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Release Date: September 7, 2022

Project No. RFP20220907MCAG

Request for Proposals for Consultant to Prepare an Electric Vehicle Readiness Plan

Notice is hereby given that proposals will be received at the Merced County Association of Governments (MCAG) for performing all work necessary in accordance with the Requirements specified herein. Please carefully read and follow the instructions provided. Proposers are responsible for making certain their proposal is complete and is received by MCAG on or before the closing deadline.

Proposals shall be emailed to: Alicia Ochoa-Jones, Procurement Manager, at alicia.ochoa-jones@mcagov.org. The email subject line shall read as follows: *RFP20220907MCAG – Consultant to Prepare an Electric Vehicle Readiness Plan – Email Submission Deadline October 14, 2022, 12:00 p.m., PDT [insert consultant name here]*.

Proposals received/email timestamped after the closing deadline will be rejected

The Merced County Association of Governments Purchasing Policy and all of its provisions are incorporated by this reference. Proposers of this project are hereby bound by all applicable federal laws, regulations, and certifications.

MCAG is not liable for any costs incurred by Proposers in responding to this Request for Proposals (RFP). Proposers are hereby notified that Proposals become public record. Proposers are to clearly identify any information that is confidential and/or proprietary and submit a redacted copy of their Proposal with the confidential and/or proprietary information. In the event of a Public Records Act or Freedom of Information Act request, MCAG will use the redacted copy submitted by Proposer in response and the failure to provide a redacted copy may result in the disclosure of a Proposer's response. MCAG is not responsible or liable for the disclosure of any information that is not clearly labeled as confidential and/or proprietary and provided in redacted form.

In compliance with Title 49 CFR Part 26, Disadvantaged Business Enterprise's (DBE) are encouraged to submit proposals and will be afforded full opportunity to submit and participate in this solicitation, both as primes and subconsultants. Note that the resulting contract from this solicitation has no specific DBE goal or requirement, therefore prospective proposers will not be required to submit good faith efforts.

Please direct inquiries to Alicia Ochoa-Jones, Procurement Manager, via email at alicia.ochoa-jones@mcagov.org.

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PROPOSER'S SUBMITTAL CHECKLIST

This checklist is provided to assist Proposers with submitting a complete Proposal. Proposers are to submit a Proposal as noted below and are to include this checklist with the Proposal.

1. _____ Cover Letter
2. _____ Proposer's Submittal Checklist
3. _____ Table of Contents
4. _____ Section One – Certification, Nondebarment Certification, Lobbying Certification, DBE Program Bidders List Form, and References List
5. _____ Section Two – Organization, Capability, and Experience
6. _____ Section Three – Response to Requirements
7. _____ Section Four – Cost

A simple cover page noting each Section before each Section begins in your proposal is acceptable. For example, a single page noting "Section One".

Non-submittal of any requested item may be considered non-responsive.

DEFINITIONS

Agreement – The Agreement constitutes the entire contract between MCAG and the selected Proposer. Term may be used interchangeably with Contract.

Authorized Representative – Person who has the legal authority to enter into and sign contracts on behalf of the organization.

Closing Deadline – The last day and time the proposal must be received via email to alicia.ochoa-jones@mcagov.org. Term may be used interchangeably with Submission Deadline.

Contract – The Contract constitutes the entire agreement between MCAG and the selected Proposer. Term may be used interchangeably with Agreement.

Consultant – The Proposer awarded the Contract derived from this RFP. Term may be used interchangeably with Contractor, Vendor, or Service Provider.

Evaluation Committee – A committee established to review and evaluate proposals to determine the Contract award. The committee may include representatives of MCAG and its member jurisdictions.

MCAG – Merced County Association of Governments, a joint powers authority, established under California Government Code Section 6500 et seq.

Proposer/Respondent – A person, partnership, firm, or corporation submitting a proposal with the intention of obtaining an MCAG contract.

Subcontractor(s) – Any person, entity, or organization, to which Consultant or Contractor/Vendor/Service Provider or MCAG has delegated any of its obligations hereunder.

SECTION I – GENERAL INFORMATION

1.1 PURPOSE

MCAG is seeking proposals from qualified consultants to prepare an Electric Vehicle Readiness Plan and guide the Merced Region to support and encourage electric vehicle usage.

MCAG intends to use the results of this RFP to award one contract to the most responsive and responsible Proposer as evaluated per Section IV of this RFP.

1.2 AGENCY INFORMATION

Formed through a Joint Powers Agreement signed by member jurisdictions in 1967, MCAG serves as the Metropolitan Planning Organization (MPO), Regional Transportation Planning Agency, and Local Transportation Authority for Merced County. MCAG is comprised of seven member agencies including six cities (Atwater, Dos Palos, Gustine, Livingston, Los Banos, and Merced) and the County of Merced. The MCAG Governing Board includes a supervisor from each of the five county districts and an elected official from each of the cities. In addition to transportation planning, MCAG also administers the Transit Joint Powers Authority for Merced County, Merced County Regional Waste Management Authority, and Yosemite Area Regional Transportation System. MCAG is also responsible for the administration of Measure V. For more information, visit MCAG’s website at <http://www.mcagov.org/>.

1.3 CONTRACT DURATION

The contract term is anticipated to commence January 23, 2023, and end July 23, 2023, and is contingent upon available funding and successful performance. A final EVRP is expected by MCAG six months from the Notice to Proceed. The contract term may be extended on a month-to-month basis by MCAG, at its sole discretion, and shall be based on available funding and successful performance.

1.4 RFP SCHEDULED ACTIVITIES

To the extent achievable, the following schedule shall be used for the procurement process. MCAG reserves the right to modify the dates below as necessary.

a. RFP Distributed	September 7, 2022
b. Questions/Clarifications due via email by	September 28, 2022, 12:00 p.m.
c. Addendum(s) and Responses Posted by	October 5, 2022
d. Deadline to Submit Proposal via Email	October 14, 2022, 12:00 p.m.
e. Evaluations/Selection	October 17 – October 28, 2022
f. Virtual Interviews	November 2, 2022
g. Notice of Intent to Negotiate	Week of November 7, 2022
h. Notice of Intent to Award	Week of November 28, 2022
i. Governing Board Approval of Contract	January 19, 2023
j. Notice of Award	January 20, 2023
k. Contract Execution/Notice to Proceed	January 23, 2023

1.5 QUESTIONS, CLARIFICATIONS AND/OR REVISIONS

Proposers are expected to raise any questions, noted errors, discrepancies, ambiguities, exceptions, additions, or deficiencies they have concerning this RFP via email to alicia.choa-jones@mcagov.org no later than 12:00 p.m. PDT September 28, 2022.

If the Proposer fails to notify MCAG of any condition stated above that reasonably should have been known to the Proposer, and if a contract is awarded to that Proposer, the Proposer shall not be entitled to additional compensation or time by reason of the error or its correction.

Revisions to this RFP will be made only by official addendum issued by MCAG. Addenda will be posted by October 5, 2022. Proposers are responsible for checking the website for addenda prior to submitting their proposal. Failure to acknowledge addenda may disqualify a Proposal. As such, Proposers are advised to review the website prior to the close of this RFP at <http://www.mcagov.org/bids.aspx>. Proposers are encouraged to sign up for "Notify Me" on the website to receive emails, or a text, when items are posted relevant to RFP's.

1.6 WITHDRAWAL OF PROPOSALS

Proposals shall be irrevocable unless withdrawn prior to the closing deadline. Proposers may withdraw a Proposal, in writing, at any time up to the closing deadline. A written withdrawal notice must be received by MCAG at 369 W. 18th Street, Merced, California, 95340 or via email at alicia.choa-jones@mcagov.org. The notice must be signed by an authorized representative. If a previously submitted Proposal is withdrawn before the closing deadline, the Proposer may submit another proposal at any time up to the closing deadline.

1.7 PROTEST PROCEDURES

Notice of intent to protest must be made in writing and conform to the requirements of MCAG Protest Procedures, included herein on pages 17-19.

1.8 FALSE OR MISLEADING STATEMENTS

Proposals which contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the Proposer, shall be rejected.

1.9 RIGHT TO REJECT OR ACCEPT PROPOSALS AND RIGHT TO CANCEL

MCAG reserves the right to reject any or all Proposals or any part thereof, to waive any informalities or minor irregularities in the Proposals, and to make an award on the basis of suitability, quality of service to be provided, and ability to perform the Requirements. MCAG also reserves the right to cancel this RFP in part or in its entirety.

1.10 DISPUTE RESOLUTION, ATTORNEY FEES, JURISDICTION, AND VENUE

In any action, suit, or proceeding arising out of or in any way connected with the performance of the Agreement contemplated herein, the prevailing party shall be entitled to recover reasonable attorney's

fees and costs. Notwithstanding any other provision of the Agreement contemplated herein, any disputes concerning any question of fact or law relating to the Agreement contemplated herein, or any litigation or arbitration arising out of the Agreement contemplated herein, shall be interpreted pursuant to California law, subject to the jurisdiction of the Superior Court of California, and venued in the County of Merced. CONSULTANT expressly waives federal jurisdiction.

SECTION II – REQUIREMENTS - SCOPE OF WORK

2.1 GENERAL

The goal of the Electric Vehicle Readiness Plan (EVRP) is to review and locate existing and potential electric vehicle (EV) infrastructure sites to support the usage of EVs. Also, the goal is to address challenges which are specific to the region that local entities may face such as EV infrastructure permits, policies, building codes, cost estimates, and funding. The EVRP shall be one integrated document with chapters addressing location review and recommendations in each jurisdiction including best practices and guidance on regional and local applications.

The EVRP will be developed on behalf of MCAG to prepare and guide the Merced Region to support and encourage EV usage.

2.2 SCOPE OF WORK

TASK 1: PROJECT INITIATION, MANAGEMENT, AND COORDINATION

Task 1.1: Consultant Kickoff Meeting

Within two weeks of receiving the Notice to Proceed, CONSULTANT shall initiate, make necessary arrangements, and assist the MCAG project manager in holding a project kickoff meeting for the EVRP. MCAG will lead the kickoff meeting with CONSULTANT and establish clear direction and communication protocols and refine the schedule and project scope.

CONSULTANT shall present its proposed project scope, budget, and schedule and introduce its plans to establish and maintain regular communication with MCAG Staff. CONSULTANT shall describe how it intends to conduct, coordinate, and share its outreach activities, data collection and analysis tasks, mapping outputs, and associated deliverables and reports.

The focus shall be on critical path data needed CONSULTANT to adhere to a proposed schedule. At this time, CONSULTANT shall raise and address specific areas of concern to be considered when preparing the EVRP and propose ways to address them. This includes potential unknowns regarding stakeholder engagement, data sources and data collection, data analysis and methods, data management and maintenance, pending legislation, or other regulatory or statutory issues.

In preparation of this task, CONSULTANT shall be responsible for providing MCAG's project manager with administrative support for scheduling the meeting, a kickoff meeting agenda, and PowerPoint presentation materials and handouts for MCAG review and comment (no less than five days in advance of the meeting. CONSULTANT, project manager, and project leads will participate via presentations and facilitation of discussion.

CONSULTANT shall be responsible for developing project templates for each category of project deliverables to ensure consistence of format, layout, and overall design within and between deliverable types (e.g., for reports, presentations, and Geographic Information Systems (GIS) layouts, displays, tables, figures, etc.).

The emphasis of the CONSULTANT kickoff meeting shall be CONSULTANT planned management, administrative, and technical approach. In turn, it will afford MCAG and other key MCAG staff the opportunity to hear the proposed approach, express client expectations, and discuss issues and opportunities, priorities, challenges, expected outcomes, and policies and procedures as needed to successfully complete the work.

The meeting shall serve as a first step in establishing and communicating a shared view of the project, confirming partnership responsibilities, and establishing the parameters of the project.

CONSULTANT shall prepare and submit meeting minutes within five business days of the kickoff meeting to document the discussion and outcomes. Minutes shall be submitted to the MCAG project manager for review and comment.

***Deliverables:** Kickoff meeting announcements; agenda; presentation and handouts; minutes and action items; summary of activities; work plan, outreach plan, and data collection plan.*

Task 1.2: Schedule and Budget

CONSULTANT shall develop a detailed project schedule and budget. The schedule shall take into consideration and include required CONSULTANT production activities, quality control and client reviews, and CONSULTANT revisions for adequate response to comments. CONSULTANT shall maintain and update the schedule as needed, monthly at a minimum, over the course of the project for review and approval of the MCAG project manager. All tasks and subtasks, meetings (including public outreach activities), and major milestones and deliverables shall be identified on the schedule and budget spreadsheet. Any critical path elements shall be identified in the schedule to assist project tracking.

The schedule/budget will be employed to allocate resources, establish task sequencing, track project execution, and review project status throughout the length of the planning effort. CONSULTANT shall also be responsible for developing and maintaining a simplified version of the schedule for presentation to a broader audience, including MCAG's standing committees, members of the public, and the MCAG Governing Board.

The baseline and current schedule, as well as the contracted scope of work and budget, shall be reviewed by the MCAG project manager and CONSULTANT project manager during project management meetings.

***Deliverables:** Project schedule and budget breakdown.*

Task 1.3: Develop Project Public Participation Plan

CONSULTANT shall develop and describe a Project Public Participation Plan that identifies outreach methods, potential participants, potential event dates and times, event formats, and goals for each outreach activity. The Project Public Participation Plan will provide an approach for outreach that encourages open communication, generates meaningful dialogue across transportation related issues, proactively identifies issues and concerns throughout the planning process and tailors information appropriately for its varied audiences. CONSULTANT shall ensure that its plan aligns with the MCAG Public Participation Plan. CONSULTANT shall develop the plan in close coordination with MCAG and shall submit

the Administrative Draft Plan to the MCAG project manager for review and approval within three weeks of the kickoff meeting.

CONSULTANT shall include strategies to engage Merced County's local agencies (the six cities and the County) and shall outreach to as many stakeholders and members of the public as feasibly possible.

Deliverables: *Stakeholder and Public Participation Plan.*

Task 1.4: Staff Coordination and Project Management

MCAG staff shall oversee the CONSULTANT's progress to ensure timely and integrated production of all tasks and deliverables throughout the contract's term.

CONSULTANT shall be responsible for initiating and leading twice-monthly staff coordination and project management meetings; preparing a meeting agenda for each meeting; providing a project status report for discussion; and documenting the outcome of project management meetings, including any issues or concerns, action items, and/or corrective steps, in meeting minutes. The task/discipline and subconsultant leads will participate in these meetings as requested by MCAG. MCAG and CONSULTANT may use video or audio-conferencing software to conduct these meetings as needed.

Deliverables: *Twice-monthly Project Management/Team Meetings; Meeting Agendas; Project Status Reports; Meeting Minutes and Action Items; List of Upcoming Milestones or Deliverables Identifying Responsible Parties and Completion Dates; Baseline and Updated Project Schedule.*

TASK 2: PUBLIC OUTREACH

The MCAG Public Participation Plan requires a balanced representation of all sectors of the public in the planning process by providing ample opportunities for public input and review. MCAG will gather community input for the EVRP by routinely distributing informational materials, conducting surveys, posting updates to the MCAG website, hosting MCAG public advisory committee meetings and hearings, and maintaining an accessible and up to date MCAG EVRP webpage. CONSULTANT shall identify and contact a diverse group of stakeholders, organize, and conduct public workshops and similar outreach events, and develop outreach collateral and exhibits for all public events. CONSULTANT shall also be responsible for generating and maintaining a project mailing list to keep all members of the public informed about the project's progress, upcoming outreach events, and other relevant details. Public meeting announcements and notices must be advertised in both English and Spanish to maximize public participation, and meetings must have translation services available. The input collected from each public outreach task will be documented in the appendix of the EVRP. CONSULTANT may use video or audio-conference software to conduct these public meetings if in-person events are not feasible due to public health concerns.

Task 2.1: Develop materials and prepare updates for MCAG Electric Vehicle Readiness Plan webpage

CONSULTANT shall develop materials and information to be shared on the MCAG website, and MCAG staff will regularly update the website. The website will provide an opportunity for the community to review the status of the project during its development; access project materials (presentations, reports,

handouts, flyers, agendas, and other information); provide input (e.g., via a survey/questionnaire); and submit questions.

CONSULTANT shall maintain an up-to-date project timeline, meeting and event schedules, and tools for public comment on the website. The website shall be available through final adoption of the Plan.

Deliverables: MCAG Electric Vehicle Readiness Plan website materials and information.

Task 2.2: Key Stakeholder Interviews and Outreach Events

CONSULTANT and MCAG staff shall implement and execute the stakeholder and Public Participation Plan. In conjunction with the field visits, CONSULTANT shall conduct key stakeholder interviews, with local agency staff participation, across the region. Stakeholders may include biking and pedestrian advocates, traffic safety professionals, law enforcement officials, emergency services personnel, or members of organizations involved in non-motorized transportation initiatives, and others. CONSULTANT shall conduct interviews in a geographically representative manner.

CONSULTANT shall include additional opportunities for public input, including innovative methods, in-person or virtual public meetings or workshops, attendance at significant regional events (e.g., Bike to Work Month events, parades, or other public events), and through other activities as identified in the project Public Participation Plan.

CONSULTANT shall be responsible for developing, reproducing, presenting, and distributing outreach materials (e.g., agendas, displays, presentations, layouts/maps, graphics, fact sheets, flyers, meeting notices and/or other materials).

CONSULTANT shall be responsible for documenting outreach activities undertaken as part of the public involvement effort in a Public Participation Summary Report. The report will present the description of activities, dates/occurrences, and locations and will include the invitations, agendas, presentations, and meeting minutes. Additionally, fact sheets/ newsletters, comments and response, notifications, and other materials developed in support of outreach will be compiled in the Report. The Report shall be integrated as an appendix to the EVRP.

Deliverables: Public participation summary report; Collateral for outreach events, including agendas, displays, presentations, layouts/maps, graphics, fact sheets, flyers, meeting notices and/or other materials.

Task 2.3: Presentations to MCAG Committees and Governing Board meetings

CONSULTANT shall be responsible for participating in and facilitating MCAG Governing Board and other standing committee meetings at critical junctures of the planning process to provide the committees with presentations on the purpose of the project, status of the project, the proposed approach, study results, project findings, and other relevant updates. These presentations shall detail accomplishments and milestones achieved, allow for input, and identify upcoming tasks and deliverables. The committees shall provide guidance and feedback that CONSULTANT shall record and incorporate into all tasks and deliverables. CONSULTANT shall present its findings to MCAG's standing committees, including presentations of the Draft and Draft Final EVRP prior to Governing Board approval.

CONSULTANT shall be responsible for preparing and displaying poster size maps, layouts, graphics on display foam boards, handouts, or PowerPoint presentations, per the request of MCAG, as needed.

TASK 3: RESEARCH AND REVIEW EXISTING EV CONDITIONS AND AIR QUALITY BENEFITS

CONSULTANT shall research current EV charging infrastructure, available technologies, best practices, compatibility, and appropriate regional and local applications. CONSULTANT shall also review existing EV facilities within the region and plans, or initiatives made by local agencies. To make sure the system will meet the goals of the RTP and future needs of the region, CONSULTANT shall forecast future EV use and air quality benefits for the Merced Region. For system resiliency and reliability, CONSULTANT shall also research the feasibility of solar shade structures at or near the charge port parking spaces.

Deliverables: Technical memorandums on existing conditions, local policies, current infrastructure technologies, current applications, and future benefits.

TASK 4: IDENTIFY POTENTIAL CHARGING STATION SITES

CONSULTANT will conduct outreach with stakeholders (property owners and local jurisdictions) to identify obstacles and opportunities to electric vehicle adoption. In coordination with MCAG staff, CONSULTANT will identify at least 10 potential locations for public charging infrastructure in Merced County, with at least one location per jurisdiction. Of these potential sites, two must be usable by electric transit vehicles. One transit site must be on the Westside of the county, and one must be on the Eastside of the county. Site visits and communication with property owners shall be completed by CONSULTANT in coordination with MCAG and local agency staff.

At least 10 sites will be identified in the EVRP, though this number may change based on discussion with MCAG, local agencies, and stakeholders. CONSULTANT will analyze best feasible locations for site selection. In addition to desires of local agencies and property owner willingness for installing electrification infrastructure, it is expected that criteria such as available space, American with Disabilities Act access, property owner interest, available electric connection/supply, nearby number of potential users, and best-sized infrastructure for specific sites will be considered. Both transit accessible sites shall include all the above criteria as well as any additional needs as defined by the Transit Joint Powers Authority for Merced County.

Deliverables: Site selection map; report on site selection criteria and specifics regarding the readiness of each site; confirmation of property owner's permission to perform site specific analysis.

TASK 5: COSTS AND FUNDING OPPORTUNITIES

Funding is a vital component of electric vehicle implementation. The EVRP shall outline general cost estimates for the various recommended charging set ups (two chargers, four chargers, DC fast chargers, etc.), and general cost estimates for in-ground infrastructure. It is not expected that detailed estimates for in-ground infrastructure at every selected site is prepared by CONSULTANT. These may be quite variable and dependent on local agency decisions, but a general idea, such as the known cost at other locations that have already been constructed, shall be part of the cost element of the Report.

Funding opportunities for electric vehicle implementation shall be identified in the report. This may include local funds, private and public grants, and other funding mechanisms.

Deliverables: *Costs and Funding Opportunities Report.*

TASK 6: PREPARE MCAG ELECTRIC VEHICLE READINESS PLAN

Based on the results and feedback derived from previous tasks, CONSULTANT shall develop an Administrative Draft, Draft Final, and Final Draft of the Electric Vehicle Readiness of the Plan. The Administrative Draft will be for internal MCAG review only. The Plan will also include an executive summary and appendices to provide access to other key deliverables and work products developed over the planning process.

The Draft Final Electric Vehicle Readiness Plan will be for public review and shall be available on the MCAG website for at least 30 days for public comment. The Draft Final Electric Vehicle Readiness Plan shall also be presented at committee meetings and to the Governing Board prior to finalizing the plan. CONSULTANT shall address MCAG's comments and recommended changes to the Administrative Draft Plan and all other public comments and recommended changes into the Draft Final Plan for development of a Final Plan, which will be presented to the MCAG Governing Board for consideration of final approval/adoption.

Deliverable: *Administrative Draft MCAG Electric Vehicle Readiness Plan; Draft Final MCAG Electric Vehicle Readiness Plan; Final Electric Vehicle Readiness Plan; all project files, supporting technical data, reports, and documentation, and compilation of comments received and response.*

SECTION III – SUBMITTAL

3.1 GENERAL INSTRUCTIONS

This section describes the required Proposal format and content. The Proposal must contain the requested information organized by the prescribed sections. Each Proposer shall submit a complete Proposal, providing all information requested with a complete description of the project plan. Failure to follow the prescribed format may result in rejection of the Proposal.

A Proposal may be rejected if it is conditional or incomplete, or if it contains any alteration of form or other irregularities of any kind. A Proposal may be rejected if any such defect or irregularity constitutes a material deviation from the submittal requirements. Proposals submitted under improperly marked covers may be rejected. If discrepancies are found within the Proposal, the Proposal may be rejected. Proposals must be typed with a minimum font size 11. Each page must be clearly and consecutively numbered. All Proposals must be submitted in the name of the legal entity or authorized agency.

3.2 SUBMITTAL OF PROPOSAL

Via email, Proposers must submit their proposal and include all materials required for acceptance of their Proposal by the Proposal deadline - 12:00 p.m. PDT, October 14, 2022, to: Alicia Ochoa-Jones, Procurement Manager, at alicia.ochoa-jones@mcagov.org. All Proposals must be signed by an authorized representative and received by Alicia Ochoa-Jones via email by the closing deadline. Late Proposals will be rejected. MCAG will not accept facsimiles. The email subject line shall read as follows: *RFP20220907MCAG – Consultant to Prepare an Electric Vehicle Readiness Plan – Submission Deadline October 14, 2022, 12:00 p.m., PDT [insert consultant name here]*.

3.3 COVER LETTER

A one page cover letter shall be submitted and include the Proposer's contact information and specify the authorized representative. The person authorized by the firm to negotiate a contract with MCAG shall sign the cover letter. The cover letter shall include the name, phone number, fax number and e-mail address of a contact person for the selection process. Proposers shall include a statement certifying the firm will comply with insurance requirements as noted in Section Five of the Sample Agreement page 27.

3.4 TABLE OF CONTENTS

Using the Submittal Checklist provided on page 3, the Proposer shall provide a Table of Contents listing proposal contents by page number.

3.5 CERTIFICATIONS AND REFERENCES (SECTION ONE)

- 1) Certification, (noting any addenda – if applicable);
- 2) Nondebarment Certification and Other Responsibility Matters;
- 3) Lobbying Certification;
- 4) Disadvantaged Business Enterprise Bidders List Form; and,
- 5) References List

RFP Certifications must be signed by the person in the Proposer's organization who is responsible for the decision as to the prices being offered or by a person who has been authorized in writing to act as agent for the person responsible for the decision on prices and services. Failure to provide this form/information with a submittal may disqualify the Proposal.

ALL Proposers *must* complete a Disadvantaged Business Enterprise (DBE) Bidders List form regardless of DBE status.

Proposer must supply three references to which similar services have been provided. If contacted, all references must verify that a high level of satisfaction was provided.

3.6 ORGANIZATION, CAPABILITY, AND EXPERIENCE (SECTION TWO)

Provide a concise statement covering the history of your organization under current and any prior names (include number of years in business under each name), your major projects or activities both in general and similar to the subject of the proposal, and why your agency is best suited to fulfill the Requirements - Scope of Work in Section II of this RFP. The section is to clearly state the unique qualifications which the Proposer believes it possesses to meet the goals and objectives of the Requirements - Scope of Work in Section II. This section is to contain the following information:

1. Describe your present organizational structure and current operations including number of years in business;
2. Describe organizational experience providing similar service that demonstrates your agency's capability in providing the services described in your proposal;
3. Describe experience and qualifications of the proposed key staff members assigned to this project;
4. Include any other relevant information regarding your suitability/capability in providing the services described in Requirements - Scope of Work.

3.7 RESPONSE TO REQUIREMENTS (SECTION THREE)

Proposers are to describe how the Requirements - Scope of Work in Section II will be met. Proposers are to describe their response in sufficient detail to enable evaluators in knowing what is anticipated at every stage and to make a judgment as to the probable success of the proposed effort.

Proposers shall provide, in a timeline format, a clear and concise description of the services to be provided and activities to be undertaken as a means of reaching the objectives stated in the Requirements - Scope of Work in Section II. Proposals may include milestone charts, flowcharts, and related graphics to display the timeframe for achieving and accomplishing the Requirements - Scope of Work in Section II.

3.8 PROJECT COSTS (SECTION FOUR)

Proposers shall provide project costs based on the proposed labor, materials, tasks, activities, deliverables, and any other project related costs including travel. Total costs shall be itemized and submitted in a manner deemed most appropriate by Proposer and shall include but are not limited to billing rates for each proposed staff member (including subcontractors if applicable), task budget with breakdown/itemization, and direct and indirect costs.

SECTION IV – BASIS OF AWARD, EVALUATION, SELECTION PROCESS, AND PROTESTS

4.1 BASIS OF AWARD

MCAG intends to make one award to the responsive and responsible Proposer whose proposal is most advantageous to MCAG. Accordingly, MCAG may not necessarily make an award to the Proposer with the highest technical ranking nor award to the Proposer with the lowest price proposal if doing so would not be in the overall best interest of MCAG.

4.2 RIGHT TO REJECT PROPOSALS

MCAG reserves the right to reject any or all Proposals or any part thereof.

4.3 WAIVER OF IRREGULARITIES

MCAG reserves the right to waive any informalities or minor irregularities in the Proposals and to make an award on the basis of suitability, quality of services to be provided, and ability to perform the Requirements.

4.4 EVALUATION

Proposals will be evaluated by a selection committee based on the evaluation criteria outlined in Section 4.5. Proposers who best demonstrate the ability to deliver quality work on schedule consistent with requirements of this RFP may be invited to interview. However, MCAG reserves the right to make a final selection without an interview.

4.5 EVALUATION CRITERIA

Proposals will undergo an initial administrative review prior to evaluation. Any Proposal which fails to meet the submission requirements may be considered non-responsive and may be rejected.

Proposals will be evaluated on a maximum point scale of 100 as follows:

Proposal Evaluation Criteria	Possible Points
Comprehensiveness of Project Approach	40
Experience with Similar Work	35
Schedule	15
Cost	10
Total	100

4.6 INTERVIEW PRESENTATION (VIRTUAL)

Top scoring Proposer(s) may be asked to participate in an interview. The Proposer's original response cannot be changed in any aspect at the interview presentation. Proposer(s) will be advised as to the time and place for such presentations, and they are to be prepared to discuss all aspects of their response.

4.7 NEGOTIATIONS

MCAG reserves the right to negotiate the terms of the contract, including the award amount, with the selected Proposer prior to entering into a contract. However, certain contract terms, including, but not limited to, Insurance, Indemnification, Termination for Convenience, and Liquidated Damages, are non-negotiable. If contract negotiations cannot be concluded successfully with the highest-ranking Proposer, the agency may choose to negotiate a contract with the next highest-ranking Proposer, etc.

4.8 NOTICES - INTENT TO NEGOTIATE, INTENT TO AWARD, AND AWARD

A Notice of Intent to Negotiate with the highest ranked proposer will be issued and sent via email to all participating proposers upon the evaluation committee's recommendation to initiate Agreement negotiations.

MCAG will issue a Notice of Intent to Award upon conclusion of negotiations and, where appropriate, place an item on the MCAG Governing Board agenda for approval. The Notice of Intent to Award will be sent via email to all participating proposers. Proposals shall remain confidential and shall not be made available in response to a Public Records Act Request until after the issuance of the Notice of Intent to Award.

Once the MCAG Governing Board has approved award of the Agreement, MCAG will issue a Notice of Award.

4.9 DEBRIEFING

A debriefing may be requested by unsuccessful Proposers after the Notice of Intent to Award has been issued and before the Notice of Award. Requestor shall submit questions via email to the Procurement Manager, or her designee, within three business days of issuance of the Notice of Intent to Award. The purpose of the debriefing shall be to receive information concerning the evaluation of the unsuccessful Proposer. Information regarding other agencies/proposers will not be covered. Debriefings shall be held via telephone conference. The time allotted for the debriefing shall be a maximum of one hour.

4.10 MCAG PROTEST PROCEDURES

All protests shall reference the name of the project or procurement in question and the contract, bid or proposal reference number. Failure to comply with the time requirements specified below shall constitute grounds for MCAG to deny the protest without further consideration. MCAG has no obligation to delay or otherwise postpone an award of a contract based on a protest. Bids or Proposals shall remain confidential until after the Notice of Intent to Award is issued.

Pre-Award Protest Procedures

Any bidder or proposer who has submitted a bid or proposal to MCAG may file a protest of MCAG's intent to award a contract provided that:

1. The bid or proposal protest is in writing;
2. The bid or proposal protest is signed by the protestor or an individual legally entitled to act on his or her behalf;

3. The bid or proposal protest is received by MCAG's Deputy Executive Director not more than five business days following the date of issuance of MCAG's Intent to Award the Contract; and
4. The bid or proposal protest sets forth, in detail, a statement of the reason(s) for the protest, all facts and documentation supporting the protest, and legal authorities and argument in support of the grounds for the protest. Any grounds for protest not identified in the pre-award protest are waived.

Protests of MCAG's Intent to Award must be personally delivered or sent by U.S. mail, postage prepaid, to: Stacie Guzman, Executive Director, Merced County Association of Governments, 369 W. 18th Street, Merced, CA 95340 with a copy to: General Counsel, Haden Law Office, 2241 N Street, Merced, CA 95340.

Any protest not conforming with the foregoing shall be rejected by MCAG as invalid. Provided that the protest is filed in strict conformity with the foregoing, MCAG's Deputy Executive Director shall review and evaluate the basis for the bid or proposal protest. The Deputy Executive Director shall provide the protestor with a written statement concurring with or denying the protest. The written decision will then be provided to the protestor.

Use of the above procedures shall be a condition precedent to use of the post-award protest procedures detailed below and/or the institution of any legal or equitable proceedings relative to the bid or proposal. In the event that any such legal or equitable proceedings are instituted and MCAG is named as a party thereto, the prevailing party(ies) shall be entitled to recover all attorney's fees and costs incurred in connection with the proceeding.

Post-Award Protest Procedures

Within five business days of the contract being awarded, a bidder or proposer who has complied with the pre-award protest procedures detailed above may file a post-award protest. The post-award protest must:

1. Be in writing;
2. Be signed and dated by the bidder/proposer or someone legally entitled to act on his or her behalf; and
3. Include a detailed statement of the reason for the post-award protest and all facts and documentation supporting the bidder or proposer's position, including any legal authorities or argument.

Post-award protests must be personally delivered or sent by U.S. mail, postage prepaid, to: Stacie Guzman, Executive Director, Merced County Association of Governments, 369 W. 18th Street, Merced, CA 95340 with a copy to: General Counsel, Haden Law Office, 2241 N Street, Merced, CA 95340.

Failure to file a request for a pre-award protest shall constitute grounds for MCAG to deny the protest without further consideration of the grounds stated therein. Any grounds for protest that could have been, but were not, identified in the pre-award protest are deemed waived and will not be considered.

Provided that the protest is filed in strict conformity with the foregoing, MCAG's Executive Director or his or her designee shall review and evaluate the basis for the bid or proposal protest, together with the written statement issued by MCAG's Deputy Executive Director. MCAG's Executive Director or his or her

designee shall issue a written statement concurring with or denying the protest. The decision of MCAG's Executive Director shall be final and not subject to appeal or reconsideration.

Use of the above procedures shall be a condition precedent to the institution of any legal or equitable proceedings relative to the bid or proposal. In the event that any such legal or equitable proceedings are instituted and MCAG is named as a party thereto, the prevailing party(ies) shall be entitled to recover all attorney's fees and costs incurred in connection with the proceeding.

CERTIFICATION

To: Merced County Association of Governments
Attn: Elizabeth Forte, Director of Planning and Programming
369 W. 18th Street
Merced, CA 95340

Re: Consultant to Prepare an Electric Vehicle Readiness Plan No. RFP20220907MCAG

In compliance with the submittal requirements of which this Certification is a part, the undersigned proposes to furnish all services for the cost presented in the enclosed submittal package for the following amount:

Cost: \$ _____

The undersigned acknowledges receipt of the following addenda to the RFP:

Addendum No. _____, dated _____
Addendum No. _____, dated _____
Addendum No. _____, dated _____

.....
I am the authorized representative with authority to sign this certification and agree that:

- 1. The Response has been arrived at by the Proposer independently and has been submitted without collusion, and without any agreement, understanding, or planned common course of action, with any other party which would obstruct fair and open competition;
- 2. The Proposer is legally entitled to enter into contract with MCAG and is not in violation of any prohibited conflict of interest, including those prohibited by the provisions of state and federal law;
- 3. The Proposer is fully informed regarding the accuracy of the above statements.

NOTICE: Any agreement or collusion among Proposers or prospective Proposers which restrain, tend to restrain, or are reasonably calculated to restrain competition by agreement to respond, or to refrain from responding, or otherwise, is prohibited.

Name of Individual, Partnership, or Corporation

Address Email Address

Authorized Person (Print or Type) Authorized Signature

Title of Authorized Person Date Phone Number

NONDEBARMENT CERTIFICATION

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

Instructions for Certification

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

NONDEBARMENT CERTIFICATION (CONTINUED)

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature of Authorized Representative: _____ Date: _____

Name/Title: _____

Name of Organization/Business: _____

LOBBYING CERTIFICATION

This form is to be submitted with an offer exceeding \$100,000.

The Proposer or Bidder certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification thereof.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any 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, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). *
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

THE PROPOSER OR BIDDER, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE PROPOSER OR BIDDER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Name of the Proposer's or Bidder's authorized official: _____

Title: _____

Signature: _____ Date: _____

* **NOTE:** Per paragraph 2 of the included form Lobbying Certification, add Standard Form-LLL, "Disclosure Form to Report Lobbying," ***if applicable.***



DBE PROGRAM BIDDERS LIST FORM

The Merced County Association of Governments (MCAG) as a **designated recipient** of Department of Transportation (DOT) federal financial assistance funding is required to: 1) Create and maintain a comprehensive DBE bidders List {49 CFR Part 26.11(c)}; and 2) Monitor **subrecipient** DBE compliance. The Bidders List Form will be used to determine the relative availability of Disadvantaged Business Enterprise (DBE) and non-DBEs, and will assist with establishing the agency’s triennial DBE goal. Each Bidders List is a compilation of data on bidders, proposers, quoters, subcontractors, manufacturers, and suppliers of materials and services who have submitted bids during the advertising period of a specific acquisition.

Certified DBE’s must be verifiable and currently listed on the following website to be considered a certified DBE:

<https://ucp.dot.ca.gov/licenseForm.htm>

Providing the following information is mandatory regardless of DBE status:

PART A: BUSINESS DATA

1. Business Name: _____

2. Business Address: _____
Street City State Zip

3. County Business is located in: _____

4. Name of Contact Person: _____

5. Phone: () _____ 6. Fax: () _____

7. Email address: _____

8. Is this business a certified Disadvantaged Business Enterprise (DBE)? a. Yes * b. No

*If “yes”, MCAG will verify via the following website: <https://ucp.dot.ca.gov/licenseForm.htm>

9. Business Annual Gross Receipts:

- a. Less than \$500,000
- b. \$500,000 to \$1,000,000
- c. \$1,000,000 to \$2,000,000
- d. \$2,000,000 to \$5,000,000
- e. Over \$5,000,000

10. Age of Business: _____ Years _____ Months

(continued on next page)

DBE PROGRAM BIDDERS LIST FORM (CONTINUED)

PART B: PROJECT AND WORK DESCRIPTION

11. RFQ, RFP, OR IFB#: _____

12. Project Name: _____

13. Provide a brief description of scope of work, services, and/or materials to be performed/furnished: _____

14. Will you subcontract any of your work? a. Yes * b. No

*** If "yes", subcontractor(s) also required to complete the mandatory Bidders List Form, regardless of DBE status and will also be verified on following website: <https://ucp.dot.ca.gov/licenseForm.htm>**

PART C: SIGNATURE

The undersigned declares that the information set forth on this page is current, complete, and accurate.

Authorized Signature: _____ Date: _____

Printed Name: _____ Title : _____

REFERENCES LIST

Complete and return with the submittal package. Three references required.

REFERENCE NO. 1 - AGENCY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ TITLE: _____

E-MAIL: _____ TELEPHONE NUMBER: _____

SERVICE DESCRIPTION: _____

CONTRACT DATE & AMOUNT: _____

REFERENCE NO. 2 - AGENCY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ TITLE: _____

E-MAIL: _____ TELEPHONE NUMBER: _____

SERVICE DESCRIPTION: _____

CONTRACT DATE & AMOUNT: _____

REFERENCE NO. 3 - AGENCY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ TITLE: _____

E-MAIL: _____ TELEPHONE NUMBER: _____

SERVICE DESCRIPTION: _____

CONTRACT DATE & AMOUNT: _____

SAMPLE AGREEMENT

THIS AGREEMENT is made and entered into this 23rd day of January 2023 by and between the Merced County Association of Governments, a California joint powers authority within the meaning of Government Code § 6500 et seq (hereinafter referred to as "MCAG"), and *To Be Determined*, (hereinafter referred to as "CONSULTANT").

It is agreed between the parties that:

Section One – Scope of Work

CONSULTANT agrees to perform all work necessary to complete, in a manner satisfactory to MCAG, those items described in Exhibit A – Scope of Work and incorporated herein by this reference as if set forth in full.

Section Two – Notice to Proceed

MCAG shall serve an email notice to proceed upon full execution of this Agreement. Upon receipt of such notice, CONSULTANT shall diligently proceed with the work authorized and complete it within the agreed time period.

Section Three – Term

CONSULTANT shall commence work immediately following notice of execution of this Agreement. CONSULTANT shall complete the performance of its obligations under this Agreement by July 23, 2023. A final EVRP is expected by MCAG six months from the Notice to Proceed. The contract term may be extended on a month-to-month basis by MCAG, at its sole discretion, and shall be based on available funding and successful performance. All work is contingent upon agreed upon services, available funding, and successful performance. The contract will be a fixed price contract for the full term including extensions.

Section Four – Compensation and Invoicing

For services performed pursuant to this Agreement, MCAG agrees to pay, and CONSULTANT agrees to accept as payment in full, the amounts as identified on the cost summary provided in EXHIBIT B – COST SUMMARY. CONSULTANT shall be reimbursed no later than 30 days following receipt of a written, acceptable billing to MCAG. Invoice shall include details of tasks and/or work completed relevant to the billing payment request.

In each invoice, CONSULTANT shall include Agreement Number 20220907BD, the full agreement amount, the previously billed dollar amount, the current invoice dollar amount, and the remaining agreement balance.

In the event MCAG disputes all or any part of a bill submitted by CONSULTANT pursuant to this Agreement, MCAG shall pay the undisputed portion of the invoice when due and shall notify CONSULTANT of the

disputed amount in writing at least 10 days prior to the due date of the disputed invoice. The Parties shall use best efforts to resolve the dispute amicably and promptly. Upon determination of the correct billing amount, MCAG shall pay such amount within 10 days of such determination.

Section Five – Insurance

CONSULTANT shall, for the duration of this Agreement, purchase and maintain insurance to protect against loss resulting from the performance of its duties under this Agreement. Said insurance coverage shall comply with the following minimum requirements:

- A. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or any other policy with a general aggregate limit is used, either the aggregate limit shall be endorsed to apply separately to this project, or the aggregate limit shall be twice the above occurrence limit.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- C. Professional Liability or Errors and Omissions Insurance: \$1,000,000.

Original certificates of such insurance shall be filed with MCAG. Said certificates shall evidence coverage through the term of this Agreement, reference Agreement Number 20220907BD, and shall name MCAG as an additional insured, with the exception of Professional Liability or Worker's Compensation. Modifications to insurance requirements must be approved by MCAG in writing. CONSULTANT is responsible for providing MCAG updated insurance documents annually.

CONSULTANT shall maintain worker's compensation coverage sufficient to comply with statutory requirements and limits as required by the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident.

All policies shall be endorsed to waive the insurer's subrogation rights against MCAG.

Section Six – Changes to Scope

MCAG may at any time, and upon a minimum of 10 days written notice, modify the scope of basic services to be provided under this Agreement. CONSULTANT shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify MCAG in writing. Upon agreement between MCAG and CONSULTANT as to the extent of said impacts on time and compensation, an amendment to this Agreement shall be prepared describing such changes. Execution of the amendment by MCAG and CONSULTANT shall constitute the CONSULTANT's notice to proceed with the changed scope.

Section Seven – Compliance with Laws, Rules, and Regulations

All services performed by CONSULTANT pursuant to this Agreement shall be undertaken with usual and customary professional care to be performed in accordance and full compliance with all applicable federal, state or city statutes, and any rules or regulations promulgated thereunder.

Section Eight – Responsibility of CONSULTANT

By executing this Agreement, CONSULTANT warrants to MCAG that it possesses, or will arrange to secure from others, all the necessary professional services, resources and facilities to provide MCAG with the services contemplated under this Agreement. CONSULTANT further warrants that it will follow the best current, generally accepted practice of the profession to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the project for which services are rendered under this Agreement.

Section Nine – Responsibility of MCAG

To the extent appropriate to the Project contemplated by this Agreement, MCAG shall:

- A. Assist CONSULTANT by placing at its disposal all available information pertinent to the project;
- B. Examine all studies, reports, proposals, and other documents presented by CONSULTANT, and render verbally or in writing, as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT; and,
- C. The Director of Planning and Programming, or designee, will act as MCAG's representative with respect to all work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define MCAG's policies and decisions with respect to materials, equipment, elements, and systems pertinent to CONSULTANT's services.

Section 10 – Termination for Convenience of MCAG

MCAG may terminate this Agreement, with or without cause, at any time by giving CONSULTANT 10 days written notice of such termination. If this Agreement is terminated by MCAG as provided herein, CONSULTANT shall be paid a total amount that is the ratio of completed tasks to total services as determined by MCAG, less payments already made under this Agreement. This proration shall be extended to cover any fixed fee charged for a fully completed product. Upon termination, CONSULTANT will give MCAG all its work product.

Section 11 – Termination of Agreement for Cause

- A. MCAG may, by written notice to CONSULTANT, terminate the whole or any part of this Agreement in any one of the following circumstances:
 1. If CONSULTANT fails to perform the services called for by this Agreement within the time(s) specified herein, or any extension thereof; or
 2. If CONSULTANT fails to perform the services called for by this Agreement or so fails to make the progress as to endanger performance of this Agreement in accordance with its terms and in either of these two circumstances does not correct such failure within a period of 10 days (or such longer period as MCAG may authorize in writing) after receipt of notice from MCAG specifying such failure.
- B. In the event MCAG terminates this Agreement in whole or in part as provided in Paragraph A above, MCAG may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.
- C. Except with respect to defaults of subcontractors, CONSULTANT shall not be liable for any excess costs if the failure to perform arises out of causes beyond the control and without the fault or

negligence of CONSULTANT. Such causes include, but are not limited to, acts of God or of the public enemy, acts of government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather. In the event the failure to timely perform is caused by the default of a subcontractor that is mandated, required, or otherwise imposed on CONSULTANT by MCAG, CONSULTANT shall not be liable for failure to perform the services.

- D. Should the Agreement be terminated as provided in Paragraph A above, CONSULTANT shall provide MCAG with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by CONSULTANT pursuant to this Agreement. Upon termination as provided in Paragraph A above, CONSULTANT shall be paid the value of the work performed, as determined by MCAG less payments of compensation previously made. Payments previously made by MCAG to CONSULTANT shall be credited to the amount payable to CONSULTANT for allowable costs as provided herein, except, however, CONSULTANT shall be entitled to a proportionate fixed fee, if any, which, in the opinion of MCAG, it has legitimately earned and was not related to the cause for which this Agreement was terminated.
- E. If after notice of termination of this Agreement as provided for in this Section, it is determined for any reason that CONSULTANT was not in default under the provisions of this Section or that the default was excusable under the provisions of this Section, then the rights and obligations of the parties shall be the same as if the Agreement had been terminated for the convenience of MCAG.
- F. Failure to pay subcontractors may, at the discretion of MCAG, constitute a material breach of this Agreement.

Section 12 – Interest of Officials and CONSULTANT

- A. No member of or delegate to the Congress of the United States of America nor any Resident Commissioner shall be admitted to any share or part hereof or to any benefits to arise herefrom.
- B. CONSULTANT hereby covenants that it has, at the time of the execution of this Agreement, no interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. CONSULTANT further covenants that in the performance of this work, no person having any such interest shall be employed.

Section 13 – Subcontracting

- A. CONSULTANT shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without the prior written approval of MCAG.
- B. All subcontracts shall be subject to the provisions contained in this Agreement between MCAG and CONSULTANT.
- C. If the subcontractor is a Disadvantaged Business Enterprise, prompt payment and return of retainage requirements apply, as referenced in 49 CFR 26.29. CONSULTANT will provide payment records upon MCAG's request.
- D. CONSULTANT cannot terminate a subcontractor, including a DBE subcontractor, for convenience if CONSULTANT listed the subcontractor in response to the RFP, and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without MCAG's prior written consent.

Section 14 – Negotiated Agreement

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

Section 15 – Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of any successors or assigns.

Section 16 – Independent Contractor

MCAG and CONSULTANT agree that CONSULTANT is an independent contractor, and that no employer-employee relationship exists between MCAG and CONSULTANT or any of its subcontractors. CONSULTANT shall be solely responsible for the work performed under this Agreement and for the conduct and control of its employees and/or subcontractors. CONSULTANT shall be free to render services to others during the term of this Agreement so long as such activities do not interfere with or diminish CONSULTANT's ability to fulfill the obligations established herein to MCAG.

Section 17 – Dispute Resolution, Attorney Fees, Jurisdiction, and Venue

In any action, suit or proceeding arising out of or in any way connected with the performance of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. Notwithstanding any other provision of this Agreement, any disputes concerning any question of fact or law relating to this Agreement or any litigation or arbitration arising out of this Agreement shall be interpreted pursuant to California law, subject to the jurisdiction of the Superior Court of California, and venued in the County of Merced. CONSULTANT expressly waives federal jurisdiction.

Section 18 – Publication

No reports relating to this work shall be published by CONSULTANT without written permission of MCAG.

Section 19 – Indemnification

CONSULTANT shall indemnify and defend MCAG and hold it harmless from and against any and all claims, demands, or liability arising out of or in any way connected with the performance of this Agreement. Indemnity shall apply to any acts, omissions, willful misconduct, or negligent conduct, whether active or passive, unless liability is caused solely by the negligent or willful misconduct of MCAG. CONSULTANT will, on request and at its own expense, defend any action, suit, or proceeding arising hereunder and shall reimburse and pay MCAG for any loss, cost, damage, or expense, including attorney's fees suffered by it hereunder.

Section 20 – Patent Protection

To the extent the subject articles are not manufactured pursuant to design originated by MCAG, CONSULTANT agrees it will indemnify and hold MCAG and its officers, agents, and employees harmless from any loss, damage or liability which may be incurred on account of any alleged infringement of any United States patent with respect to such articles or materials, and that it will, at its own expense, defend any action, suit, or claim in which such infringement is alleged. MCAG agrees to notify CONSULTANT promptly of any suit or claim against MCAG for any alleged infringement of patent.

Section 21 – Ownership of Documents

All documents, methodological explanations, computer programs, drawings, designs, and reports generated as a result of work on this Agreement shall be the property of MCAG.

Section 22 – Documentation/Access to Records

CONSULTANT shall document the results of the work with each billing, to the satisfaction of MCAG. Such documentation shall include a progress summary, listing attainment of Agreement objectives. CONSULTANT shall work with MCAG to ensure that all paperwork requirements are met.

CONSULTANT shall 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 Agreement period and for three years after final payment is made and all other matters are closed with CONSULTANT. Such materials shall be available for inspection by authorized representatives of MCAG, or the copies thereof shall be furnished if requested. The FTA, FHWA, Comptroller General of the United States, or any authorized representative, shall have access to any books, documents, papers, and records of the CONSULTANT, that are directly pertinent to this specific Agreement, for the purpose of an audit, examination, excerpt, and transcriptions.

Section 23 – Waiver

No waiver by either party of any default, breach, or condition precedent shall be valid unless made in writing and signed by the parties hereto. No oral waiver of any default, breach, or condition precedent shall be binding on any of the parties hereto. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent, or any other right hereunder.

In no event shall the making, by MCAG, of any payment to CONSULTANT constitute, or be construed as, a waiver by MCAG of any breach of covenant, or any default which may then exist, on the part of CONSULTANT. The making of any such payment by MCAG while any such breach or default shall exist, shall not be construed as acceptance of substandard or careless work or as relieving CONSULTANT from its full obligations under this Agreement.

Section 24 – Notices

Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

A. To MCAG: Stacie Guzman, Executive Director
Merced County Association of Governments
369 W. 18th Street
Merced, CA 95340

B. To CONSULTANT: Contact Name, Title
Company Name
Street Address
City, State, Zip Code

Nothing hereinabove shall prevent either MCAG or CONSULTANT from personally delivering any such notices to the other.

Section 25 – Integration

This Agreement, and Exhibits A, and B represent the entire understanding of MCAG and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by MCAG and CONSULTANT.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first above written.

Merced County Association of Governments:

CONSULTANT:

By _____
Stacie Guzman, Executive Director

By _____
Contact Name, Title

APPROVED AS TO FORM:

By _____
General Counsel, Haden Law Office