



TUOLUMNE COUNTY TRANSPORTATION COUNCIL

Draft Request for Proposals (RFP) **Central Sierra Zero Emission Vehicle Readiness Plan Project:** Issued: October 12, 2017

Notice

The Tuolumne County Transportation Council (TCTC) is soliciting a Request for Proposals (RFP) to retain one consultant firm to develop a Zero Emission Vehicle Readiness Plan for the Central Sierra Region. The goal of this project is to improve opportunities for ZEV Readiness in the Central Sierra Region and to resolve barriers to the widespread deployment of private and public ZEV infrastructure.

Background

The Central Sierra Region is located along the western slope of the Sierra Nevada mountain range and includes a four county area: Alpine County, Amador County, Calaveras County, and Tuolumne County. The Department of Finance population estimate for the four county region is approximately 139,408 for 2017. The central Sierra region is a popular tourist destination with Yosemite National Park, several state parks, ski resorts, wineries, and walkable gold rush downtowns.

California's Zero Emission Vehicles (ZEV) Action Plan projects 1.5 million ZEVs will be on the road by 2025. With the transportation sector being the largest contributor to greenhouse gas (GHG) emissions in California, ZEV's are a large part of the solution to help reduce GHG emissions. In order to meet statewide greenhouse gas emission reductions laws including AB 32, AB 197, and SB 32, the Central Sierra ZEV Regional Readiness Plan will help achieve State and local goals, objectives, and policies by improving opportunities for ZEV Readiness, resolving barriers, and increasing the deployment of ZEV infrastructure in the region. The Readiness Plan will also help achieve TCTC's Rural Sustainable Strategies from the 2016 Tuolumne Regional Transportation Plan.

The rural Central Sierra Region has many challenges to the successful deployment of Zero Emission Vehicles. Some of the challenges are unique to rural areas and include: a large geographical area and low population density, large travel distances between neighboring communities, a steep mountainous terrain, and a lack of electric infrastructure in some rural locations. The ZEV Readiness Plan will help address these unique rural challenges and provide solutions to increase public and private ZEV deployment in the Central Sierra region.

Objectives

The objectives of this project are to study and analyze site locations needed for ZEV infrastructure deployment in Alpine, Amador, Calaveras, and Tuolumne Counties:

- Study and analyze site locations needed for ZEV infrastructure deployment;
- Evaluate the current state of the ZEV market;
- Evaluate opportunities to streamline ZEV permitting, installation, and inspection to facilitate the timely approval and construction of ZEV infrastructure;
- Study and analyze the feasibility of ZEV adoption in municipal fleets;
- Create a venue for stakeholder coordination and gain input from key stakeholders on the ZEV Readiness Plan;
- Identify funding sources for an implementation program.

Project Deliverables

The goal is to develop a ZEV Readiness Plan for the Central Sierra Nevada Region including Alpine, Amador, Calaveras, and Tuolumne Counties which supports and increases the deployment of ZEV infrastructure in the region. The goal of the Project is to improve opportunities for ZEV Readiness in the Central Sierra Region and resolve barriers to the widespread deployment of private and public ZEV infrastructure.

The consultant shall present draft and final ZEV Readiness Plan to the Central Sierra PEV Coordinating Council Meetings, the Technical Advisory Committee/Citizens Advisory Committee Meeting, Alpine County, Amador County Transportation Commission, Calaveras Council of Governments, and the Tuolumne County Transportation Council governing board meetings (6).

1. Background Assessment Report:

The Background Assessment Report will be developed to establish the existing conditions and identify the key needs in the region to prepare for and coordinate ZEV infrastructure deployment. The assessment will include the estimated number of PEVs for the planning period in the region. The Central Sierra Region lacks baseline information on ZEV use and demand. Therefore, an analysis of existing conditions and the assessment are a key piece of readiness planning. The Assessment will also include region-specific electric vehicle market research and data, a current state of the ZEV market analysis of what is currently available in the electric vehicle market and what will soon be available.

ZEV infrastructure analysis:

- Existing conditions of ZEV infrastructure;
- Regional travel patterns;
- Estimate of investment required;
- Estimate of ZEV's required to support ZEV infrastructure;
- Projection of ZEV charging stations needed;
- ZEV Gap Analysis;

Current state of the ZEV market analysis

- Federal, State, and local funding and incentives available for zero emission electric vehicles (ZEV's) and charging infrastructure;
- Policies and training programs;
- Available data on ZEV infrastructure;
- Review data on consumer charging behavior;
- Evaluate relevant ZEV case studies/best practices;
- Determine/survey employer/workforce interest;
- Identify existing and future market availability of ZEV market of light, medium, and heavy duty vehicles;
- Identify market availability of charging stations with solar panels.

Products:

Draft Background Assessment Report – Date due - June 2018

Final Background Assessment Report – Date due - August 2018

2. Outreach Plan and Toolkits:

Develop an Outreach Strategy and Education Plan to aid in the promotion of the toolkits and the future implementation of the ZEV Plan. The Toolkits will be developed to target and provide training to key sectors including: local governments, fleet owners and operators (public and private), vehicle dealers, Central Sierra Region residents, visitors to the Central Sierra region, chamber of commerce's, Visitor's Bureau, and tourist destinations (state parks, ski resorts, casinos, and etc.).

- Create promotional toolkits with economic and environmental benefits of switch to electric vehicles;
- Coordinate outreach to business sectors for implementation
- Information on electric vehicle supply equipment (EVSE);
- Information on EVSE planning permitting and installation;
- Information electric vehicle market that can replace that can replace internal combustible engines (ICE) vehicles;
- Information on coordinating with the local electricity providing utility.

Products:

Draft Outreach and education plan material – Date Due - Dec 2018

Final Outreach and education plan material – Date Due - June 2019

Sector Specific Toolkits – Date due - June 2019

3. Central Sierra ZEV Readiness Plan:

The goal of this task is to develop a ZEV Readiness Plan to disseminate information for Alpine, Amador, Calaveras and Tuolumne Counties. Based upon the Background Report, the needs assessment will include maps with candidate locations of charging stations which meet the criteria set by the Coordinating Council.

- Goals, objectives, policies for ZEV Readiness Plan;

- Readiness Actions for short, medium, and long term;
- Identify barriers to ZEV adoption in the region;
- Establish criteria for candidate charging station locations;
- Cost estimate for ZEV charging station infrastructure;
- Maps with candidate charging station locations including public and private locations;

Develop a streamlined permitting, installation, and inspection process for EVCS installations:

- Conduct assessment of the following ZEV local permitting processes
- Environmental review, streamlining permitting, building codes, utility provider, zoning, parking rules, local ordinances, install process and checklists, and inspection process.

Develop method to accelerate ZEV adoption into Municipal Fleets;

- Conduct a usage assessment of all vehicles in the municipal fleets;
- Determine Fleet applications where ZEV's can be utilized;
- Plan for replacing municipal fleets with ZEVs;
- Evaluate public lots for EV charging station sites;
- Determine employer and workforce opportunities and constraints;

Products:

Outline of ZEV Readiness Plan – Date due - June 2018

Draft of ZEV Readiness Plan - Date due - Feb 2019

Final ZEV Readiness Plan – Date due - August 2019

Budget

Proposals should not exceed \$170,387 and detailed budgets and cost schedule shall be submitted with each proposal. Use the Appendix C budget and cost template and reference the schedule.

Schedule

1.	Request for Proposals released	October 12, 2017
2.	Last day to submit written questions on RFP	October 27, 2017
3.	Responses to questions posted on website	November 3, 2017
4.	Deadline to submit RFP	November 17, 2017
5.	Review Proposals (Possible Finalist Interviews)	December 4-8, 2017
6.	Selection process concluded (tentative)	December 15, 2017
6.	Agreement negotiation concluded (tentative)	December/January 17/18
7.	Agreement executed (tentative)	February 14, 2018

Communications

It is the TCTC's intent to provide the same information to all proposers and questions will not be answered individually by telephone. Any oral responses to questions are not binding on the TCTC. Prospective proposers may make written inquiries by email concerning the RFP to obtain clarification of requirements. The TCTC will post all of the questions received, along with TCTC's written responses, to the TCTC website, <http://tuolumnecountytransportationcouncil.org>. **It is the responsibility of the proposers to check the TCTC website to review the questions and responses.** Except for questions that might render the award of the Contract Agreement invalid, the TCTC will not respond to any questions submitted after October 27, 2017. Any communications related to this RFP should be directed to:

Darin Grossi, Executive Director
Tuolumne County Transportation Council
Mailing: 2 South Green Street, Sonora, CA, 95370
Physical: 48 West Yaney Avenue (3rd floor), Sonora, California
Email: dgrossi@co.tuolumne.ca.us

Addenda

Any changes to the Request for Proposals document will be made by written addendum. Upon issuance, such addenda shall be incorporated in this Request for Proposal document, and shall prevail over inconsistent provisions of earlier issued documentation. Addenda will be posted on the TCTC website. **It is the responsibility of the proposers to check the TCTC website for any addenda.** Proposers must certify receipt of the addenda on the appropriate form (see ADDENDA ACKNOWLEDGMENT) to be included and submitted with their qualifications.

Contents of Qualifications

Each proposal submittal shall concisely respond to this request for proposals as outlined in the project description. The submittal shall include, but not necessarily be limited to, the following:

1. Discussion of the consultant's qualifications for the listed Project Deliverables Section identified on pages 2, 3, and 4 in this RFP, including a discussion of the understanding of the project requirements and the capability to provide the requested deliverables and services.
2. A general discussion of the consultant's qualifications, expertise, and past work experience in providing zero emission vehicles and plug-in electric vehicle planning services to other local and regional agencies.
3. A Project Management Plan with a detailed budget and cost schedule. Please use the budget and cost schedule templates included in Appendix C in your RFP submittal.
4. List of Project Personnel and their duties and qualifications.
5. List of projects similar in nature to the project, showing past record of performance and project cost control, quality control and ability to meet schedules.

6. List of past public sector clients.
7. Proposed public outreach plan.

Evaluation Criteria

A Selection Committee, appointed by the TCTC Executive Director, shall review and rate each proposal submittal and, if necessary, conduct an interview with the consultant's project management and key personnel of the most qualified firm(s).

The Selection Committee shall identify the rank of qualifications in a selection order based upon the following criteria:

Rating Items

1. Firm's specialized experience, qualifications and technical competence as related to the services required. (20 points possible)
2. Project manager's specialized qualifications and technical experience as related to the services required. (20 points possible)
3. Firm's demonstration of a clear understanding of the services required as evidenced in their written and/or oral statements. (20 points possible)
4. Firm's past record of performance including control of costs, quality of work and completion, in a timely manner. (20 points possible)
5. Firm's present work load, availability of staff, company size, and list of major projects contracted to perform. (10 points possible)
6. Central Sierra region address of prime consultant and/or sub-consultants. (10 points possible)

Consultant Selection

Upon completion of the rating of the consultant firms, the Executive Director may negotiate a draft agreement with the top-ranked consultant. The goal of negotiation is to agree on a final agreement that will deliver the services or products required based on the professional qualifications of the selected firm.

If an agreement cannot be reached with any of the consultant recommended by the Selection Committee, the Selection Committee may be asked to make additional recommendations.

Upon attainment of a draft agreement, the draft agreement will be forwarded internally within the TCTC for review of content prior to final approval and execution by the TCTC.

The TCTC hereby notifies all proposers that it will affirmatively ensure that in regard to any agreement(s) entered into pursuant to this RFP, disadvantaged business enterprises will be afforded full opportunity to submit qualifications in response to this invitation, and that proposers will not be discriminated against on the

grounds of race, religion, creed, medical condition, color, marital status, ancestry, gender, age, national origin or physical or mental disability in consideration for award. In addition, the TCTC requires that any consultant hired by the TCTC to perform any work activity does not discriminate against any employee or applicant for employment because of race, religion, creed, medical condition, color, marital status, ancestry, sex, age, national origin or disability. The consultant shall comply with Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act, as amended from time to time.

The TCTC retains the right to withdraw this Request for Proposals at any time, without prior notice, to reject any or all qualifications submittals submitted, and/or to waive any irregularities or informalities in the qualification or in the qualification procedure.

Fee and Method of Payment

The TCTC will pay the consultant on a time and reimbursable expense basis at the rates set forth in the agreement, subject to any limitations set forth in a specific Work Order. Progress payments will be made no more frequently than at monthly intervals. Payment will be made only on submitted claims describing work completed prior to the close of the billing period and approved by the Executive Director. Progress payments will be limited to the budget for the tasks completed. Payment for work completed can be expected within 30 days of invoice receipt and verification of work performed.

Agreement for Professional Consulting Services

This Request for Proposals does not obligate the Tuolumne County Transportation Council to award a Contract Agreement, nor does it commit the TCTC to pay for any costs associated with the preparation and submittal of proposals.

A draft copy of the Contract Agreement to be executed between the parties follows as Exhibit A to this RFP. It is imperative that the prospective consultants familiarize themselves with each of the provisions contained in the Agreement form prior to preparing and submitting their qualifications. **If substantial revisions to the Agreement will be proposed by the consultant, these items/issues should be clearly specified in the proposal submittal.**

Insurance Requirements

The successful consultant will be required to maintain, throughout the term of the agreement work, insurance of the type and amount indicated in Exhibit B.

Qualifications Submission & Deadline

All qualifications submittals and accompanying materials shall become the property of the Tuolumne County Transportation Council upon submittal. Proposal submittals must be received and date stamped at the Tuolumne County Transportation Council office no later than **2:00 p.m. on Friday, November 17, 2017**. Six (6) copies of each qualifications submittal should be sealed in an envelope which is clearly marked "Central ZEV Readiness Plan RFP" and delivered to:

Tuolumne County Transportation Council
Darin Grossi – Executive Director
2 South Green Street
Sonora, CA 95370

The consultant's name and return address must also appear on the envelope. Proposal submittals may also be hand delivered to the TCTC office, Third Floor, 48 W. Yaney Avenue, Sonora, California 95370.

Qualifications submittals will be received only at the address shown above, and must be received by the time indicated. It is the sole responsibility of the consultant to send or deliver its proposal submittal so that it is received by the time and date required, regardless of postmark. Any proposal submittal received after said time and/or date or at a place other than the stated address, cannot be considered and will not be accepted. No e-mailed or facsimile qualifications submittals will be considered. The TCTC time stamp shall be considered the official timepiece for the purpose of establishing the actual receipt of qualifications submittals.

ADDENDA ACKNOWLEDGMENT

(To be submitted with qualifications packet)

Receipt of the following addenda is hereby acknowledged:

Addendum No. _____ Proposer's Initials _____

Addendum No. _____ Proposer's Initials _____

Addendum No. _____ Proposer's Initials _____

Addendum No. _____ Proposer's Initials _____

Draft Agreement for Professional Services
(Central Sierra ZEV Readiness Plan)

This Agreement ("Agreement") is made and entered into this _____ day of _____, 2018 by and between the Tuolumne County Transportation Council ("TCTC"), a California joint powers authority, and _____, a *California based company or a (identify state) based (company or corporation) licensed to do business in the State of California*, ("Consultant").

1. Agreement Documents

1.01 The total agreement between the parties consists of this Agreement and the following additional documents, copies of which are attached hereto and incorporated herein by this reference Exhibit A-C:

A. Standard Insurance Requirements.

B. TCTC's Request for Proposals, dated (October 12, 2017), including Addenda, if any.

C. Consultant's Proposal, Scope of Work, Rate Schedule and Project Schedule, as accepted by the TCTC.

In the event of a conflict or ambiguity arising between such documents or any term therein, the document executed later in time shall prevail over the document executed earlier in time. Notwithstanding the above, in the event of a conflict or ambiguity between the Consultant's Proposal and any other Agreement Document, the other Agreement Document will control.

2. Recitals

2.01 The TCTC desires to enter into an agreement to produce a (Central Sierra Zero Emission Vehicle (ZEV) Readiness Plan); and,

2.02 The TCTC has determined (Central Sierra ZEV Readiness Plan) requires the need for professional services; and,

2.03 Consultant has responded to the TCTC's Request for Proposals soliciting proposals to (Central Sierra ZEV Readiness Plan) hereinafter referred to as the "Project;" and,

2.04 Consultant hereby represents that it is in the business of, and fully qualified in, the field of conducting (Central Sierra ZEV Readiness Plan); and is fully willing and able to perform the work described in the Scope of Work, Exhibit B, of this Agreement, and with the level of service and quality of work specified herein. The TCTC awarded this Agreement in reliance on such representations, and on Consultant's particular skills, experience and abilities as represented by Consultant in its Proposal; and,

- 2.05** The TCTC and Consultant intend to enter into an agreement for the furnishing of certain articles and services for the consideration hereinafter set forth.

The TCTC and Consultant, for the consideration hereinafter described, mutually agree as follows:

- 3. Scope of Work:** Consultant agrees to complete the Project pursuant to the Scope of Work of this Agreement, attached hereto as Exhibit B, and the Agreement Documents. The TCTC agrees to compensate Consultant as specified herein below and accordance with the Request for Proposals, the Proposal and all such other documents referred to herein and made a part of hereof by specific reference.
- 4. Effective Date/Term:** This Agreement shall be effective from the date of execution. The term of the Agreement shall extend from the date TCTC issues a notice to proceed and shall continue until completion of the tasks as identified within the Scope of Work (Exhibit B). Consultant shall not commence work prior to the date a written Notice to Proceed is issued by the TCTC.
- 5. Commencement/Completion of Work:** The Consultant agrees to commence work upon execution of this Agreement and receipt of a written notice to proceed from the TCTC Executive Director and perform and complete the project in compliance with the Scope of Work, Exhibit B, and Project Schedule in Exhibit C.
- 6. Suspension, Delay or Interruption of Work:** The TCTC may suspend, delay or interrupt the services of the Consultant for the convenience of the TCTC. In the event of force majeure or such suspension, delay or interruption, an equitable adjustment in the Project's schedule, commitment and cost of Consultant's personnel and sub-consultant, and Consultant's compensation will be made.
- 7. Additional Services:** For additional services not outlined in Section 3 above, a separate Scope of Work describing the scope, schedule, fee and work products will be negotiated by the TCTC and the Consultant and approved as written amendments to this Agreement prior to any additional work effort being commenced upon.
- 8. Professional Standards:** Consultant warrants and guarantees that the work provided under this Agreement shall be performed and completed in a professional manner. All services shall be performed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and any sub-consultant are engaged.
- 9. Performance:** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory accomplishment of the Consultant's obligations under this Agreement. Performance of services shall comply with the schedule set forth in the Agreement Documents. A time extension may be granted in the event that acts or omissions by the TCTC cause delay. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

- 10. Work Standard:** The TCTC has relied upon the professional training and ability of the Consultant to perform the services hereunder as a material inducement to enter into this Agreement. The Consultant shall, therefore, provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by the Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in the Consultant's field of expertise. The Consultant shall be responsible for ensuring any approved sub-consultant adheres to this same work standard.
- 11. Personnel:** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Consultant shall provide all staff necessary to completion of services under this Agreement. The Consultant's Project Team identified in their Proposal shall be the Project Team for the duration of the project unless TCTC agrees to accept replacement personnel. In the event that the TCTC, at its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Consultant to perform services pursuant to this Agreement because of their incompetence, Consultant shall remove any such person(s) immediately upon receiving notice from the TCTC of the desire of the TCTC for the removal of such person(s).
- 12. Independent Contractor:** In providing the services as set forth in the Agreement Documents, Consultant shall act as an independent contractor and not as an employee of the TCTC. In accordance with that relationship, Consultant shall assume all responsibility for its employees for Federal and State income tax withholding, FICA, SDI and any other deductions from income that Consultant is properly required to make as an independent contractor.
- 13. Administration of Agreement:** Consultant's compliance with this Agreement shall be supervised and administered by the TCTC through the office of the Executive Director. This paragraph shall not relieve Consultant of any obligation or liability undertaken by virtue of this Agreement.
- 14. Written Notification:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class United States mail. Any such notice, demand, request, consent, approval or communication shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of depositing in the United States mail box if mailed as provided in this section.

If to TCTC:

Tuolumne County Transportation Council
Darin Grossi, Executive Director
2 South Green Street
Sonora, CA 95370
dgrossi@co.tuolumne.ca.us

If to Consultant:

(Insert Consultant information)

15. Consents and Agreements: Any and all consents and agreements provided for or permitted by this Agreement shall be in writing, and a signed copy thereof shall be filed and kept with the books of this Agreement.

16. Signature Authority

16.01 The Executive Director or his designee shall have authority on behalf of the TCTC to sign Agreement amendments and other documents related to this Agreement.

16.02 Consultant certifies that the following person(s) has (have) authority to sign Agreement amendments and other documents related to this Agreement on behalf of Consultant. Written certification of the signatory authority of the following persons shall be provided by the Consultant to the TCTC prior to execution of this Agreement.

Name

Title

17. Insurance Requirements: Consultant and/or any sub-consultant shall provide a Certificate of Insurance as proof of a policy of insurance satisfactory to the TCTC evidencing that Consultant and/or sub-consultant maintains insurance that meets the requirements included in Exhibit A, "Standard Insurance Requirements," of this Agreement.

18. Workers Compensation

18.01 Consultant shall comply with the provisions of the Workers' Compensation and Insurance Law of the State of California.

18.02 The TCTC shall not be responsible for providing Workers' Compensation insurance or any other protective insurance coverage for the Consultant that is based upon the relationship of employer and employee.

19. Compensation

19.01 Consultant will be reimbursed for actual costs incurred by Consultant in the performance of work directly related to this Agreement pursuant to the Scope of Work (Exhibit B) and Rate Schedule (Exhibit C). Consultant will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for through an amendment to this Agreement. In the event that the TCTC determines that a change to the work from that specified in this Agreement is required, the Agreement term or allowable reimbursable costs shall be adjusted through an amendment to this Agreement to accommodate the changed work. The maximum total cost as specified in Article 19.02 shall not be exceeded unless authorized through an amendment to this Agreement.

- 19.02** Progress payments will be made monthly in arrears based upon the work completed by task at the close of the billing period and allowable incurred costs. The total cost upon project completion is not to exceed \$170,387. Consultant will include with each progress payment request a monthly written progress report for work completed, as described in Article 20, Reporting Requirements, of this Agreement. Progress payment requests shall be based on the amount of work completed per task in accordance with Exhibit B, Scope of Work, and shall be billed in accordance with the Rate Schedule included in Exhibit C. Progress payment requests and monthly progress reports shall be reviewed and approved by the TCTC Executive Director prior to processing payments. Progress payments will be limited to 90% of the budget for the tasks completed. The 10% retention will be released upon completion, presentation and approval of the final Project.
- 19.03** Consultant will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by the TCTC Executive Director of itemized invoices. Payment of invoices can usually be expected within 30 calendar days of receipt and approval. Invoices shall be submitted no later than 45 calendar days after the performance of work for which Consultant is billing. The final invoice should include a summary of the total expenditures, final amount due, and final report on the work completed pursuant to this Agreement. Payment of the final invoice will be processed once the Project has been formally approved by the TCTC.
- 19.04** No payment will be made prior to approval of any work, nor for any work performed prior to execution of this Agreement and a Notice to Proceed issued by the TCTC.
- 19.05** If Consultant fails to submit the required deliverables according to the approved schedule and Scope of Work, TCTC shall have the right to delay payment or terminate this Agreement in accordance with the provisions of Article 38, Termination.
- 20. Reporting Requirements:** The Consultant will submit to the TCTC written progress reports at least once a month. The report should be sufficiently detailed for the Executive Director to clearly determine the status of the work schedule and outputs, the percentage of work completed by task and any other relevant factors to completion of the Project in a timely manner. The report should also sufficiently address any potential or existing difficulties or special problems encountered so that remedies can be developed as soon as possible. Consultant shall meet with the Executive Director, as needed, to discuss progress on the Project.
- 21. Maintenance of Records/Audit Rights:** Consultant shall maintain books, records, documents and other evidence directly pertinent to work under this Agreement in accordance with generally accepted accounting principles and practices. Consultant shall also maintain for a period of at least three (3) years from the expiration date of this Agreement the financial information and data used by Consultant to determine charges and costs related to work performed under this Agreement. The TCTC, and any Federal or State authorized representatives, shall have the right to inspect and audit Consultant's accounting books, records and documents during normal business hours. Such records shall be turned over to the TCTC upon request.

- 22. Work Product Property of the TCTC:** All plans, specifications, reports, computer files and other work products prepared by Consultant pursuant to this Agreement shall become the property of the TCTC. The TCTC's use of documents produced under this Agreement and/or supporting information or calculations other than as intended hereunder shall be at the TCTC's sole risk.
- 23. Release of Documents and Information:** Services provided within the scope of this Agreement are for the exclusive use of the TCTC. The TCTC and Consultant agree that all data, plans, specifications, reports, computer files and other work products will not be released to third parties by Consultant without the prior written consent of the TCTC.
- 24. Covenant Against Contingent Fees:** The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee or sub-consultant working for the Consultant, as provided for in the Consultant's Proposal (as accepted by TCTC), to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than a bona fide employee, a fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon, resulting from the award or making this Agreement. For breach or violation of this warranty, the TCTC shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
- 25. Covenant Against Gratuities:** Consultant covenants that it has not offered or given gratuities in the form of entertainment, gifts or otherwise to any member, officer or employee of the TCTC with a view toward securing favorable treatment in the award, modification or performance evaluation of this Agreement. For breach or violation of this covenant, the TCTC shall have the right to cancel this Agreement without any liability to Consultant.
- 26. Restrictions on Lobbying:** Consultant shall not pay any person or organization to influence or attempt to influence an officer or employee of any federal, state or local agency in connection with awarding this Agreement or any other federal award from which funding for this Project is originally derived, consistent with 31 U.S.C. section 1352.
- 27. Transfer of Agreement:** This Agreement is made in reliance by TCTC upon the qualifications and responsibility of Consultant. The performance by Consultant of this Agreement may not be assigned, sublet, transferred or in any way subcontracted, except upon the prior written approval of the TCTC.
- 28. Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under subcontract, including procurement of material or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this Agreement relative to civil rights requirements. Consultant shall provide the TCTC documentation of such notifications.

Consultant agrees to refrain from awarding any third party subcontract without prior written approval by TCTC. Payment for such services shall be the responsibility of the Consultant.

29. Third Party Obligations: Consultant shall be solely liable to third parties with whom it enters into contracts to effectuate the purpose of this Agreement. Consultant shall pay directly such parties for all amounts due under said arrangement. Consultant shall indemnify, defend and hold the TCTC harmless from any and all claims and liabilities arising from any third party contracts. Consultant shall exert its best efforts to prevent any loss to the TCTC from the failure of proper performance of any third party.

30. Conflicts of Interest: Consultant shall not enter into any Agreement, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project, in which any member, officer or employee of Consultant or the TCTC, during the Project term and for one year thereafter, has any direct or indirect interest. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of the Project term any such interest, and if such interest is immediately disclosed to Consultant and such disclosure is entered upon the minutes of Consultant's written report to the TCTC of such interest, Consultant, with the prior written approval of the TCTC, may waive the prohibition contained in this subsection; provided that any such present member, officer or employee shall not participate in any action by Consultant or the TCTC relating to such Agreement, subcontract or arrangement.

31. Debarment and Suspension Certification

31.01 Consultant certifies under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (non-procurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer or 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 three (3) years; does not have a proposed debarment pending; and has not been indicted, 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 three (3) years. Any exceptions to this certification must be disclosed to the TCTC.

31.02 Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency and dates of action.

32. Civil Rights Requirements

During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (collectively, "Consultant") agree as follows:

- A. Compliance with Regulations:** The Consultant shall comply with regulations relative to nondiscrimination in federally assisted programs of the Department of Energy , Title 10, Code of Federal Regulations, Part 1040, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this Agreement.
- B. Nondiscrimination:** The Consultant, with regard to the work performed by it during the Agreement term shall not discriminate on the grounds of race, color, sex, national origin, religion, age or disability in the selection and retention of sub-consultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the Agreement covers a program set forth in Appendix B of the REGULATIONS.
- C. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation by the Consultant for work to be performed under a sub-agreement, including procurements of materials or leases of equipment, each potential subcontractor, sub-consultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color or national origin. Consultant shall provide the TCTC documentation of such notifications.
- D. Information and Reports:** The Consultant shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to Consultant's books, records, accounts, other sources of information, and its facilities as may be determined the TCTC, State or the California Energy Commission (CEC) to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to the TCTC, State or CEC, as appropriate, and shall set forth what efforts Consultant has made to obtain the information.
- E. Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the TCTC and/or State shall impose such Agreement sanctions as they or the CEC may determine to be appropriate, including, but not limited to:
- 1) Withholding of payments due to Consultant under this Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - 2) Cancellation, termination or suspension of this Agreement, in whole or in part.
- F. Incorporation of Provisions:** Consultant shall include the provisions of these paragraphs (A) through (F) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. Consultant shall take such action with respect to any sub-agreement or procurement as the TCTC, State or the Department of Energy

may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, Consultant may request the TCTC and/or State enter into such litigation to protect the interest of the TCTC and/or State, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

33. Health, Safety, Fire and Environmental Protection

The Consultant and any sub-consultant or agent shall comply with Federal, State and local requirements pertaining to safety, health, fire and environmental protection.

The Consultant shall comply with all applicable provisions of the California Occupational Safety and Health Act of 1973, including any amendments thereto, and the rules, standards, orders and regulations prescribed by the Occupational Safety and Health Standards Board and the Division of Industrial Safety in the California Department of Industrial Relations. Consultant shall further comply with all other applicable safety laws, ordinances and regulations.

In the event standards conflict, the standard providing the highest degree of protection and not in violation of any other applicable standard or law shall prevail.

34. Federal, State and Local Laws: Consultant warrants and covenants that it shall fully and completely comply with all applicable Federal, State and local laws and ordinances, and all lawful orders, rules and regulations issued by any authority with jurisdiction in all aspects of its performance of this Agreement.

35. Governing Law: 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.

36. Indemnification

To the extent permitted by law, Consultant does hereby assume liability for, and agrees to indemnify, defend, save, protect and hold harmless the TCTC, its elected and appointed officials, officers, employees, agents and volunteers (collectively, "TCTC") from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury or death (collectively, "Liability") arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Consultant, its officers, employees, agents, sub-consultants, consultants, or any person under its direction or control and will make good to and reimburse TCTC for any expenditures, including reasonable attorney's fees, the TCTC may make by reason of such matters and, if requested by TCTC, will defend any such suits at the sole cost and expense of Consultant. Consultant's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the TCTC or any other person; provided, however, that Consultant shall not be required to indemnify TCTC for the proportion of Liability a court determines is attributable to the active negligence or willful misconduct of the TCTC.

If such indemnification becomes necessary, the legal counsel for the TCTC shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the TCTC. This indemnification clause shall survive the termination or expiration of this Agreement.

The parties shall establish procedures to notify the other party where appropriate of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnification provision. The parties shall cooperate in the defense of such actions brought by others with respect to the matters covered in this indemnity. Nothing set forth in this Agreement shall establish a standard of care for, or create any legal rights in, any person not a party to this Agreement.

37. Sanctions for Noncompliance

In the event of the Consultant's noncompliance with the provisions of this Agreement, the TCTC shall impose such Agreement sanctions as it may determine to be appropriate, including, but not limited to:

- A. Withholding of payments due to the Consultant under this Agreement until the Consultant complies to the TCTC's satisfaction, and/or
- B. Cancellation, termination or suspension of this Agreement, in whole or in part.

38. Termination of Agreement

38.01 Acts Constituting Termination: This Agreement shall commence on the date of execution and shall continue until the earlier of expiration or:

- A. Completion of the Project pursuant to Scope of Work, Exhibit B, as approved by TCTC;
- B. Voluntary or involuntary transfer or assignment by either party hereto without the prior written consent of the other party of any of the rights, titles or obligations set forth in this Agreement;
- C. Mutual agreement of the parties hereto to terminate this Agreement;
- D. Any default or breach, as specified in Section 39 of this Agreement, by either party hereto which has not been cured within thirty (30) days after notice of such default by the other party, or such later time as is reasonably necessary if the default cannot be reasonably cured within such thirty (30) day period;
- E. Termination as provided in this Article.

38.02 TCTC may terminate this Agreement for convenience upon five (5) calendar days' written notice to Consultant.

- 38.03** Consultant shall be paid for all work performed through the date of termination at the rates set forth in the Rate Schedule in Exhibit C, and subject to the proportion of work completed and approved by the Executive Director.

Upon termination of this Agreement, all affairs undertaken or conducted pursuant to this Agreement shall be wound up and debts paid.

39. Breach

If Consultant materially breaches the terms of this Agreement, the TCTC shall have the following remedies:

- A. Immediately terminate the Agreement with Consultant;
- B. Complete the unfinished work under this Agreement with a different consultant;
- C. 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; and/or
- D. Allow the Consultant five (5) business days to diligently complete the correction.

40. Waiver: A waiver by the TCTC of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure. No failure on the part of the TCTC to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

41. Disputes: It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Tuolumne, State of California. The prevailing party shall be entitled to its costs, including reasonable attorneys' fees, in any legal action to enforce the terms of this Agreement.

42. Amendments: This Agreement may be amended or modified in any way by an instrument in writing, stating the amendment or modifications, signed by the parties hereto.

43. Survivorship: Any responsibility of Consultant for warranties, insurance or indemnity with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.

44. Severability: If any term, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall remain in effect.

45. Successors and Assigns: This Agreement is binding upon the TCTC and the Consultant and their successors. Except as otherwise provided herein, neither the TCTC nor the Consultant shall assign, sublet

or transfer its respective interest in this Agreement or any part thereof without the prior written consent of the other.

- 46. Succession:** This Agreement shall be binding on and inure to the benefit of heirs, executors, administrators and assigns of the parties hereto.
- 47. Third Party Beneficiary:** Nothing in this Agreement is intended to, nor shall anything in this Agreement be construed to, benefit any third party.
- 48. Ambiguities:** The parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. Both parties have had the opportunity to engage counsel and negotiated the term of the Agreement. No ambiguity shall be presumed to be construed against either party.
- 49. Integration:** The Agreement Documents embody the entire agreement of the parties in relation to the scope of services herein described, and no other understanding whether verbal, written or otherwise exists between the parties.
- 50. Relationship Between the Parties:** Nothing in these Agreement Documents is intended to create, and nothing herein shall be considered as creating, any partnership, joint venture or agency relationship between the TCTC and Consultant.
- 51. Modification:** No waiver, alteration, modification or termination of this Agreement shall be valid unless made in writing and signed by the authorized parties hereof.
- 52. Headings and Subtitles:** Headings and subtitles to the Articles of this Agreement have been used for convenience only and do not constitute matter to be considered as interpreting this Agreement.
- 53. Sole and Only Agreement:** This instrument contains the sole and only agreement of the parties and correctly sets forth the rights, duties and obligations of each party to the other as of this date. Any prior agreements, policies, negotiations and/or representations are expressly set forth in this Agreement.

54. Acceptance of Agreement: The undersigned, having read the foregoing, accept and agree to the terms set forth therein. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the administrators for the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties thereto.

In witness hereof, the parties have caused their authorized representatives to execute this Agreement as of the date first written above.

For the Consultant:

Legal Name of Firm

Signature

Street Address

Name (typed)

City, State, Zip Code

Title

For the TCTC:

Tuolumne County Transportation Council

Approval Recommended:

Chair of the TCTC

Executive Director

Date: _____

Approved as to Legal Form:

TCTC Legal Counsel

By: _____

Date: _____

Exhibit A

Standard Insurance Requirements

Consultant at its own expense, shall procure, and maintain for the duration of the Agreement, the following insurance policies and endorsements with insurers licensed in the State of California possessing a Best's rating of no less than A:VII:

- A. Workers' Compensation Coverage - Worker's Compensation Insurance and Employer's Liability Insurance for employees in accordance with the laws of the State of California (including requiring any authorized sub-consultant to obtain such insurance for its employees).
- B. General Liability Coverage - Commercial general liability insurance with a minimum liability limit per occurrence of one million dollars (\$1,000,000) for bodily injury and one hundred thousand dollars (\$100,000) for property damage. If a commercial general liability insurance form or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Coverage shall be included for premises, operations and broad form contractual.
- C. Automobile Liability Coverage - Automobile liability insurance with a minimum liability limit per occurrence of one million dollars (\$1,000,000) for bodily injury and one hundred thousand dollars (\$100,000) for property damage, and including coverage for owned, hired and non-owned vehicles.
- D. Professional Liability Coverage - Professional errors and omissions liability for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, sub-consultants, or sub-consultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) per claim with an aggregate limit of five million dollars (\$5,000,000).
- E. Policy Endorsements: Each general liability and automobile liability insurance policy shall be endorsed with the following specific provisions:
 - 1) The TCTC, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insured ("TCTC additional insured").
 - 2) This policy shall be considered, and include a provision it is, primary as respects the TCTC additional insured, and shall not include any special limitations to coverage provided to the TCTC additional insured. Any insurance maintained by the TCTC, including any self-insured retention the TCTC may have, shall be considered excess insurance only and shall not contribute with it.

Exhibit A

Standard Insurance Requirements (continued)

- 3) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 - 4) The insurer waives all rights of subrogation against the TCTC additional insured.
 - 5) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the TCTC additional insured.
 - 6) The insurance policy and endorsements shall not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days' written notice has been given to the Executive Director by registered mail, return receipt requested, at 2 South Green Street, Sonora, CA, 95370.
- F. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Executive Director. At the TCTC's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- G. Evidence of Insurance: Consultant shall provide policies and certificates of insurance with original endorsements or other evidence of insurance coverage as required by the Executive Director. Required evidence of insurance shall be filed with the Executive Director on or before commencement of performance of this Agreement. Current evidence of insurance shall be kept on file with the Executive Director at all times during the term of this Agreement.
- H. Unsatisfactory Policies: If at any time any of the policies or endorsements be unsatisfactory as to form or substance, or if an issuing company shall be unsatisfactory, to the Executive Director, a new policy or endorsement shall be promptly obtained and evidence submitted to the Executive Director for approval.
- I. Failure to Comply: Upon failure to comply with any of these insurance requirements, this Agreement may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.

Exhibit C

Budget Template (see Excel Spreadsheet)