

SAMPLE CONTRACT
PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
NEVADA COUNTY TRANSPORTATION COMMISSION
AND

TO PREPARE
FISCAL AND COMPLIANCE AUDITS

This Agreement by and between the Nevada County Transportation Commission (referred to as "NCTC") and _____, (referred to as the "Consultant"), in consideration of the mutual promises, covenants, and conditions set forth, the parties do agree as follows:

1. **Purpose and Scope:** The purpose of this Agreement is to provide a contract for professional services to conduct a careful and complete examination of the accounts and records of NCTC. The fiscal and compliance audit (referred to as the "Audit") will include the Local Transportation Fund, the State Transit Assistance Fund, the Regional Surface Transportation Program Fund, the Regional Transportation Mitigation Fee Fund, the Public Transportation Modernization, Improvement, and Service Enhancement Account Fund, the County of Nevada, the cities of Grass Valley and Nevada City, the Town of Truckee, and Gold Country Stage as claimants for transit/paratransit, pedestrian/bicycle, and streets and roads purposes. Consultant will conduct the audits to meet and/or exceed all applicable requirements and standards, including: Section 99245 of the Public Utilities Code and Sections 6661, 6662, 6663, 6664, 6666, 6667, and 6751 of the California Code of Regulations (Title 21, Chapter 3, Subchapters 2 and 2.5); applicable auditing standards set forth in Government Auditing Standards, issued by the Comptroller General of the United States; Statements on Auditing Standards published by the American Institute of Certified Public Accounts; OMB Circular A-133 Audits of States, Local Governments and Nonprofit Organizations June 2003 and June 2007, and any amendments; and California State Controller's Office, California Local Agencies Internal Control Guidelines (see Assembly Bill No. 804, 9/27/17).

Consultant will provide services as set forth in Exhibit "A" NCTC's "Request for Proposal" and Exhibit "B" Consultant's proposal entitled, "Nevada County Transportation Commission Proposal for Independent Audit Services for the Years Ending June 30, 2018 through June 30, 2020." In the event of a conflict between Exhibit "A" and Exhibit "B," Exhibit "A" will control. In the event a single audit is required pursuant to OMB Circular A-133, a contract amendment will be required pursuant to Section 3 below.

2. **Engagement of Consultant:** NCTC hereby agrees to engage Consultant, and Consultant hereby agrees to perform the services required to complete the Audit. The services of Consultant are described in Exhibit "A" and Exhibit "B" which are herein incorporated as part of the Agreement.

3. **Scope of Services:** Consultant will do, perform, and carry out the services as set forth in Exhibit "A" and Exhibit "B" in accordance with this Agreement. No changes to Exhibit "A" and Exhibit "B" or to this Agreement will be made without the written agreement of

NCTC and Consultant. In the event of a conflict between Exhibit "A" and Exhibit "B," Exhibit "A" will control.

Upon completion of the final fiscal and compliance audits, and not later than December 30th of each respective year, the final audit reports for each audit will be submitted by Consultant to the NCTC.

Consultant will provide one (1) electronic copy of each draft audit report to the NCTC and one (1) electronic copy to the agency subject to the audit.

Consultant will provide one (1) electronic copy of each final audit report to the NCTC and one (1) electronic copy to the agency subject to the audit. In addition, Consultant will provide ten (10) bound hardcopies of each final audit report to the NCTC, and two (2) bound hardcopies to the agency subject to the audit, if requested.

Subject to approval by the NCTC, Consultant will submit the necessary reports and data to the California State Controller, as required by state law.

4. **Data to be Furnished to Consultant:** All information, data, reports, records and maps as are existing, available, and necessary for carrying out the Audit will be furnished to Consultant without charge by NCTC, and NCTC will cooperate with Consultant in every way possible during all phases of the Audit. All data prepared, developed, or assembled under this Agreement will be the property of NCTC.

Consultant will have access to and will be permitted to use figures, tabulations, statistical schedules, and other data previously assembled or prepared by the County Auditor, the County Treasurer, or the personnel of their respective offices for county purposes. However, such statements will not be copied verbatim or used as a representation of results of services in the audit report. This does not preclude the use of these statements in the audit report where acknowledgement is made that they were prepared by the County Auditor or the County Treasurer. Neither the County Auditor or the County Treasurer, nor any member of their respective staffs will be employed by Consultant in connection with this audit, nor will the County Auditor, the County Treasurer, or any personnel in their respective departments be called upon to perform any service beyond their regular duties.

5. **Personnel:** Consultant represents that it has, or will obtain at its own expense, all personnel and/or subcontractors required in performing the services under this Agreement. Such personnel will not be employees of NCTC.
6. **Standard of Quality:** All work performed by Consultant under this Agreement will be in accordance with all applicable legal requirements and will meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.
7. **Audit Representative:** Consultant and NCTC will each designate a representative who will be responsible for coordinating the efforts of the respective party with regard to the performance of the work as set forth under this Agreement. The Audit representative for NCTC will be Dale D. Sayles. The Audit representative for Consultant will be _____, CPA. The Audit representative may be changed upon mutual agreement by NCTC and Consultant.

8. **Subcontracting:** Consultant will be as fully responsible to NCTC for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as Consultant is for the acts and omissions of persons directly employed.

All of the services required will be performed by Consultant and its subcontractors as set forth in Exhibit "A," Exhibit "B," and any amendment thereto. All personnel engaged in the Audit will be fully qualified and will be authorized under state and local law to perform such services. None of the work or services covered by this Agreement will be subcontracted, except as proposed in Exhibit "A," Exhibit "B," and any amendments thereto without the written approval of NCTC prior to the performance of any work.

Consultant will supervise all personnel or subcontractors selected for this Audit. Should the services of any personnel or subcontractors be unsatisfactory to NCTC, such personnel or subcontractor will be removed from the Audit immediately upon receipt of written notice from NCTC.

9. **Time of Performance:** The services of Consultant are to commence as soon as practical after the execution of this Agreement and will be undertaken and completed in such sequence as to assure their expeditious completion in light of the purpose of this contract. All specified elements of the Agreement and the Exhibits attached will be completed and submitted to NCTC and the State of California Controller's Office by December 30th of each applicable year, or earlier if required by statute.

In the event a delay is incurred through no fault on the part of Consultant, Consultant will present to NCTC a written request for an extension of time and/or change(s) in the Work Program necessary for the performance of this Agreement. Approval of such time and/or Work Program change(s) will not be unreasonably withheld and such additional time as NCTC approves will be added to the time otherwise specified in this Agreement for completion of this Audit and made a part of this Agreement by written amendment.

Consultant will not be responsible for damages or be in default by reason of delays in performance caused by NCTC, governmental acts or failure to act, labor disputes, accidents, acts of God and other delays unavoidable or beyond Consultant's control or due to errors or omissions contained in material, data, or information supplied by NCTC.

Within ten (10) business days of experiencing a delay as a result of one of the factors listed in this paragraph, Consultant will provide a written notice to NCTC of the nature of the delay and specific facts which caused the delay. NCTC reserves the right to terminate the contract in accordance with Section 12 in the event of unavoidable delays.

10. **Compensation:** Consultant agrees to complete each audit, and NCTC agrees to pay Consultant, as compensation in full for all services performed by Consultant pursuant to this Agreement, sums not to exceed the following amounts: Audits of Year Ending June 30, 2018, _____ (\$xx,xxx); Audits of Year Ending June 30, 2019, _____ (\$xx,xxx); Audits of Year Ending June 30, 2020, _____ (\$xx,xxx). Consultant will not perform work, nor be required to perform work, outside those services specified in this Agreement which would result in billings in excess of the maximum amounts listed above per fiscal year, without the prior written agreement of both parties. These amounts include all compensation including fees, expenses, travel, and all other costs incurred.

- a. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., (any subcontractors and subrecipients will refer to the *Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments*) will be used to determine the allowability of individual items of cost.
 - b. Consultant also agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
 - c. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.; *Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments*; or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Consultant to NCTC. Disallowed costs must be reimbursed to NCTC within sixty (60) days unless NCTC approves in writing an alternative repayment plan.
 - d. Consultant and subcontractors will establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) which segregates and accumulates the costs of work elements by line item and produces quarterly reports which clearly identify reimbursable costs and other expenditures.
 - e. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, will contain all of the provisions of Sections 10 (a) through (c) above.
11. **Method of Payment:** Consultant will bill NCTC for time and materials. Man hours by task and all other costs will be itemized in the invoice. Consultant may bill for services performed under this contract on a monthly basis. Payment by NCTC to Consultant will be made within 30 days after receipt of Consultant's invoice and acceptance of the work to date. However, NCTC, at its own discretion, may withhold up to ten percent (10%) of each invoice until the successful completion of the scope of work and the delivery and acceptance by NCTC of all final products.

NCTC will hold retainage from Consultant and will make prompt and regular incremental acceptances of portions, as determined by NCTC of the contract work and pay retainage to Consultant based on these acceptances. Consultant or subcontractor will return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by NCTC. Any delay or postponement of payment may take place only for good cause and with NCTC's prior written approval. Any violation of these provisions will subject the violating Consultant to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement will not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Consultant or subcontractor in the event of: a dispute involving late payment or nonpayment by Consultant; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

12. **Termination of Agreement:** Upon failure of performance by the other party, or at NCTC's convenience, either party may terminate this Agreement upon ten (10) days written notice to the other party. If the Agreement is to be terminated, Consultant will be paid the amount due for work properly completed and approved by NCTC, up to the date of the notice of termination, based on the actual costs to Consultant attributable to the Audit, less any compensation to NCTC for damages suffered as a result of Consultant's failure to comply with the terms of this Agreement. If this Agreement is terminated because the work of Consultant does not meet the terms or standards specified in this Agreement, then NCTC will be obligated to compensate Consultant only for that portion of Consultant's services which is of benefit to NCTC.

Upon receipt of written notice from NCTC that this Agreement is terminated, Consultant will submit an invoice to NCTC for an amount which represents the total cost of services actually and properly performed that are attributable to the Audit to the date of notice, for which Consultant has not previously been compensated. Upon approval of this invoice by NCTC, Consultant will be paid the sum due, and NCTC will be under no further obligation to Consultant, monetary or otherwise.

Termination and payment pursuant to this Section will not waive, limit or otherwise affect any cause of action for breach of contract, which NCTC may possess.

In the event of termination by either party, all data will become the property of NCTC subject to the provisions of Section 32.

13. **Interest of Members of NCTC and Others:** No officer, member, or employee of NCTC and no member of the governing body, and no other public official of the governing body of the locality or localities in which the Audit is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Audit, will participate in any decision relating to this Agreement which affects his or her personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds from it. In addition, Consultant will notify NCTC of any such direct or indirect personal or pecuniary interest prior to entering into this Agreement, or if discovered after execution of the Agreement, immediately upon learning of such interest.
14. **Assignability:** Consultant will not assign any interest in this Agreement, and will not transfer any interest in the same (whether by assignment or novation), without the prior written consent of NCTC thereto; provided, however, that claims for money due or to become due to Consultant from NCTC under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval provided there is no dispute as to the amount of funds due to Consultant. Notice of any such assignment or transfer will be furnished promptly to NCTC.
15. **Covenant Against Contingent Fees:** Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, 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, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or

formation of this Agreement. For breach or violation of this warranty, NCTC will have the right to annul this Agreement without liability, or at 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.

16. **Findings Confidential:** Any reports, information, data, etc. given to, prepared by, or assembled by Consultant will be held as confidential, and will not be made available to any individual or organization by Consultant without the prior written approval of NCTC.
17. **Copyright:** No reports, maps, or other documents produced in whole or in part under this Agreement will be the subject of an application for copyright by or on behalf of Consultant.
18. **Availability of Records:** Consultant will document the results of the work to the satisfaction of NCTC, and if applicable, the State and U.S. Department of Transportation (DOT). Such documentation may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of contract objectives.

Consultant and its subcontractors will maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, and make such materials available at their respective offices at all reasonable times during the contract period and for four (4) years from the date of final payment to Consultant, or four (4) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement, whichever is later. Such materials will be available for inspection by authorized representatives of NCTC, or copies will be furnished if requested. Consultant agrees to provide any requested information and will permit NCTC or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of interviewing employees and inspecting or copying such materials. The U.S. DOT, Caltrans, the Comptroller General of the United States, or any authorized representatives of these agencies, will have access to any books, documents, papers and records of Consultant which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and/or transcriptions.

19. **Applicable Laws:** Consultant agrees to conduct and execute the Audit in compliance with all applicable local, state and federal laws, codes, ordinances, regulations, orders, and decrees. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775. Consultant will keep itself fully informed of and will observe and comply with and will cause any and all persons, firms, or corporations employed by it or under it to observe and comply with all state and national laws and county and municipal ordinances, regulations, orders and decrees which in any manner affect those engaged or employed in the services described by this Agreement or the material used or which in any way affect the conduct of the work.

Consultant warrants and represents to NCTC that Consultant will, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals that are legally required for Consultant to practice its profession or are necessary and incident to the performance of the services and work Consultant performs under this Agreement. Consultant will provide written proof of such licenses, permits, insurance and approvals upon request by NCTC. NCTC is not

responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

20. **Insurance:** Consultant will maintain, at Consultant's own expense during the term hereof, insurance with respect to Consultant's business, the premises and all activities or services in the performance of this Agreement, of the types and in the minimum amounts described generally as follows:
- a. Full Worker's Compensation covering all employees of Consultant as required by law in the State of California, and Employers' Liability Coverage of \$1,000,000. Consultant acknowledges that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code and it certifies that it will comply with such provisions before commencing the performance of the work of this contract. A copy of the certificates evidencing such insurance will be provided to NCTC prior to commencement of work.
 - b. Comprehensive Public Liability Insurance or Comprehensive Liability Insurance (Bodily Injury and Property Damage) of \$1,000,000.00 combined single limit per occurrence, including, but not limited to, endorsements for the following coverages: personal injury, premises-operations, products and completed operations, blanket contractual, and independent contractor's liability. If Comprehensive Liability Insurance or other form has a general aggregate limit, such limit will apply separately to this Audit/location or the general aggregate limit will be twice the required occurrence limit.
 - c. Comprehensive Automobile Liability Insurance (Bodily Injury and Property Damages) on owned, leased, and non-owned vehicles used in connection with Consultant's business of \$1,000,000.00 combined single limit per occurrence.
 - d. Throughout the duration of the Audit, Consultant will carry professional liability insurance in a standard form, including Errors and Omission coverage, with a company approved by NCTC. Said insurance will be written with limits of \$500,000 for each incident and \$1,000,000 in the aggregate. NCTC may waive this Section "d" at its discretion, in the event such insurance is not available for the type of service being provided by Consultant.
 - e. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions in excess of \$5,000 must be declared to and approved by NCTC.
 - f. Required Provisions: The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - (1) For any claims related to this Agreement, Consultant's insurance coverage will be primary insurance as respects NCTC, its directors, officers, employees and agents. Any insurance or self-insurance maintained by NCTC, its directors, officers, employees or agents will be in excess of Consultant's insurance and will not contribute to it.

- (2) Any failure by Consultant to comply with reporting or other provisions of the policies including breaches of warrants will not affect coverage provided to NCTC, its directors, officers, employees or agents.
 - (3) Consultant's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - g. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by NCTC.
 - h. Certificate of Insurance and Additional Insured Requirement: Consultant will furnish to NCTC an original Certificate of Insurance on a standard ACORD form, or other form acceptable to NCTC, substantiating the required coverages and limits set forth above and also containing the following statement with respect to the General Liability policy: "Nevada County Transportation Commission and its directors, officers, employees and agents, are made additional insureds, but only insofar as the operations under this Agreement are concerned."
 - i. Certified Copies of Policies: Upon request by NCTC, Consultant will immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.
 - j. Consultant's Responsibility: Nothing herein will be construed as limiting in any way the extent to which Consultant may be held responsible for damages resulting from Consultant's operations, acts, omissions, or negligence. Insurance coverage obtained in the minimum amounts specified above will not relieve Consultant of liability in excess of such minimum coverage, nor will it preclude NCTC from taking other actions available to it under this Agreement or by law, including but not limited to, actions pursuant to Consultant's indemnity obligations.
 - k. Notice: Consultant agrees that none of the required coverages set forth in this Section 20 will be suspended, voided, canceled, terminated, or reduced in coverage or limits, without thirty (30) days' prior written notice to NCTC by certified mail, return receipt requested.
21. **Indemnification**: Consultant agrees to indemnify, defend, and hold harmless, NCTC, its directors, officers, agents, and employees (the "Indemnitees") from and against any and all actions, suits, claims, demands, liabilities, damages, costs and expenses, including reasonable attorneys' fees and costs, arising out of, pertaining to, relating to, or are in any way connected with the performance of this Agreement, however caused, regardless of any negligent act of an Indemnatee, whether active or passive, excepting only such claims as may be caused by the sole active negligence or willful misconduct of an Indemnatee. Consultant will pay all costs that may be incurred by NCTC in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this Section will survive the expiration, termination or assignment of this Agreement.

22. **Governing Law and Choice of Forum:** This Agreement will be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement will be brought in the Superior Court of Nevada County.
23. **Prevailing Party:** Should any dispute arise; the prevailing party will be entitled to an award of reasonable attorneys' fees and costs.
24. **Conflict of Interest:** No consultant, subcontractor, or member of any firm proposed to be employed in the preparation of this Audit may have any past, ongoing, or potential involvement which could be deemed a conflict of interest under the Fair Political Practices Act or other law. During the term of this Agreement, Consultant will not accept any employment or engage in any consulting work that would create a conflict of interest with NCTC or in any way compromise the services to be performed under this Agreement. Consultant will immediately notify NCTC of any and all potential violations of this paragraph upon becoming aware of the potential violation.
25. **Political Reform Act Compliance:** Consultant is aware and acknowledges that certain contractors that perform work for governmental agencies are "consultants" under the Political Reform Act (the "Act") (Government Code § 81000, et seq.) and its implementing regulations (2 California Code of Regulations § 18110, et seq.). Consultant agrees that any of its officers or employees deemed to be "consultants" under the Act by NCTC, as provided for in the Conflict of Interest Code for NCTC, will promptly file economic disclosure statements for the disclosure categories determined by NCTC, to be relevant to the work to be performed under this Agreement and will comply with the disclosure and disqualification requirements of the Act, as required by law.
26. **Independent Contractor:** In performing services under this Agreement, Consultant is and will act as an independent contractor and not an employee, representative, or agent of NCTC. Consultant will have control of its work and the manner in which it is performed. Consultant expressly warrants that neither Consultant nor any of Consultant's employees or agents will represent themselves to be employees or agents of NCTC.
27. **National Labor Relations Board Certification:** Consultant, by signing this Agreement, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant's failure to comply with an order of a federal court which orders Consultant to comply with an order of the National Labor Relations Board (Public Contract Code § 10296).
28. **Americans with Disabilities Act (ADA) of 1990:** By signing this Agreement, Consultant assures NCTC that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
29. **Equal Employment Opportunity/Title VI Compliance:** Consultant will comply with Title VI of the Civil Rights Act of 1964, as amended, and with the provisions contained in 49 CFR Part 21 through Appendix C and 23 CFR 710.405 (b).
 - a. During the performance of this Agreement, Consultant and its subcontractors will not unlawfully discriminate, harass, or allow harassment, against any employee or

applicant for employment because of sex, sexual orientation, race, color, ancestry, religion, national origin, physical disability, mental disability, medical condition, age or marital status.

- b. Consultant and its subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- c. Consultant will comply with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in the Department of Labor Regulation (41 CFR Part 60), the California Fair Employment and Housing Act, and any other applicable federal and state laws and regulations relating to equal employment opportunity, including the provisions of the Fair Employment and Housing Act (Government Code § 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §§ 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- d. Solicitations for Subcontractors, including procurement of materials and equipment: In all solicitations either by competitive bidding or negotiations made by Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.
- e. Information and Reports: Consultant will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NCTC or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required of Consultant which is in the exclusive possession of another who fails or refuses to furnish this information, Consultant will so certify to NCTC or the Federal Transit Administration as appropriate, and will set forth what efforts it has made to obtain the information.
- f. Sanctions for Noncompliance: In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, NCTC will impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including but not limited to:
 - i. Withholding of payments to Consultant under the Agreement until Consultant complies, and/or,
 - ii. Cancellation, termination or suspension of the Agreement, in whole or in part.

- g. Incorporation of Provisions: Consultant will include the provision of this Section 29 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant will take such action with respect to any subcontract of procurement as NCTC or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request that NCTC enter into such litigation to protect the interests of NCTC. In addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.
 - h. Subcontracts: All subcontracts awarded will contain provisions requiring compliance with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR Part 21 through Appendix C and 23 CFR 710.405 (b) will be made applicable by reference in all subcontracts.
30. **Drug-Free Certification:** By signing this Agreement, Consultant hereby certifies, under penalty of perjury under the laws of the State of California, Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The person's or the organization's policy of maintaining a drug-free workplace;
 - (3) Any available counseling, rehabilitation, and employee assistance programs; and
 - (4) Penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee of Consultant who works under this Agreement will:
 - (1) Receive a copy of Consultant's Drug-Free Workplace Policy Statement; and
 - (2) Agree to abide by the terms of Consultant's Statement as a condition of employment on this Agreement.
31. **Union Organizing:** By signing this Agreement, Consultant hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.

- a. Consultant will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.
- b. Consultant will not meet with employees or supervisors on NCTC or state property if the purpose of the meeting is to assist, promote, or deter union organizing, unless the property is equally available to the general public for meetings.

32. **Ownership of Documents:** Original document, methodological explanations, computer programs, drawings, designs and reports generated by this Agreement will belong to and become the property of NCTC. Consultant is not liable for changes made by others or any use beyond the scope of this Agreement. Any additional copies, not otherwise provided for herein, will be the responsibility of NCTC.

It is understood that in addition to NCTC, state and federal funding agencies will have the right to reproduce, publish, or otherwise use, and authorize others to use, the information developed from federally reimbursed projects.

33. **Campaign Contribution Disclosure:** Consultant has complied with the campaign contribution disclosure provisions of the California Levine Act (Government Code § 84308) and has completed the Levine Act Disclosure Statement attached hereto as Exhibit C.

34. **Entire Agreement:** This Agreement contains the entire agreement of the parties, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreement arrangements, or understandings, oral or written, between the parties relating to the subject matter contained in this Agreement, which are not fully expressed herein. The provisions of this Agreement may be waived, altered, amended, or repealed in whole or in part only upon written consent of all parties to this Agreement.

35. **Severability:** If any term or provision of this Agreement or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

36. **Headings:** The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.

37. **Authority:** Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.

38. **Counterparts:** This Agreement may be executed in multiple counterparts, each of which will constitute an original, and all of which taken together will constitute one and the same instrument.
39. **Necessary Acts:** Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

IN WITNESS HEREOF, this Agreement between the Nevada County Transportation Commission and _____ for professional services has been executed by the parties hereto the day and year shown below.

By: _____ Date: _____
_____, Chairman
Nevada County Transportation Commission

By: _____ Date: _____
_____, CPA
Consultant Firm

Nevada County Transportation Commission Counsel, Approved as to Form

By: _____ Date: _____
Renne, Sloan, Holtzman, Sakai, LLC
A Professional Corporation

- Exhibit A: NCTC RFP
- Exhibit B: Consultant's Proposal
- Exhibit C: Levine Act Disclosure Statement

EXHIBIT C
LEVINE ACT DISCLOSURE STATEMENT

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract.

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any NCTC Commissioner(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

YES NO

If yes, please identify the Commissioner(s):

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any NCTC Commissioner(s) in the three months following the award of the contract?

YES NO

If yes, please identify the Commissioner(s):

Answering yes to either of the two questions above does not preclude NCTC from awarding a contract to your firm. It does, however, preclude the identified Commissioner(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

California Government Code Section 84308

- (a) The definitions set forth in this subdivision shall govern the interpretation of this section.
 - (1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
 - (2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.
 - (3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.
 - (4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.
 - (5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.
 - (6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.
- (b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.
- (c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has

willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7. If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

- (d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.
- (e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

For more information, contact the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814, (916) 322-5660.