

Draft Agreement for Professional Services
Triennial Performance Audits
(Fiscal Years 2016/17 through 2018/19)

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 Proposals, issued November 15, 2019, including Addenda, if any.
- B. Standard Insurance Requirements attached hereto as Exhibit A.
- C. Draft Agreement and Scope of Work attached hereto as Exhibit B.
- D. Consultant's Proposal, Rate Schedule and Project Schedule, as accepted by the TCTC, attached hereto as Exhibit C.
- E. Certification Regarding Lobbying attached hereto as Exhibit D.
- F. Debarment & Suspension Certification attached hereto as Exhibit E.

In the event of a conflict or ambiguity arising between such documents or any term therein, the document executed later in time shall prevail over the document executed earlier in time.

Notwithstanding the above, in the event of a conflict or ambiguity between the Consultant's Proposal and any other Agreement Document, the other Agreement Document will control.

2. Recitals

- 2.01** The TCTC desires to enter into an agreement to conduct Triennial Performance Audits of the TCTC and Public Transit System ("Project"); and,
- 2.02** The TCTC has determined the Project involves the performance of specialized professional services; and,
- 2.03** Consultant has responded to the TCTC's Request for Proposals soliciting proposals to conduct Triennial Performance Audits of the TCTC and Public Transit System; and,

- 2.04** Consultant hereby represents that it is in the business of, and fully qualified in, the field of conducting performance audits for transportation planning agencies and public transit systems and is fully willing and able to perform the work described in the Scope of Work, Exhibit B, of this Agreement, and with the level of service and quality of work specified herein. The TCTC awarded this Agreement in reliance on such representations, and on Consultant's particular skills, experience and abilities as represented by Consultant in its Proposal; and,
- 2.05** The 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. Scope of Work

Consultant agrees to complete the Project pursuant to the Scope of Work of this Agreement, attached hereto as Exhibit B, and the Agreement Documents. The TCTC agrees to compensate Consultant as specified herein below and accordance with the Request for Proposals, the Proposal and all such other documents referred to herein and made a part of hereof by specific reference.

4. Effective Date/Term

This Agreement shall be effective from the date of execution. The term of the Agreement shall extend from the date TCTC issues a notice to proceed and shall continue until completion of the tasks as identified within the Scope of Work (Exhibit B). Consultant shall not commence work prior to the date a written Notice to Proceed is issued by the TCTC.

5. Commencement/Completion of Work

The Consultant agrees to commence work upon execution of this Agreement and receipt of a written notice to proceed from the TCTC Executive Director and perform and complete the project in compliance with the Scope of Work, Exhibit B, and Project Schedule in Exhibit C.

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 subconsultant, 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 amendments to 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 Agreement Documents. A time extension may be granted if 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 subconsultant 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 Proposal shall be the Project Team for the duration of the project 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 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 hereinbelow. 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

If to Consultant:

(insert Consultant 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) has (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 any subcontractor shall provide a Certificate of Insurance as proof of a policy of insurance satisfactory to the TCTC evidencing that Consultant and 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 Workers' 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. Compensation

- 19.01** Consultant will be reimbursed for actual costs incurred by Consultant in the performance of work directly related to this Agreement pursuant to the Scope of Work (Exhibit B) and Rate Schedule (Exhibit C). Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for through an amendment to this Agreement. In the event that the TCTC determines that a change to the work from that specified in this Agreement is required, the Agreement term or allowable reimbursable costs shall be adjusted through an amendment to this Agreement to accommodate the changed work. The maximum total cost as specified in Article 19.02 shall not be exceeded unless authorized through an amendment to this Agreement.
- 19.02** Progress payments will be made monthly in arrears based upon the work completed by task at the close of the billing period and allowable incurred costs. The total cost upon project completion is not to exceed \$_____. Consultant will include with each progress payment request a monthly written progress report for work completed, as described in Article 20, Reporting Requirements, of this Agreement. Progress payment requests shall be based on the amount of work completed per task in accordance with Exhibit B, Scope of Work, and shall be billed in accordance with the Rate Schedule included in Exhibit C. Progress payment requests and monthly progress reports shall be reviewed and approved by the TCTC Executive Director prior to processing payments. Progress payments will be limited to ninety percent (90%) of the budget for the tasks completed. The ten percent (10%) retention will be released upon completion, presentation and approval of the final Project.

19.03 Consultant will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by the TCTC Executive Director of itemized invoices. Payment of invoices can usually be expected within 30 calendar days of receipt and approval. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing. The final invoice should include a summary of the total expenditures, final amount due, and final report on the work completed pursuant to this Agreement. Payment of the final invoice will be processed once the Project has been formally approved by the TCTC.

19.04 No payment will be made prior to approval of any work, nor for any work performed prior to execution of this Agreement and a Notice to Proceed issued by the TCTC.

19.05 If Consultant fails to submit the required deliverables according to the approved schedule and Scope of Work, TCTC shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Article 38, Termination.

20. Reporting Requirements

The Consultant will submit to the TCTC written progress reports at least once a month. The report should be sufficiently detailed for the Executive Director to clearly determine the status of the work schedule and outputs, the percentage of work completed by task and any other relevant factors to completion of the Project in a timely manner. The report should also sufficiently address any potential or existing difficulties or special problems encountered so that remedies can be developed as soon as possible. Consultant shall meet with the Executive Director, as needed, to discuss progress on the Project.

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 it 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 Proposal (as accepted by TCTC), to solicit or secure this Agreement, and that it 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 local 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. The Consultant's executed Certification regarding Lobbying is attached hereto as Exhibit D.

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 subcontractor 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

31.01 Consultant certifies under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer or manager, is not currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the TCTC. The Consultant's executed Debarment & Suspension Certification is attached as Exhibit E.

31.02 Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency and dates of action.

- 31.03** Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration (FHWA).

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 nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this Agreement.
- B. Nondiscrimination:** The Consultant, with regard to the work performed by it during the Agreement term shall not discriminate on the grounds of race, color, sex, national origin, religion, age or disability in the selection and retention of subcontractors, including procurements 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 REGULATIONS, including employment practices when the Agreement covers a program set forth in Appendix B of the REGULATIONS.
- C. Solicitations for Sub-agreements, 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 sub-agreement, including procurements of materials or leases of equipment, each potential subcontractor, sub-consultant 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 Consultant's books, records, accounts, other sources of information, and its facilities as may be determined the TCTC, State or Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to the TCTC, State or FHWA, as appropriate, and shall set forth what efforts Consultant 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 FHWA may determine to be appropriate, including, but not limited to:
 - 1) Withholding of payments due to Consultant under this Agreement within a reasonable period of time, not to exceed 90 days; and/or

2) Cancellation, termination or suspension of this Agreement, in whole or in part.

F. Incorporation of Provisions: Consultant shall include the provisions of these paragraphs (A) through (F) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. Consultant shall take such action with respect to any sub-agreement or procurement as the TCTC, State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request the TCTC and/or State enter into such litigation to protect the interest of the TCTC and/or State, and, in addition, 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, Consultant does hereby assume liability for, and agrees to indemnify, defend, save, protect and hold harmless the TCTC, its elected and appointed officials, officers, employees, agents and volunteers (collectively, "TCTC") from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury or death (collectively, "Liability") arising directly or

indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Consultant, its officers, employees, agents, subcontractors, consultants, or any person under its direction or control and will make good to and reimburse TCTC for any expenditures, including reasonable attorney's fees, the TCTC may make by reason of such matters and, if requested by TCTC, will defend any such suits at the sole cost and expense of Consultant. Consultant's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the TCTC or any other person; provided, however, that Consultant shall not be required to indemnify TCTC for the proportion of Liability a court determines is attributable to the active negligence or willful misconduct of the TCTC.

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.

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.

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 execution and shall continue until the earlier of expiration or:

- A. Completion of the Project pursuant to Scope of Work, Exhibit B, as approved by TCTC;
- B. 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;
- C. Mutual agreement of the parties hereto to terminate this Agreement;
- D. Any default or breach, as specified in Section 39 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;

E. Termination as provided in this Article.

38.02 TCTC may terminate this Agreement for convenience upon thirty (30) calendar days' written notice to Consultant.

38.03 Consultant shall be paid for all work performed through the date of termination at the rates set forth in the Rate Schedule in Exhibit C, 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 this Agreement with a different consultant;
- C. Charge Consultant with the difference between the cost of completion of the unfinished work pursuant to this Agreement 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 costs, including 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.

In witness hereof, the parties have caused their authorized representatives to execute this Agreement as of the date first written above.

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:

Tuolumne County Transportation Council
Triennial Performance Audits

Chair of the TCTC

Executive Director

Date: _____

Approved as to Legal Form:
TCTC Legal Counsel

By: _____

Date: _____

DRAFT

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 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.

Exhibit A
Standard Insurance Requirements (continued)

- 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.

Exhibit B
Scope of Work

Performance Audits of the Tuolumne County Transportation Council (TCTC) and Tuolumne County Public Transit System (Tuolumne County Transit) will be conducted in accordance with relevant sections of the Transportation Development Act, the "Performance Audit Guidebook for Transit Operators and Regional Transportation Entities" issued by the California Department of Transportation and the following Scope of Work.

Task 1: Hold Introductory/Progress Meetings

The smooth progress and development of the Performance Audits and their value to the Tuolumne County Transportation Council depends upon planning and agreement regarding the performance audit process. The purpose of this task is for the TCTC and the Consultant to agree upon the audit plan scope, schedule and other details of the audits. The Consultant will also request basic documents at the entrance conference to ensure that the Consultant is thoroughly familiar with recent TCTC and Public Transit events. Specific subtasks include:

- 1.1.** Finalize the work plan for the performance audits.
- 1.2.** Conduct an entrance conference with the TCTC management to:
 - Introduce the audit team.
 - Refine the scope, approach and methodologies to be used in the audit.
 - Agree on responsibilities of the Consultant and the TCTC.
 - Establish coordinating procedures between the Consultant and the TCTC.
- 1.3.** Hold monthly progress meetings with TCTC staff.

Task 2: Performance Audit of the Tuolumne County Transportation Council

The purpose of this audit is to provide the TCTC an independent, objective and comprehensive review of the economy, efficiency and effectiveness of their functions as the Regional Transportation Planning Agency for Tuolumne County. The following items should be addressed in the performance audit of the TCTC.

2.1. Determine Compliance with Legal and Regulatory Requirements

The Consultant will be required to review and determine the TCTC's compliance with the Transportation Development Act (TDA) and related sections of the California Administrative Code. The specific Code Sections for which compliance is to be verified are those specified within the "Performance Audit Guidebook for Transit Operators and Transportation Planning Entities." Should the Consultant identify instances of non-compliance, a finding regarding the non-compliance should be made in the audit report.

2.2. Follow-Up on Prior Performance Audit Recommendations

The Consultant will review the most recent prior performance audit for the TCTC, and assess the TCTC's implementation of audit recommendations. The auditor will need to make determinations as to whether recommendations which have not been implemented are (a) no longer applicable, (b)

infeasible or (c) should still be implemented. If a prior audit recommendation has not been implemented but still has merit, the Consultant should include the prior audit recommendation in the current audit report. The Consultant will evaluate recommendations which have been implemented or are being implemented. For these recommendations, the Consultant should assess the benefits provided, or likely to be provided, by the recommendation. Significant accomplishments in implementing prior recommendations should be recognized.

2.3. Review TCTC Functions

The Consultant will review each TCTC TDA-related function, consistent with the "Performance Audit Guidebook for Transit Operators and Transportation Planning Entities." The functional review is expected to include interviews with the TCTC's management, staff and governing board. Supplemental interviews with other regional agencies and State or Federal agencies may be appropriate to gather more detailed information.

The audit should, at a minimum, address the following functional areas;

- Administration and management;
- Transportation planning and regional coordination;
- Claimant relationships and oversight;
- Marketing and transportation alternatives;
- Grant applications and management;
- Analysis and evaluation in regard to the TCTC's established goals, policies, committees and organizational procedures;
- Evaluation of TCTC Strategic Plan - review recommendations and provide additional recommendations, as needed, for organizational growth;
- Analysis and evaluation of staff functions, staffing levels and TCTC staff needs;
- Discussion of future roles of the TCTC.

- 2.4.** A summary of the major issues and concerns identified in the audit report and specific strategies and/or recommended solutions to address these issues and concerns should be addressed in the audit.

Task 3: Performance Audit of the Public Transit System

The purpose of this audit is to provide the TCTC an independent, objective and comprehensive review of the economy, efficiency and effectiveness of the operations of Tuolumne County Transit, the Regional Public Transit System. The following items should be addressed in this performance audit of the Tuolumne County Transit System.

3.1. Determine Compliance with Statutory and Regulatory Requirements

The Consultant will be required to review and determine the system's compliance with the TDA, [Americans with Disabilities Act \(ADA\)](#) and [related sections of the California Code of Regulations](#). As a minimum, the Code Sections for which compliance is to be verified are those specified within the "Performance Audit Guidebook for Transit Operators and Regional Transportation Planning Entities," published by the California Department of Transportation. Should the Consultant identify

instances of non-compliance, a finding regarding the non-compliance should be made in the audit report. Recommendations to bring system into compliance should be included.

3.2. Follow-Up on Prior Performance Audit Recommendations

The Consultant will review the most recent prior performance audit for the Transit System, and assess the implementation of audit recommendations. The auditor will need to make determinations as to whether recommendations which have not been implemented are (a) no longer applicable, (b) infeasible, or (c) should still be implemented. If a prior audit recommendation has not been implemented but still has merit, the Consultant should include the prior audit recommendation in the current audit report. The Consultant will evaluate recommendations which have been, or are being, implemented. For these recommendations, the Consultant should assess the benefits provided, or likely to be provided, by the recommendation. Significant accomplishments in implementing prior recommendations should be recognized.

3.3. Review major functions of Transit Operator

The Consultant will review each operator function, consistent with the "Performance Audit Guidebook for Transit Operators and Regional Transportation Planning Entities." The functional review is expected to include interviews with the operator's management, staff and governing board, as well as with selected TCTC staff. The following methods may be used to perform the required functional review:

- Interview operator and TCTC concerning operator functions;
- Review documents, such as monthly management reports and the Transit Development Plan;
- Review and analyze TDA required performance indicators;
- Follow up on prior performance audits; and
- Review operator compliance with Transit Services Agreement.

Concerns of inefficient or ineffective performance should lead to further investigation, which may include the verification and calculation of additional performance indicators. The detailed investigation of functional concerns, problems and potential improvements should make up the basis of most findings in the audit report.

The audit should, at a minimum, address the following functional areas;

- General management and organization;
- Administration;
- Systems/methods of monitoring system performance, including efficiency and accuracy;
- Systems/methods of developing, calculating and reporting data, including efficiency and accuracy;
- Service planning;
- Dispatch and operations;
- Scheduling;
- Maintenance; and
- Personnel management and training.

- 3.4. A summary of the major issues and concerns identified in the audit report and specific strategies and/or recommended solutions to address these issues and concerns should be addressed in the audit.

Task 4: Prepare Draft and Final Audit Reports

The Consultant will engage the TCTC in the review and finalization of the Audit Reports. The specific subtasks include:

- 4.1. Confer with TCTC staff and present progress report(s).
- 4.2. Prepare Administrative Draft Performance Audit Reports of the TCTC and of the Public Transit System that address the items included above in Tasks 2 and 3, at a minimum, and any additional items agreed upon at the Introductory/Progress meetings (Task 1).
- 4.3. Confer with TCTC staff to present the results of the performance audits and provide additional explanation and clarification.
- 4.4. Submit five (5) copies of each Administrative Draft Audit to the Executive Director for review and comment no later than the date identified in the Project Schedule.
- 4.5. Prepare Draft Final Performance Audits that address comments received from TCTC staff.
- 4.6. Submit Draft Final Audits to the Executive Director of the TCTC no later than the date identified in the Project Schedule.
- 4.7. Present Draft Final Audits to the TCTC on the date identified in the Project Schedule.
- 4.8. Prepare Final Audit Reports that address comments received from the TCTC.
- 4.9. Submit twenty (20) copies of each Final Performance Audit to the Executive Director of the TCTC along with one (1) unbound original and one (1) electronic copy of each Audit that is of reproduction quality, in Microsoft WORD format, no later than the date identified in the Project Schedule.
- 4.10. Present Final Performance Audits to the TCTC on the date identified in the Project Schedule.

