

**PROFESSIONAL SERVICES AGREEMENT**  
**BETWEEN THE**  
**NEVADA COUNTY TRANSPORTATION COMMISSION**  
**AND**

**TO DEVELOP**  
**STUDY OF CURRENT TRANSIT OPERATIONS AND NEEDS**

This Agreement by and among the Nevada County Transportation Commission (hereinafter referred to as "NCTC"), the County of Nevada ("Nevada County"), the Town of Truckee ("Truckee") (NCTC, Nevada County and Truckee are hereinafter collectively and individually referred to as the "Government Parties") and \_\_\_\_\_, (hereinafter referred to as "Consultant"), in consideration of the mutual promises, covenants, and conditions hereinafter set forth, the parties do hereby agree as follows:

1. **Purpose and Scope:** The purpose of this Agreement is to provide a contract for professional services to complete a study of current transit operations and needs in Nevada County and the Town of Truckee.

Consultant will provide services as set forth in Exhibit "A" NCTC's "Request for Proposal"(name of it) and Exhibit "B," Consultant's proposal entitled, "\_\_\_\_\_". In the event of a conflict between Exhibit "A" and Exhibit "B," Exhibit "A" shall control.

2. **Engagement of Consultant:** NCTC hereby agrees to engage Consultant, and Consultant hereby agrees to perform the services required to complete the project. 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 shall 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 shall be made without the written agreement of all parties hereto. In the event of a conflict between Exhibit "A" and Exhibit "B," Exhibit "A" shall control.

Consultant must provide to NCTC \_\_\_\_\_ ( ) bound copies and a reproducible original on CD-ROM of the draft report. Format for reproducible originals on CD-ROM will be in Microsoft Word 2010, Excel 2010, and PDF.

Consultant shall deliver \_\_\_\_\_ ( ) bound copies, one reproducible unbound original copy, and the final on CD-ROM to NCTC.

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

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 shall not be employees of the Government Parties.
6. **Standard of Quality:** All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.
7. **Project Representative:** Consultant and NCTC shall each designate a project representative who shall 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 project representative for NCTC shall be [REDACTED]. The project representative for Consultant shall be [REDACTED]. Consultant's project representative may only be changed upon prior written approval by NCTC.
8. **Subcontracting:**
  - a. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Government Parties and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to the Government Parties for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from Nevada County's and Truckee's respective obligations to make payments to the Consultant.
  - b. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by NCTC's Project Representative, except that which is expressly identified in the approved Cost Proposal.
  - c. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by Nevada County and Truckee.
  - d. Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.
  - e. Any substitution of subconsultant(s) must be approved in writing by NCTC's Contract Administrator prior to the start of work by the subconsultant(s).
9. **Time of Performance:**
  - a. This Agreement shall go into effect on [DATE], contingent upon approval by the Government Parties, and Consultant shall commence work after notification to proceed by NCTC'S Contract Administrator or Project Administrator. The contract shall end on [REDACTED], 2018, unless extended by written contract amendment.

- b. Consultant is advised that any recommendation for contract award is not binding on the Government Parties until the contract is fully executed and approved by the Government Parties.
  - c. Consultant shall complete work as expeditiously as is consistent with generally accepted standards of professional skill and care and the orderly progress of work.
10. **Compensation and Invoicing:** Nevada County and Truckee shall pay Consultant as compensation in full for all services performed by Consultant pursuant to this Agreement, a total sum not to exceed [REDACTED] (**bold**) (spell out the amount). 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 \$ [REDACTED] without the prior written agreement of both parties. Nevada County and Truckee each shall be responsible to pay one-half (1/2) of amounts owing to Consultant under this Agreement; this obligation is several and not joint.
- a. Invoicing: Consultant may bill for services performed under this contract on a monthly basis. Payment by Nevada County and Truckee to Consultant shall be made within 30 days after receipt of Consultant's invoice and acceptance of the work to date. However, Nevada County and Truckee each, 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.
  - b. Allowable Costs and Payments: Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Cost Proposal (Exhibit 10-H). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.
  - c. Travel Costs: Consultant shall comply with, and shall require its subcontractors to comply with, the requirements for non-state employee travel and subsistence (per diem) expenses found in the California Department of Transportation ("Caltrans") Travel Guide, Non-State Employee Travel (referencing the current California Department of Personnel Administration rules) at the following link: <http://www.dot.ca.gov/hq/asc/travel/index.htm>. Lodging rates shall not exceed rates authorized to be paid non-state employees unless written verification is supplied that such rates are not commercially available to Contractor and/or its subcontractors at the time and location required as specified in the Caltrans Travel Guide Exception Process.
11. **Termination of Agreement:** NCTC, on behalf of the Government Parties, reserves the right to terminate this contract upon ten (10) days written notice to Consultant, with or without cause.
- a. NCTC may terminate this contract with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, NCTC may proceed with the work in any manner deemed proper by NCTC. If NCTC terminates this Agreement with Consultant, Nevada County and Truckee shall pay Consultant the sum that was due to the Consultant under this Agreement prior to termination, unless the cost of completion exceeds the funds remaining in the Agreement. In which case the

overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

- b. The maximum amount for which Nevada County and Truckee shall be liable if this contract is terminated is [insert total contract amount] dollars.
  - b. In the event of termination, all data shall become the property of NCTC subject to the provisions of Section 31.
12. **Interest of Members of the Government Parties and Others:** No officer, member, or employee of a Government Party and no member of the governing body, and no other public official of the governing body of the locality or localities in which the project 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 project, shall 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 thereof. In addition, Consultant shall notify the Government Parties 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.
13. **Assignability:** Consultant shall not assign any interest in this Agreement, and shall 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 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 shall be furnished promptly to the Government Parties.
14. **Rebates, Kickbacks, or Other Unlawful Consideration:** Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any Government Party employee. For breach or violation of this warranty, NCTC shall have the right (in its discretion) to: terminate the contract without liability to pay only for the value of the work actually performed; deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.
- Furthermore, 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 shall have the right (in its discretion) to: terminate the contract without liability to pay only for the value of the work actually performed; deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.
15. **Findings Confidential:** Any reports, information, data, etc. given to, prepared by, or assembled by Consultant shall be held as confidential, and shall not be made available to any individual or organization by Consultant without the prior written approval of NCTC.
16. **Copyright:** No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of Consultant.

17. **Availability of Records/Audit Review Procedures:** Consultant shall 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.

a. Retention of Records/Audit: For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq. (when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7), Consultant, subconsultants, and the Government Parties shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the Agreement.

(1) All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for five years from the date of final payment under the Agreement. The state, State Auditor, Government Parties, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its certified public accountants' (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

(2) Subcontracts in excess of \$25,000 shall contain this provision.

b. Audit Review Procedures:

(1) Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by NCTC's Executive Director.

(2) Not later than 30 days after issuance of the final audit report, Consultant may request a review by NCTC's Executive Director of unresolved audit issues. The request for review will be submitted in writing.

(3) Neither the pendency of a dispute nor its consideration by NCTC will excuse Consultant from full and timely performance, in accordance with the terms of this contract.

18. **Compliance with Applicable Laws:** Consultant agrees to conduct and execute the project 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 shall keep itself fully informed of and shall observe and comply with and shall 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 the Government Parties that Consultant shall, 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 shall provide written proof of such licenses, permits, insurance and approvals upon request by any Government Party. The Government Parties are not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

19. **Insurance:** Consultant shall 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. Copies of the certificates evidencing such insurance shall be provided to the Government Parties 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 shall apply separately to this project/location or the general aggregate limit shall 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 project, Consultant shall carry professional liability insurance in a standard form, including Errors and Omission coverage, with a company approved by NCTC. Said insurance shall 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 shall be primary insurance as respects the Government Parties, and their respective directors, officers, employees and agents. Any insurance or self-insurance maintained by the Government Parties, or their respective directors, officers, employees or agents shall be in excess of Consultant's insurance and shall not contribute to it.
    - (2) Any failure by Consultant to comply with reporting or other provisions of the policies including breaches of warrants shall not affect coverage provided to the Government Parties, or their respective directors, officers, employees or agents.
    - (3) Consultant's insurance shall 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 shall furnish to the Government Parties original Certificates 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, the County of Nevada, the Town of Truckee and their respective 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 shall 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 shall 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 shall not relieve Consultant of liability in excess of such minimum coverage, nor shall it preclude any Government Party 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 19 shall be suspended, voided, canceled, terminated, or reduced in coverage or limits, without thirty (30) days' prior written notice to the Government Parties by certified mail, return receipt requested.
20. **Indemnification:** Consultant agrees to indemnify, defend, and hold harmless, the Government Parties, and their respective directors, officers, agents, and employees (collectively and individually, 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 Indemnitee, whether active or passive, excepting only such claims as may be caused by the sole active negligence or willful misconduct of an Indemnitee. Consultant shall pay all costs that may be incurred by the Government Parties in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this Section shall survive the expiration, termination or assignment of this Agreement.

21. **Governing Law and Choice of Forum:** This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Nevada County.
22. **Prevailing Party:** Should any dispute arise hereunder, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.
23. **Conflict of Interest:**
  - a. Consultant shall disclose any financial, business, or other relationship with any Government Party that may have an impact upon the outcome of this Agreement, or any ensuing Government Party construction project. Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing Government Party construction project, which will follow.
  - b. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.
  - c. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.
  - c. Consultant shall immediately notify the Government Parties of any and all potential violations of this paragraph upon becoming aware of the potential violation.
24. **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, shall 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 shall comply with the disclosure and disqualification requirements of the Act, as required by law.
25. **Independent Contractor:** In performing services under this Agreement, Consultant is and shall act as an independent contractor and not an employee, representative, or agent of any Government Party. Consultant shall 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 shall represent themselves to be employees or agents of any Government Party.

26. **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).
27. **Americans with Disabilities Act (ADA) of 1990:** By signing this Agreement, Consultant assures the Government Parties 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, including but not limited to, those found within the Code of Federal Regulations, Title 49, Parts 27, 37, and 38.
28. **Equal Employment Opportunity/Title VI Compliance:** Consultant shall comply with Title VI of the Civil Rights Act of 1964, as amended, the provisions contained in 49 CFR Part 21 through Appendix C, 23 CFR Part 200, 23 CFR Part 230, 49 U.S.C. 5332, and the Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794.
  - a. During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave.
  - b. Consultant and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
  - c. Consultant shall 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), and any other applicable federal and state laws and regulations relating to equal employment opportunity, including the provisions of the California 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 shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
  - d. Consultant shall also comply with the Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age, Section 324 of Title 23 U.S.C., prohibiting discrimination based on gender, and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and 49 CFR Part 27 regarding discrimination against individuals with disabilities.

- e. 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 shall be notified by Consultant of Consultant's obligations under this Agreement and the statutes and regulations relative to nondiscrimination set forth herein.
  - f. Information and Reports: Consultant shall provide all information and reports required by applicable federal and state laws and regulations or directives issued pursuant thereto, and shall 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 laws and regulations, orders and instructions, including but not limited to permitting access to all records of employment, employment advertisements, application forms and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency designated to investigate compliance with this section. Where any information is required of Consultant which is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to the Government Parties or the Federal Transit Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
  - g. Sanctions for Noncompliance: In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, NCTC shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including but not limited to:
    - (1) Withholding of payments to Consultant under the Agreement until Consultant complies, and/or,
    - (2) Cancellation, termination or suspension of the Agreement, in whole or in part.
  - h. Incorporation of Provisions: Consultant shall include the provision of this Section 28 in every subcontract, including procurement 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 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.
29. **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 shall:
    - (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.
30. **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.
31. **Ownership of Documents:** Original document, methodological explanations, computer programs, drawings, designs and reports generated by this Agreement shall belong to and become the property of the Government Parties. 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, shall be the responsibility of the Government Parties.
- It is understood that in addition to the Government Parties, state and federal funding agencies shall have the right to reproduce, publish, or otherwise use, and authorize others to use, the information developed from federally reimbursed projects.
32. **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.
33. **Entire Agreement and Amendment:** 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. Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by NCTC.

34. **Severability:** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, 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, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall 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.
35. **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.
36. **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.
37. **Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.
38. **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.
39. **Debarment, Suspension, and Other Responsibilities:** Consultant certifies and warrants that neither Consultant firm nor any owner, partner, director, officer, or principal of Consultant, nor any person in a position with management responsibility or responsibility for the administration of funds:
  - a. Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal or state department or agency.
  - b. Has within the three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

- c. Is presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commissions of any of the offenses enumerated in paragraph “b” above.
- d. Has within a three-year period preceding this Agreement, had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

Consultant further certifies that is shall not knowingly enter into any transaction with any subconsultant, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

40. **Non-lobbying Certification:** Consultant certifies, to the best of his or her knowledge and belief, that:

- a. No State or Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of any state or federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than State or Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Consultant shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying.” In accordance with its instructions, as well as the attached Exhibit "10-Q", “Disclosure of Lobbying Activities,” in accordance with its instructions.
- c. This certification is a material representation of fact upon which reliance was placed when this Agreement was entered into. Submission of this certification is a prerequisite for making or entering into this Agreement, imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000 for each such failure.
- d. Consultant also agrees by signing this Agreement that it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

41. **Clean Air Act:** Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, including sections 174 and 176, subdivisions (c) and (d) (42 U.S.C. §§ 7504, 7506 (c) and (d)) and 40 CFR Part 93 (“Clean Air requirements”). Consultant agrees to report each Clean Air requirement violation to NCTC and understands and agrees that NCTC will, in turn, report each Clean Air requirement violation as required to assure notification to FTA and the appropriate

EPA Regional Office. Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

- 42. **Disputes:** Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of NCTC’s Executive Director and Chairperson, who may consider written or verbal information submitted by Consultant. Not later than 30 days after completion of all work under the contract, Consultant may request review by NCTC’s Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

Any dispute concerning a question of fact arising under an audit of this Agreement shall be reviewed by NCTC’s Executive Director. Not later than 30 days after issuance of the final audit report, Consultant may submit a written request for review by the Executive Director of unresolved audit issues.

Neither the pendency of a dispute, nor its consideration by the committee or Executive Director, will excuse Consultant from full and timely performance in accordance with this Agreement.

- 43. **Safety:** Consultant shall comply with any applicable OSHA regulations regarding necessary safety equipment or procedures, and safety instructions issued by NCTC, if any.

- 44. **State Prevailing Wage Rates:** The State of California’s General Prevailing Wage Rates are not applicable to this Agreement.

**IN WITNESS HEREOF**, this Agreement among the Nevada County Transportation Commission, the County of Nevada, the Town of Truckee and [redacted] has been executed by the parties hereto the day and year shown below.

**NEVADA COUNTY TRANSPORTATION COMMISSION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairman  
Nevada County Transportation Commission

Nevada County Transportation Commission Counsel, Approved as to Form

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Sloan Sakai Yeung & Wong LLP

**COUNTY OF NEVADA**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairman, Board of Supervisors

Nevada County Counsel, Approved as to Form

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

**TOWN OF TRUCKEE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chairman, City Council

Town of Truckee City Attorney, Approved as to Form

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

**CONSULTANT**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Consultant  
(Name of Firm)

enclosures

- Exhibit A: NCTC RFP
- Exhibit B: Consultant's Proposal (including Exhibit 10-H)
- Exhibit C: Levine Act Disclosure Statement
- Exhibit 10-I: Notice to Proposers Disadvantaged Business Enterprise Information
- Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System
- Exhibit 10-Q: Disclosure of Lobbying Activities

**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)