



# Request for Proposal for Lobbying and Intergovernmental Services

PROPOSAL REQUESTED BY:

MADERA COUNTY TRANSPORTATION COMMISSION

2001 HOWARD ROAD, SUITE 201

MADERA, CA 93637

[www.maderactc.org](http://www.maderactc.org)

# REQUEST FOR PROPOSAL (RFP) FOR LOBBYING AND INTERGOVERNMENTAL SERVICES FOR THE MADERA COUNTY TRANSPORTATION COMMISSION

The Madera County Transportation Commission (MCTC) is seeking proposals to assist on behalf of MCTC to provide State Lobbying Services to promote MCTC's interests before the State of California's Legislature, state agencies, and related interest groups.

## SCOPE OF SERVICES

Lobbyist shall be experienced in **transportation legislation** and in the state legislative process, to monitor and analyze proposed state legislation affecting MCTC, assist in the development of new legislation, and develop strategies for advancing legislative initiatives beneficial to MCTC and its programs. Lobbyist shall provide MCTC effective representation and advocacy on state surface transportation, transportation funding, infrastructure finance and delivery, transportation-related land use, climate change, and clean air initiatives before the Legislature, state agencies, and related interest groups.

In addition to regular reports to MCTC, it is anticipated that requests for other legislative advocacy assistance will be initiated by telephone or email correspondences and that meetings will be held, as necessary, to address the issues at hand. The Executive Director, or designee, will serve as the primary point of contact for MCTC, although the lobbyist will work directly with staff in certain areas, as requested by the primary contact or staff. Lobbyist will need to identify its key contact person, assign tasks to members of the legislative advocacy team, control costs, and report monthly on costs and services to date.

Specific tasks include: 1) state legislative assistance, 2) legislative review and monitoring, 3) legislative advocacy, 4) legislative coordination, 5) annual state legislative program, and 6) other legislative services. The tasks are detailed below:

### **TASK 1 – State Legislative Assistance**

Provide advice, counsel, and assistance to MCTC on state legislative issues involving transportation policy, transportation funding, infrastructure finance and project delivery, transportation-related land use, climate change, and clean air issues. Suggest, develop, and help implement legislation supporting MCTC's goals and objectives. Schedule meetings with key offices and individuals for MCTC and staff, leading the preparation for those meetings, and actively facilitating those meetings. Advise staff on effective lobbying strategies.

#### *Deliverables:*

- 1. Email and phone conversations.*
- 2. Memoranda on specific issues as requested.*

### **TASK 2 – Legislative Review and Monitoring**

Monitor pending legislation and advise MCTC of the status and impact of legislation

affecting MCTC and/or its programs. Monitor key agencies such as California Transportation Commission (CTC), California State Transportation Agency (CalSTA), the California Air Resources Board (CARB), the Strategic Growth Council, and the California Department of Transportation (Caltrans). Propose positions for the MCTC Policy Board to act upon.

*Deliverables:*

1. *Monthly report on pending legislation for consideration by the MCTC Policy Board.*
2. *Presentations to the Policy Board, upon request.*

**TASK 3 – Legislative Advocacy**

Ensure that MCTC maintains a visible presence in Sacramento, including maintaining regular contact with the Office of the Governor, members of the Legislature and committee staff, state agencies and departments, and advocacy organization. Act as liaison as needed and requested by the Executive Director or staff, to the Senate and Assembly Transportation Committees and the Legislature, the Office of the Governor as well as to Caltrans, the CARB, HCD, and the CTC. Provide timely responses to legislative requests for information on MCTC initiatives or bills that affect the MCTC. Represent the MCTC's interest with testimony before the legislature or in individual meetings with legislators and staff, as directed. Remain up to date with the MCTC's legislative platform, board actions, and positions on legislation and proposals by state agencies. Build alliances and coalitions with like-minded agencies and advocates to advance the MCTC's interests.

*Deliverable:*

1. *Regular progress reports on specific legislative activities performed.*

**TASK 4 – Legislative Coordination**

Coordinate legislative initiatives with other transportation agencies, Council of Governments, other self-help counties, the region, and the state.

*Deliverable:*

1. *Email and phone conversations regarding issues of importance.*

**TASK 5 – Annual State Legislative Program**

Assist MCTC in developing an annual overall state transportation legislative and appropriations strategy, in coordination with other city and regional transportation agencies. Provide counsel on the overall advocacy strategy at the state level.

*Deliverable:*

1. *Review and participate in drafting the Annual State Legislative Program*

**TASK 6 – Other Legislative Services**

Provide other legislative services within the individual's or firm's ability as needed. This would involve providing guidance and/or training for the appointed contact and designated staff on the state's legislative process, including routine legislative law-making as well as the state budget process. Familiarize the staff with the workings of key state departments or agencies.

*Deliverable:*

1. *Email and phone conversations.*

## EVALUATION PROCESS

Following the review and screening of all proposals, two or more firms may be invited to participate in the final selection process. This process may include the submission of additional information regarding costs, and explanation of strategies. The proposals will be evaluated, and a short list will be developed by an Evaluation Committee, which also may schedule and conduct Interviews with short listed firms prior to making its recommendation for final selection by the Policy Board.

## PROPOSAL SUBMITTAL

Proposals can be submitted in a sealed envelope that is clearly marked “**Proposal for Lobbying Services.**” If mail delivery is used, the proposer should mail the proposal early enough to provide for arrival by the deadline. Proposer uses mail or courier service at his/her own risk. MCTC will not be liable or responsible for any late delivery of proposals. **Postmarks will not be accepted.** Until award of contract, the proposals shall be held in confidence and shall not be available for public review. Upon award of a contract to the successful proposer, all proposals shall be public records. No proposal shall be returned after the date and time set for opening thereof. Please provide three (3) bound copies and one (1) electronic ADA accessible Adobe PDF in response to this Request for Proposals.

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

Troy McNeil, Deputy Director/Fiscal Supervisor  
Madera County Transportation Commission  
2001 Howard Road, Suite 201  
Madera, CA 93637

## QUESTIONS

Questions should be directed to Troy McNeil by email at [troy@maderactc.org](mailto:troy@maderactc.org). Questions must be in writing and will be accepted until 3:00 p.m. on May 17, 2021. Replies to the written questions submitted will be posted on the MCTC website ([www.maderactc.org](http://www.maderactc.org)) no later than May 19, 2021. Please check [www.maderactc.org](http://www.maderactc.org) regularly for amendments or additional information on this RFP. Consultants that are applying are forbidden from contacting members of the Madera County Transportation Commission to discuss their proposal. Failure to comply with this requirement may cause your proposal to be denied without review.

## GENERAL CONDITIONS

### **Limitations**

This Request for Proposal (RFP) does not commit MCTC to award a contract, to pay any costs incurred in the preparation of the proposal in response to this request, or to procure or contract for services or supplies. MCTC expressly reserves the right to reject any and all proposals or to waive any irregularity or information in any proposal or in the RFP procedure and to be the sole judge of the responsibility of any proposer and the suitability of the materials and/or services to be rendered. MCTC reserves the right to withdraw this RFP at any time without prior notice. Further, MCTC reserves the right to modify the RFP schedule described above.

### **Award**

All finalists may be required to participate in negotiations and submit such price, technical, or other revisions of their proposals as may result from negotiations. MCTC also reserves the right to award the contract without discussion or interviews, based upon the initial proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. However, selection will be based upon demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required. Following the initial qualifications-based selection, the price proposal provided will be the basis for negotiations to ensure MCTC receives a fair and reasonable price.

The selected consultant shall execute a contract with MCTC after consultant selection approval. The official selection of the consultant, if any, will be made by MCTC on June 23, 2021 or subsequent Board meeting. Unsuccessful proposals will be notified in writing.

### **RFP Addendum**

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

### **Verbal Agreement or Conversations**

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

### **Pre-contractual Expense**

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

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

In any event, MCTC shall not be liable for any pre-contractual expenses incurred by any proposer or selected contractor. Proposers shall not include any such expenses as part of the

price proposed in response to this RFP. MCTC shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or in behalf of, any person or organization responding to this RFP.

### **Signature**

The proposal shall provide the following information: name, title, address, and telephone number of the individual with authority to bind the company and also who may be contacted during the period of proposal evaluation. The proposal shall be signed by an official authorized to bind the consultant(s) and shall contain a statement to the effect that the proposal is a firm offer for at least a ninety (90) day period. Execution of the contract is expected by June 1, 2021.

### **Term**

The term of the contract will be July 1, 2021 –June 30, 2022 with negotiated extensions allowed if required, or as agreed upon by the proposer and the MCTC Executive Director.

### **Insurance**

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

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

### **Contract Arrangements**

The proposer is expected to execute a contract similar to MCTC's Professional Services Agreement. Even though federal funds will not be used for the contracted services, MCTC will adhere to the following policies:

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

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

assisted contracts.

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

Equal Employment Opportunity: In connection with the performance of the contract, the contractor shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

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

1. A copy of the consultant(s) Equal Employment Opportunity policy (applicable for firms with 50 or more employees); and
2. A discussion of the consultant(s) program for use of DBE's in the performance of this work, including the following:
  - The names and addresses of DBE firms that will participate
  - The description of work each named firm will perform
  - The dollar amount of participation by each DBE firm
3. Conflict of Interest: Firms submitting proposals in response to this RFP must disclose to MCTC any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided under Agreement for consulting services to be awarded pursuant to this RFP. If this firm has no conflict of interest, a statement to that effect shall be included in this proposal.

## PROPOSAL REQUIREMENTS

### **Experience and Qualifications**

Prospective consultants shall provide a summary description of the firm's overall qualifications for this project and previous experience on similar or related engagements. The proposal shall also provide a description of the qualifications and experience of key staff proposed for this project. For each key project staff that works on this project, the proposal must list the location of the office that the employee typically works. Failure to provide the requested information may disqualify a proposal. (8 page maximum)

### **Understanding of the Project**

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

**Project Personnel**

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

**Subcontracting**

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

**References**

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

**Methodology**

Prospective consultants shall describe the overall approach to the project, specific techniques that will be used, and the specific administrative and operational management expertise that will be employed. A proposed schedule shall be included. The project schedule must be clearly stated with intermittent milestones. (15 pages maximum)

**Conflict of Interest**

Prospective consultants shall disclose any financial, business, or other relationship with MCTC, either of the two incorporated cities in Madera County, the County of Madera, or any of their officers or officials that may have an impact on the outcome of the project. The prospective consultant shall also list current clients who may have a financial interest in the outcome of the project.

**Project Costs**

Prospective consultants must provide a description of any fees/and or compensation the bidder may seek from MCTC for services, inclusive of staff time, equipment, materials, travel, administrative/clerical, overhead and other out-of-pocket expenses, if applicable to this contract. If the firm uses hourly billing rates (instead of a flat retainer fee), please provide a detailed fee summary with a total annual not to exceed cost.



**Number of Copies**

The proposer must provide 3 bound copies and one (1) electronic ADA accessible Adobe PDF in response to this Request for Proposals.

**Signature**

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

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

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

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

## PROPOSAL EVALUATION AND SELECTION

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

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

- Specialized experience and technical competence
- Familiarity with the types of issues and problems associated with transportation planning agencies
- Understanding the purpose and requirements of state and federal transportation funding
- Fee schedule

Following the qualification-based ranking, negotiations may be conducted with the most qualified proposer. Failing an agreement on price, MCTC will negotiate with the next most qualified proposer until a contract can be awarded to the most qualified offeror whose price is fair and reasonable.

Proposals submitted by each consultant will be evaluated separately based on how well each proposal meets the scoring criteria listed below:

<b>CRITERIA</b>	<b>POINTS</b>
<b>PROPOSAL</b>	
Comprehension of Project	5
Thoroughness of Proposal	5
Meeting the RFP Objectives	10
Project Delivery Time	5
<b>CONSULTANT QUALIFICATIONS</b>	
Qualifications and Experience	50
References	10
DBE Participation Level	5
<b>COST</b>	
Reasonableness of Cost	10
<b>TOTAL POSSIBLE (RFP)</b>	<b>100</b>

**PAYMENT SCHEDULE**

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

**OTHER INFORMATION**

Invoices will be accepted and paid based on the fee structure agreed upon in performing the services identified above. Payment will be made to the selected company within 30-days of submittal to the MCTC of a properly completed invoice.

It is intended that the selection shall be made on merit alone, consistent with the process set forth herein. Accordingly, no contact of any kind, by or on behalf of any proposing firm, should be made with any MCTC Board members or their staff, or with the MCTC staff, other than as provided above. Adherence to this condition will assure that all information requests, and particularly the specific information or information referral each proposer receives, will be consistent, uniform, and available to all proposers. Proposing firms are hereby advised that violation of this condition may be cause for immediate rejection of the proposal.

## SELECTION TIMELINE

The RFP timeline is as follows:

RFP Issued	May 7, 2021
Deadline for Questions, Clarifications	May 17, 2021 3:00 PM
Proposals Due	June 9, 2021 3:00 PM
Determination of Short List	June 11, 2021
Consultant Interviews, if necessary	June 14-16, 2021
Recommendation to the Board	June 23, 2021 or subsequent Board Meeting

## AWARD OF CONTRACT

The MCTC reserves the right to reject any and all proposals or to select one or more firms. Award of contract, if any, will be made for one or more of the line items to the firm or firms having submitted a bid proposal that in the sole opinion of the MCTC will provide the best and most responsive service, and whose qualifications and experience best address the needs of the MCTC, with regard to such item(s). The MCTC may award to a proposer covering one, all, or any combination of line items proposed. Any such award shall be expressly conditioned upon the subsequent execution by the successful bidder of an appropriate written agreement, as more thoroughly set forth below.

The MCTC is under no obligation to accept the lowest bidder, as cost is only one factor to be considered in evaluation of the bid proposals. The MCTC reserves the right to engage in further negotiations regarding proposed services and costs with any short-listed firm prior to making its recommendation(s) for award.

The content of all proposals shall be maintained as confidential until any such negotiations have been fully and finally concluded.

The terms and conditions of the work shall be set forth in writing in one or more final Professional Services Contract(s) ("Agreement"), the provisions of which shall be consistent with the proposal and any such additional terms as may be negotiated. The effectiveness of the contract award shall be expressly conditioned upon subsequent execution by the successful bidder of such written Agreement.

## ATTACHMENTS

A. Sample Agreement

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

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THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2021, by and between the MADERA COUNTY TRANSPORTATION COMMISSION, hereinafter referred to as "COMMISSION," and \_\_\_\_\_, hereinafter referred to as "CONSULTANT."

**RECITALS**

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

**AGREEMENT**

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

2. **PAYMENT TERMS.**

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

any work or services or incur any expenses, and COMMISSION shall have no obligation to pay for any work or services or expenses, costing more than the amounts set forth above without the prior express written approval of the COMMISSION. Such approval, if any, must be in the form of a written amendment to this Agreement, which has been approved by CONSULTANT and by the COMMISSION.

3. **TERM OF AGREEMENT.**

This Agreement shall take effect \_\_\_\_\_ and shall terminate \_\_\_\_\_, unless terminated earlier by one or both parties.

4. **GENERAL PROVISIONS.**

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

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

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

4.04 The applications and documents prepared by CONSULTANT pursuant to this Agreement shall become the property of COMMISSION. COMMISSION is entitled to full and unrestricted use of such applications and documents for this Project. COMMISSION may also retain the original of the documents upon request. CONSULTANT shall not apply for copyrights or patents on all or any part of the work performed under this Agreement. CONSULTANT shall not be liable or responsible for any use, reuse, or modification of, or derivation from, any of such applications and documents prepared by CONSULTANT that is made without CONSULTANT's written consent other than for purposes contemplated by CONSULTANT's scope of work in the respective tasks undertaken pursuant to Section 1 above.

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

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

4.06.1 Immediately terminate the Agreement with CONSULTANT;

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

4.06.3 Charge CONSULTANT with the difference between the cost of completion of the unfinished work pursuant to this Agreement and the amount that would otherwise be due CONSULTANT, had CONSULTANT completed the work.

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

4.08 A COMMISSION representative shall be designated by COMMISSION and a CONSULTANT representative shall be designated by CONSULTANT. The COMMISSION representative and the CONSULTANT representative shall be the primary contact person for each party regarding performance

of this Agreement. The COMMISSION representative shall cooperate with CONSULTANT and the CONSULTANT representative shall cooperate with COMMISSION in all matters regarding this Agreement, and in such a manner as will result in the performance of the work in a timely and expeditious fashion.

COMMISSION Representative

Patricia Taylor

Madera County Transportation Commission

2001 Howard Road, Suite 201

Madera, CA 93637

(559) 675-0721

[patricia@maderactc.org](mailto:patricia@maderactc.org)

CONSULTANT Representative

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

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

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

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

4.13 The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this Agreement.

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

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

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

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

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



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

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

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

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

## **5. ADDITIONAL PROVISIONS**

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

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

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

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

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

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

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

## **6. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

MADERA COUNTY  
TRANSPORTATION COMMISSION

\_\_\_\_\_  
Patricia Taylor  
Executive Director

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

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