



# **Request for Qualifications HR & Personnel Services**

QUALIFICATIONS REQUESTED BY:

MADERA COUNTY TRANSPORTATION COMMISSION  
2001 HOWARD ROAD, SUITE 201  
MADERA, CA 93637

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## HR and Personnel Services Request for Qualifications

The Madera County Transportation Commission (MCTC) is soliciting *Statements of Qualifications* in response to this Request for Qualifications from qualified consultants to assist in performing on-call HR and personnel services including but not limited to reviewing and updating job descriptions, performing salary and benefit surveys, reviewing and updating compensation policies, and reviewing and providing recommendations to the performance evaluation process and applicable forms.

Total amount of on-call work shall not exceed \$50,000 per year with a performance period of 3 years with an option to extend 2 years (1 year extensions, no more than twice and not to exceed 5 years total). Please note the not to exceed amount is a ceiling not a target.

All qualified firms interested in providing these services are invited to submit their Statement of Qualifications (SOQs). The Consultant's SOQs will be evaluated and ranked according to the criteria provided in "Statement of Qualification Evaluation and Selection" of this RFQ.

Addenda to this RFQ, if issued, will be sent to all prospective consultants MCTC has specifically emailed a copy of the RFQ to and will be posted on the MCTC website at: <http://www.maderactc.org/>

It shall be the Consultant's responsibility to check the MCTC website to obtain any addenda that may be issued.

SOQ's must be received no later than 3:00 pm on January 29, 2024 via email to the project manager: Troy McNeil [troy@maderactc.org](mailto:troy@maderactc.org)

By submitting an SOQ, the proposer certifies that his or her name or the consulting firm's name, as well as that of proposer subcontractors, does not appear on the Comptroller General's list of ineligible contractors for federally assisted projects.

Submittals received after the time and date specified above will be considered nonresponsive and will be rejected.

Any proposals received prior to the time and date specified above may be withdrawn or modified by written request of the Consultant. To be considered, however, the modified submittal must be received prior to **3:00 pm on January 29, 2024**.

Unsigned submittals or submittals signed by an individual not authorized to bind the prospective Consultant will be considered nonresponsive and rejected.

This RFQ does not commit MCTC to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. MCTC reserves the right to accept or reject any or all SOQs received as a result of this request, to negotiate with any qualified Consultant(s), or to modify or cancel in part or in its entirety the RFQ if it is in the best interests of MCTC to do so. Furthermore, a contract award may not be based solely on price.

The prospective Consultant(s) are advised that should this RFQ result in recommendation for award of an on-call contract(s), the contract will not be in force until approved by the MCTC Board and fully executed by MCTC.

All products used or developed in the execution of any contract resulting from this RFQ will remain in the public domain at the completion of the contract.

The anticipated consultant(s) selection schedule is as follows:

December 29, 2023	Distribution of Request for Qualifications
January 5, 2024	Questions due to MCTC
January 29, 2024	SOQs due to MCTC by 3:00 p.m.
February 21, 2024	Consultant(s) selection
March 1, 2024	Finalize Contract(s) and begin work (estimated)

Any questions related to this RFQ shall be submitted via email to the attention of:

Troy McNeil  
[troy@maderactc.org](mailto:troy@maderactc.org)

Questions shall be submitted before 5:00 pm on January 5, 2024. Replies to the written questions submitted will be posted on the MCTC website ([www.maderactc.org](http://www.maderactc.org)) no later than January 8, 2024. Please check [www.maderactc.org](http://www.maderactc.org) regularly for amendments or additional information on this RFQ. Consultants that are applying are forbidden from contacting members of the Madera County Transportation Commission to discuss their proposal. Failure to comply with this requirement may cause your proposal to be denied without review.

MCTC Dispute Resolution procedures can be obtained by contacting Troy McNeil at [troy@maderactc.org](mailto:troy@maderactc.org).

## Project Description

The Madera County Transportation Commission (MCTC) is soliciting *Statements of Qualifications* from qualified consultants to perform on-call HR and personnel services including but not limited to reviewing and updating job descriptions, performing salary and benefit surveys, reviewing and updating compensation policies, and reviewing and providing recommendations to the performance evaluation process and applicable forms.

At this time the MCTC expects that on-call work could include at a minimum:

**Task 1: UPDATE JOB DESCRIPTIONS.** Discussion with the Management team to identify which, if any, of the current job descriptions, need to be updated. The consultant(s) will work with the Management team to make suggestions regarding content, format, and internal equity. MCTC staff will take these suggestions and prepare the updated job descriptions and deliver them to the consultant(s) for possible use in a classification and salary survey. Review MCTC's current method of classifying employees and assigning a pay grade or range and suggest improvements if needed.

**Task 2: DEVELOP AND CONDUCT CLASSIFICATION/COMPENSATION SURVEY.** Work with the Management Team to develop a list of classification/salary survey participants and develop a plan for survey content regarding classifications, salaries, salary ranges, and benefits as may be offered by the survey participants. Distribute the survey, collect the data, and present results to the Management Team. The consultant(s) would be expected to make recommendations as to changes, if any, to the MCTC compensation plan. The consultant(s) will also prepare a comparison of benefits between those offered by the survey respondents and those offered by MCTC.

**Task 3: UPDATE CLASSIFICATION/COMPENSATION PLAN AND RELATED POLICIES.** MCTC has a compensation plan defined in its Employee Manual. The Management Team recognizes that the current plan may need to be updated. Consultant(s) may need to review the current MCTC compensation plan and make recommendations that will help MCTC develop a compensation plan that is fair and equitable, within its budget restraints, and will allow employees to progress in a manner that is competitive with other comparable employers.

**Task 4: UPDATE PERFORMANCE EVALUATION PROCESS.** MCTC has an established program to evaluate employee performance. The practice and procedure

are outlined in the MCTC Employee Manual. The Management Team would like the consultant(s) to review and analyze the current performance evaluation form and process and provide recommendations for improvement.

Task 5: RECRUITMENT PROCESS. MCTC has an established recruitment process. Consultant(s) will review and provide recommendations for improvement. Support from Consultant(s) during any future active recruitment process would be anticipated.

## Schedule

MCTC anticipates a flexible schedule from notice to proceed to accomplish any on-call work. The actual schedule will be negotiated with the selected firm based on consultant and agency staff availability and any updates to the proposed level of work.

## Budget and Invoicing

Total amount budgeted shall not exceed \$50,000 per year with a performance period of 3 years with an option to extend 2 years (1 year extensions, no more than twice and not to exceed 5 years total). Please note the budget is a ceiling not a target.

Materials to be provided by consultant

Unless otherwise specified in the contract, the Consultant(s) will provide all materials to complete the required work in accordance with any delivery schedule and cost estimate.

## MCTC Project Manager

Troy McNeil  
Madera County Transportation Commission  
2001 Howard Road, Suite 201  
Madera, CA 93637  
(559) 675-0721 x2  
[troy@maderactc.org](mailto:troy@maderactc.org)

## Project Timeline

December 29, 2024	Distribution of Request for Proposals
January 5, 2024	Questions due to MCTC
January 29, 2024	SOQs due to MCTC by 3:00 p.m.

February 7, 2024	Possible Consultant Interviews, if needed
February 21, 2024	Consultant Selection by Board
March 1, 2024	Contract Start Date (tentative)

**Introduction and Background**

MCTC will establish a list of on-call Consultants with specialized services in the area of HR and Personnel Services and follow all pertinent state, federal, and MCTC rules and regulations.

This solicitation is not for specific projects, but for specific services. The services are to be rendered for the duration of the contract term. Task orders will be issued for specific projects. **MCTC does not guarantee a specific dollar amount of projects.**

MCTC will establish a master list of qualified firms. In this case, Task Orders will be issued for specific projects based on competitive mini RFP's.

In order for the prospective Consultant(s) to accurately estimate the complexity of the On-Call agreement, a brief description of MCTC is provided.

**MCTC Organization**

MCTC is the Regional Comprehensive Planning Agency, Regional Transportation Planning Agency (RTPA), Metropolitan Planning Organization, and the Local Transportation Commission for Madera County designated pursuant to Title 3, Division 3, Chapter 2, Article 11, Section 29535 of the California Government Code. The Commission is responsible for the development and adoption of the Regional Transportation Plan and Transportation Improvement Program required by state and federal law.

MCTC's role is to foster intergovernmental coordination; undertake comprehensive regional planning with an emphasis on transportation planning issues; provide a forum for citizen input into the planning process; and to provide technical services to its member agencies. In all these activities the Commission works to develop a consensus among its members with regards to multi-jurisdictional transportation issues.

MCTC is organized into a Board of Directors supported by the Transportation Policy Committee and the Technical Advisory Committee. The Commission staff includes an Executive Director, Deputy Director/Fiscal Supervisor, two Principal Regional Planners, two Senior Regional Planners, Administrative Analyst, and Accounting Technician.

There is currently one standing committee – the Social Services Transportation Advisory Council (SSTAC) which reports through the Technical Advisory Committee.

The Commission Board of Directors is comprised of three (3) members of the Madera County Board of Supervisors; two (2) members of the Madera City Council; and one (1) member from the Chowchilla City Council.

The Transportation Policy Committee (TPC) has the same membership as the Board with the addition of one (1) person representing the Caltrans District 06 Director.

The Technical Advisory Committee (TAC) includes the County of Madera, City of Madera, City of Chowchilla, Tribal Governments, and one representative from Caltrans District 6. The TAC reviews staff work conducted pursuant to the Overall Work Program, advises MCTC and TPC on transportation issues, and makes recommendations on planning and programming actions to be taken by MCTC. TAC review is generally focused upon the technical merits of various transportation issues coming before the Commission.

### **Materials to be Provided by the Consultant**

Unless otherwise specified in the Contract, the Consultant shall provide all materials to complete the required work in accordance with the delivery schedule and cost estimate outlined in each Task Order.

MCTC shall not pay the Consultant for the Consultant's work under the Contract if the charges incurred by the Consultant does not conform to the requirements specified in the Contract and to the applicable Task Order, and such work shall be corrected at the Consultant's sole expense at no additional cost to MCTC.

### **Statement of Qualification Submittal**

These guidelines are provided for standardizing the preparation and submission of Statement of Qualifications (SOQs) by all Consultants. The intent of these guidelines is to assist Consultants in preparation of their qualifications, to simplify the review process, and to help consistency in format and content.

### **General Conditions**

#### **Award**

All finalists may be required to participate in negotiations and submit such price, technical, or other revisions of their proposals as may result from negotiations. MCTC also reserves the right to award a contract without discussion or interviews, based upon



the initial SOQs. Accordingly, each initial SOQs should be submitted on the most favorable terms from a price and a technical viewpoint. However, selection will be based upon demonstrated competence and professional qualifications necessary for the satisfactory performance of the on-call services that may be required. Following the initial qualifications-based selection, the price proposal provided will be the basis for negotiations to ensure MCTC receives a fair and reasonable price.

The selected Consultant shall execute a contract with MCTC after Consultant selection approval. The official selection of the Consultant, if any, will be made by MCTC on February 21, 2024, or next available Board meeting. Unsuccessful SOQs will be notified in writing.

### **RFQ Addendum**

Any changes to the RFQ requirements will be made by written addenda by MCTC and shall be considered part of the RFQ. Upon issuance, such addenda shall be incorporated in the RFQ documents, and shall prevail over inconsistent provisions of earlier issued documentation.

### **Verbal Agreement or Conversation**

No prior, current, or post award verbal conversations or agreement(s) with any officer, agent, or employee of MCTC shall affect or modify any terms or obligations of the RFQ, or any contract resulting from this RFQ.

### **Pre-contractual Expense**

Pre-contractual expenses are defined as expenses incurred by proposers and selected contractor in:

1. Preparing SOQs in response to this RFQ.
2. Submitting proposals to MCTC.
3. Negotiations with MCTC on any matter related to proposals.
4. Other expenses incurred by a contractor or proposer prior to the date of the award of any agreement.

In any event, MCTC shall not be liable for any pre-contractual expenses incurred by any proposer or selected contractor. Proposers shall not include any such expenses as part of the price proposed in response to this RFQ. MCTC shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or in behalf of, any person or organization responding to this RFQ.

### **Signature**

The proposal shall provide the following information: name, title, address, and telephone number of the individual with authority to bind the company and also who may be contacted during the period of SOQ evaluation. The proposal shall be signed by an official authorized to bind the Consultant and shall contain a statement to the effect that the proposal is a firm offer for at least a ninety (90) day period. Execution of the on-call agreement is expected by March 1, 2024.

### **Term**

The term of the on-call agreement is anticipated to be March 1, 2024 to June 30, 2027, or as agreed upon by the proposer and the MCTC Executive Director.

### **Insurance**

The successful Consultants shall provide evidence of the following insurance requirements:

1. Workers Compensation; Employer's Liability: Statutory requirements for Workers' Compensation; \$1,000,000 Employers' Liability.
2. Comprehensive Automobile: Bodily Injury/Property Damage \$1,000,000 each accident.
3. General Liability: \$1,000,000 per occurrence naming The Madera County Transportation Commission as an additional insured.
4. Errors and Omissions/Professional Liability (errors and omissions liability insurance appropriate to the Consultant's profession as defined by MCTC): \$1,000,000 per claim.

### **Contract Arrangements**

The proposer is expected to execute a contract similar to MCTC's Professional Services Agreement, which meets state and federal requirements.

### **Disadvantaged Business Enterprise DBE Policy**

It is the policy of the U.S. Department of Transportation that minority- and women-owned business enterprises (hereby referred to as DBE's) as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. DBE certified Consultants are encouraged to submit a SOQ. MCTC will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone, in connection with the award and performance of any contract covered by 49 CFR, Part 26 on the basis of race, color, sex, or national origin.

### **DBE Obligation**

The recipient or its contractor agrees to ensure that DBE's have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

## **Records**

Consultants are to maintain records and document payments to all subcontractors for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative at MCTC, Caltrans, FHWA, or DOT. This reporting requirement also extends to any certified DBE subcontractor, the date of payment, and total dollar figure paid to each subcontractor.

MCTC will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, or local laws.

## **Title VI of the Civil Rights Act of 1964**

The contractor agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (49 USC 2000d) and the regulations of the U.S. Department of Transportation issued thereunder in 49 CFR Part 21.

## **Equal Employment Opportunity**

In connection with the performance of the contract, the contractor shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex or national origin. 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 selection for training, including apprenticeship.

Each SOQ, to be considered responsive, must include the following:

1. A copy of the Consultant's Equal Employment Opportunity policy (applicable for firms with 50 or more employees); and
2. A discussion of the Consultant program for use of DBE's in the performance of this work, including the following:
  - The names and addresses of DBE firms that will participate

- The description of work each named firm will perform

## SOQs Requirements

### **Experience and Qualifications**

Prospective Consultants shall provide a summary description of the Consultant's overall qualifications and previous experience on similar or related engagements. The SOQ shall also provide a description of the qualifications and experience of key staff proposed. (8 page maximum)

### **Understanding of the Project**

Prospective Consultants shall include a brief narrative introducing the Consultant's understanding of the project requirements. The contents of this section are to be determined by the respondent but shall demonstrate understanding of the unique characteristics of this project and the requirements of the project in the scope of work contained in this request for qualifications. Prospective Consultants shall identify and state in the SOQ the types of information it will need to complete the Scope of Services. (12 page maximum).

### **Project Personnel**

Prospective Consultants shall designate by name the project manager and primary professional staff to be employed. Primary professional staff shall include staff with a high number of proportionate hours performed on the project and specialized and/or technical staff. The selected Consultant shall not substitute the project manager or key professional staff without the prior approval of the MCTC Executive Director. (3 pages maximum)

### **Disadvantaged Business Enterprise**

The following forms **must** be submitted with the bid, cost proposal, price and/or rate schedule by the bid due date and time as indicated in the SOQ:

- ADM-0227f: Disadvantaged Business Enterprise (DBE) Information Participation, and/or
- ADM-0312f: Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation

Failure to complete and submit the required DBE information and forms, will be grounds for finding the bidder/proposer non-responsive and cause for rejection of the bid/proposal.

### **Subcontracting**

If subcontractors are used, prospective Consultants shall submit a description of each person and/or firm, the work to be done by each subcontractor. The MCTC Executive Director must approve all subcontractors and no work may be subcontracted nor the subcontractor changed without the prior approval of the MCTC Executive Director. (2 pages maximum per subcontractor)

**References**

Prospective Consultants shall provide names, addresses, and telephone numbers for three clients for whom the prospective firm has completed technical and management assignments of similar complexity to that proposed in this request. A brief summary statement for each assignment shall be provided, along with a description of the role the proposing firm had in project completion and/or implementation of said projects. Key project personnel shall also be included in references, with a minimum of one reference specific to key personnel proposed for work on this project. Previous projects for key personnel may include work performed outside of the proposing firm if necessary, and may necessitate additional listed references. At least one reference for each subcontracted person and/or firm shall be provided. (6 page maximum)

**Methodology**

Prospective Consultants shall describe the overall approach to the project, specific techniques that will be used, and the specific administrative and operational management expertise that will be employed. (5 pages maximum)

**Conflict of Interest**

Prospective Consultants shall disclose any financial, business, or other relationship with MCTC, either of the two incorporated cities in Madera County, the County of Madera, or any of their officers or officials that may have an impact on the outcome of the project. The prospective Consultant shall also list current clients who may have a financial interest in the outcome of the project. If this firm has no conflict of interest, a statement to that effect shall be included in this proposal.

**Project Costs**

Prospective Consultants shall include cost details for the hourly labor rate, administrative and overhead rates, and the profit rates as shown below for each staff working on the project. (Individuals acting as a sole proprietor only need to list total hourly rate.)

<b>Sample Cost SOQ</b>				
Title	Hourly Rate	Overhead	Profit	Total Hourly Rate

Project Manager				
Professional Staff				
Other Staff				

**Signature**

The SOQ shall be signed by an official(s) authorized to bind the Consultant and shall contain a statement to the effect that the proposal is a firm offer for a 90-day period. The proposal shall also provide the following: name, title, address, and telephone number of individuals with authority to negotiate and contractually bind the company.

All SOQs, whether selected or rejected, shall become the property of the Madera County Transportation Commission.

All SOQs received prior to the date and time specified above for receipt may be withdrawn or modified by written request of the proposer. To be considered, the modification must be received in writing, and in the same number of copies as the original proposal, prior to the date and time specified for receipt of SOQs.

Until award of a contract, the proposals shall be held in confidence and shall not be available for public review. Upon award of a contract to the successful Consultants, all SOQs shall be public records. No SOQ shall be returned after the date and time set for opening thereof.

**Statement of Qualification Evaluation and Selection**

A SOQ review panel made up of members of MCTC and the selected Evaluation Committee will evaluate the SOQs. Consultants may be telephoned and asked for further information, if necessary. Previous clients will also be called. The panel will make recommendations to the MCTC Executive Director on the basis of the SOQ and reference check. MCTC reserves the right to approve a Consultant based solely on written SOQs and not convene oral interviews.

Upon receipt of the proposals, a technical evaluation will be performed. Each of the major sections of the proposal will be reviewed and evaluated with criteria designed to help judge the quality of the SOQ. Evaluation criteria will include such considerations as:

- Specialized experience and technical competence
- Familiarity with the types of issues and problems associated with transportation planning agencies

- Understanding the purpose and requirements of state and federal transportation funding
- Hourly fee schedule of staff

SOQs submitted by each Consultant will be evaluated separately based on how well each SOQ meets the scoring criteria listed below:

<b>Criteria</b>	<b>Points</b>
<b>Statement of Qualifications</b>	
Comprehension of Project	10
Thoroughness of SOQ	10
Meeting the RFQ Objectives	5
<b>CONSULTANT QUALIFICATIONS</b>	
Qualifications and Experience	55
References	10
DBE Participation Level	5
<b>COST</b>	
Reasonableness of Cost	5
<b>TOTAL POSSIBLE (RFQ)</b>	<b>100</b>

## Payment Schedule

Payment to the selected consultant will be made upon successful completion of project tasks as invoiced by the consultant. Pre-award expenses shall not be allowed. Invoices shall be billed on a monthly basis. All invoices will be mailed to the MCTC office at 2001 Howard Road, Suite 201, Madera, CA 93637.

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.

## SOQs Submittal

SOQs shall be provided electronically as a PDF. *PAPER SUBMISSIONS ARE NOT REQUIRED AND WILL NOT BE ACCEPTED.*

### Digital Submittal

1. Proposals must be in PDF format.
2. Proposals must be submitted electronically, via email to [troy@maderactc.org](mailto:troy@maderactc.org) or via a platform such as Dropbox or other similar, cloud based FTP site.

SOQs must be **received** no later than **3:00 pm on January 29, 2024.**

By submitting a SOQ, the consultant certifies that his or her name or the consulting firm's name, as well as that of proposer subcontractors, does not appear on the Comptroller General's list of ineligible contractors for federally assisted projects.

## Questions

Questions should be directed to Troy McNeil by email at [troy@maderactc.org](mailto:troy@maderactc.org). Questions must be in writing and will be accepted until 3:00 p.m. on January 5, 2024. Replies to the written questions submitted will be posted on the [MCTC website](http://www.maderactc.org) (www.maderactc.org) no later than January 8, 2024. Please check regularly for amendments or additional information on this RFQ. Consultants that are applying are forbidden from contacting members of the Madera County Transportation Commission to discuss their proposal. Failure to comply with this requirement may cause your proposal to be denied without review.



Appendix I Sample Agreement

**PROFESSIONAL SERVICES AGREEMENT**  
**between**  
**MADERA COUNTY TRANSPORTATION COMMISSION**  
**and**

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THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2024, 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 complete on call \_\_\_\_\_, 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 on-call services required for the Project.
- E. CONSULTANT has agreed to perform on-call services pursuant to the following terms.

**AGREEMENT**

1. **SCOPE.** CONSULTANT shall perform on-call tasks on an as needed basis as set forth in CONSULTANT's proposal for each task requested by the COMMISSION. 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 on-call 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 the 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. The COMMISSION has the option to extend this agreement for up to two additional one-year terms.

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 on-call 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 on-call 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  
patricia@maderactc.org

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 on-call 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 supplied 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

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Patricia Taylor  
Executive Director

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

Title: \_\_\_\_\_