April 13, 2021

Request for Proposals

for

the Farmersville Complete Streets and Multimodal Access Study

from the

Tulare County Association of Governments (TCAG)
210 N. Church St., Suite B,
Visalia, California 93291

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I. Introduction to the Request for Proposals (RFP)

The Tulare County Association of Governments (TCAG), as the Metropolitan Planning Organization and the Regional Transportation Planning Agency (RTPA) for Tulare County, is requesting proposals from qualified consultants for the preparation of the City of Farmersville Complete Streets and Multimodal Access Study. The objective of this RFP is to select a qualified consultant to enter into an agreement to perform the work described below. A joint venture of firms or a single firm for all or part of the tasks described is acceptable to accomplish the anticipated Scope of Services outlined in Attachment A.

The City of Farmersville, California is located in Tulare County. Farmersville has an estimated population of 11,396 residents. The Farmersville Complete Streets and Multimodal Access Study will propose comprehensive, citywide strategies to improve circulation and multimodal access throughout the community. Principle objectives and deliverables include a needs assessment via public outreach and evaluation of technical data, development of a list of projects with associated design concepts, and the creation of a plan for funding and implementation. Community input will be collected through an extensive public outreach process.

The movement of pedestrians, cyclists and vehicular traffic across Farmersville is hindered by significant constraints. The city is served by one major north-south thoroughfare, Farmersville Boulevard, channeling a high amount of vehicular, pedestrian, and bicycle traffic to one corridor. The city is also transected by the San Joaquin Valley Railroad, from east to west, which causes difficulty for safe school access and also results in the unsafe crossings of pedestrians. There are also a limited number of safe bicycle and residential routes from residential areas to school sites.

Some of the goals for this project include: a system of safe and interconnected vehicular, pedestrian, and bicycle transportation infrastructure that offers better city-wide circulation, with a particular focus on school access; improved access to recreational spaces; improved access to the city's commercial district; exploring bicycle and pedestrian amenities within the commercial district, such as road diets and/or enhanced street-side pedestrian amenities.

II. Scope of Services

Attachment A identifies the Scope of Services.

III. Selection Timeline

April 13, 2021	Distribution of Request for Proposals
May 7, 2021	Deadline for Written inquiries/questions
May 20, 2021	Proposals Due to TCAG by 5:00 PM
June 3, 2021	Interviews (potential)
June 21, 2021	Consultant selection by TCAG Board (estimated)
July 16, 2021	Finalize Contract (estimated)
July 19, 2021	Work begins (estimated)

IV. Budget & Consultant Administration Responsibilities

1. Working meetings: Schedule and coordinate all necessary working meetings with TCAG project manager and staff.

2. Budget and Schedule: The total amount budgeted for the project is $150,000. Project completion date is March 31, 2022.

3. Invoices and progress reports: Invoices and accompanying progress reports shall be submitted monthly. All invoices shall include a description of work completed, including the percent completed for each project task, and the hourly rate and expenditures for each employee or subcontractor. Direct expenses shall include receipts or an acceptable form of backup.

V. Proposal Requirements

1. Firm experience and qualifications: Prospective consultants shall provide a summary description of the firm's overall qualifications for this project and previous experience on similar or related engagements. Qualifications and examples of previous related experience/projects should be included for the project manager and each of the key project staff proposed for the project. For each employee that works on this project (except support or clerical), the proposal must list the location of the office that the employee works. Failure to provide the requested information may disqualify a proposal. (15 page maximum)

2. Understanding of the Project: Prospective consultants shall include a narrative introducing the consultant's understanding of the project and project issues. Demonstration of expertise in surface transportation should be included here. (15 pages maximum)

3. Project Management: Prospective consultants shall designate by name the project manager to be employed. The selected consultant shall not substitute the project manager without prior approval by the TCAG Executive Director. (3 page maximum)

4. Project Personnel: Prospective consultants shall describe the qualifications of all professional personnel assigned to this project, including a summary of similar work or studies each member has performed and a resume of each professional. Project personnel changes require that TCAG is notified by Project Manager. (10 page maximum)

5. References: Prospective consultants shall provide names and contact information for three clients for whom the prospective consultant has performed technical and management assignments of similar complexity to that proposed in this request. At least two references shall be provided for projects on which the proposed and named project manager has worked. Up to one may exclusively include a project on which the proposed professional personnel for this project with the most hours assigned participated in. Full points cannot be awarded for past projects in which the proposed project manager or primary professional assigned did not participate. This could necessitate projects references outside of the work of the proposing firm. A brief summary statement for each assignment shall be provided. (5 page maximum)

6. Subcontracting: If subcontractors are used, prospective consultants must submit a description of each person, firm, and the work to be done by each subcontractor. The TCAG Executive Director must approve all subcontractors and no work may be subcontracted nor the subcontractor changed without the prior approval of the TCAG Executive Director. (5 page maximum)

7. Methodology: Prospective consultants shall describe the approach to the project and specific techniques that will be used. The schedule should be included in this section. Content in this section is to be determined by consultant. Reviewers will be assessing, among other things, consultant's outreach methodology along with surface transportation system assessment and transportation design expertise. (20 page maximum)

8. Conflict of Interest: Prospective consultants shall disclose any financial, business or other relationship with TCAG, any of the eight incorporated cities in Tulare County, the County of Tulare, 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.

9. Project Costs: Prospective consultants shall include a cost proposal section or exhibit demonstrating the total cost of the work solicited under this RFP, by task. For each task, estimated costs for should be broken down. Cost proposals shall detail all direct and indirect costs to be incurred for the project, broken down by task, and shall include the labor rates.

10. Signature: The proposal and accompanying certifications shall be signed by an official (or officials, as applicable) 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 information: type of business entity (i.e. corporation, California limited partnership, etc.) and whether the business entity is registered to do business in California; and name, title, address, and telephone number of individuals with authority to negotiate and contractually bind the company.

11. Insurance Requirements: TCAG will require the selected consultant to obtain and maintain, at consultant's sole cost and expense, insurance coverage as outlined in (Attachment E).

    The selected consultant shall maintain said insurance policies in effect during the term of the contract and shall cause all parties supplying services, labor, or materials to maintain insurance in amounts and coverage not less than those specified in the attached Sample Consultant Services Contract General Terms and Conditions.

    The selected consultant shall file certifications of this insurance, including all applicable endorsements, with TCAG prior to commencement of its performance under this agreement. Consultant must maintain adequate levels of insurance throughout the duration of the agreement.

12. Indemnity and Harmless Clause: TCAG will require the selected consultant to hold harmless, defend and indemnify TCAG, their officers, employees and agents from any liability, claims, actions, costs, damages or losses, for injury, including death to any person, or damage to any property arising out of the consultant's services, in accordance with the indemnity language included in the Sample Consultant Services Contract General Terms and Conditions (Attachment F).

13. Ineligible Bidders: Each consultant must certify that it is not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions. Attachment B must be properly completed and submitted with the proposal.

14. Disadvantaged Business Enterprise (DBE): It is the policy of the U.S. Department of Transportation that minority and women-owned business enterprises (herein referred to as DBEs) shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement.

    The proposal must list the percentage of work, by cost expended, to be completed by DBE-certified consulting firms, prime or sub-consultants. Proof of DBE certification for qualified firms is required to be submitted with the proposal. If the percentage is less than 13.5% an explanation of the attempt and failure to meet this goal must be provided. Failure to provide the requested information may disqualify the proposal.

15. 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 there under in 49 CFR Part 21.

16. Equal Employment Opportunity: In connection with the performance of this 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.

17. Attachments: Attachments A through E are attached herein. Consultants must complete attachments B through D and include them at the end of the proposal.

Attachment A	Scope of Services
Attachment B	Debarment and Suspension Notification
Attachment C	Workers' Compensation Insurance
Attachment D	DBE Participation Certification (**OR** provide DBE statement as described in Section 14)
Attachment E	Insurance Requirements
Attachment F	Sample Consultant Services Contract General Terms and Conditions

VI. Scoring Criteria, Submission, and Selection

1. Selection of Successful Consultant: Selection of the successful consultant will be based on information provided in response to the Request for Proposals, information provided by former clients of the consultant for whom work of a similar scope has been done, interviews, if conducted, and consideration of any exceptions taken to the RFP or taken to the proposed contract terms and conditions. Proposals submitted by each consultant will be evaluated separately based on how well each proposal meets the scoring criteria listed below. In the event that a high number of proposals is received, TCAG reserves the right to interview consultant teams with the higher proposal scores.

Scoring Criteria	Points
Comprehension of Project	10
Thoroughness of Proposal	10

Meeting the Project Objectives	25
Project Delivery Time	5
Qualifications and Experience	25
References	15
Reasonableness of Cost	5
DBE	5
Subtotal	100
Local Firm[1]	5
Total Possible Points (RFP)	105
Total Possible Points (Interview)	*100*

[1] Local firms are required to meet both of the following:
- Have a local business office in Tulare County; and
- At least 51% of the work to be conducted by employees in the local office

2. Contract Award: The selected consultant will execute a contract with TCAG after consultant selection approval. The official selection of the consultant, if any, is anticipated to be made by TCAG at its **Monday, June 21, 2021**, meeting. Unsuccessful proposals will be notified in writing.

3. Modification or Withdrawal of Proposals: Any proposal received prior to the due date and time specified may be withdrawn or modified by written request of the consultant. However to be considered, the final modified proposal must be received by the date and time specified above. All verbal modifications of these conditions or provisions are void and ineffective for proposal evaluation purposes. Only written changes issued to consultants by the TCAG Executive Director are authorized and binding.

4. Selection Process: All proposals submitted in response to this request will be screened by a selection committee using the provided scoring criteria. Proposal opening does not constitute the awarding of a contract. The contract is not in force until it is awarded by the TCAG Board and executed by TCAG.

   a. TCAG may, during the evaluation process, request from any applicant additional information that TCAG deems necessary to determine the applicant's ability to perform the required services. If such information is requested, the applicant shall be permitted three (3) working days to submit the information requested.

   b. TCAG reserves the right to select the applicant(s) that in its sole judgment best meets the needs of TCAG. The lowest proposed cost is not the sole criterion for recommending a contract award. TCAG reserves the right to reject any and all proposals and/or negotiate with another party or any other party directly.

   c. TCAG reserves the right to conduct interviews. Consultants who will be interviewed will be notified by **May 26, 2021** for interviews on **June 3, 2021**. TCAG will conduct the interview via Zoom or another electronic medium.

5. Rejection of Proposals: Failure to meet the requirements of the Request for Proposals will be cause for rejection of the proposal. TCAG may reject any proposal if it is conditional, incomplete, contains

irregularities, or has inordinately high or low costs. TCAG reserves the right to reject any and all proposals without cause. TCAG may waive an immaterial deviation in a proposal when it determines that waiving a requirement is in the best interest of TCAG. Waiver of an immaterial deviation shall in no way modify the Request for Proposals documents or excuse the applicant from full compliance with the contract requirements, if the applicant is awarded the contract.

6. Public Record: All proposals submitted in response to this RFP shall become the exclusive property of TCAG. At such time as the selection committee recommends a proposal to the TCAG Board and such recommendation appears on the TCAG Board agenda, all proposals submitted in response to this RFP shall become a matter of public record and shall be regarded as public records. If there are any trade or proprietary secrets included by the consultant, the consultant may provide a different copy of the proposal that would be acceptable to release to the public.

7. Method of Payment: 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. Cash advances will not be available.

VII. Other Conditions

1. Reservation of Right to Withdraw RFP and/or Not Award Contract: TCAG reserves the right to amend or withdraw this RFP at any time without prior notice. Revisions to the RFP, if any, will be emailed to all consultants to whom the original RFP was distributed in addition to posting online with the notice of the RFP. Furthermore, TCAG makes no representations that any agreement will be awarded to any consultant responding to this RFP. TCAG expressly reserves the right to reject any and all proposals in response to this RFP without indicating any reasons for such rejection.

2. TCAG Property: All data, documents and other information provided to TCAG by the Contractor shall become property of TCAG.

3. Pre-Contractual Expenses Not Allowed: TCAG shall not, in any event, be liable for any pre-contractual expenses incurred by any consultant. Pre-contractual expenses are defined as expenses incurred by prospective consultants such as:

   a. Preparing and submitting a proposal in response to this RFP

   b. Negotiating with TCAG on any matter related to this RFP, proposal and/or contractual agreement

   c. Any other expenses incurred by the consultant prior to the date of a Notice to Proceed.

VIII. Proposal Submittal

Proposals must be received electronically no later than **5:00 PM on May 20, 2021**. It is recommended that a submittal email is sent without an attachment, as attachments may be too large, and access be granted for TCAG to download your document. This could be done via FTP, Dropbox, Hightail, or another service as provided by prospective consultants. A flash drive or disc may also be delivered to the TCAG office before the deadline. These items will not be returned. Please submit to Elizabeth Forte at ewright@tularecag.ca.gov.

IX. Questions

Questions should be directed to Elizabeth Forte at ewright@tularecag.ca.gov. All questions must be submitted in writing by **5:00 p.m. on May 7, 2021**. Questions and responses will be posted in writing on the TCAG website. Please check www.tularecog.org/tcag/rfps-contracts/rfps regularly for amendments or additional information on this RFP. Consultants that are considering responding to this RFP are forbidden from contacting members of the Tulare County Association of Governments to discuss their proposal. Failure to comply with this requirement may cause your proposal to be denied without review.

ATTACHMENT A

SCOPE OF SERVICES

Task 1: Needs Assessment

Deliverable: Needs Assessment Report

The consultant shall review the overall circulation of the city, highlighting connectivity and safety, bicycle conditions and walkability, connections to schools and to the future transit center, commercial connections and more. Deficiencies and areas that may be appropriate for improvement shall be identified. The consultant shall use existing studies, such as the Cross Valley Corridor Plan, Regional Active Transportation Plan, and Regional Transportation Plan/Sustainable Communities Strategy, and available data (traffic data, demographic information, etc.) to help inform the analysis. The consultant shall perform a walking audit of the area, accompanied by the stakeholder group, city staff, and TCAG staff.

Task 2: Public Outreach

Deliverables: Meeting agendas, records of attendance, meeting minutes, public comments

The consultant shall conduct a multi-faceted public outreach campaign, including the development of a targeted stakeholder group comprised of representatives of local schools, downtown businesses, advocates for active transportation, city council members, city staff, community groups, and interested members of the public. This outreach shall include a minimum of two community-wide workshops. Presentations will be made as requested by the community at locally held meetings such as service clubs, parent groups or other similar civic or public organizations, as the budget allows.

Task 3: Project List and Design Concepts

Deliverables: Project list, design concepts

A list of proposed multi-modal projects shall be created. It shall consider bicycle, pedestrian, rail crossing, transit access, vehicle circulation, transportation-related amenities, and other project types as identified by public outreach and consultant expertise. Projects identified shall complement each other and the existing transportation system, conform to existing plans, and have feasible/potential funding opportunities. Design concepts will be prepared for the highest priority projects and reviewed by the stakeholder group, city and TCAG staff, and the Farmersville City Council, at a minimum.

Task 4: Funding and Project Implementation Plan

Deliverable: Funding and Project Implementation Report

A Funding and Project Implementation Plan shall be prepared based on details collected in the prior tasks (e.g. project list and review of current planning documents), project readiness, and other information supplied by the consultant via their experience, knowledge, and expertise. Project cost estimates shall be provided and potential funding sources shall be identified. City and TCAG staff will assist in informing the consultant of the funding sources they have knowledge of.

Task 5: Draft and Final Study

Deliverable: Farmersville Complete Streets and Multimodal Access Study

A comprehensive document incorporating all of the aforementioned elements shall be prepared, submitted to city and TCAG staff for review and comment, and finalized for presentation to the Farmersville City Council.

Attachment B

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29
DEBARMENT AND SUSPENSION CERTIFICATION

The Consultant, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, 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 3 years;

does not have a proposed debarment pending; and

has not been indicated, 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 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

For any exception noted above, indicate below to whom it applies, initiating agency, and dates of actions.

_____
Consultant

_____
Date

Attachment C

CERTIFICATION CONCERNING WORKERS' COMPENSATION INSURANCE

STATE OF CALIFORNIA)
)
COUNTY OF TULARE)

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Date_____

_____
CONTRACTOR

Attachment D

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

The following stated percent (%) of total cost that will be compensation paid to DBE firms.

% DBE Participation:_____

_____
DBE Company

_____
Address

The undersigned hereby certifies that the foregoing statements and information are true and correct.

Date: _____

Name of Contractor: _____

By: _____

Title: _____

*DBE Certificate(s) must be included with proposal submission.

EXHIBIT E
PROFESSIONAL SERVICES CONTRACTS
INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than $1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability of $1,000,000 per occurrence including any auto or, if the CONTRACTOR has no owned autos, hired and non-owned auto coverage. If an annual aggregate applies it must be no less than $2,000,000.

3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

4. Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate.

B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.

2. CONTRACTOR must submit endorsements to the General Liability reflecting the following provisions:

   a. *TCAG and the COUNTY OF TULARE, their officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects; liability arising out of work or operations performed by or on behalf of the CONTRACTOR including material, parts, or equipment furnished in connection with such work or operations.*

   b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects TCAG and the COUNTY OF TULARE, their officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by TCAG or THE COUNTY OF TULARE, their officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*

   c. *CONTRACTOR hereby grants to TCAG and the COUNTY a waiver of any right to subrogation which any insurer of CONTRACTOR may acquire against the county by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the TCAG or the COUNTY has received a waiver of subrogation endorsement from the insurer.*

d. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled, except after written notice has been provided to TCAG.

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of TCAG and the COUNTY OF TULARE for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against TCAG and the COUNTY, their officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds $100,000 will be reviewed by the TULARE COUNTY Risk Manager for approval.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-:VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the TCAG, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to TULARE COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. TCAG and the COUNTY reserve the right to require certified copies of all required insurance policies at any time.

TULARE COUNTY ASSOCIATION OF GOVERNMENTS'
GENERAL AGREEMENT TERMS AND CONDITIONS
(Revised 05/10/2018)

1. COMPLIANCE WITH LAW: CONTRACTOR must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

2. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK: CONTRACTOR is not entitled to any payments under this Agreement until TCAG confirms that services provided, including any furnished deliverables, satisfy all of the requirements of this Agreement. Payments to CONTRACTOR by TCAG shall not excuse CONTRACTOR from its obligation to replace unsatisfactory deliverables, including equipment, components, materials, or services even if the unsatisfactory character of such deliverables, equipment, components, materials, or services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and services that do not conform to the requirements of this Agreement may be rejected by TCAG and in such case must be replaced by CONTRACTOR without delay and at no cost to the TCAG.

3. DISALLOWANCE: If CONTRACTOR requests or receives payment from TCAG for services hereunder, reimbursement for which is later disallowed by the State of California or United States Government, CONTRACTOR shall promptly refund the disallowed amount to TCAG upon TCAG'S request. At its option, TCAG may offset the amount disallowed from any payment due or to become due to CONTRACTOR under this Agreement or any other Agreement between CONTRACTOR and TCAG. CONTRACTOR'S obligations under this section 2 will survive the expiration or termination of this Agreement.

4. LIABILITY OF TCAG: TCAG'S payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 3, "PAYMENT FOR SERVICES," of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall TCAG be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

5. QUALIFIED PERSONNEL: CONTRACTOR shall utilize only competent personnel under the supervision of, and in the employment of, CONTRACTOR (or CONTRACTOR'S authorized subcontractors) to perform the services. CONTRACTOR will comply with TCAG'S reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at TCAG'S request, must be supervised by CONTRACTOR. CONTRACTOR shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

6. INDEPENDENT CONTRACTOR STATUS: The Parties enter into this Agreement with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. The Parties agree that CONTRACTOR and any of its agents, employees, or officers cannot be considered agents, employees, or officers of TCAG.

CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of TCAG. Subject to any performance criteria contained in this Agreement, CONTRACTOR will be solely responsible for determining the means and methods of performing the specified services and TCAG will have no right to control or exercise any supervision over CONTRACTOR as to how CONTRACTOR will perform the services. As CONTRACTOR is not TCAG'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, TCAG will not**:**

(1) Withhold FICA (Social Security) from CONTRACTOR'S payments.

(2) Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
(3) Withhold state or federal income tax from payments to CONTRACTOR.
(4) Make disability insurance contributions on behalf of CONTRACTOR.
(5) Obtain unemployment compensation insurance on behalf of CONTRACTOR.

Notwithstanding this independent contractor relationship, TCAG will have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

7. LICENSES AND PERMITS: CONTRACTOR represents and warrants that it possesses and will maintain during the term of this Agreement all licenses and permits required for its performance of the services required under this Agreement.

8. GOVERNING LAW: The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.

9. RECORDS AND AUDIT: CONTRACTOR must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR must maintain complete and accurate records with respect to any payments to employees or subcontractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, CONTRACTOR must make the records available within Tulare County to the Auditor of Tulare County and to his or her agents and representatives, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this Agreement. Additional record-keeping requirements may be located in Exhibit F or G (related to federally-funded contracts generally, or FTA-funded contracts specifically).

10. CONFLICT OF INTEREST:
(a) At all times during the performance of this Agreement, CONTRACTOR must comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to, Government Code Section 1090 *et seq.*, and the Political Reform Act, Government Code Section 81000 *et seq.*, and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations, and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of TCAG in which the officer, employee, or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee, or consultant/contractor participates in or influences any TCAG decision that has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it will immediately inform TCAG and provide all information needed for resolution of this question.

11. INSURANCE: The attached **Exhibit C** outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Exhibit C** cannot be used to reduce limits available to TCAG as an additional insured from CONTRACTOR'S full policy limits. Insurance policies cannot be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or

act in any way to reduce the policy coverage and limits available from the insurer(s). If CONTRACTOR fails to maintain or renew coverage, or to provide evidence of renewal, then TCAG may consider that failure a material breach of this Agreement. TCAG may also withhold any payment otherwise due to CONTRACTOR for failure to provide evidence of renewal until CONTRACTOR provides such evidence.

12. INDEMNIFICATION AND DEFENSE:

(a) To the fullest extent permitted by law, CONTRACTOR must indemnify, defend (at CONTRACTOR'S sole cost and expense and with legal counsel approved by TCAG, which approval may not be unreasonably withheld), protect and hold harmless TCAG, all subsidiaries, divisions, committee, and affiliated agencies of TCAG, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors, and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including, without limitation, attorneys' fees, disbursements, and court costs, and all other professional expert or consultants' fees and costs and TCAG general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of CONTRACTOR with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors, and/or omissions of CONTRACTOR, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, and anyone employed directly or indirectly by any of them, or for whose acts they may be liable, or any or all of them). CONTRACTOR'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR'S indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from CONTRACTOR'S duty to indemnify. CONTRACTOR shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to CONTRACTOR of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to CONTRACTOR by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than CONTRACTOR are responsible for the Claim does not relieve CONTRACTOR from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if CONTRACTOR asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR may submit a claim to the TCAG for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. CONTRACTOR'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. CONTRACTOR'S liability for indemnification under this Agreement is in addition to any liability CONTRACTOR may have to TCAG for a breach by CONTRACTOR of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit CONTRACTOR'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.

(c) CONTRACTOR must indemnify and hold TCAG harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by TCAG, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

13. TERMINATION:

(a) **Without Cause:** TCAG may terminate this Agreement without cause by giving thirty (30) days' prior written notice to CONTRACTOR of its intention to terminate under this provision, specifying the date of termination. TCAG will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. TCAG will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. TCAG will not impose sanctions on CONTRACTOR under these circumstances.

(b) **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party**:**

(1) Be adjudged a bankrupt, or
(2) Become insolvent or have a receiver appointed, or
(3) Make a general assignment for the benefit of creditors, or
(4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this Agreement, or
(5) Materially breach this Agreement.

In addition, TCAG may terminate this Agreement based on**:**

(6) Material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR'S behalf, as to any matter related in any way to TCAG'S retention of CONTRACTOR, or
(7) Other misconduct or circumstances that, in the sole discretion of TCAG, either impairs the ability of CONTRACTOR to competently provide the services under this Agreement, or exposes TCAG to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If CONTRACTOR fails to perform according to the terms and conditions of this Agreement, then TCAG may, in addition to any other remedy it may have, issue a declaration of default after 10 days' written notice to CONTRACTOR.

Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to

cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination.

TCAG will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. TCAG will not pay lost anticipated profits or other economic loss, nor will TCAG pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If TCAG terminates this Agreement for cause and the expense of finishing CONTRACTOR'S scope of work exceeds the unpaid balance of the Agreement, then CONTRACTOR must pay the difference to TCAG. TCAG may impose sanctions under these circumstances, which may include possible rejection of future proposals based on specific causes of CONTRACTOR'S non-performance.

(c) **Effects of Expiration or Termination:** Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where TCAG terminates CONTRACTOR'S services, that termination will not affect any rights of TCAG to recover damages against CONTRACTOR.

(d) **Suspension of Performance***:* Independent of any right to terminate this Agreement, the Executive Director of TCAG may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

14. LOSS OF FUNDING: It is understood and agreed that if TCAG'S funding is either discontinued or reduced for the services to be provided hereunder, then TCAG will have the right to terminate this Agreement under section 13 (a) ("Termination Without Cause") as of the end of the term for which funds are appropriated. Such termination shall be without penalty, liability, or expense to TCAG of any kind, provided that TCAG shall pay CONTRACTOR in accordance with section 13 (a) for services satisfactorily performed prior to the date of such termination and to the extent funds have been appropriated for such payment.

15. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES: Under applicable federal and state law, if CONTRACTOR submits a false claim to TCAG under this Agreement, then CONTRACTOR will be liable to TCAG for the statutory penalties set forth in those statutes, including but not limited to statutory fines, treble damages, costs, and attorneys' fees. CONTRACTOR will be deemed to have submitted a false claim to TCAG if CONTRACTOR**:**

(a) Knowingly presents or causes to be presented to TCAG a false claim or request for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by TCAG;

(c) Conspires to defraud TCAG by getting a false claim allowed or paid by TCAG;

(d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to TCAG; or

(e) Is a beneficiary of an inadvertent submission of a false claim to TCAG, later discovers the falsity of the claim, and fails to disclose the false claim to TCAG within a reasonable time after discovery of the false claim.

16. FORM DE-542: If CONTRACTOR is an individual, CONTRACTOR acknowledges that this Agreement is subject to filing obligations under Unemployment Insurance Code Section 1088.8. Accordingly, TCAG has an obligation to file a report with the Employment Development Department, which report will include CONTRACTOR'S full name, social security number, address, the date this Agreement was executed, the total amount of the Agreement, its expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with TCAG to make that information available and to complete Form DE- 542. Failure to provide the required information may, at TCAG'S option, prevent approval of this Agreement, or be grounds for termination by TCAG.

17. WORKS FOR HIRE: CONTRACTOR acknowledges that all work(s) under this Agreement are "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to TCAG all rights and interests CONTRACTOR may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Agreement for TCAG will be the sole property of TCAG, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to TCAG. CONTRACTOR will execute all necessary documents to enable TCAG to protect TCAG'S intellectual property rights under this section.

18. WORK PRODUCT: All work product, equipment, or materials created for TCAG or purchased by TCAG under this Agreement belong to TCAG and CONTRACTOR must immediately deliver them to TCAG at TCAG'S request upon termination or completion of this Agreement.

19. TIME OF ESSENCE: The Parties agree that time is of the essence under this Agreement, unless they agree otherwise in writing.

20. CONFIDENTIALITY: CONTRACTOR may not use or disclose any information it receives from TCAG under this Agreement that TCAG has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by TCAG. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, TCAG may not disclose to third parties any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential. If TCAG determines that it must disclose any information that CONTRACTOR previously identified as confidential, then it shall promptly give CONTRACTOR written notice of its intention to disclose such information and the authority for such disclosure. CONTRACTOR shall have period of five (5) calendar days thereafter within which to seek a protective court order to prevent such disclosure or to notify TCAG that it will not seek such an order. TCAG shall cooperate with CONTRACTOR in any efforts to seek such a court order. TCAG shall not disclose the information until the five (5) day period has expired without a response from CONTRACTOR, or CONTRACTOR has notified TCAG that it will not seek such an order, or CONTRACTOR has sought and a court has declined to issue a protective order for such information. If CONTRACTOR seeks a protective order for such information, CONTRACTOR shall defend and indemnify TCAG from any and all loss, injury, or claim arising from TCAG'S withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of TCAG and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

21. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, TCAG is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this

Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of TCAG, which consent TCAG may grant, delay, deny, or condition in its absolute discretion.

22. DISPUTES AND DISPUTE RESOLUTION: CONTRACTOR shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.

23. PROPERTY TAXES: Under the terms of California Revenue and Taxation Code section 107.6 (possessory interest tax), CONTRACTOR'S possession or use of any TCAG-owned real property under this Agreement may create a "possessory interest" in the real property. If a possessory interest is created, then it may be subject to property taxation and CONTRACTOR may be subject to the payment of property taxes on that possessory interest.

24. FURTHER ASSURANCES: Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

25. CONSTRUCTION: This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

26. HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

27. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

28. WAIVERS: The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.

29. ORDER OF PRECEDENCE: In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these "General Agreement Terms and Conditions") and any Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.

30. CONFLICT WITH LAWS OR REGULATIONS/ SEVERABILITY: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the Parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, then the Agreement may be terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.

31. ENTIRE AGREEMENT: This Agreement represents the entire agreement between CONTRACTOR and TCAG as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.

32. ASSURANCES OF NON-DISCRIMINATION: CONTRACTOR must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that both CONTRACTOR and TCAG have the responsibility to protect TCAG employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CONTRACTOR agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. TCAG, in its sole discretion, has the right to require CONTRACTOR to replace any employee who provides services of any kind to TCAG under this Agreement with other employees where TCAG is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. TCAG'S right to require replacement of employees under this section does not preclude TCAG from terminating this Agreement with or without cause as provided for under this Agreement. Additional nondiscrimination requirements may be located in Exhibit F or G (related to federally-funded contracts generally, or FTA-funded contracts specifically).

33. DRUG-FREE WORKPLACE POLICY: CONTRACTOR acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on TCAG premises. CONTRACTOR agrees that any violation of this prohibition by CONTRACTOR, its employees, agents, or assigns will be deemed a material breach of this Agreement.

34. RECYCLED PAPER CONTENT: To the extent CONTRACTOR'S services under this Agreement include printing services, pursuant to Public Contract Code section 22153, CONTRACTOR shall use paper that meets the recycled content requirements of Public Contract Code section 12209.

EXHIBIT __
TO TULARE COUNTY ASSOCIATION OF GOVERNMENTS SERVICES AGREEMENT
ADDITIONAL TERMS & CONDITIONS FOR FEDERALLY-FUNDED CONTRACTS
(Form revision approved 05/10/2018)

FEDERALLY-FUNDED SERVICES. TCAG will be paying for the services to be provided under this Agreement, in whole, or in part, with Federal grant funds, and so the following additional terms and conditions will apply to this Agreement:

(1) Equal Employment Opportunity — Except as otherwise provided under 41 CFR Part 60, if this Agreement meets the definition of ''federally assisted construction contract'' in 41 CFR Part 60–1.3, then during the performance of this Agreement, CONTRACTOR agrees as follows:

(A) CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, 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. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(B) CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(C) CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with CONTRACTOR'S legal duty to furnish information.

(D) CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of CONTRACTOR'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(E) CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(F) CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(G) In the event of CONTRACTOR'S noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(H) CONTRACTOR will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

CONTRACTOR will take such action with respect to any subcontract or purchase order as the TCAG may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided,* however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by the TCAG, then CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States. TCAG further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work.

TCAG agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. TCAG further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, TCAG agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to TCAG under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from TCAG; and refer the case to the Department of Justice for appropriate legal proceedings.

CONTRACTOR and each of its subcontractors shall include the equal opportunity clause in each of its subcontracts.

(2) Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). — If this Agreement involves payment for construction services in excess of $2,000, then CONTRACTOR must comply with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, ‘‘Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction’’). In accordance with the Davis-Bacon Act, CONTRACTOR is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the U.S. Secretary of Labor. In addition, CONTRACTOR is required to pay wages not less than once a week. TCAG must provide CONTRACTOR with a copy of the current prevailing wage determination issued by the U.S. Department of Labor with respect to the services to be provided under the subject Agreement. CONTRACTOR’S execution of the subject Agreement constitutes CONTRACTOR’S acceptance of the wage determination. TCAG must report all suspected or reported violations to the Federal awarding agency.

(3) Copeland ‘‘Anti- Kickback’’ Act (40 U.S.C. 3145). — CONTRACTOR must comply with the Copeland ‘‘Anti-Kickback’’ Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, ‘‘Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States’’). Under the Copeland ‘‘Anti- Kickback’’ Act, CONTRACTOR and all subcontractors are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. TCAG must report all suspected or reported violations to the Federal awarding agency.

(4) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708) — If this Agreement involves payments for services in excess of $100,000 that include the employment of mechanics or laborers, then CONTRACTOR must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, CONTRACTOR is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(5) Rights to Inventions Made Under a Contract or Agreement — If the Federal award supporting payments for services under this Agreement meets the definition of ''funding agreement'' under 37 CFR § 401.2 (a) and the Agreement is with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that ''funding agreement,'' then TCAG and CONTRACTOR recipient or subrecipient must comply with the requirements of 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

(6) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended — If this Agreement involves payments for services in excess of $150,000, then CONTRACTOR must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(7) Debarment and Suspension (Executive Orders 12549 and 12689) — By execution of this Agreement, CONTRACTOR certifies to TCAG that it is not a party listed on the government-wide exclusions list in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), ''Debarment and Suspension,'' and is not debarred, suspended, or otherwise excluded from the award of a federally-supported contract under statutory or regulatory authority other than Executive Order 12549.

(8) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) — If this Agreement involves payments for services in excess of $100,000, then by execution of this Agreement, CONTRACTOR certifies to TCAG that it will not and has not used Federally-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. CONTRACTOR must also disclose to TCAG in writing any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

(9) Procurement of recovered materials — Pursuant to 2 CFR § 200.322, TCAG and CONTRACTOR must comply with section 6002 of the Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid

waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(10) Records Retention and Access — Pursuant to 2 CFR §§ 200.333 through 200.337, the following provisions regarding Records Retention and Access will apply to this Agreement:

(A) Retention requirements for records. CONTRACTOR must retain all financial records, supporting documents, statistical records, and all other of its records pertinent to this Agreement for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or TCAG. The only exceptions to the 3 year limit are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When CONTRACTOR is notified in writing by TCAG or Federal awarding agency, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by TCAG, or Federal awarding agency, the 3-year retention requirement is not applicable to CONTRACTOR.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of CONTRACTOR'S fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

i. *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to TCAG or the Federal Government to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

ii. *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to TCAG or Federal Government for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(B) Methods for collection, transmission and storage of information. In accordance with the May 2013 Executive Order on Making Open and Machine Readable the New Default for Government Information, the Federal awarding agency and CONTRACTOR should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper. The Federal awarding agency or TCAG must always provide or accept paper versions of Federal award-related information to and from

CONTRACTOR upon request. If paper copies are submitted, the Federal awarding agency or TCAG must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

(C) Access to records.

(a) Records of CONTRACTOR. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and TCAG, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of CONTRACTOR which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to CONTRACTOR'S personnel for the purpose of interview and discussion related to such documents.

(b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both CONTRACTOR and the Federal awarding agency or TCAG. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.

(c) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and TCAG must not impose any other access requirements upon CONTRACTOR.

(11) Small and minority businesses, women's business enterprises, and labor surplus area firms — Pursuant to 2 CFR § 200.321, if any subcontracts are to be let with respect to this Agreement, CONTRACTOR must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

If, to meet the objectives of 49 CFR Part 26, an additional exhibit regarding CONTRACTOR's DBE Commitment is incorporated in this Agreement, CONTRACTOR further agrees to the following: Neither CONTRACTOR, sub recipient, nor any subcontractor shall discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONTRACTOR shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT–assisted contracts. Failure by CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying CONTRACTOR from future bidding as non-responsible.

Upon request by TCAG, CONTRACTOR must make available a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with 49 CFR Part 26.