

REQUEST FOR PROPOSAL



FEDERAL LOBBYING AND ADVOCACY SERVICES FOR THE TULARE COUNTY ASSOCIATION OF GOVERNMENTS

RFP Release Date

October 4, 2024

Proposal Submission Deadline

November 4, 2024, at 5:00 p.m.

SECTION 1 – GENERAL INFORMATION

Background

The County of Tulare is part of the San Joaquin Valley region of California. The other counties within the region include: Fresno, Kern, Kings, Madera, Merced, San Joaquin, and Stanislaus Counties. Collectively, the San Joaquin Valley region has a population of just of over 4 million and encompasses a land area of nearly 27,500 square miles. The region stretches from Sacramento in the north to the Tehachapi Mountains in the south and is generally bounded by the Coastal Range on the west and Sierra Nevada Range on the east.

The Tulare County Association of Governments (TCAG) was created in 1971 as a joint-powers authority comprised of Tulare County and the cities of Dinuba, Exeter, Farmersville, Lindsay, Porterville, Tulare, Visalia, and Woodlake. TCAG's role is to foster intergovernmental coordination among Tulare County and neighboring jurisdictions, other regional agencies in the San Joaquin Valley, the State of California, and various federal agencies.

TCAG is overseen by a Board of Directors which makes allocations of funding to build transportation improvements. The board also establishes regional transportation policies and programs. Citizens, special or community interest groups, and other agencies are involved in the planning and approval process. Areas of public participation include TCAG's committees, task forces and attendance at workshops or public forums to provide input on planning decisions.

Purpose

TCAG is seeking to retain a lobbyist to represent the interests and advance TCAG's legislative agenda at the federal level. The goal of such representation shall be to secure legislation and federal funding for programs and projects identified by TCAG as priorities. TCAG is interested in entering into a three-year contract with the successful individual or firm. TCAG reserves the right to exercise the option to renew the contract for an additional three years by mutual agreement of both parties.

General Submission Information

TCAG intends to award a single contract for federal lobbying services. The proposal should address the Consultant's capabilities for performing all aspects of the scope of work.

Questions

Questions regarding this proposal shall be submitted to:

Tulare County Association of Governments
Gabriel Gutierrez, Principal Regional Planner
210 N. Church Street, Suite B
Visalia, CA 93291
559-623-0450
ggutierrez@tularecag.ca.gov

All questions must be submitted via email by 5:00 p.m. on October 18, 2024. Questions and responses will be posted 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.

Preparation Costs

TCAG shall not be responsible for proposal preparation costs, nor for costs including attorney fees associated with any (administrative, judicial or otherwise) challenge to the determination of the highest-ranked Proposer and/or award of contract and/or rejection of proposal. By submitting a proposal each Proposer agrees to be bound in this respect and waives all claims to such costs and fees.

Budget and Schedule

The project is budgeted in Fiscal Year 2024/25 for \$5,800/month (\$69,600/year) and will be escalated 3% each year for fiscal years 2025/26, and 2026/27. TCAG is interested in entering into a three-year contract with the successful individual or firm. There will also be an option to add three one-year extensions.

SECTION 2 – RULES GOVERNING COMPETITION

Examination of Proposals

Proposers should carefully examine the entire RFP, any addenda thereto, and all related materials and data referenced in the RFP. Proposers should become fully aware of the nature of the work and the conditions likely to be

encountered in performing the work.

Proposal Acceptance Period

The award of this proposal is anticipated to be announced on December 9, 2024. The proposal shall be a firm offer for a minimum of 90 days and contain a statement to that effect.

Confidentiality

The content of all proposals will be kept confidential until the selection of the Contractor is publicly announced. At that time the selected proposal is open for review. After the award of the Contract, all proposals will then become public information.

Proposal Format

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be placed on:

- Conformance to the RFP instructions
- Responsiveness to the RFP requirements
- Overall completeness and clarity of content

Signature Requirements

All proposals must be signed. An officer or other agent of a corporate vendor, if authorized to sign Contracts on its behalf; a member of a partnership; the owner of a privately owned vendor; or other agent if properly authorized by a Power of Attorney or equivalent document may sign a proposal. The name and title of the individual(s) signing the proposal must be clearly shown immediately below the signature.

Proposal Submission

Proposals must be received electronically no later than 5:00 PM on November 5, 2024. 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 Proposer. Please submit to Gabriel Gutierrez at ggutierrez@tularecag.ca.gov.

Disposition of Proposals

All materials submitted in response to this RFP become the property of TCAG. One copy shall be retained for the official files of the Tulare County Association of Governments and will become public record after award of the Contract.

Modification/Withdrawal of Proposals

A respondent may withdraw a proposal at any time prior to the final submission date by sending written notification of its withdrawal, signed by an agent authorized to represent the agency. The respondent may thereafter submit a new or modified proposal prior to the final submission date. Modifications offered in any other manner, oral or written, will not be considered. A final proposal cannot be changed or withdrawn after the time designated for receipt, except for modifications requested by TCAG after the date of receipt.

Oral Change/Interpretation

No oral change or interpretation of any provision contained in this RFP is valid whether issued at a pre-proposal conference or otherwise. Written addenda will be issued when changes, clarifications, or amendments to proposal documents are deemed necessary by TCAG.

Late Submissions

PROPOSALS NOT RECEIVED PRIOR TO THE DATE AND TIME SPECIFIED IN THE ADVERTISEMENT (5:00 PM, NOVEMBER 5, 2024) WILL NOT BE CONSIDERED AND WILL BE RETURNED UNOPENED AFTER RECOMMENDATION OF AWARD.

Rejection of Proposals

TCAG reserves the right to reject any or all proposals if determined to be in the best interest of the TCAG.

SECTION 3 – SCOPE OF WORK

Scope of Services

Attachment A identifies the Scope of Services

Proposed Schedule

October 4, 2024 – Release of the RFP

October 18, 2024 (5:00 PM) – Deadline for submitting proposal questions

November 4, 2024 (5:00 PM) – Deadline for receiving proposals

November 7 – November 13, 2024 – Staff evaluation of proposals

December 9, 2024 – TCAG Board award of Professional Services Agreement

January 6, 2025 – Agreement fully executed and formal Notice to Proceed issued to consultant

SECTION 4 – PROPOSAL AND SUBMISSION REQUIREMENTS

To achieve a uniform review process and obtain the maximum degree of comparability, the proposals shall be organized in the manner specified below. Proposals shall not exceed five (10) pages in length (excluding resumes, title page(s), index/table of contents, attachments, or dividers). Information in excess of those allowed will not be evaluated/scored. One page shall be interpreted as one side of single-spaced, typed (11 pt font or greater), 8½" X 11" sheet of paper. Firms are encouraged to include resumes and any applicable past projects in an appendix that will NOT count toward the pages of the narrative.

The submittal shall include a provision under Section 4 - Available Resources and Consultant Location for notifying the TCAG within thirty (30) days of any changes of personnel that are included in this statement and the addition to the Consultant's staff of personnel who may contribute to specialty work for which the Consultant has been selected. TCAG reserves the right to approve all personnel changes. TCAG also reserves the right to cancel any task request in effect should it determine that the proposed staff is not available or assigned to the task order.

Title Page (1 Page)

Identify the contract being proposed on, the name of your firm, address, telephone number(s), name of contact person, and date.

Letter of Transmittal (Limited to 1 Page)

Identify the RFP project for which proposal has been prepared.

Briefly state your firm's understanding of the services to be performed and make a positive commitment to provide the services as specified.

Provide the name(s) of the person(s) authorized to make representations for your firm, their titles, address, and telephone numbers.

The letter of each proposal must be signed by a corporate officer or other individual who has the authority to bind the firm. The name and title of the individual(s) signing the proposal must be clearly shown immediately below the signature.

Table of Contents (1 Page)

Clearly identify the materials by Section and Page Number.

Proposal Narrative (Limited to 10 Total Pages)

Submittals will be evaluated in accordance with the following criteria:

- A. Firm Experience and Key Project Staff (0-40 points)
- B. Available Resources and Consultant Location (0-30 points)
- C. Project Methodology and Approach (0-30 points)

Firm Experience and Key Project Staff

Detail the firm's experience in the same or similar areas of expertise, stability, and its adaptability to providing the required services.

Provide at least three references for which your firm has provided the same or similar services. Include a point of contact, current telephone number, and a brief description of the services provided.

Identify your firm's performance on similar projects.

Identify key project staff and task leaders expected to provide services on behalf of the firm. Resumes should be included, in an appendix that will NOT count toward the page count of the narrative, for each of the individuals referenced, which details their relevant experience.

Available Resources and Consultant Location

Provide information on personnel resources available to your firm, which indicates that you have access to the services necessary to perform the work in the time available and within the required standard. Describe the firm's location where the primary services are to be provided, noting if the firm or individual has an office in the District of Columbia

Project Methodology and Approach

Provide information on the firm's approach in meeting the scope of work requirements identified in Section 3. Describe overall approach to include special considerations in managing tasks. Provide information on methodologies and practices to be used to communicate with TCAG and working with key staff.

Other Requirements

Insurance Requirements

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

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.

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.

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 (Attachment E).

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.

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.

Equal Employment Opportunity

In connection with the performance of his 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.

Attachments

Attachments A through E are attached herein. Consultants must complete attachments B and C and include them at the end of the proposal. The attachments are identified as follows:

Attachment A	Scope of Services
Attachment B	Debarment and Suspension Notification
Attachment C	Worker's Compensation Insurance
Attachment D:	Insurance Requirements
Attachment E:	Sample Consultant Services Contract General Terms and Conditions

SECTION 5 – EVALUATION CRITERIA AND SELECTION PROCESS

Evaluation Criteria

Submittals will be evaluated in accordance with the following criteria:

A committee of individuals representing TCAG will perform evaluation of the proposals. The committee will rank the proposals as submitted.

TCAG reserves the right to award Contract(s) solely on the written proposal.

TCAG also reserves the right to request oral interviews with the highest-ranked firms (short-list). The purpose of the interviews with the highest-ranking firms is to allow expansion upon the written responses. If interviews are conducted, a maximum of three firms will be short-listed. A second

score sheet will be used to score those firms interviewed.

The final selection will be based on the total of all evaluators' scores achieved on the second rating. The highest-ranked Proposer(s), after the second scoring, if performed, may be invited to enter into final negotiations with TCAG for the purposes of Contract Award.

SECTION 6 – CONTRACT NEGOTIATION PROCESS

The highest-ranked Proposer will be invited to enter into Contract negotiations with TCAG. If an agreement cannot be reached with the highest-ranked Proposer, TCAG shall notify the Proposer and terminate negotiations. The second highest Proposer may be contacted for negotiations. This process may continue until successful negotiations are achieved. However, TCAG reserves the right to terminate negotiations with any Proposer should it be in TCAG's best interest. TCAG reserves the right to reject any and all proposals submitted.

Attachment A – Scope of Services

TCAG seeks to retain the services of a lobbyist consultant that possesses significant demonstrable experience in lobbying and advocacy at the federal level. The lobbying consultant shall be able to develop relationships with TCAG's representatives and shall have existing relationships with federal governmental staffers both within the state and federal capitals, at governmental agencies, and with other industry lobbyists. The ideal candidates will have strong existing relationships at the federal levels with all the individuals indicated previously, in order to act as trusted advisors, lobbyists, and expert navigators for TCAG. TCAG is primarily seeking a lobbyist that can help TCAG secure federal funding, advocate for TCAG's policy and financial needs, and be an expert navigator of the federal government.

Specifically, the requested services may include but are not limited to the following:

- Identify and devise strategies to successfully secure federal funding for TCAG and its regional member agencies.
- Pursue major funding opportunities and investigate other opportunities. Lobbying consultant shall research and provide information to TCAG on existing and emerging legislation, availability of funding, distribution of funding, techniques to be used by TCAG to capitalize on opportunities, and examples of successful federal government applications.
- Monitor bills that may impact TCAG's interests in accordance with the legislative priorities established by the City and provide interpretation and analysis of bills to TCAG staff.
- Work closely with TCAG staff to assess the impact of certain bills and administrative decisions and to develop a response from TCAG either in support, opposition, or seek amendments to bills or administrative rules.
- Provide legislative briefings for key TCAG staff, including information regarding major highlights and information on priority bills that require the TCAG's attention.
- Represent TCAG and meet with legislators, their staff, and governmental agency officials to advance TCAG's legislative agenda and interests.
- Testify at committee hearings and other meetings on behalf of TCAG.

- Track and review press releases, informational bulletins, and other important information released by the federal governments and their agencies.
- Review and notify TCAG staff of relevant federal grants.
- Advocate for TCAG funding in the federal budgets, through grants and legislation, and through any other appropriate means.
- Work with TCAG staff to secure sponsors for proposed bills and/or amendments to Federal law.
- Provide TCAG staff with monthly written summaries of legislative activities on behalf of TCAG.

Attachment B – Debarment and Suspension Notification

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

Consultant

Attachment D

Exhibit C 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.

Attachment 'E'

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.

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- (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

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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.

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(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

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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

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(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

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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.

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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.