

Request for Qualifications

Traffic Data Collection Services

Issued: October 29, 2024

Submittals are due by 5:00 PM on December 4, 2024



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INTRODUCTION TO THE REQUEST FOR QUALIFICATIONS

The Tulare County Association of Governments (TCAG) invites the submission of proposals by qualified consultants to provide on-call traffic data collection services to be used for the TCAG Annual Transportation Monitoring Program and other elements of our Congestion Management Program. This RFQ is only for the collection of transportation data including traffic counts and turning movement counts. Tulare County Association of Governments typically counts a set minimum number of intersections and classified traffic counts every year. Additional counts are done based on need and availability of funding.

The Tulare County Association of Governments invites the submission of statements of qualifications by traffic data collection consultants to provide on-call traffic data collection for three (3) consecutive years for FYs 2024/25, 2025/26, and 2026/27. The budget for tasks outlined in this scope of services is not to exceed a total of \$7,500 per year for the FYs 2024/25, 2025/26 and 2026/27. Contract extensions will be permitted on an annual basis for up to three years following, upon agreement by the TCAG Executive Director and Consultant. If needed, TCAG may also request additional services that fall within the scope of the contract that are not outlined below for an amount not to exceed \$5000 annually.

SCOPE OF SERVICES

- a) The consultant will collect intersection turning movement counts at requested intersections each year (as selected by TCAG staff) and provide the raw traffic count data in PDF and Excel spreadsheet format. Unless otherwise specified, the intersection turning movement counts will be collected for the PM Peak Hour (typically between 4:00 to 7:00 p.m.) during a normal work week (Tuesday thru Thursday, no holidays) and when school is in session.
- b) The consultant will collect classified (axle class) traffic count data for each year at requested locations (as directed by TCAG staff). Unless otherwise specified traffic data shall be based on 48-hour counts taken during normal work weeks (Tuesday through Thursday, no holidays) when school is in session (fall and spring), and no (local) special events are taking place. The raw count data will again be provided to TCAG in PDF and Excel spreadsheet format. The consultant is responsible for:
 - Before the counts begin, submit a protocol for data collection of planned methodologies to TCAG staff for review and approval.
 - Determining the peak hour for traffic analysis purposes.
 - Providing raw count data in the requested PDF and Excel spreadsheet format.
 - Conducting a quality review of collected data to ensure accuracy and flag any outliers or data inconsistencies.
 - Notifying school districts and public schools when conducting traffic counts near a public school facility and keep a record of notifications, such as email confirmation, to ensure that communication has been established prior to data collection near school zones.
 - Implementing appropriate traffic safety measures for working in or near public roadways.
 - Obtaining any necessary encroachment permits for working within jurisdictional rights-of-way.

- c) The consultant shall comply with all applicable California state and local traffic safety standards, in addition to the American Association of State Highway Transportation Officials (AASHTO) Guidelines for Traffic Data Programs, the Federal Highway Administration (FHWA) Traffic Monitoring Guide, and the FHWA Manual on Uniform Traffic Control Devices. In California, this includes adherence to the California Manual on Uniform Traffic Control Devices (CA MUTCD), as well as any specific safety requirements mandated by Caltrans and local jurisdictions. The consultant is responsible for implementing safety protocols—including traffic control devices, high-visibility apparel, signage, and other protective measures—necessary to ensure the safety of personnel and the traveling public when working within or near public roadways.

- d) Deliverables:
 - Progress Reports (when the invoice is sent), Maps (Showing location where counts were performed)
 - Raw traffic and turn-movement data (.pdf and Excel spreadsheet format).
 - 3-Week notice before prior to the time of the studies – this should include a planned timeline, anticipated dates, and any coordination requirements with local agencies or jurisdictions if necessary.
 - Data Analysis Report. (summarize peak hour data, trends, and significant findings)
 - BUDGET – INVOICING AND PROGRESS REPORTS

The budget for tasks outlined in this contract is not to exceed a total of \$7,500 per year for FYs 2024/25, 2025/26 and 2026/27. If needed, TCAG may also request additional services that fall within the scope of the contract that are not outlined above. Any additional services requested by TCAG will be paid up to an additional amount of \$5,000 per year with written approval from the TCAG Director. Invoices should be submitted at the end of each month. Direct expenses should include receipts or an acceptable form of backup. All invoices must include a description of work completed, percentage of work completed, the hourly rate and expenditures for each employee, upcoming tasks and reference work element 605.01.

RFQ QUESTIONS, SCHEDULE AND TCAG STAFF CONTACT

Contact person:

John Washam (559) 623-0472

JWasham@tularecag.ca.gov

Estimated dates for the review process are as follows:

October 29, 2024	Distribution of Request for Qualifications
November 20, 2024	Questions/Clarifications due via email by
December 4, 2024	Deadline to Submit Proposal via Email December 4 by 5:00 p.m.
January 20, 2025:	Consultant selection by TCAG Board (estimated)
February 20, 2025	Finalize Contract (estimated)
Spring, 2025	Issuance of Work Orders Begins (estimated)

Please check www.tularecog.org regularly for amendments or additional information on this RFQ. Consultants that are applying 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.

STATEMENT OF QUALIFICATIONS (SOQ) REQUIREMENTS AND CONTENT

The intent of this RFQ is to enable TCAG to evaluate vendor experience, qualifications and capabilities. Responders are to submit a written narrative addressing each of the below numbered items:

1. **Transmittal Letter** signed by an officer who may contractually bind the business, including a description of the firm. The SOQ shall be a firm offer for a minimum of 90 days and contain a statement to that effect. The SOQ shall identify ongoing consultant commitments and how TCAG’s needs, and schedule fit within those commitments. The letter should also note how the respondent heard of the RFQ.
2. **Relevant Traffic Data Collection Service Experience:**
 - A. MPO/RTPA clients (Please list no more than five MPO/RTPAs.)
 - B. Other municipal or regional clients (Please list name of jurisdiction; list no more than five.)
 - C. If no previous government experience, please explain relevant experience (please list other clients; list no more than five.)
 - D. References (Please list a minimum of three references and no more than five, including all contact information below.)
 - a. Client Name
 - E. Client Contact Person
 - F. Phone Number and Email Address
 - G. Client Physical Address
 - H. Website Address
3. **Company Profile:**
 - A. Number of years in business
 - B. Office location(s) (Include business address)
 - C. Organization chart
 - D. Rate schedule by job title and other expenses for services/products, as applicable.
 - E. Disadvantaged Business Enterprise (DBE) designation and certification information, if applicable
4. **Team Members/Roles (list all personnel to be assigned to this project)**
 - A. Name, title, role (e.g., project manager, lead modeler, project engineer)
 - B. Qualifications of key personnel proposed for the contract
 - C. Office location of project manager/main point-of-contact

STATEMENT OF QUALIFICATIONS (SOQ) DELIVERY AND OPENING

SOQ must be received electronically in PDF format no later than **December 4, 2024 at 5:00:00 PM (PDT)** at jwasham@tularecag.ca.gov. The subject line of the email shall state: **“Traffic Data Collection Services– Your Company Name.”** Submittals will be opened no sooner than the Submission Deadline.

Any questions regarding this RFQ should be submitted in writing to **John Washam, Regional Planner by email at JWasham@tularecag.ca.gov** no later than ten (10) working days before the closing date of December 4th, 2024.

Responses to questions submitted will be posted on the TCAG Web site at <http://www.tularecog.org> under “RFPs and RFQs” not later than six (6) working days before the closing date of December 4th, 2024.

SOQ EVALUATION AND SELECTION PROCESS

Evaluation Criteria

A consultant selection committee will evaluate the SOQs using the below evaluation criteria and will also perform random reference checks.

CRITERIA	POINTS
Demonstration of the overall understanding of the goals and objectives of this solicitation.	15
Clarity of SOQ, realistic approach, technical soundness, and enhancements to elements outlined in this RFQ.	15
Education and relevant experience of personnel in providing similar services. Only those personnel that will be assigned to work directly on each area should be cited.	20
Proven track record in the areas of expertise sought. Proposer should clearly identify the principal people who worked on past projects and the amount of time they devoted to the work effort.	25
Ability and commitment to deliver required products and services, meet all deadlines for submitting associated work products, and ensure quality control.	5
Recognition of work priorities and flexibility to deal with change and contingencies.	5
References	15
TOTAL POSSIBLE	100

References

As part of its final selection, TCAG reserves the right to contact a reasonable number of references from among those provided by the Proposer.

TCAG reserves the right to:

- A. Cancel this solicitation.
- B. Reject all SOQs and re-advertise.
- C. Negotiate a contract that covers selected parts of a proposal, or a contract that will be interrupted for a period, or canceled, for lack of funds.

Contact with TCAG:

All firms interested in this RFQ (including the firm’s employees, representatives, agents, lobbyists, attorneys, and subconsultants) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process. This policy is intended to create a level playing field for all potential firms, and to protect the integrity of the selection process. All questions on this selection process should be addressed to the authorized representative at TCAG.

TCAG Approval:

The contract is not in force until it is awarded by the TCAG Board and executed by TCAG.

TASK ORDER INITIATION

Request for Technical and Pricing Proposal

To initiate a project under an on-call contract, TCAG will provide a brief scope of services for the Task Order and request a technical and pricing proposal, based on the rate and personnel schedules described above, to be submitted to TCAG within two (2) weeks of receipt by selected On-Call Consultant. The proposal shall include the project scope of services, required schedule, a list of deliverables, and pricing.

Response

Responses to a Task Order shall be in writing and submitted to TCAG. Pricing submitted shall be in the TCAG format and will include listing of proposed staff, staff position description (i.e., Project Manager, Systems Integrator). Items shall be totaled, and the total shall be a NOT TO EXCEED amount. TCAG will finalize the scope of services and project pricing in consultation with the Consultant and other stakeholder agencies with direct involvement in the project.

Task Order Agreement

Upon finalization of the scope of services, cost, and project schedule, a Task Order agreement shall be executed. The Consultant shall commence work upon an approval notice from TCAG.

Task Order Duration

Duration of services for projects to be completed under this contract may vary from a few weeks to several months and will be dependent on the scope of services of each project. The schedule and duration will be as specified in the executed Task Order for each project. The CONSULTANT shall submit any changes to the project schedule in a format specified by TCAG

Vendor Information

Prior to issuance of a Task Order and subsequent payment, the selected On-Call Consultant shall have a completed Federal Form W-9 and Proof of Insurance on file with TCAG. No payments shall be made until the forms are on file.

Performance Standards

TCAG relies upon the provision of services in accordance with the contract; therefore, the Consultant shall agree that time is of the essence, and that contractual commitments shall be met. The Consultant agrees that Consultant's employees shall not divulge, or release data or information developed obtained in connection with the performance of the resulting contract, unless made public by TCAG.

Consultant Selection from Multiple Contracts

TCAG makes no guarantee as to the amount of work to be assigned to any Consultant and may exercise its option not to utilize the services requested herein. TCAG is under no financial obligation to any selected Consultant unless TCAG issues a Task Order for a specific requirement.

Experience of the consultant, qualifications, education, and experience of the staff will be the criteria used to decide as to which Consultants will be contacted for consideration to perform required services. Each Consultant contacted will have the opportunity to indicate their availability and prepare a staffing plan and detailed approach for the desired work assignment. If substitution of staff is required after commencement of assignment, the replacement must possess comparable qualifications and must receive prior written approval from TCAG.

TCAG will select the Consultant(s) which best addresses TCAG requirements. TCAG will attempt to reach an agreement with the most qualified Consultant in TCAG's opinion. If TCAG cannot reach an agreement for the FY 2024-2025 TCAG Traffic Data Collection Services with the selected consultant, TCAG may choose to select another Consultant from the On-Call pool or rebid the required services.

Changes in Services

Significant changes in the scope, character, or complexity of the services shall not be negotiated under this contract. Changes in services may result in the contract being canceled and rebid. Should this be required, all Consultants will be notified in writing within 30 (thirty) days prior to cancellation.

Payment

The Consultant will be paid based on the negotiated scope of services, budget, schedule, and fee. Progress reports and invoices shall be submitted monthly for reimbursement of costs incurred in conformance with the project budget. The progress reports shall document services by each work task,

the hours worked, the hourly rate of each person, and other direct expenses. All costs incurred in preparing invoices shall be included in the overhead rate. TCAG will provide to the Consultant the format to be used for invoices and progress reports. TCAG shall retain ten percent (10%) of the amount billed until satisfactory completion of the project. Final payment shall be made as soon as possible after the date of acceptance.

Invoicing Requirements

All invoices shall be prepared using the Excel invoice template provided by TCAG.

Signed invoices shall be submitted electronically to:

JWasham@tularecag.ca.gov and accounting@tularecag.ca.gov

STANDARD PROFESSIONAL SERVICES AGREEMENT

TCAG’s standard Professional Services Agreement (PSA) will be used for the agreement between TCAG and the selected consultant. A sample copy of TCAG’s PSA is included for reference in Attachment A. Consultants should review the sample PSA and indicate whether they have any issues and indicate any requested changes. TCAG will consider all requested changes during the negotiation process with the most qualified firms.

Each response to this RFQ, and any resultant interviews, and follow-up scoping and/or negotiating meetings/sessions, shall be done at the sole cost and expense of each respondent vendor and with the express understanding that no claims against TCAG for reimbursement will be accepted until work on a specific project commences after the execution of the technical services agreement.

ATTACHMENTS

Attachment A	Sample Professional Services Agreement
Attachment B	Debarment and Suspension Certification
Attachment C	Disadvantaged Business Enterprise (DBE) Participation
Attachment D	Certification Concerning Workers’ Compensation Insurance
Attachment E	Professional Services Contracts Insurance Requirements

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.

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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.

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(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.

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(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

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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

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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.

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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.

SAMPLE

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

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.

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

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.