Green Street, Sonora, CA, 95370.
- F. Self-Insured Retentions: Any self-insured retentions must be declared to and approved by the Executive Director. At the TCTC's option, Consultant shall demonstrate financial capability for payment of such self-insured retentions.
- G. Evidence of Insurance: Consultant shall provide policies and certificates of insurance with original endorsements or other evidence of insurance coverage as required by the Executive Director. Required evidence of insurance shall be filed with the Executive Director on or before commencement of performance of this Agreement. Current evidence of insurance shall be kept on file with the Executive Director at all times during the term of this Agreement.
- H. Unsatisfactory Policies: If at any time any of the policies or endorsements be unsatisfactory as to form or substance, or if an issuing company shall be unsatisfactory, to the Executive Director, a new policy or endorsement shall be promptly obtained and evidence submitted to the Executive Director for approval.
- I. Failure to Comply: Upon failure to comply with any of these insurance requirements, this Agreement may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.