

PROFESSIONAL SERVICES AGREEMENT
between
MADERA COUNTY TRANSPORTATION COMMISSION
and

THIS AGREEMENT is made and entered into this ____ day of _____ 2019, by and between the MADERA COUNTY TRANSPORTATION COMMISSION, hereinafter referred to as “COMMISSION,” and _____, hereinafter referred to as “CONSULTANT.”

RECITALS

- A. COMMISSION has previously received a proposal from CONSULTANT to _____, hereinafter described as “the Project.”
- B. COMMISSION has determined the Project will involve the performance of professional and technical services of a temporary nature.
- C. COMMISSION does not have available employees to perform the services for the Project.
- D. CONSULTANT has the extensive experience and expertise necessary for the performance of the professional and technical services required for the Project.
- E. CONSULTANT has agreed to perform services pursuant to the following terms.

AGREEMENT

1. SCOPE. CONSULTANT shall perform tasks as set forth in CONSULTANT’s proposal. CONSULTANT shall determine the methods, details, and means of performing the scope of work. CONSULTANT shall determine, at the earliest feasible time, those factors that could severely inhibit or prohibit the approval of the proposed Project. CONSULTANT shall promptly notify COMMISSION's Representative of the CONSULTANT’s findings regarding such factors and conclusions related thereto, for the purpose of determining the feasibility of continuing with the Project according to the scope of work. In the event the preparation of the project is terminated, CONSULTANT shall be paid for the work completed, in accordance with the provisions of section 4.06, below.

2. PAYMENT TERMS.

2.01 COMMISSION agrees to pay CONSULTANT for its services hereunder (including expenses of every kind) according to the cost proposal submitted, approved, and on file with the COMMISSION, but in no event shall it exceed _____. CONSULTANT’s fees and costs shall be computed and paid based upon CONSULTANT’s invoices detailing the work satisfactorily performed during period. COMMISSION shall make payment to CONSULTANT, for all work tasks satisfactorily performed, within thirty (30) days of COMMISSION’s receipt of properly detailed invoices. CONSULTANT shall not perform any work or services or incur any expenses, and COMMISSION shall have no obligation to pay for any work or services or expenses, costing more

than the amounts set forth above without the prior express written approval of the COMMISSION. Such approval, if any, must be in the form of a written amendment to this Agreement, which has been approved by CONSULTANT and by the COMMISSION.

3. **TERM OF AGREEMENT.** This Agreement shall take effect _____ and shall terminate _____, unless terminated earlier by one or both parties.

4. **GENERAL PROVISIONS.**

4.01 CONSULTANT and COMMISSION agree that all professional services performed pursuant to this Agreement by CONSULTANT shall be performed as an independent contractor. Under no circumstances shall CONSULTANT look to COMMISSION as its employer, or as a partner, agent, or principal. CONSULTANT shall not be entitled to any benefits accorded to COMMISSION's employees, including, without limitation, worker's compensation, disability insurance, vacation, or sick pay. CONSULTANT shall be responsible for providing, at its own expense, and in its name, disability, worker's compensation, or other insurance as well as licenses or permits usual or necessary for conducting the services hereunder. All persons employed by CONSULTANT in connection with this Agreement shall not be agents or employees of COMMISSION. CONSULTANT shall pay, when and as due, any and all taxes incurred as a result of CONSULTANT's compensation hereunder.

4.02 CONSULTANT and COMMISSION agree to use reasonable care and diligence to perform their respective services under this Agreement. CONSULTANT represents that it has the qualifications and ability to perform the services required hereunder and will do so with care, skill, and diligence in a professional manner and in accordance with the standards of performance generally applicable to professionals in CONSULTANT's field performing the same or similar services under the same or similar circumstances, without the advice, control, or supervision of COMMISSION. CONSULTANT shall be solely responsible for the professional performance of the services hereunder, and shall receive no assistance, direction, or control from COMMISSION. CONSULTANT shall have the sole discretion and control of its services and the manner in which performed. However, COMMISSION retains the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions hereof.

4.03 During the performance of this Agreement, CONSULTANT will not discriminate against any employee or applicant for employment on any basis prohibited by State or Federal Law including race, religion, creed, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selecting for training, including apprenticeship. The CONSULTANT will ensure that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability or any basis prohibited by law. CONSULTANT will take affirmative steps to ensure that employees are treated during employment, without regard to their race, religion, creed, color, national origin, sex, age, disability or any other basis forbidden by law.

4.04 The applications and documents prepared by CONSULTANT pursuant to this Agreement shall become the property of COMMISSION. COMMISSION is entitled to full and unrestricted use of such applications and documents for this Project. COMMISSION may also retain the original of the documents upon request. CONSULTANT shall not apply for copyrights or patents on all or any part of the work performed under this Agreement. CONSULTANT shall not be liable or responsible for any

use, reuse, or modification of, or derivation from, any of such applications and documents prepared by CONSULTANT that is made without CONSULTANT's written consent other than for purposes contemplated by CONSULTANT's scope of work in the respective task undertaken pursuant to Section 1 above.

4.05 COMMISSION may terminate this Agreement without cause by giving at least thirty (30) days written notice to CONSULTANT. The written notice shall specify the date of termination. Upon receipt of such notice, CONSULTANT may continue work on the Project through the date of termination. CONSULTANT may terminate this Agreement without cause by giving at least thirty (30) days written notice to the COMMISSION. The written notice shall specify the date of termination. If either party breaches a material provision of this Agreement, then the other party may, at its option, immediately terminate this Agreement by giving written notice to the breaching party of such termination and specifying the reasons therefore. If this Agreement is terminated for any reason prior to its completion, CONSULTANT shall be paid for all work satisfactorily performed through the date CONSULTANT received the notice of termination and for any additional work expressly requested by COMMISSION's Representative as necessary to wind up the work performed up to the date of termination. Such payment shall be in an amount based upon performance and completion of the tasks as set forth in the proposal.

4.06 If CONSULTANT materially breaches the terms of this Agreement, COMMISSION shall retain the plans, specifications, and other documents prepared by CONSULTANT, and may have the following remedies:

4.06.1 Immediately terminate the Agreement with CONSULTANT;

4.06.2 Complete the unfinished work, under this Agreement, with a different consultant; or

4.06.3 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.

4.07 This Agreement is binding upon COMMISSION and CONSULTANT and their successors. Except as otherwise provided herein, neither COMMISSION nor CONSULTANT shall assign, sublet or transfer its interest in this Agreement or any part thereof, or delegate its duties hereunder without the prior written consent of the other. Any assignment, transfer, or delegation made without such written consent shall be void and shall be a material breach of this Agreement.

4.08 A COMMISSION representative shall be designated by COMMISSION and a CONSULTANT representative shall be designated by CONSULTANT. The COMMISSION representative and the CONSULTANT representative shall be the primary contact person for each party regarding performance of this Agreement. The COMMISSION representative shall cooperate with CONSULTANT and the CONSULTANT representative shall cooperate with COMMISSION in all matters regarding this Agreement, and in such a manner as will result in the performance of the work in a timely and expeditious fashion.

COMMISSION Representative
Patricia Taylor
Madera County Transportation Commission
2001 Howard Road, Suite 201
Madera, CA 93637
(559) 675-0721
(559) 675-9328 (FAX)

CONSULTANT Representative

4.09 This Agreement represents the entire and integrated Agreement between COMMISSION and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified or amended only by a subsequent written agreement signed by both parties.

4.10 Where the payment terms provide for compensation on a time and materials basis, CONSULTANT shall maintain adequate records to permit inspection and audit of its time and material charges under this Agreement. All such records shall be available to COMMISSION. Such books and records shall be maintained and kept on a current basis, with all transactions pertaining to this Agreement recorded in a form in accordance with generally acceptable accounting principles. Such books and records shall be made available to the COMMISSION and to any authorized representative thereof for purposes of audit at all reasonable times and places. All such books and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter periods of retention, all books, records, and supporting detail shall be retained for a period of at least three years after the expiration of the term of this Agreement.

4.11 COMMISSION and CONSULTANT agree that until final approval by COMMISSION all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without the prior written consent of both parties.

4.12 CONSULTANT shall employ no COMMISSION, County of Madera, City of Madera, or City of Chowchilla official or employee in the performance of the work pursuant to this Agreement. No officer or employee of the COMMISSION shall have any financial interest in this Agreement in violation of California Government Code Sections 1090 and following. CONSULTANT represents that CONSULTANT and its officers and employees have no present financial or other conflict of interest that would disqualify any or all of them from entering into or performing services under this Agreement. During the term of this Agreement, CONSULTANT, its officers and employees shall not acquire any financial or other interest that would disqualify any or all of them from performing services under this Agreement.

4.13 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.

4.14 If either party to this Agreement shall bring or participate in any action for any relief against the other, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorney's fees incurred in bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment

or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment.

4.15 CONSULTANT shall save, keep and hold harmless COMMISSION, its officers, agents, employees and volunteers from any third party claims for loss, cost, expense (including attorneys' fees), damage, claim or liability, in law or equity, including, but not limited to, liability as a result of injury to, or death of, any person or damage to, or loss or destruction of, any property, resulting from or arising out of or in any way connected with the negligent performance of this Agreement by CONSULTANT, any of the CONSULTANT's employees, or any subcontractor, regardless of the negligence of COMMISSION, its officers, agents, employees or volunteers, except to the extent such loss, cost, expense, damage, claim or liability results from the active negligence or willful misconduct of COMMISSION, its officers, agents, employees or volunteers. COMMISSION will not be held liable for any accident, loss or damage to the work prior to its completion and acceptance. Upon request of COMMISSION, CONSULTANT shall, at no cost or expense to COMMISSION, its officers, agents, employees or volunteers, defend any suit asserting a claim for any loss, damage, or liability due to CONSULTANT's negligence, and CONSULTANT shall pay any costs and attorney's fees that may be incurred by COMMISSION, its officers, agents, employees or volunteers in connection with any such claim or suit. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, (1) CONSULTANT's indemnification obligation shall be reduced in proportion to the established comparative liability and (2) CONSULTANT may submit a claim to COMMISSION for reimbursement of reasonable attorneys' fees and defense costs incurred in defending COMMISSION in proportion to the established comparative liability of the indemnified party.

4.16 Without limiting CONSULTANT's indemnification of COMMISSION, its officers, agents, employees and volunteers, CONSULTANT shall provide, at its own expense, and maintain at all times during the term of this Agreement (and any extensions thereof) the following insurance with insurance companies licensed in the State of California and acceptable to the COMMISSION. CONSULTANT may be required to provide satisfactory proof of such insurance to COMMISSION. Such insurance policies shall name the COMMISSION, its officers, agents and employees as additional insureds under said policies, shall include a provision that the coverage is primary with respect to COMMISSION and its officers, agents and employees, and shall contain a provision preventing cancellation without thirty (30) days prior notice to COMMISSION in writing at the address of COMMISSION:

4.16.1 Worker's Compensation Insurance, in compliance with the laws of the State of California;

4.16.2 General Liability Insurance, with a minimum limit of liability per occurrence of One Million Dollars (\$1,000,000.00) for bodily injury and One Hundred Thousand Dollars (\$100,000.00) for property damage. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations and broad form contractual;

4.16.3 Automobile Liability Insurance, with a minimum limit of liability per occurrence of One Million Dollars (\$ 1,000,000.00) for bodily injury and One Hundred Thousand Dollars (\$100,000.00) for property damage. This insurance shall provide coverage for bodily injury, property damage, hired automobiles, and non-owned automobiles.

4.16.4 Errors and Omissions/ Professional Services Liability Insurance with a minimum limit of liability in the amount of One Million Dollars (\$1,000,000.00).

4.17 The CONSULTANT acknowledges and agrees that the work to be performed under this Agreement will be solely for the benefit of COMMISSION and that CONSULTANT owes its duties of performance and loyalty to COMMISSION and not to any other person or entity. CONSULTANT further acknowledges and agrees that no provision of this Agreement shall in any way inure to the benefit of any third person or entity so as to constitute any such person or entity a third-party beneficiary of said Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person or entity not a party hereto. CONSULTANT further acknowledges and agrees that the final responsibility and final authority as to the quality and the contents of the work to be performed hereunder lies in the sole discretion of COMMISSION and not in any other person or entity.

4.18 All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of the services hereunder and/or the termination of this Agreement.

5. **ADDITIONAL PROVISIONS**

5.01 CONSULTANT shall use reasonable care and diligence to comply with the applicable federal, state, and local laws in performance of work under this Agreement. In addition to the foregoing, the following provisions shall be applicable to services provided under this Agreement:

5.02 All contractors, including sub-contractors, will comply with 2 CFR Part 200 to determine the allowability of individual project costs.

5.03 All contractors, including sub-contractors, will comply with Federal administrative procedures in accordance with 2 CFR Part 200.

5.04 All subcontractors will also be bound by the same regulations within this agreement.

5.05 All records pertaining to this agreement will be retained for 3 years from date of final payment and shall make all such supporting information available for inspection and audit by representatives of the State, the Bureau of State Audits, or the Federal Government upon request.

5.06 All contractors, including subcontractors, will have an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for contract. The accounting system shall conform to Generally Accepted Accounting Principles.

5.07 Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Personnel Administration for similar employees (i.e. non-represented employees) unless written verification is supplied that government hotel rates are not commercially available to COMMISSION, or its contractors, its subcontractors, and/or its subrecipients, at the time and location required as specified in the California Department of Transportation's Travel Guide Exception Process.

6. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

6.01 Policy. It is the policy of the COMMISSION that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR, Part 26, shall have the maximum opportunity to participate in the performance of work under this AGREEMENT. The DBE requirements of 49 CFR, Part 26, apply to this AGREEMENT. The COMMISSION shall not discriminate on the basis of race, color, religion, sex (including pregnancy, childbirth, or related medical conditions), national origin, ancestry, age physical or mental disability, legally-protected medical condition, family care status, veteran status, marital status, sexual orientation, or any other basis protected by state or federal laws in the award and performance of any DOT-assisted contract or in the administration of the Disadvantaged Business Enterprise (DBE) Program or the requirements of 49 CFR Part 26. The COMMISSION shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The COMMISSION's DBE Program. As required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this AGREEMENT. Upon notification to the COMMISSION of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program fraud Civil Remedies Act of 1986 (31 U.S.Code §3901 et seq.).

6.02 Contract Assurance. The Contractor, Subrecipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation-assisted contracts. Failure by each CONSULTANT to carry out these requirements is a material breach of contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate, which may include but is not limited to:

1. Withholding monthly progress payments.
2. Assessing Sanctions
3. Liquidated Damages.
4. Disqualifying the contractor from future bidding as non-responsible.

6.03 DBE Obligation. The Contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains authorization from Caltrans. Unless the COMMISSION provides prior authorization approving the request for termination or substitution of a listed DBE, the Contractor shall not be entitled to any payment for work or materials unless it is performed or supplies by the listed DBEs.

6.04 Prompt Payment of Funds. No retainage will be held by the COMMISSION from payments due the CONSULTANT. Any retainage held by the CONSULTANT from payments due any subcontractors shall be promptly paid in full to subcontractors for satisfactory performance no later than the (10) days from the receipt of each payment the CONSULTANT receives from the COMMISSION. Federal law (49 CFR Part 26.29) requires that any delay or postponement of payment beyond thirty (30) days may take place for good cause and with the COMMISSION's prior written approval. Any violation of this provision shall subject the CONSULTANT to the penalties, sanctions and other remedies specified in §7208.5 of the Business and Professions Code. These requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise

available to the CONSULTANT in the event of a dispute involving late payment or no payment by the CONSULTANT, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors or subcontractors.

6.05 DBE Records. The CONSULTANT shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE Consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report – Utilization of Disadvantaged Enterprises (DBE)," certified correct by the CONSULTANT or the CONSULTANT's authorized representative and shall be furnished to the COMMISSION with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the CONSULTANT when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to the COMMISSION.

6.06 DBE Certification and De-Certification Status. If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the CONSULTANT in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the CONSULTANT in writing with the date of certification. Any changes should be reported to the COMMISSION within thirty (30) days.

6.07 As required by Title 49 CFR, Part 26, of the Code of Federal Regulations, each invoice must be accompanied by a completed Disadvantaged Business Enterprises Utilization Report (ADM-3069). This reporting requirement increases accountability, tracks federal dollars, and confirms actual DBE usage.

IN WITNESS WHEREOF, the parties have caused their authorized representatives to execute this agreement as of the day and year first above-written.

MADERA COUNTY
TRANSPORTATION COMMISSION

Authorized Representative

By: _____

Title: _____